

1 BEFORE THE ARIZONA BOARD OF MASSAGE THERAPY

2 In the Matter of:

3 )  
4 Justin Neil Gallagher, LMT )

5 )  
6 License No. MT-17021 )

7 As a Massage Therapist )

8 In the State of Arizona )  
9

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER**

10 Pursuant to Complaint and Notice of Hearing, case number 13-103 came before the Arizona  
11 Board of Massage Therapy (Board) on July 22, 2013.

12 Dennis Beye, president, presided at the meeting with Board members Victoria Bowman, Earl  
13 Duskey and John Ortega in attendance.

14 The State was represented by the Office of the Attorney General, Elizabeth Campbell, Assistant  
15 Attorney General, Licensing and Enforcement Section. Chris Munns, of the Solicitor General's  
16 Section of the Attorney General's Office was present and available to provide independent legal  
17 advice to the Board. Justin Neil Gallagher (Respondent) appeared before the Board and was not  
18 represented by an attorney.

19 The Board, after considering the testimony and evidence presented, hereby issues the following  
20 Findings of Fact, Conclusions of Law, and Final Order.

21 **AUTHORITIES AND JURISDICTION**  
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23  
24 1. The Board is the duly constituted authority for licensing and regulating the practice of  
25 massage therapy in the state of Arizona.

26 2. Respondent is the holder of license number MT-17021, which allows him to practice as a  
27 massage therapist in the state of Arizona.

28 3. Under A.R.S. § 32-4201, *et. seq.*, the Board possess jurisdiction over the subject matter  
29 and over Respondent as a licensee of the Board.

30 **FINDINGS OF FACT**  
31

32  
33 1. On or about August 23, 2011, Respondent was convicted of a class 6 undesignated  
34 felony, in Maricopa County Superior Court case number CR2012-005940.

1 2. Respondent failed to notify the board that he had been charged with a criminal offense  
2 within 10 days after the charge was filed. The Board was only notified of the offense when it  
3 received a notification of conviction from the Maricopa County Superior Court on October 11,  
4 2012.

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6 **CONCLUSIONS OF LAW**

7  
8 1. The felony conviction described above in the Findings of Fact paragraph 1 is grounds for  
9 discipline under A.R.S. § 32-4253(A)(4) (Being convicted of a felony or other offense involving  
10 moral turpitude or conviction for prostitution, solicitation or other similar offense. A conviction  
11 by a court of competent jurisdiction is conclusive evidence of the commission of the crime).

12 2. A class 6 undesignated felony is treated as a felony for all purposes until such time as a  
13 court may actually enter an order designating the offense as a misdemeanor. A.R.S. § 13-702(G).

14 3. The conduct described in the Findings of Fact paragraph 2 constitutes unprofessional  
15 conduct under A.R.S. § 32-3208(A) and (D), which provide that it is unprofessional conduct for  
16 a health professional who has been charged with a misdemeanor involving conduct that may  
17 affect patient safety or a felony after receiving or renewing a license or certificate to fail to  
18 notify the health professional's regulatory board in writing within ten working days after the  
19 charge is filed.

20  
21 **ORDER**

22  
23 Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED  
24 that Respondent's license number MT-17021 is placed on probation until Respondent's next  
25 renewal date of March 12, 2015. Respondent is required to include in the required continuing  
26 education hours for renewal a minimum of six hours of ethics. At the end of the probationary  
27 period Respondent shall appear before the Board to request release from probation. Respondent's  
28 failure to comply with this Board order will subject him to future disciplinary action by the  
29 Board. (A.R.S. § 32-4253(A)(23).

30  
31 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

32 Respondent has the right to petition for a rehearing or review of this Order. Pursuant to A.R.S. §  
33 41-1092.09 and A.A.C. R4-15-401(A), the petition must be filed with the Board within thirty-

1 five (35) days from the date of mailing if the Order was served by certified mail. The petition  
2 must set forth legally sufficient reasons for granting the rehearing or review pursuant to A.A.C.  
3 R4-15-401(C). The timely filing of a motion for rehearing or review shall stay the enforcement  
4 of the Board's Order. If a motion for rehearing or review is not filed, the Board's Order becomes  
5 effective thirty-five (35) days after it is mailed, unless pursuant to A.A.C. R4-15-401(F), the  
6 Board has expressly found good cause to believe that this Order shall be effective immediately  
7 upon the issuance and has so stated in this Order. The failure to file a motion for rehearing or  
8 review within thirty days after service of the decision has the effect of prohibiting the parties  
9 from seeking judicial review of the Board's decision.

10  
11  
12 Dated and signed this 25<sup>th</sup> day of July, 2013.

13 ARIZONA BOARD OF MASSAGE THERAPY

14 By: Kathleen Phillips  
15 Kathleen Phillips  
16 Executive Director  
17

18 ORIGINAL OF THE FOREGOING FILED

19 this 25<sup>th</sup> day of July 2013 with the:  
20 Arizona State Board of Massage Therapy  
21 1400 West Washington, Suite 300  
22 Phoenix, AZ 85007

23  
24 EXECUTED COPY OF THE FOREGOING MAILED

25 BY CERTIFIED & REGULAR FIRST-CLASS MAIL

26 this 25<sup>th</sup> day of July 2013, to:

27  
28 Justin Neil Gallagher  
29 Address of Record  
30 Respondent

31  
32 COPY OF THE FOREGOING MAILED

33 this 25<sup>th</sup> day of July 2013, to:

34  
35 Chris Munns  
36 Assistant Attorney General

1 1275 W. Washington Street, CIV/SGO  
2 Phoenix, Arizona 85007  
3 Attorney for the Board

4  
5 Elizabeth Campbell  
6 Assistant Attorney General  
7 1275 W. Washington Street, CIV/LES  
8 Phoenix, Arizona 85007  
9 Attorney for the State

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*S. Longe*

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