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REC'D JUN 10 2015

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7
8 **BEFORE THE ARIZONA STATE BOARD OF MASSAGE THERAPY**

9 In the Matter of

10 **MARIO AMAYA, LMT,**

11 Holder of License No. MT-19009
As a Massage Therapist
12 In the State of Arizona

Board Case No. 15-130

**CONSENT AGREEMENT
FOR SURRENDER**

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15 In the interest of a prompt and judicious settlement of this case, consistent with the
16 public interest, statutory requirements and the responsibilities of the Arizona State Board
17 of Massage Therapy ("Board") under A.R.S. § 32-4201, *et. seq.*, Mario Amaya
18 ("Respondent"), holder of Massage Therapist License Number MT-19009 in the State of
19 Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions
20 of Law and Order ("Consent Agreement") as a final disposition of this matter.

21 **RECITALS**

22 1. Respondent has read and understands this Consent Agreement and has had
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the
24 opportunity to discuss this Consent Agreement with an attorney.

25 2. Respondent understands that he has a right to a public administrative
26 hearing concerning this matter, at which hearing he could present evidence and cross

1 examine witnesses. By entering into this Consent Agreement, Respondent knowingly
2 and voluntarily relinquishes all right to such an administrative hearing, as well as rights
3 of rehearing, review, reconsideration, appeal, judicial review or any other administrative
4 and/or judicial action, concerning the matters set forth herein.

5 3. Respondent affirmatively agrees that this Consent Agreement shall be
6 irrevocable.

7 4. Respondent understands that this Consent Agreement or any part of the
8 agreement may be considered in any future disciplinary action by the Board against him.

9 5. Respondent understands this Consent Agreement deals with Board case
10 number 15-130 involving allegations that Respondent engaged in conduct that would
11 subject him to discipline under the Board's statutes and rules. The investigation into
12 these allegations against Respondent shall be concluded upon the Board's adoption of
13 this Consent Agreement.

14 6. Respondent understands that this Consent Agreement does not constitute
15 any waiver, express or implied, of the Board's statutory authority or jurisdiction
16 regarding any future investigation, action or proceeding.

17 7. Respondent also understands that acceptance of this Consent Agreement
18 does not preclude any other agency, subdivision, or officer of this State from instituting
19 any other civil or criminal proceedings with respect to the conduct that is the subject of
20 this Consent Agreement.

21 8. Respondent acknowledges and agrees that, upon signing this Consent
22 Agreement and returning this document to the Board's Executive Director, he may not
23 revoke his acceptance of the Consent Agreement or make any modifications to the
24 document regardless of whether the Consent Agreement has been signed by the
25
26

1 Executive Director. Any modification to this original document is ineffective and void
2 unless mutually agreed by the parties in writing.

3 9. If a court of competent jurisdiction rules that any part of this Consent
4 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
5 shall remain in full force and effect.

6 10. Respondent understands that this Consent Agreement is a public record that
7 may be publicly disseminated as a formal action of the Board and may be reported as
8 required by law to the National Practitioner Data Bank and the Healthcare Integrity and
9 Protection Data Bank.

10 11. Respondent agrees that the Board will adopt the following Findings of Fact,
11 Conclusions of Law and Order.

12
13 ACCEPTED AND AGREED BY RESPONDENT

14
15 
16 Mario Amaya

Dated: 6/10/15

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18 **FINDINGS OF FACT**

19 1. The Board is the duly constituted authority for licensing and regulating the
20 practice of Massage Therapy in the State of Arizona.

21 2. Respondent is the holder of license number MT-19009 to practice as a
22 Massage Therapist in the State of Arizona.

23 3. On January 5, 2015, female massage therapy client TA received a massage
24 from Respondent in Phoenix, Arizona.

25 4. During the massage, Respondent engaged in sexual intercourse with TA.
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2 CONCLUSIONS OF LAW

3 1. The Board possesses jurisdiction over the subject matter and over
4 Respondent pursuant to A.R.S. § 32-4201 *et seq.*

5 2. The conduct and circumstances described above constitute sexual activity
6 in violation of A.R.S. § 32-4253(B)(2)(a) (“Sexual activity” means sexual conduct).
7 “Sexual conduct” means any direct or indirect touching, fondling, or manipulating of any
8 part of the genitals or anus by any part of the body or by any object or causing a person to
9 engage in that conduct. A.R.S. § 32-4253(B)(3).

10 3. The conduct and circumstances described above constitute sexual activity
11 in violation of A.R.S. § 32-4253(B)(2)(b) (“Sexual activity” means offering to engage in
12 sexual conduct).

13 4. The conduct and circumstances described above constitute sexual activity
14 in violation of A.R.S. § 32-4253(B)(2)(c) (“Sexual activity” means making sexual
15 advances, requesting sexual favors or engaging in other verbal conduct or physical
16 contact of a sexual nature with a client).

17 5. The conduct and circumstances described above constitute sexual activity
18 in violation of A.R.S. § 32-4253(B)(2)(h) (“Sexual activity” means exposing the massage
19 therapist’s anus or genitals to a client).

20 6. The Board possesses statutory authority to enter into a consent agreement
21 with a massage therapist and accept the surrender of an active license from a massage
22 therapist who admits to having committed an act which would subject him to discipline
23 under the Board’s statutes or rules. A.R.S. § 32-4254(O)(2).

24 ...

25 ...

1 ORDER

2 IT IS HEREBY ORDERED THAT License Number MT-19009 issued to Mario
3 Amaya to practice as a massage therapist in the State of Arizona is hereby surrendered.

4 DATED this 19th day of May, 2015.

5 ARIZONA STATE BOARD OF MASSAGE
6 THERAPY

7 (Seal)

8 By: 
9 KATHLEEN PHILLIPS
Executive Director

10 ORIGINAL OF THE FORGOING FILED
11 this 19th day of May, 2015, with:

12 Arizona State Board of Massage Therapy
13 1700 West Washington, Suite 250
14 Phoenix, Arizona 85007

15 EXECUTED COPY OF THE FOREGOING MAILED
16 BY CERTIFIED MAIL
17 this 19th day of May, 2015, to:

18 Mario Amaya
19 Address of Record
20 Respondent

21 EXECUTED COPY OF THE FOREGOING MAILED
22 this 19th day of May, 2015, to:

23 Elizabeth A. Campbell
24 Assistant Attorney General
25 1275 W. Washington Street, CIV/LES
26 Phoenix, Arizona 85007
Attorney for the Board

