

1 BEFORE THE ARIZONA BOARD OF MASSAGE THERAPY

2 In the Matter of:

3  
4 **HOWARD YEAMAN, LMT**

5  
6 Holder of License No. MT-04150P

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 13-134, this matter came before the Arizona Board  
11 of Massage Therapy (Board) on February 3, 2014.

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

20 **AUTHORITIES AND JURISDICTION**

- 21
- 22 1. The Board is the duly constituted authority for licensing and regulating the practice of  
23 massage therapy in the state of Arizona.
  - 24 2. Respondent is the holder of license number MT-04150P, which allows him to practice as  
25 a massage therapist in the state of Arizona.
  - 26 3. Under A.R.S. §§ 32-4201, *et seq.*, the Board has jurisdiction over the subject matter and  
27 over Respondent as a licensee of the Board.
- 28

1 FINDINGS OF FACT

- 2 1. On April 24, 2014, female massage therapy client CC received a massage from  
3 Respondent.  
2.4 2. During the massage, Respondent touched CC's genitals.

3.5  
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 in the Findings of Fact with regard to  
12 CC constitute sexual activity in violation of A.R.S. § 32-4253(B)(2)(a) ("Sexual activity" means  
13 sexual conduct). ("Sexual conduct" means any direct or indirect touching, fondling or  
14 manipulating of any part of the genitals or anus by any part of the body or by any object or  
15 causing a person to engage in that conduct).

16  
17 ORDER

18 Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED**  
19 that Respondent's license number **MT-04150P** is suspended for 60 days. Respondent is placed  
20 on probation for 1 year beginning on the last day of suspension. Respondent must complete 20  
21 hours of continuing education, preapproved by staff, before the last day of the probation in  
22 addition to the 24 hours of continuing education required for renewal of his license. The 20  
23 continuing education hours shall be in lower extremities (6 hours or more), draping (5 to 8  
24 hours), and ethics (4 or more) and may not be completed on-line. Respondent must appear before  
25 the Board at the end of probation to request release from probation. Respondent's failure to  
26 comply with this Board order will subject him to future disciplinary action by the Board. (A.R.S.  
27 § 32-4253(A)(23).

28  
29 Dated and signed this 5th day of February, 2014.

30 ARIZONA BOARD OF MASSAGE THERAPY

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By: Kathleen Phillips  
Kathleen Phillips  
Executive Director

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**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 5th day of February, 2014 with the:  
Arizona State Board of Massage Therapy  
1400 West Washington, Suite 300  
Phoenix, AZ 85007

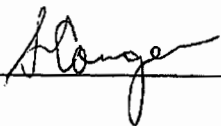
EXECUTED COPY OF THE FOREGOING MAILED  
BY CERTIFIED & REGULAR FIRST-CLASS MAIL  
this 5th day of February, 2014, to:

Howard Yeaman  
Respondent/Licensee  
Address of Record

1 COPY OF THE FOREGOING MAILED  
2 this 5th day of February, 2014, to:

3  
4 Chris Munns  
5 Assistant Attorney General  
6 1275 W. Washington Street, CIV/SGO  
7 Phoenix, Arizona 85007  
8 Attorney for the Board

9  
10 Elizabeth Campbell  
11 Assistant Attorney General  
12 1275 W. Washington Street, CIV/LES  
13 Phoenix, Arizona 85007  
14 Attorney for the State

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1 Thomas C. Horne  
Attorney General  
2 Firm State Bar No. 14000

3 Elizabeth Campbell  
Assistant Attorney General  
4 State Bar No. 018311  
1275 W. Washington  
5 Phoenix, Arizona 85007-2997  
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6 Fax: (602) 364-3202  
Attorneys for State of Arizona  
7

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

10 In the Matter of

11 **HOWARD YEAMAN, LMT,**

12 Holder of License No. MT-04150P  
As a Massage Therapist  
13 In the State of Arizona

Case No. 13-134

**RESPONSE TO PETITION  
FOR REHEARING**

14  
15 The State of Arizona, through the undersigned Assistant Attorney General, files its  
16 Response to Howard Yeaman's ("Respondent") Petition for Rehearing filed in this  
17 matter. For the reasons more fully explained in the following Memorandum of Points  
18 and Authorities, the State respectfully requests that the Arizona State Board of Massage  
19 Therapy ("Board") deny Respondent's request.

20 Rehearing or review of a decision may be granted for any of the following  
21 causes materially affecting a party's rights:

- 22 1. Irregularity in the administrative proceedings of the Board,  
23 administrative law judge, or the Administrative Law Judge, or any  
24 abuse of discretion that deprived the party of a fair hearing;  
25 2. Misconduct of the Board or administrative law judge;  
26 3. Accident or surprise which could not have been prevented by  
ordinary prudence;

1 4. Newly discovered material evidence that could not with  
2 reasonable diligence have been discovered and produced at the hearing;

3 5. Excessive or insufficient penalties;

4 6. Error in the admission or rejection of evidence or other errors of  
5 law occurring at the hearing; or

6 7. The findings of fact or decision are not supported by the  
7 evidence or are contrary to law.

8 A.A.C. R4-15-401(C). Respondent presents no argument or evidence requiring  
9 rehearing on any of these grounds.

10 Respondent's request for rehearing received by the Board on March 10, 2014,  
11 requests a rehearing because Respondent's wife died on January 25, 2014. However,  
12 Respondent did not request a continuance of the hearing based upon his wife's death.  
13 Respondent appeared and fully participated in the formal hearing before the Board on  
14 February 3, 2014. At the formal hearing in this matter on February 3, 2014, the Board  
15 heard testimony from Respondent and complainant CC. Following the formal hearing  
16 the Board issued Findings of Fact, Conclusions of Law and Order on February 5, 2014.  
17 The Board's Order is attached as Attachment 1.

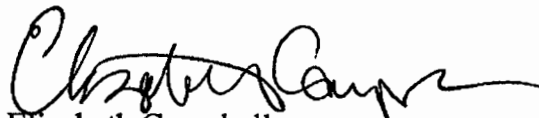
18 Respondent asserts no basis in his request that would entitle him to a rehearing in  
19 this case, and the State respectfully requests that the Board deny Respondent's rehearing  
20 request.

21 The State does request that Finding of Fact 1 in the Board Order be corrected to  
22 reflect that the massage at issue occurred on April 24, 2013, not 2014 as stated in the  
23 Board's Order. State's Exhibit 2, CC's complaint, which was introduced as evidence at  
24 hearing is attached hereto as Attachment 2 and shows the date of the massage at issue to  
25 have been April 24, 2013.

26 ...

1 Respectfully submitted this 17<sup>th</sup> day of March, 2014.

2  
3 Thomas C. Horne  
Attorney General

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5   
6 Elizabeth Campbell  
Assistant Attorney General

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8 **ORIGINAL** filed and this  
9 17<sup>th</sup> day of March 2014, with:

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

12 **COPY** of the foregoing mailed this  
17<sup>th</sup> day of March, 2014 to:

13 Howard Yeaman  
14 4605 E. Virginia Ave.  
Phoenix, AZ 85008  
15 Respondent

16 Christopher Munns  
Assistant Attorney General  
17 1275 West Washington  
Phoenix, AZ 85007  
18 Attorney for the Board

19  
20 By: Rinda Cooper  
#3469973