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Attorney General  
2 (Firm State Bar No. 14000)

JUN 5 2009

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7 Attorneys for the Arizona Board of Massage Therapy

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

9  
10 In the Matter of  
11 **MORGAN TINDALL,**  
12 Holder of License No. MT-03102  
As a Massage Therapist  
13 In the State of Arizona

Board Case No. 08-112

**CONSENT AGREEMENT FOR  
PROBATION**

14  
15 **RECITALS**

16 In the interest of a prompt and judicious settlement of this case, consistent with the  
17 public interest, statutory requirements and the responsibilities of the Arizona Board of  
18 Massage Therapy ("Board") under A.R.S. § 32-4201, *et. seq.*, Morgan Tindall  
19 ("Respondent"), holder of Massage Therapist License Number MT-03102 in the State of  
20 Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions  
21 of Law and Order ("Consent Agreement") as a final disposition of this matter.

22 1. Respondent 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.

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

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

9           4.     Respondent understands that this Consent Agreement or any part of the  
10 agreement may be considered in any future disciplinary action by the Board against him.

11          5.     Respondent understands this Consent Agreement deals with Board Case  
12 No. 08-112 involving allegations that Respondent engaged in conduct that would subject  
13 him to discipline under the Board's statutes and rules. The investigation into these  
14 allegations against Respondent shall be concluded upon the Board's adoption of this  
15 Consent Agreement.

16          6.     Respondent understands that this Consent Agreement does not constitute a  
17 dismissal or resolution of any other matters currently pending before the Board, if any,  
18 and does not constitute any waiver, express or implied, of the Board's statutory authority  
19 or jurisdiction regarding any other pending or future investigation, action or proceeding.

20          7.     Respondent also understands that acceptance of this Consent Agreement  
21 does not preclude any other agency, subdivision, or officer of this State from instituting  
22 any other civil or criminal proceedings with respect to the conduct that is the subject of  
23 this Consent Agreement.

24          8.     Respondent acknowledges and agrees that, upon signing this Consent  
25 Agreement and returning this document to the Board's Executive Director, he may not  
26

1 revoke his acceptance of the Consent Agreement or make any modifications to the  
2 document regardless of whether the Consent Agreement has been signed by the  
3 Executive Director. Any modification to this original document is ineffective and void  
4 unless mutually agreed by the parties in writing.

5 9. Respondent understands that the Consent Agreement shall not become  
6 effective unless and until adopted by the Board and signed by its Executive Director.

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

10 11. Respondent understands and agrees that if the Board does not adopt this  
11 Consent Agreement, he will not assert as a defense that the Board's consideration of this  
12 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

13 12. Respondent understands that this Consent Agreement is disciplinary and is  
14 a public record that may be publicly disseminated as a formal action of the Board and  
15 may be reported as required by law to the National Practitioner Data Bank and the  
16 Healthcare Integrity and Protection Data Bank.

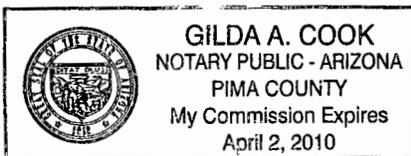
17 13. Respondent understands that any violation of this Consent Agreement  
18 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. § 32-  
19 4253(A)(23).

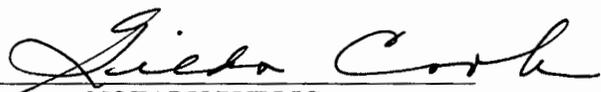
20 ACCEPTED AND AGREED BY RESPONDENT

21   
22 Morgan Tindall

Dated: 6/02/09

23 Subscribed and sworn to before me in the County of Pima, State of ARIZONA,  
24 this 2 day of JUNE, 2009, by Morgan Tindall.



26   
NOTARY PUBLIC  
My Commission expires: 04-02-2010

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2 **FINDINGS OF FACT**

3 1. The Board is the duly constituted authority for licensing and regulating  
4 massage therapists in the State of Arizona.

5 2. Respondent is the holder of license number MT-03102, which allows him to  
6 practice as a massage therapist in the State of Arizona.

7 3. In July 2008, AC was given a massage by Respondent.

8 4. During the massage, Respondent exposed AC's breasts and touched AC's  
9 breasts.<sup>1</sup> AC had not requested a breast massage, nor had she signed a written consent for  
10 a breast massage.

11 **CONCLUSIONS OF LAW**

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

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

16 3. The conduct and circumstances described above with regard to AC  
17 constitute sexual activity in violation of A.R.S. § 32-4253(B)(2)(e) ("Sexual activity"  
18 means massaging, touching or applying any instrument or device by a licensee in the  
19 course of practicing or engaging in massage therapy to the breasts of a female client  
20 unless the client requests breast massage and signs a written consent form).

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<sup>1</sup> "Breast" means any portion of the female breast below a point immediately above the top of the areola.

1 ORDER

2 IT IS HEREBY ORDERED THAT License Number MT-03102 which was issued  
3 to Morgan Tindall to practice as a massage therapist in the State of Arizona is hereby  
4 placed on **PROBATION** for a period of one year.

5 IT IS FURTHER ORDERED that Respondent shall, within 90 days after the  
6 effective date of this Order, complete and provide proof of successful completion of 8  
7 hours of Continuing Education ("CE") on ethics, specifically to include instruction on  
8 boundary issues and/or draping. The course(s) shall be pre-approved by Board staff and  
9 shall be in addition to the requirements of A.R.S. § 32-4225(E).

10 IT IS FURTHER ORDERED that Respondent shall pay a civil penalty of  
11 \$1,000.00 within 90 days after the effective date of this Order.

12 DATED and effective this 22<sup>nd</sup> day of June, 2009.

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14  
15 ARIZONA BOARD OF MASSAGE THERAPY

16 SEAL

17   
18 Craig Rumbek, N.M.D.  
19 Executive Director  
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1 ORIGINAL OF THE FORGOING FILED  
this 22<sup>nd</sup> day of June, 2009, with:

2  
3 Arizona Board of Massage Therapy  
1400 West Washington, Suite 230  
Phoenix, Arizona 85007

4 EXECUTED COPY OF THE FOREGOING MAILED  
5 BY CERTIFIED MAIL  
this 23<sup>rd</sup> day of June, 2009, to:

6 Morgan Tindall  
7 Address of Record  
Respondent

8 EXECUTED COPY OF THE FOREGOING MAILED  
9 this 23<sup>rd</sup> day of June, 2009, to:

10 Elizabeth A. Campbell  
Assistant Attorney General  
11 1275 W. Washington Street, CIV/LES  
Phoenix, Arizona 85007  
12 Attorney for the Board

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#451568

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SEP 21 2009

ORDER

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DATED and effective this 22<sup>nd</sup> day of June, 2009.

ARIZONA BOARD OF MASSAGE THERAPY

SEAL

  
Craig Rymbeck, N.M.D.  
Executive Director