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8 **BEFORE THE ARIZONA STATE BOARD OF MASSAGE THERAPY**
9

10 In the Matter of

11 **KIVI BYRNE,**

12 Holder of License No. MT-12516
As a Massage Therapist
13 In the State of Arizona

Board Case No. 15-115

**CONSENT AGREEMENT
FOR PROBATION**

14
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.*, Kivi Byrne
18 ("Respondent"), holder of Massage Therapist License Number MT-12516 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.
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1 2. Respondent understands that she has a right to a public administrative
2 hearing concerning this matter, at which hearing she could present evidence and cross
3 examine witnesses. By entering into this Consent Agreement, Respondent knowingly
4 and voluntarily relinquishes all right to such an administrative hearing, as well as rights
5 of rehearing, review, reconsideration, appeal, judicial review or any other administrative
6 and/or judicial action, concerning the matters set forth herein.

7 3. Respondent affirmatively agrees that this Consent Agreement shall be
8 irrevocable.

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

11 5. Respondent understands this Consent Agreement deals with Board case
12 number 15-115 involving allegations that Respondent engaged in conduct that would
13 subject him to discipline under the Board's statutes and rules. The investigation into
14 these allegations against Respondent shall be concluded upon the Board's adoption of
15 this Consent Agreement.

16 6. Respondent understands that this Consent Agreement does not constitute a
17 dismissal or resolution of any other matters currently pending before the Board, if any,
18 and does not constitute any waiver, express or implied, of the Board's statutory authority
19 or jurisdiction regarding any other pending or future investigation, action or proceeding.

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

24 8. Respondent acknowledges and agrees that, upon signing this Consent
25 Agreement and returning this document to the Board's Executive Director, she may not
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1 revoke her acceptance of the Consent Agreement or make any modifications to the
2 document regardless of whether the Consent Agreement has been signed by the
3 Executive Director. Any modification to this original document is ineffective and void
4 unless mutually agreed by the parties in writing.

5 9. This Consent Agreement is effective only when signed by the Executive
6 Director on behalf of the Board.

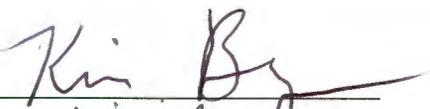
7 10. If a court of competent jurisdiction rules that any part of this Consent
8 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
9 shall remain in full force and effect.

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

14 12. Respondent understands that any violation of this Consent Agreement may
15 result in disciplinary action. A.R.S. § 32-4253(A)(23).

16 13. Respondent agrees that the Board will adopt the following Findings of Fact,
17 Conclusions of Law and Order.

18
19 ACCEPTED AND AGREED BY RESPONDENT

20
21 
22 Kivi Byrne
23

Dated: 10 / 13 / 15'

1 FINDINGS OF FACT

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

4 2. Respondent is the holder of license number MT-12516 to practice as a
5 Massage Therapist in the State of Arizona. Respondent has been licensed as a massage
6 therapist in Arizona since August 2004.
7

8 3. On July 17, 2014, Respondent was investigated by the Scottsdale Police
9 Department utilizing an undercover officer. During the course of the massage, a
10 pillowcase utilized to cover the genitals of the officer/client was removed. There is a
11 factual dispute between the officer and Respondent as to how the pillowcase was
12 removed (he would testify that she removed the pillowcase and she would testify that he
13 removed the pillowcase himself), but it is admitted that the massage continued for a brief
14 period of time as the officer lay on his back with his genitals uncovered.
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16 4. A criminal case was pursued in the City of Scottsdale, State of Arizona v.
17 Kivi Linn Byrne, SC-2014017104, Complaint 01929531. At the conclusion of the case,
18 Respondent pleaded guilty to violating Scottsdale City Code 16-221(D)(1), massage
19 uncovered genitals, a Class 1 misdemeanor.
20

21 5. Ms. Byrne asserts that she never physically touched the officer's genitals.
22 Respondent was sentenced to 12 months of unsupervised probation, due to be completed
23 on November 25, 2015. She was also fined \$622.20, which she is making payments on.
24 Respondent will not serve any days in jail upon successful completion of probation.
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1 1. Respondent's Massage Therapist License No. MT-12516 is immediately
2 placed on probation for a period of eighteen (18) months, subject to the following terms
3 and conditions:

4 a. By Respondent's renewal date of August 10, 2016, Respondent shall
5 complete 20 hours of Board staff pre-approved continuing education in /
6 professional and personal ethics, to include draping, and provide
7 documentation proving successful completion of the required continuing
8 education to the Board. These continuing education hours shall be in
9 addition to the hours required for the renewal of Respondent's massage
10 therapist license under A.R.S. § 32-4225.

11 b. Respondent shall contact at least six (6) Arizona schools of massage
12 therapy and request to speak at the schools on the topic of ethics.
13 Respondent shall provide the ethics presentation at no less than one school
14 by her renewal date of August 10, 2016. Respondent shall provide at least
15 two weeks' notice of the presentation date to the Board's Executive
16 Director. In the event that none of the six schools are willing to allow
17 Respondent to speak on the topic of ethics, Respondent shall write a 200
18 word essay, submitted to the Board's Executive Director, on the ethics and
19 standard of draping a client and the avoidance of even the appearance of
20 sexual impropriety.

21 c. No sooner than eighteen (18) months from the beginning of
22 Respondent's probationary period, Respondent shall request in writing that
23 the Board terminate her probation. Respondent's request for termination
24 will be considered at a regularly scheduled Board meeting. Respondent is
25 required to personally appear at that Board meeting. Respondent's
26

1 probationary period will continue until Respondent's request for
2 termination is received and the Board terminates the probation.

3 d. Respondent shall pay all necessary fees and complete all continuing
4 education requirements throughout the term of her probation to maintain
5 Massage Therapist License No. MT-12516.

6 e. Throughout the term of Respondent's probation, Respondent shall
7 personally appear before the Board when requested to do so by the Board
8 or Board staff.

9 f. Respondent shall obey all federal and state laws and rules governing
10 the practice of Massage Therapists.

11 3. Respondent shall pay all costs associated with complying with this Consent
12 Agreement.

13 4. If Respondent violates this Order in any way or fails to fulfill the
14 requirements of this Order, the Board, after giving the Respondent notice and the
15 opportunity to be heard, may revoke, suspend or take other disciplinary actions against
16 Respondent's license. The issue at such a hearing will be limited solely to whether this
17 Order has been violated.

18 DATED this 19th day of October, 2015.

19
20 ARIZONA STATE BOARD OF MASSAGE
21 THERAPY

22 (Seal)

23 By: Kathleen Phillips
24 KATHLEEN PHILLIPS
25 Executive Director
26

1 ORIGINAL OF THE FORGOING FILED
this 2nd day of October, 2015, with:

2 Arizona State Board of Massage Therapy
3 1700 West Washington, Suite 250
4 Phoenix, Arizona 85007

5 EXECUTED COPY OF THE FOREGOING MAILED
BY CERTIFIED MAIL
this 2nd day of October, 2015, to:

6 Kivi Byrne
7 Address of Record
8 Respondent

9 EXECUTED COPY OF THE FOREGOING MAILED
this 2nd day of October, 2015, to:

10 Kent M. Nicholas, Esq.
11 Attorney at Law
12 40 N. Center Street, Suite 115
13 Mesa, Arizona 85201
14 Attorney for Respondent

15 Elizabeth A. Campbell
16 Assistant Attorney General
17 1275 W. Washington Street, CIV/LES
18 Phoenix, Arizona 85007
19 Attorney for the State

20 S.Conger
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