BEFORE THE ARIZONA BOARD OF MASSAGE THERAPY

In the Matter of:

	)	**Case No. 15-101**
Joseph Flory, LMT	)	
	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**
License No. MT-13725	)	
As a Massage Therapist	)	
In the State of Arizona	)	

On February 23, 2015, the Arizona Board of Massage Therapy (the Board) considered the State's Motion to Deem Allegations admitted. Elizabeth Campbell, Assistant Attorney General, appeared on behalf of the state. Chris Munns of the Solicitor General's Section of the Attorney General's Office was present and available to provide independent legal advice to the Board. Neither Respondent nor an attorney for Respondent was present.

After reviewing the record and hearing from the parties, the Board granted the State's Motion to Deem Allegations Admitted. Based upon A.R.S. § 32-4252(H) and the Complaint and Notice of Hearing filed in this matter, the Board issues the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On March 31, 2014, female massage therapy client AD received a massage from Respondent at Rubs Massage in Tucson, Arizona. During the massage, Respondent touched the tops and sides of AD's breasts.

2. On May 23, 2014, female massage therapy client KG received a massage from Respondent at Rubs Massage in Tucson, Arizona. During the massage, Respondent pressed his erect penis against KG's thigh and brushed his hand against her genitals. During the massage, Respondent

failed to provide draping that ensured the comfort and privacy of KG. Specifically, Respondent failed to drape KG's thighs and buttocks so that her privacy was protected.

3. On May 26, 2014, female massage therapy client MV received a massage from Respondent at Rubs Massage in Tucson, Arizona. During the massage, MV felt Respondent, who was wearing pants, rub his erect penis against her several times. MV, who was wearing underwear during the massage, also felt Respondent brush his hand against her genitals on multiple occasions and manipulate the edges of her underwear.

4. In June, 2014, female massage therapy client TS received a massage from Respondent at Rubs Massage in Tucson, Arizona. During the massage, Respondent made groaning and deep breathing sounds. Respondent touched the sides of TS's breasts and the top of her breasts to just above the nipple. During the massage, Respondent failed to provide draping that ensured the comfort and privacy of TS. Specifically, Respondent failed to drape TS's buttocks so that her privacy was protected.

CONCLUSIONS OF LAW

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

2. The Board may discipline a massage therapist who has engaged in sexual activity with a client. A.R.S. § 32-4253 *et seq.*

3. The conduct and circumstances described above with regard to KG and MV constitute sexual activity in violation of 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).

4. The conduct and circumstances described above with regard to AD, KG, MV, and TS 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).

5. The conduct and circumstances described above with regard to AD and TS constitute sexual activity in violation of A.R.S. § 32-4253(B)(2)(e) ("Sexual activity" means massaging, touching or applying any instrument or device by a licensee in the course of practicing or engaging in massage therapy to the breasts[1] of a female client unless the client requests breast massage and signs a written consent).

6. The conduct described in the Findings of Fact with regard to AD, KG, MV, and TS constitutes grounds for discipline under A.R.S. § 32-4253 (A)(14) (Engaging in the performance of substandard care by a massage therapist due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the person cared for is established).

7. The conduct described in the Findings of Fact with regard to KG and TS constitutes grounds for discipline under A.R.S. § 32-4253 (A)(16) (Failing to adhere to the recognized standards and ethics of the massage therapy profession). A.R.S. § 32-4253(B) further requires that a massage therapist adhere to the recognized standards and ethics of the massage therapy profession. When a licensee agrees to provide massage therapy to a client, the licensee shall provide draping that ensures the safety, comfort and privacy of the client. A.A.C. R4-15-103(1)(E).

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[1] "Breast means any portion of the female breast below a point immediately above the top of the areola. A.R.S. § 32-4253(B)(1)

ORDER

IT IS HEREBY ORDERED that Respondent's license number MT-13725 is **REVOKED**.

Dated and signed this 4th day of March, 2015.

ARIZONA BOARD OF MASSAGE THERAPY

By: _____
Kathleen Phillips
Executive Director

NOTICE

Any aggrieved party may appeal this decision by filing a written request for Rehearing or Review with the Board within 30 days of service of this Decision. Service of this Decision is effective on personal delivery or **five** days after the date of mailing. A motion for Rehearing or Review shall conform to the requirements set forth in the Board's rules at A.A.C. R4-15-401 and shall be served on the opposing party. The filing of a Motion for Rehearing or Review is required in order to exhaust a party's administrative remedies. The failure to file a Motion for Rehearing or Review will preclude a party from seeking judicial review of this decision.

ORIGINAL OF THE FOREGOING FILED
This 4th day of March, 2015 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 4th day of March, 2015, to:

Joseph Flory
Address of Record
Respondent

COPY OF THE FOREGOING MAILED
this 4th day of March, 2015, to:

Christopher Munns
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Attorney for the Board

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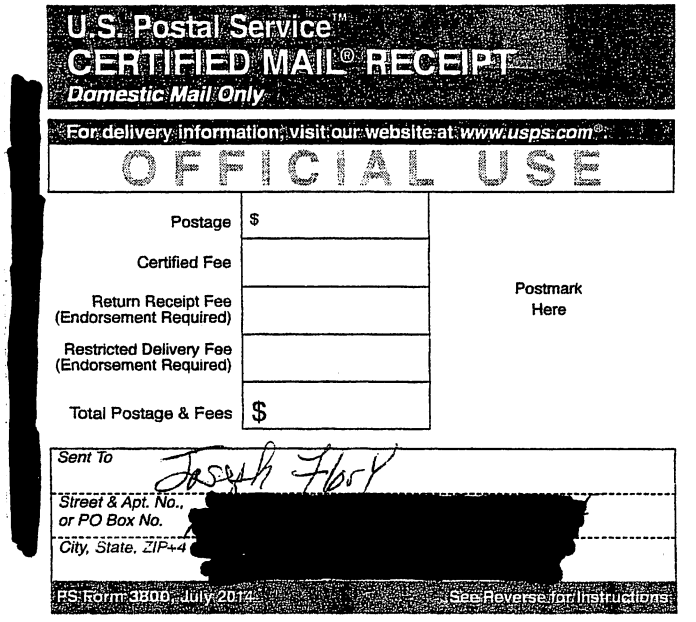

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Sent To Joseph Flory
Street & Apt. No., or PO Box No. [redacted]
City, State, ZIP+4 [redacted]

PS Form 3800, July 2014 See Reverse for Instructions