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REC'D JUL 29 2013

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

9 In the Matter of

11 **STEPHEN CUMMINGS,**

12 Applicant for Licensure as a  
13 Massage Therapist in the  
14 State of Arizona

**CONSENT AGREEMENT FOR  
LICENSURE WITH PROBATION**

14 **CONSENT AGREEMENT**

15 As Stephen Cummings ("Applicant") has made application to the Arizona State  
16 Board of Massage Therapy (the "Board") for licensure as a massage therapist and,  
17 consistent with the public interest, statutory requirements and the responsibilities of the  
18 Board under A.R.S. § 32-4201, *et. seq.*, the Board and Applicant enter into the following  
19 Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") for  
20 licensure with suspension and probation.

21 **RECITALS**

22 1. Applicant 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  
26

1           2.     Applicant understands that he has a right to a public administrative hearing  
2 concerning this matter, at which hearing he could present evidence and cross examine  
3 witnesses. By entering into this Consent Agreement, Applicant knowingly and  
4 voluntarily relinquishes all right to an administrative hearing, as well as all rights of  
5 rehearing, review, reconsideration, appeal, judicial review or any other administrative  
6 and/or judicial action, concerning the matters set forth herein.

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

9           4.     Applicant acknowledges and agrees that, upon signing this Consent  
10 Agreement and returning this document to the Board's Executive Director, he may not  
11 revoke his acceptance of the Consent Agreement or make any modifications to the  
12 document regardless of whether the Consent Agreement has been signed by the  
13 Executive Director. Any modification to this original document is ineffective and void  
14 unless mutually agreed by Applicant and the Board in writing.

15          5.     Applicant understands that the Consent Agreement shall not become  
16 effective unless and until signed by the Board's Executive Director on behalf of the  
17 Board.

18          6.     This Consent Agreement is subject to the approval of the Board and is  
19 effective only when accepted by the Board and signed by the Executive Director. In the  
20 event that the Board does not approve this Consent Agreement, it is withdrawn and shall  
21 be of no evidentiary value and shall not be relied upon nor introduced in any action by  
22 any party, except that the parties agree that should the Board reject this Consent  
23 Agreement and this case proceeds to hearing, Applicant shall assert no claim that the  
24 Board was prejudiced by its review and discussion of this document or any records  
25 relating thereto.

26

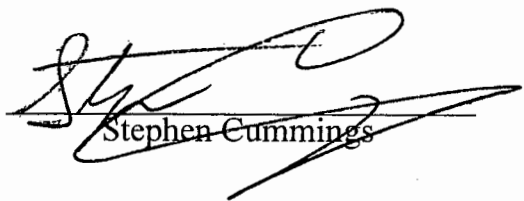
1 7. If a court of competent jurisdiction rules that any part of this Consent  
2 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
3 shall remain in full force and effect.

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

8 9. Applicant understands that any violation of this Consent Agreement may  
9 result in disciplinary action. A.R.S. § 32-4253(A)(23).

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

12 ACCEPTED AND AGREED BY STEPHEN CUMMINGS

13  
14   
15 Stephen Cummings

Dated: 7/26/13

16  
17 **FINDINGS OF FACT**

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

20 2. At its July 2013 meeting, the Board considered Applicant's application for  
21 licensure as a massage therapist in the State of Arizona.

22 3. Applicant has the following criminal convictions:

- 23 • A 1996 felony conviction for falsification of business records;
- 24 • A 1998 felony conviction for possession of marijuana for sale; and
- 25 • A 2013 felony conviction for unlawful delivery of marijuana for which  
26 Applicant is currently on probation;

1 4. Being convicted of a felony is grounds for disciplinary action. A.R.S. § 32-  
2 4253(A)(4).

3 **CONCLUSIONS OF LAW**

4 1. The Board possesses jurisdiction over the subject matter and over  
5 Applicant pursuant to A.R.S. § 32-1901 *et seq.*

6 2. The Board, having heard the statements made by Applicant, hereby closes  
7 its investigation and finds that Applicant currently meets the requirements for licensure  
8 under A.R.S. § 32-4222, subject to the terms of this Consent Agreement.

9 **ORDER**

10 Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY  
11 ORDERED AS FOLLOWS:

12 1. Subject to the terms of this Order, Applicant is hereby issued a license to  
13 practice massage therapy in Arizona.

14 2. Applicant's license is immediately SUSPENDED for ninety (90) days from  
15 the effective date of this Consent Agreement.

16 3. Following the term of suspension, Applicant's license is immediately  
17 placed on PROBATION for three (3) years.

18 4. During the term of suspension and probation, Applicant shall participate in  
19 random drug testing at least once per month for the first year and at least quarterly  
20 thereafter. Within ten (10) days of the effective date of this order, Applicant shall enroll  
21 and participate in a 10-panel screen random urine drug testing schedule, specifically to  
22 include marijuana testing. The drug testing shall be performed by a drug testing facility  
23 pre-approved by Board staff.<sup>1</sup> Applicant shall furnish the testing facility with a copy of  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Treatment Assessment Screening Center, Inc. ("TASC") is hereby approved as the testing facility. Should Applicant wish to change testing facilities, such a request must be submitted in writing to Board staff.

1 this Consent Agreement and shall authorize and require the testing facility to submit test  
2 results directly to the Board. In addition, Applicant shall authorize and require the testing  
3 facility to immediately notify the Board of any failure by Applicant to appear and be  
4 tested when requested to do so by the testing facility. Any positive drug test for a  
5 prohibited substance or any failure by Applicant to appear and be tested when requested  
6 to do so by the testing facility is a violation of this Order.

7 5. Applicant shall sign any release necessary to allow the Board to obtain  
8 information regarding his testing with the drug testing facility.

9 6. Throughout the term of Applicant's suspension and probation, Applicant  
10 shall personally appear before the Board when requested to do so by the Board or Board  
11 staff.

12 7. Applicant shall obey all federal and state laws and rules governing the  
13 practice of Massage Therapists.

14 8. Three (3) years after the beginning of Applicant's probationary period,  
15 Applicant shall request in writing that the Board terminate the probation. Applicant's  
16 request for termination will be considered at a regularly scheduled Board meeting.  
17 Applicant is required to personally appear at that Board meeting. Applicant's  
18 probationary period will continue until Applicant's request for termination is received  
19 and the Board terminates the probation.

20 9. Applicant shall pay all costs associated with complying with this Consent  
21 Agreement, including specifically the costs of drug testing.

22 10. If Applicant violates this Order in any way or fails to fulfill the  
23 requirements of this Order, the Board, after giving notice and the opportunity to be heard,  
24 may revoke, suspend or take other disciplinary actions against the license. The issue at  
25 such a hearing will be limited solely to whether this Order has been violated.

26

1 DATED this 30th day of July, 2013.

2  
3 ARIZONA STATE BOARD OF MASSAGE  
THERAPY

4  
5 By: Kathleen Phillips  
6 KATHLEEN PHILLIPS  
Executive Director

7  
8 ORIGINAL OF THE FORGOING FILED  
9 this 30th day of July, 2013, with:

10 Arizona State Board of Massage Therapy  
11 1400 West Washington, Suite 300  
Phoenix, Arizona 85007

12 EXECUTED COPY OF THE FOREGOING MAILED  
13 this 30th day of July, 2013, to:

14 Stephen Cummings  
Address of Record

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

17  
18 #3486603 [Signature]