

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

2 In the Matter of:

3
4 **KENNETH WARE, LMT**

5
6 Holder of License No. MT-14472

7 As a Massage Therapist

8 In the State of Arizona
9

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

10 Pursuant to Notice of Hearing, Case Number 11-110, this matter came before the Arizona Board
11 of Massage Therapy (Board) on July 22, 2013.

12 Dennis Beye, president, presided at the meeting with Board members Victoria Bowman, John
13 Ortega, and Earl Duskey in attendance. The State was represented by the Office of the Attorney
14 General, Elizabeth Campbell, Assistant Attorney General, Licensing and Enforcement Section.
15 Chris Munns of the Solicitor General's Section of the Attorney General's Office was available to
16 provide independent legal advice to the Board. Respondent was present at the hearing and was
17 not represented by an attorney. The Board, after considering the testimony and evidence
18 presented, hereby issues the following Findings of Fact, Conclusions of Law, and Order.

19 **AUTHORITIES AND JURISDICTION**

- 20
21 1. The Board is the duly constituted authority for licensing and regulating the practice of
22 massage therapy in the state of Arizona.
- 23 2. Respondent is the holder of license number MT-14472, which allows him to practice as a
24 massage therapist in the state of Arizona.
- 25 3. Under A.R.S. §§ 32-4201, et seq., the Board has jurisdiction over the subject matter and
26 over the Respondent as a licensee of the Board.

27 **FINDINGS OF FACT**

1 1. On May 9, 2012, female massage therapy client YW received a massage from
2 Respondent.

3 2. During the massage, Respondent touched YW's genitals.
4

5 **CONCLUSIONS OF LAW**

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

8 2. The conduct and circumstances described above in the Findings of Fact is grounds for
9 discipline under A.R.S. § 32-4253(B)(2)(a) ("Sexual activity" means sexual conduct). "Sexual
10 conduct" means any direct or indirect touching, fondling, or manipulating of any part of the
11 genitals or anus by any part of the body or by any object or causing a person to engage in that
12 conduct. A.R.S. § 32-4253(B)(3)

13 3. The conduct and circumstances described above in the Findings of Fact with regard to
14 YW constitute sexual activity in violation of A.R.S. § 32-4253(B)(2)(c) ("Sexual activity"
15 means making sexual advances, requesting sexual favors or engaging in other verbal conduct or
16 physical contact of a sexual nature with a client).

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

20
21 **ORDER**

22 Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED
23 that Respondent's license number MT-14472 is suspended for three years beginning on the 35th
24 day after the date of mailing this order. Respondent must appear before the Board at the end of
25 the suspension. 50 % of the 49 hours of continuing education required for the next two renewal
26 periods must be in ethics. Respondent's license will be placed on one-year probation beginning
27 on the last date of suspension. Respondent is required to appear before the Board to request
28 release from probation. Respondent's failure to comply with this Board order will subject him to
29 future disciplinary action by the Board. (A.R.S. § 32-4253(A)(23).
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1 Dated and signed this 25rd day of July, 2013.

2 ARIZONA BOARD OF MASSAGE THERAPY

3 By: Kathleen Phillips
4 Kathleen Phillips
5 Executive Director
6

7
8 **RIGHT TO PETITION FOR REHEARING OR REVIEW**
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10 Respondent has the right to petition for a rehearing or review of this Order. Pursuant to A.R.S. §
11 41-1092.09 and A.A.C. R4-15-401(A), the petition must be filed with the Board within thirty-
12 five (35) days from the date of mailing if the Order was served by certified mail. The petition
13 must set forth legally sufficient reasons for granting the rehearing or review pursuant to A.A.C.
14 R4-15-401(C). The timely filing of a motion for rehearing or review shall stay the enforcement
15 of the Board's Order. If a motion for rehearing or review is not filed, the Board's Order becomes
16 effective thirty-five (35) days after it is mailed, unless pursuant to A.A.C. R4-15-401(F), the
17 Board has expressly found good cause to believe that this Order shall be effective immediately
18 upon the issuance and has so stated in this Order. The failure to file a motion for rehearing or
19 review within thirty days after service of the decision has the effect of prohibiting the parties
20 from seeking judicial review of the Board's decision.
21

22
23 ORIGINAL OF THE FOREGOING FILED
24 this 25th day of July, 2013 with the:
25 Arizona State Board of Massage Therapy
26 1400 West Washington, Suite 300
27 Phoenix, AZ 85007
28

29 EXECUTED COPY OF THE FOREGOING MAILED
30 BY CERTIFIED & REGULAR FIRST-CLASS MAIL
31 this 25th day of July, 2013, to:
32

33 Kenneth Ware
34

1 Respondent/Licensee
2 Address of Record

3
4

5 COPY OF THE FOREGOING MAILED
6 this 25th day of July, 2013, to:

7

8 Chris Munns
9 Assistant Attorney General
10 1275 W. Washington Street, CIV/SGO
11 Phoenix, Arizona 85007
12 Attorney for the Board

13

14 Elizabeth Campbell
15 Assistant Attorney General
16 1275 W. Washington Street, CIV/LES
17 Phoenix, Arizona 85007
18 Attorney for the State

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