

BEFORE THE ARIZONA BOARD OF MASSAGE THERAPY

In the Matter of:

KEITH NISLY, LMT

License No. MT-01542P

As a Massage Therapist

In the State of Arizona

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

Pursuant to Notice of Hearing Number 11-103 (Notice) this matter came before the Arizona Board of Massage Therapy (Board) on November 28, 2011.

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

The State was represented by the Office of the Attorney General, Elizabeth Campbell, Assistant Attorney General, Licensing and Enforcement Section. Chris Munns, of the Solicitor General's Section of the Attorney General's Office was present and available to provide independent legal advice to the Board. Keith Nisly (Respondent) was present, but was not represented by an attorney. The Board, after considering the testimony and evidence presented, hereby issues the following Findings of Fact, Conclusions of Law, and Order.

AUTHORITIES AND JURISDICTION

1. The Board is the duly constituted authority for licensing and regulating the practice of massage therapy in the state of Arizona.
2. Respondent is the holder of license number MT-01542P, which allows him to practice as a massage therapist in the state of Arizona.
3. Under A.R.S. § 32-4201, *et seq.*, the Board has jurisdiction over the subject matter and over Respondent as a licensee of the Board.

1 FINDINGS OF FACT

2 1. In February 2011, female massage therapy client MM received a massage from
3 Respondent at Respondent's home.

4 2. During the massage, Respondent draped MM's legs and positioned his head so that he
5 was able to see MM's genitals during the massage. MM was not wearing underwear.

6 CONCLUSIONS OF LAW

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

9 2. The Board may discipline a massage therapist who has engaged in sexual activity with a
10 client A.R.S. § 32-4253(15).

11 3. The conduct and circumstances described above with regard to MM constitute sexual
12 activity in violation of A.R.S. § 32-4253(B)(2)(d) ("Sexual activity" means intentionally viewing
13 a completely or partially disrobed massage therapy client in the course of treatment if the
14 viewing is not related to treatment under current practice standards and is intended to appeal to
15 the pruient interest of the massage therapy client or the massage therapist).

16 4. The conduct and circumstances described above with regard to MM constitute grounds
17 for disciplinary action under A.R.S. § 32-4253(A)(10) (Engaging in conduct that could result in
18 harm or injury to the public.

19 ORDER

20 Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED**
21
22 that Respondent's license number **MT-01542P** is **REVOKED**.

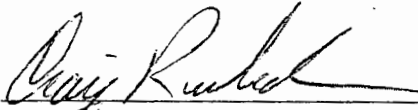
23 RIGHT TO PETITON FOR REHEARING OR REVIEW

24 Respondent has the right to petition for a rehearing or review of this Order. Pursuant to A.R.S. §
25 41-1092.09 and A.A.C. R4-15-401(A), the petition must be filed with the Board within thirty-
26 five (35) days from the date of mailing if the Order was served by certified mail. The petition
27 must set forth legally sufficient reasons for granting the rehearing or review pursuant to A.A.C.
28

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

8 Dated and signed this 28 day of November, 2011.

9 ARIZONA BOARD OF MASSAGE THERAPY

10 By: 
11 Craig Runbeck, N.M.D.
12 Executive Director
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17 ORIGINAL OF THE FOREGOING FILED
18 this 28 day of November, 2011 with the:
19 Arizona State Board of Massage Therapy
20 1400 West Washington, Suite 300
21 Phoenix, AZ 85007
22

23 EXECUTED COPY OF THE FOREGOING MAILED
24 BY CERTIFIED & REGULAR FIRST-CLASS MAIL
25 this 28 day of November, 2011, to:

26
27 Keith Nisly
28 17239 N. 46th Place
29 Phoenix, Arizona 85032
30 Respondent/Licensee
31

32 COPY OF THE FOREGOING MAILED
33 this 28 day of November, 2011, to:

34
35 Christopher Munns
36 Assistant Attorney General
37 1275 W. Washington Street, CIV/SGO
38 Phoenix, Arizona 85007
39 Attorney for the Board

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Elizabeth Campbell
Assistant Attorney General
1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007
Attorney for the State
