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7

REC'D JUL 10 2014

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

9 In the Matter of

10
11 **ERIK GARCIA,**

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

**CONSENT AGREEMENT FOR
LICENSURE WITH PROBATION**

14 **CONSENT AGREEMENT**

15 As Erik Garcia ("Applicant") has made application to the Arizona State Board of
16 Massage Therapy (the "Board") for licensure as a massage therapist and, consistent with
17 the public interest, statutory requirements and the responsibilities of the Board under
18 A.R.S. § 32-4201, *et. seq.*, the Board and Applicant enter into the following Recitals,
19 Findings of Fact, Conclusions of Law and Order ("Consent Agreement") for licensure
20 with suspension and probation.
21

22 **RECITALS**

23 1. Applicant has read and understands this Consent Agreement and has had
24 the opportunity to discuss this Consent Agreement with an attorney, or has waived the
25 opportunity to discuss this Consent Agreement with an attorney.
26

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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 ERIK GARCIA
13

14 
15 _____
16 Erik Garcia

Dated: July 7, 2014

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. Applicant was convicted of misdemeanor driving under the influence in
21 December 2012 in the Municipal Court of Lake Havasu City, Arizona. As a result of his
22 conviction, Applicant was placed on 36 months of probation.

23 3. On February 27, 2014, Applicant applied for licensure with the Board. On
24 his application, Applicant answered "No" to the following question: "Are you on
25 probation?"
26

1 of participation and continued recovery progress is submitted to the Board by Applicant's
2 recovery support group.

3 4. During the term of PROBATION, Applicant shall abstain from alcohol and
4 all mind and/or mood altering drugs except upon current prescription from a licensed
5 provider. Applicant shall immediately provide proof of prescription to Board staff upon
6 request.

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

10 6. Applicant shall obey all federal and state laws and rules governing the
11 practice of Massage Therapists.

12 7. **One month prior to May 15, 2016**, Applicant shall request in writing that
13 the Board terminate the probation. With his request for termination of probation,
14 Applicant shall submit certificates showing completion of the 24 hours of continuing
15 education required for renewal under A.R.S. § 32-4225(E). Applicant's request for
16 termination will be considered at a regularly scheduled Board meeting. Applicant is
17 required to personally appear at that Board meeting. Applicant's probationary period will
18 continue until Applicant's request for termination is received and the Board terminates
19 the probation.

20 8. Applicant shall pay all costs associated with complying with this Consent
21 Agreement, including specifically the costs of participation in recovery support.

22 9. 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.

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2 ...
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REC'D JUL 10 2014

4 DATED this 10th day of July, 2014

6 ARIZONA STATE BOARD OF MASSAGE
7 THERAPY

8 By: *Kathleen Phillips*

9 KATHLEEN PHILLIPS,
10 Executive Director

11 ORIGINAL OF THE FORGOING FILED

12 This 10th day of July, 2014, with:

13 **Arizona State Board of Massage Therapy**
14 1400 West Washington Street, Suite 300
15 Phoenix, Arizona 85007

16 EXECUTED COPY OF THE FORGOING MAILED BY CERTIFIED MAIL

17 This 10th day of July, 2014 to:

18 **Erik Garcia**

19 Address of Record
20 Respondent

21 **Elizabeth A. Campbell**

22 Assistant Attorney General
23 1275 W. Washington Street, CIV/LES
24 Phoenix, Arizona 85007

25 Attorney for the Board

26 **S. Conger** *S. Conger*