

BEFORE THE ARIZONA BOARD OF MASSAGE THERAPY

In the Matter of:

NINA TERTEROVA, LMT

Applicant for a -
Massage Therapy License
In the State of Arizona

**ORDER DENYING RESPONDENT'S
REQUEST FOR REHEARING OR REVIEW**

On May 18, 2015, the Arizona Board of Massage Therapy (Board) met to consider Respondent's request for rehearing or request of the Board's Order on June 23, 2014. The Board was represented by the Office of the Attorney General, Elizabeth Campbell. Chris Munns with the Solicitor General's Office was present to provide independent legal advice. Applicant appeared without counsel. After full consideration of the record in this matter and the arguments of the parties, the Board voted to DENY Respondent's request for rehearing or review. Respondent has set forth no grounds upon which a rehearing or review should be granted.

ORDER

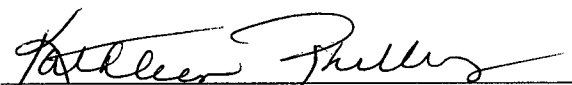
Respondent's Motion for Rehearing is **Denied**. The Board's Order dated June 23, 2014 remains in effect.

NOTICE

Respondent is notified that this Order is the final administrative decision of the Board and that Respondent has exhausted her administrative remedies. Respondent is advised that an appeal to superior court may be taken from this decision pursuant to A.R.S. §§ 12-901 *et seq* within thirty-five (35) days from the date this decision is served.

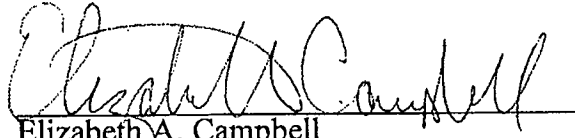
Dated and signed this 1 day of June, 2015.

ARIZONA BOARD OF MASSAGE THERAPY

By: 
Kathleen Phillips
Executive Director

1 RESPECTFULLY SUBMITTED this 20th day of April, 2015.

2
3 Mark Brnovich
Attorney General

4
5 

6 Elizabeth A. Campbell
7 Assistant Attorney General
Attorneys for the State

8 ORIGINAL OF THE FORGOING FILED
9 This 20th day of April, 2015, with:

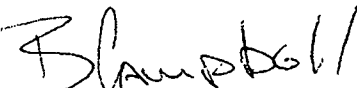
10 Arizona Board of Massage Therapy
11 1400 West Washington, Suite 300
Phoenix, Arizona 85007

12 COPY OF THE FOREGOING MAILED
this 20th day of April, 2015, to:

13 Nina Terterova
14 4132 West Garden Drive
Phoenix, AZ 85029
15 Applicant

16 COPY OF THE FOREGOING E-MAILED
this 20th day of April, 2015, to:

17 Christopher Munns
18 Assistant Attorney General
Christopher.munns@azag.gov
19 Attorney for the Board

20 
21 #642296

BEFORE THE ARIZONA STATE BOARD OF MASSAGE THERAPY

REC'D APR 15 2015

In the Matter of:

NINA TERTEROVA

PETITION FOR REVIEW

PETITIONER,

(Denial of License)

v.

ARIZONA STATE BOARD OF
MESSAGE THERAPY. (BOARD)

COMES NOW PETITIONER NINA TERTEROVA, hereinafter referred to as **Petitioner**, and hereby Request(s) a **Review** of the **(Board's)** Decision **and** subsequent "Order" dated **March 18, 2015**. **This Petition is submitted within 30 days as provided by law.**

SUPPORTING MEMORANDUM

1. **Petitioner** files this *Petition* to preserve her legal right to pursue this matter in the *Maricopa County Superior Court* and/or [any] other Court of competent jurisdiction deemed appropriate to resolve this matter, in it's entirety.
2. **Petitioner** alleges, the **(Board)** clearly made an "erroneous, "*Decision*" to [deny] **Petitioner** her license to Practice Massage Therapy, (**Petitioner** will concede), **at this point**, under the pretense of "harmless error", (although much harm has been incurred) and for **favorable consideration** upon review with the subsequent **Granting** of her license to Practice Massage

Therapy without [any] further and unnecessary delay. [Or] **Petitioner's** position will be that the **(Board)** (without legal justification [or] lawful authority to do so) Denied her a license to Practice Massage Therapy resulting in "*abuse of discretion, an "abuse of power", and discrimination* a defined by state and federal law.

3. **Petitioner** agrees with the **Order** as and for paragraph 1.
4. **Petitioner** acknowledges the **Order** in paragraph 2 "Findings of Fact", item(s) 1, & 2.
5. **Petitioner** [dis]agrees with the **Order** in paragraph 2 "Findings of Fact" item 3, in as far as, **Petitioner** alleges the "factual grounds for denial" are [not] supported by applicable *Arizona Statute* or [any] other relevant law [or] legal authority.
6. **Petitioner** [dis]agrees with the **Order** in paragraph 3, "Conclusions of Law", items 1 and 2.
7. The statutory principle for which the **(Board)** relied upon in their decision to **Deny** **Petitioner** her License to Practice Massage, as stated is contrary to what the legislative intent establishes in *Arizona Revised Statute, ARS, 32-4253(A)(4) and ARS 32-4222(A)(7)(b)(c)*.
8. *Under the (Board's) stated position, "an applicant is subject to disciplinary action for being "convicted" of a felony or other offense involving moral turpitude or any conviction for prostitution, solicitation or other similar offense"*.
9. **Petitioner** (in this case) was convicted of "solicitation [emphasis added] to possess a narcotic" [emphasis added], which does [not] fall within the parameters of *ARS 32-4253(A)(4)*.
10. The mere use of the term "solicitation", does not constitute a "similar offense" as lawful grounds for disciplinary action as the **(Board's)** wishes to imply here in their interpretation of this Statute, to the extent that **Petitioner** should be Denied a License to Practice Massage.

11. "The primary principle of statutory interpretation is to determine and give effect to legislative intent. When a statute's words do not disclose legislative intent, the court (in this instance, the **(Board)** must read the statute as a whole, and give meaningful operation to all of its provisions. (See *Kriz v. Buckeye Petroleum Co.* 145 *Ariz.* 374, 377, 701 P 2d 1182, 1185, see *Peterson v. Flood*, 84 *Ariz.* 256, 259, 326 P 2d 845, 847 (1958). To find legislative intent an appellate court (in this case the **(Board)**) may consider many different factors. These factors include the context of the statute, the language used, the subject matter, its historical background, its effects and consequences, and its spirit and purpose. *Martin v Martin* 156 *Ariz.* 452, 457, 752 P 2d 1038, 1043 (1988), A court (in this case the **(Board)** should interpret two sections of the same statute consistently, especially when they use identical language. *State v. Oehlerking*, 147 *Ariz.* 266, 268, 709, P 2d 900, 902 (App 1985).

12. Clearly, the Legislative intent in ARS 32-4253(A)(4) when applying the word "solicitation" clearly references an offense or offenses involving "moral turpitude" or "prostitution", or other "similar" offense, to those particular crimes, [not] as used in the possession of a drug, which clearly and unambiguously is **not** a similar offense for the purpose(s) of this Statute.

13. A cursory review of the ARS 32-4222(A)(7)(b) clearly establishes the differences in the meaning within the same statute, which reads;

(A) *An applicant for a license as a massage therapist shall;*

(7) *Within the five years preceding the date of the application, not have been convicted of;*

(b) *A class 4, 5, or 6 felony offense involving moral turpitude that has a reasonable relationship to the practice of massage therapy.*

14. According to the (Board) in two **Formal Hearings** one on September 22, 2014 and another on February 23, 2015 upon her felony being reduced to a misdemeanor, the (Board) has clearly [led] **Petitioner** to believe she would obtain her license to practice massage, at that time. The (Board) went as far as [deferring] their Ruling for that purpose.

15. This is particularly noteworthy because, when applying the (Board's) reason(s) or **theory**, for Denying **Petitioner** her license to practice massage therapy and obviously using "solicitation" as the "*catch all phrase*", it would be of [no] significance whether or not **Petitioner's** felony conviction was reduced to a misdemeanor, she would [not] be eligible to obtain her license to practice massage until April 10, 2019.

16. This is clearly evident pursuant to *ARS 32-4222(A)(7)(c)* which reads:

(A)(7)(c) A misdemeanor involving prostitution or solicitation or other similar offense involving moral turpitude that has a reasonable relationship to the practice of massage therapy", has a five (5) year waiting period as it applies to "solicitation", clearly indicating the (Board's) [mis]interpretation of this Statute and as it would apply to legislative intent.

17. **Petitioner's** offense had [no] relationship whatsoever, to the practice of massage therapy. Matter of fact, it happened over a year prior to her even graduating from the massage therapy program and the "solicitation" had [no] relationship to moral turpitude, prostitution or similar offense as the (Board) has apparently indicated in their Denial of


Petitioner's License to Practice Massage Therapy.

18. **Petitioner's** main objective at this time, is to just receive her license to practice massage therapy without having to endure any other court proceedings, or further delay.

19. Additionally, **Petitioner** has demonstrated remarkable achievements since her conviction as evidenced in her file and she presents to this **(Board)** with this filing, her Transcript and Certificate of Completion in the *Physical Therapy Technology Program* at Carrington College with a **4.0 GPA**. This of course should have [no] real impact on the facts stated herein although it clearly indicates that **Petitioner** is certainly competent to hold a Massage Therapy License and based upon the correct interpretation of the Statutes, she should therefore be lawfully entitled to enjoy the fruits of her labor(s) and must be Granted her Massage License.

WHEREFORE, Petitioner Prays that the **(Board)** Review the facts and legal authorities stated herein and Thereby Grant her a license to practice *Massage Therapy*, without further delay and continued financial and emotional hardship.

RESPECTFULLY SUBMITTED this ~~16th~~^{15th} day of April, 2015

By: 
Nina Terterova, Applicant/Petitioner

Original of the foregoing Hand Delivered

This ~~16th~~^{15th} day of April, 2015 to

Arizona State Board of Massage Therapy

1400 West Washington Street

Suite 300

Phoenix, Arizona 85007

Kathleen Phillips, Executive Director

Copies of the foregoing Mailed

This ~~16~~¹⁵th day of April, 2015 to:

11.8.1524

Elizabeth Campbell

Assistant Attorney General
Office of the Attorney General-CIV/LES
1275 West Washington Street
Phoenix, Arizona 85007

Christopher Munns

Assistant Attorney General
Solicitor General's Office
1275 West Washington Street
Phoenix, Arizona 85007

Arizona State Board of Massage Therapy
1400 West Washington Street
Phoenix, Arizona 85007
Attention: Kathleen Phillips, Executive Director

REC'D APR 17 2015

Nina Terterova
4132 West Garden drive
Phoenix, Arizona 85029

April 15, 2015

Re: Consent Agreement

Dear Kathleen,

I signed the Consent Agreement in your office this morning, with the specific understanding that the Random Drug Testing would [not] be through the TASC Color Line, which as explained previously and today is too restrictive and punitive in nature.

I've just checked with TASC and the only way they can do "Random Drug Testing" is by using the Color Line, therefore, please disregard the Consent Agreement and dispose of it properly. As discussed extensively, I'm not interested in being restricted to the Phoenix area for the next six months under those conditions.

An Agreement is void and/or voidable if it contains an invalid release, is not equitable or signed by all parties. Furthermore, this Agreement would be invalid as it would require Board Approval regardless.

Therefore, please dispose of the "void" Agreement and proceed with the *Petition for Review* that was presented to you this morning.

Thank you for your attention in this matter

Sincerely,



Nina Terterova

1 TOM HORNE
Attorney General
2 Firm State Bar No. 14000

3 ELIZABETH A. CAMPBELL
Assistant Attorney General
4 State Bar No. 018311
1275 W. Washington, CIV/LES
5 Phoenix, Arizona 85007-2997
Tel: (602) 542-7681
6 Fax: (602) 364-3202
Attorneys for the Arizona State Board of Massage Therapy
7

REC'D APR 15 2015

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

9 In the Matter of

10
11 **NINA TERTEROVA,**

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

**CONSENT AGREEMENT FOR
LICENSURE WITH PROBATION**

14 **CONSENT AGREEMENT**

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

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

1 2. Applicant understands that she has a right to a public administrative hearing
2 concerning this matter, at which hearing she 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, she may not
11 revoke her 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.

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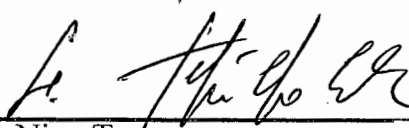
1 7. If a court of competent jurisdiction rules that any part of this Consent
2 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
3 shall remain in full force and effect.

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 NINA TERTEROVA

13
14 
15 _____
Nina Terterova

Dated: 04/15/2015

16 **FINDINGS OF FACT**

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

19 2. On February 12, 2013, in Maricopa County, Arizona, Superior Court Case
20 NO. CR2012-145158, Applicant was convicted of solicitation to commit possession or
21 use of narcotic drugs, a class 6 undesignated felony. As a result of her conviction,
22 Applicant was placed on probation for 3 years.

23 3. Applicant's class 6 undesignated felony conviction is grounds for denial of
24 an application. A.R.S. §§ 32-4222(G) and -4253(A)(4).
25
26 ...

1 CONCLUSIONS OF LAW

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

4 2. The Board, having heard the statements made by Applicant, finds that
5 Applicant currently meets the requirements for licensure under A.R.S. § 32-4222, subject
6 to the terms of this Consent Agreement.

7 ORDER

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

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

12 2. Applicant's license is immediately placed on PROBATION for six (6)
13 months from the effective date of this Consent Agreement.

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

18 4. Within ten (10) days of the effective date of this order, Applicant shall
19 enroll and participate in a 10-panel screen random urine drug testing schedule,
20 specifically to include alcohol testing, wherein Applicant is tested at least once per month
21 for the entire term of the probationary period. The drug testing shall be performed by a
22 drug testing facility pre-approved by Board staff.¹ Applicant shall furnish the testing
23 facility with a copy of this Consent Agreement and shall authorize and require the testing
24

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

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

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

10 7. **Six (6) months from the effective date of this Consent Agreement,**
11 Applicant shall request in writing that the Board terminate the probation. Applicant's
12 request for termination will be considered at a regularly scheduled Board meeting.
13 Applicant is required to personally appear at that Board meeting. Applicant's
14 probationary period will continue until Applicant's request for termination is received
15 and the Board terminates the probation.

16 8. Applicant shall pay all costs associated with complying with this Consent
17 Agreement, including specifically the costs of drug testing.

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

22 DATED this _____ day of _____, 2014.

23 ARIZONA STATE BOARD OF MASSAGE
24 THERAPY

25 By: _____
26 KATHLEEN PHILLIPS,
Executive Director

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ORIGINAL OF THE FORGOING FILED
this 13TH day of April, 2014, with:

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

EXECUTED COPY OF THE FOREGOING MAILED
This 13th day of April, 2014, to:

Nina Terterova
Address of Record

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



BEFORE THE ARIZONA STATE BOARD OF MASSAGE THERAPY

In the Matter of:

Nina Terterova

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

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**ORDER DENYING APPLICATION
FOR LICENSE**

The Arizona State Board of Massage Therapy (the Board) held a formal hearing concerning the denial of Applicant's application for licensure as a Massage Therapist on February 23, 2015. Applicant appeared without counsel and presented testimony, evidence and argument in support of the application. Elizabeth Campbell, Assistant Attorney General represented the state and presented evidence and testimony. Chris Munns, Assistant Attorney General with the Solicitor General's Office, was available to provide independent legal advice to the Board.

FINDINGS OF FACT

1. Applicant applied to the Board for licensure as a Massage Therapist on April 10, 2014.
2. On June 23, 2014, the Board denied the application based on a felony conviction for solicitation to commit possession or use of narcotic drugs. (A class 6 undesignated felony).
3. Based on the testimony and other evidence produced at the hearing, the Board affirms the factual grounds for denial of the application stated in the denial letter.

CONCLUSIONS OF Law

1. The conduct and circumstances stated in the Findings of Fact above constitutes grounds for denial of the application pursuant to A.R.S. § 32-4222(G)(The Board may deny an application for a license if the applicant committed an act that would subject a person licensed under this chapter to disciplinary action).
2. Under A.R.S. § 32-4253(A)(4), an applicant is subject to disciplinary action for being "convicted of a felony or other offense involving moral turpitude or any conviction for prostitution, solicitation or other similar offense."

ORDER

It is HEREBY ORDERED that Nina Terterova's application for Liscensure as a Massage Therapist is DENIED.

Notice of Right to Request Rehearing or Review

Either party has the right to petition for a rehearing or review of this order. Pursuant to A.R.S. § 41-1092.09 and A.A.C. R4-15-401, the petition must be filed with the Board within thirty (30) days from the date of service of this order. Service of this Order is effective upon personal delivery or five(5) days from the date of mailing. The petition must forth legally sufficient reasons for granting rehearing or review. The filing of a petition for rehearing or review is required to preserve any rights of appeal to the Superior Court that the party may wish to pursue.

If no such motion is filed, this Order shall be effective and in force upon the expiration of the above time period for filing a motion for rehearing or review with the Board.

DATED AND EFFECTIVE THIS 18th DAY OF March, 2015.

Arizona State Board of Massage Therapy

By *Heather Phillips*
Executive Director

Original of the foregoing filed
This 18th day of March, 2015, with:

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

Copy of the foregoing mailed by certified
Mail, return receipt requested
This 18th day of March, 2015, to

Nina Terterova
4132 West Garden Drive
Phoenix, AZ 85029

Copy of the foregoing mailed

This 18th day of March, 2015
via Interagency Mail to:

Elizabeth Campbell
Assistant Attorney General
Office of the Attorney General – CIV/LES
1275 W. Washington
Phoenix, AZ 85007

Christopher Munns
Assistant Attorney General
Solicitor General's Office
1275 W. Washington Street
Phoenix, AZ 85007
Independent Advisor