BEFORE THE ARIZONA BOARD OF MASSAGE THERAPY

In the Matter of:

KENNETH WARE, LMT

Holder of License No. MT-14472
As a Massage Therapist
In the State of Arizona

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

Dennis Beye, president, presided at the meeting with Board members Victoria Bowman, John Ortega, 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 available to provide independent legal advice to the Board. Respondent was present at the hearing and 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-14472, 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 the Respondent as a licensee of the Board.

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

2. During the massage, Respondent touched YW’s genitals.

**CONCLUSIONS OF LAW**

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

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

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

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

**ORDER**

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

ARIZONA BOARD OF MASSAGE THERAPY

By: Kathleen Phillips
Executive Director

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent 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(A), the petition must be filed with the Board within thirty-five (35) days from the date of mailing if the Order was served by certified mail. The petition must set forth legally sufficient reasons for granting the rehearing or review pursuant to A.A.C. R4-15-401(C). The timely filing of a motion for rehearing or review shall stay the enforcement of the Board’s Order. If a motion for rehearing or review is not filed, the Board’s Order becomes effective thirty-five (35) days after it is mailed, unless pursuant to A.A.C. R4-15-401(F), the Board has expressly found good cause to believe that this Order shall be effective immediately upon the issuance and has so stated in this Order. The failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the Board’s decision.

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

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

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

Elizabeth Campbell
Assistant Attorney General
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Phoenix, Arizona 85007
Attorney for the State

[Signature]