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2 5.

3 On 06/04/2013, the Board served upon the Licensee a Notice of Proposed Action (Revocation) and  
4 a Notice of Right to Hearing (Notice) by regular and certified mail. On 06/20/2013, the Licensee contacted  
5 the Board office by telephone and spoke with the Compliance Coordinator about settlement in this matter.

6 **CONCLUSIONS OF LAW**

7 6.

8 Based on the facts and conduct described above, Licensee was found to have violated Board  
9 Rules and Statutes as follows:

- 10 6.1 One violation of ORS 687.081(1)(i), The State Board of Massage Therapists may discipline  
11 a licensee, deny, suspend, revoke or refuse to renew a license, issue a reprimand,  
12 censure a licensee or place a licensee on probation if the licensee: Engages in  
13 unprofessional or dishonorable conduct;
- 14 6.2 One violation of OAR 334-010-0025(3)(a)(A)(B)(C)(D), A massage therapist must use safe  
15 and functional coverage/draping practices during the practice of massage when the client  
16 is disrobed. Safe and functional coverage/draping means: LMT explains, maintains and  
17 respects coverage/draping boundaries; Client gives informed consent; Genitals and gluteal  
18 cleft of male and female clients and the breast area of female clients are not exposed;  
19 Massage or movement of the body does not expose genitals, gluteal cleft or breast area;
- 20 6.3 One violation of OAR 334-030-0005(1)(b)(g), Standard I: Responsibility -- the relationship  
21 between the LMT and the profession. The LMT must: act within the context of professional  
22 practice standards, codes of ethics, and relevant statutes and regulations; be accountable  
23 for his or her actions and commitments and assume personal and professional  
24 responsibility to do his or her best;
- 25 6.4 One violation of OAR 334-030-0005(2)(a)(c), Standard II: Therapeutic Relationship -- the  
26 relationship between the LMT and the client. The LMT must: Be accountable to his or her  
27 clients for the quality and effectiveness of care and services and for creating the basic  
28 conditions and boundaries necessary to foster safety and trust in the client-professional

1 relationship; ensure that their actions with a client are based on understanding and  
2 implementing the core values of caring, respect, compassion, appropriate boundaries, and  
3 appropriate use of personal power;

4 6.5 One violation of OAR 334-040-0010(19)(a)(B)(iii)(v) Unprofessional or dishonorable  
5 conduct which includes but is not limited to: any conduct involving inappropriate physical  
6 contact or sexual misconduct which includes: sexual violation which is sex between the  
7 LMT and the client, whether initiated by the client or not, engaging in any conduct with a  
8 client that is sexual, or may be reasonably interpreted as sexual, including, but not limited  
9 to: oral to genital contact; or encouraging the client to masturbate in the presence of the  
10 LMT or masturbation by the LMT while the client is present; and

11 6.6 One violation of OAR 334-040-0010(19)(a)(C)(i)(iii), sexual impropriety which is any  
12 behavior, gestures, or expressions that are seductive or sexually demeaning to a client;  
13 inappropriate procedures, including, but not limited to: disrobing or draping practices that  
14 reflect a lack of respect for the client's privacy, deliberately watching a client dress or  
15 undress instead of providing privacy for disrobing; an examination or touching of genitals.  
16

### 17 STIPULATIONS & FINAL ORDER

#### 18 7.

19 The parties desire to settle this matter and, pursuant to ORS 183.415(5), stipulate and agree as  
20 follows in full and final settlement:

21 7.1 The Board has jurisdiction over Licensee, and over the subject matter of this proceeding;

22 7.2 The Board may issue and enter the Final Order;

23 7.3 Licensee has been advised of his right to request a hearing in this matter pursuant to ORS  
24 183.415(2)(a), and to be represented at a hearing pursuant to ORS 183.415(3);

25 7.4 Licensee waives any and all rights to a hearing and waives any right to appeal or  
26 otherwise challenge the Final Order;

27 7.5 The Board has the right to take further action against Licensee for any violation of the  
28 terms of the Final Order or any violation of ORS Chapter 687 or OAR Chapter 334. Further

1 violations shall be grounds for prosecution and the full penalties of this case will be  
2 enacted;

3 7.6 As part of the conditions for entering into this Order, the Board does not assess against  
4 Licensee the costs of this disciplinary process to date, including the Board's legal costs;

5 7.7 Licensee has fully read this Order and understands it completely. Licensee has consulted  
6 with an attorney regarding this Order and has been fully advised in regards thereto, or  
7 waives any and all rights to consult with an attorney prior to entering into this Order;

8 7.8 Licensee enters into this Order voluntarily and without force or duress. Licensee states that  
9 no promises or representation not stated herein have been made to induce Licensee to  
10 sign this stipulation and agree to the issuance of this Order;

11 7.9 Once surrendered, Licensee agrees to never again attempt to reapply as a massage  
12 therapist or to engage in the practice of massage in the State of Oregon;

13 7.10 Licensee does immediately upon signature, and acceptance of the Board, voluntarily  
14 surrender his Oregon massage license number 17300;

15 7.11 This document contains the entire agreement between the parties on the subject matter  
16 hereof; and

17 7.12 This document is a public document.  
18

19 **IT IS SO STIPULATED AND AGREED TO BY:**

20  
21 **Signature on File** \_\_\_\_\_ Dated: 07-05-2013

22  
23  
24 BOARD OF MASSAGE THERAPISTS

25 State of Oregon

26  
27 **Signature on File** \_\_\_\_\_ Dated: 7/11/13  
28

BEFORE THE STATE OF OREGON  
BOARD OF MASSAGE THERAPISTS

In the Matter of the licensure of

Case No. **1514**

**GUINN, ZACHARY A**  
LMT #17300

**NOTICE OF PROPOSED ACTION**  
*(Revocation)*  
and  
**NOTICE OF RIGHT TO HEARING**

Licensee

1.

Pursuant to ORS chapter 687, the Oregon Board of Massage Therapists (*Board*) is the agency responsible for licensing, disciplining and regulating massage therapists in the State of Oregon.

2.

Zachary A. Guinn (*Licensee*) is currently licensed to practice as a massage therapist in the State of Oregon and is subject to the jurisdiction of the Board. Licensee's last known address is 708 NW 19TH AVE #201, PORTLAND, OR 97209-1316.

**FINDINGS OF FACTS**

3.

The Board received a complaint of sexual abuse of a client. Interviews were conducted. Police reports were obtained and Licensee was found to be in violation.

4.

4.1 On 01/04/2013, the Board received a complaint alleging that the Licensee engaged in inappropriate conduct by performing unsolicited oral sex on Client AA during a massage session. An investigator contacted the complainant for further information.

4.2 AA indicated that an appointment was made with the Licensee for 12/30/2012 at the Licensee's residence. AA reported that he had scheduled a one-hour massage for his back, though agreed to going over in time if needed, specifically requesting more rigorous massage to address tension in his back. AA reported that the session began with him lying face-down on the massage table and that the first portion of the massage was appropriate. The Licensee then asked AA to turn over onto his back. AA alleged that the Licensee continued to massage his legs and then unexpectedly began to stroke AA's penis. AA alleged that the Licensee then began to perform oral sex on him (AA), while stroking his own

1 (Licensee's) penis. AA reported that he was in disbelief over what was happening. AA stated that the  
2 Licensee paused and asked if AA was alright, and that AA replied that he was "a bit in shock right now."  
3 AA stated that he did not know how to respond to the unexpected collapse in professionalism. AA stated  
4 that the Licensee told him that this doesn't normally happen but that he was so attracted to him that he  
5 just couldn't control himself. AA alleged that the Licensee then bit AA's nipple in, what he described as a  
6 "lascivious manner" before returning to a normal massage finish and leaving the room for AA to dress.  
7 AA stated that he felt violated and avoided eye contact when leaving. AA said that he felt that the  
8 Licensee took advantage of the trust he had in Licensee as his Licensed Massage Therapist. Licensee  
9 did not require payment from AA, saying that he wouldn't charge him since this didn't normally happen.

10 4.3 AA also filed a police report, which was consistent with the information provided to  
11 the Board. The investigating officer interviewed Licensee and Licensee admitted to the investigating  
12 officer he moved the towel and that he did touch AA's penis and began to give oral sex to AA, and that  
13 AA just laid there and never said anything. The Licensee told the investigating officer that he stopped  
14 when AA was not responding, and he finished the massage and told AA that it shouldn't have happened.  
15 Licensee stated that he did not charge AA for the massage.

16 4.4 On 04/01/2013, the Licensee talked with the Board compliance office about the  
17 complaint and investigation. Licensee admitted to the Board compliance coordinator that he performed  
18 unsolicited oral sex on AA and that he was aware that it was against the rules and laws of the Board. The  
19 Licensee was asked to provide a written explanation of the events.

20 4.5 On 04/04/2013, the Board received the written response from the Licensee. The  
21 letter stated, in part:

22 "The client became noticeably aroused. This is where I made a terrible judgment and  
23 removed the sheets. No words were spoken and he did not indicate with his body that I  
24 should not do this."

25 "The client was lying on my massage table exposed. I did not stop and began to stroke the  
26 penis of this client. Again, the client did not give me any reason to believe I should stop or  
that he wanted me to stop."

1  
2 "This continued ... by this time I was stimulated and the client's erection indicated to me  
3 that he too was very stimulated. This seemed to fuel my poor reasoning and I began oral  
4 sex on him. Again, he did not resist in any way and the client did not give me any reason to  
5 believe he wanted me to stop. I should have stopped. "

6  
7 4.6 On 05/17/2013, the Board determined that Licensee's conduct in crossing sexual  
8 and professional boundaries with Client AA poses serious risk and potential irreparable harm to the health  
9 and safety of other clients. As such, the Board has voted to issue a Notice of Proposed Action for  
10 Revocation of License.

11 **CONCLUSIONS OF LAW**

12 5.

13 Based on the acts and conduct described above, Licensee committed the following violations of  
14 Board Rules and Laws:

15 5.1 One violation of ORS 687.051(2), an applicant must be a person of good moral  
16 character. For purposes of this section, the lack of good moral character may be established by reference  
17 to acts or conduct reflecting moral turpitude or to acts or conduct that would cause a reasonable person to  
18 have substantial doubts about the applicant's ability to practice massage in accordance with ORS 687.011  
19 to 687.250, 687.895 and 687.991 and rules of the board;

20 5.2 One violation of ORS 687.081.(1)(a), The State Board of Massage Therapists may  
21 discipline a licensee, deny, suspend, revoke or refuse to renew a license, issue a reprimand, censure a  
22 licensee or place a licensee on probation if the licensee: violated any provision of ORS 687.011 to 687.250,  
23 687.895 and 687.991 or any rule of the board adopted under ORS 687.121;

24 5.3 One violation of ORS 687.081(1)(i), The State Board of Massage Therapists may  
25 discipline a licensee, deny, suspend, revoke or refuse to renew a license, issue a reprimand, censure a  
26 licensee or place a licensee on probation if the licensee: Engages in unprofessional or dishonorable  
conduct;

1           5.4           One violation of OAR 334-010-0025(3)(a)(A)(B)(C)(D), A massage therapist must  
2 use safe and functional coverage/draping practices during the practice of massage when the client is  
3 disrobed. Safe and functional coverage/draping means: LMT explains, maintains and respects  
4 coverage/draping boundaries; Client gives informed consent; Genitals and gluteal cleft of male and female  
5 clients and the breast area of female clients are not exposed; Massage or movement of the body does not  
6 expose genitals, gluteal cleft or breast area;

7           5.5           One violation of OAR 334-030-0005(1)(b)(g), Standard I: Responsibility -- the  
8 relationship between the LMT and the profession. The LMT must: act within the context of professional  
9 practice standards, codes of ethics, and relevant statutes and regulations; be accountable for his or her  
10 actions and commitments and assume personal and professional responsibility to do his or her best;

11           5.6           One violation of OAR 334-030-0005(2)(a)(c), Standard II: Therapeutic Relationship  
12 -- the relationship between the LMT and the client. The LMT must: Be accountable to his or her clients for  
13 the quality and effectiveness of care and services and for creating the basic conditions and boundaries  
14 necessary to foster safety and trust in the client-professional relationship; ensure that their actions with a  
15 client are based on understanding and implementing the core values of caring, respect, compassion,  
16 appropriate boundaries, and appropriate use of personal power;

17           5.7           One violation of OAR 334-040-0010(19)(a)(A), Unprofessional or dishonorable  
18 conduct which includes but is not limited to: any conduct involving inappropriate physical contact or sexual  
19 misconduct which includes: sexual abuse which is conduct which constitutes a violation of any provision of  
20 ORS 163.305 through 163.465;

21           5.8           One violation of OAR 334-040-0010(19)(a)(B)(iii)(v) Unprofessional or  
22 dishonorable conduct which includes but is not limited to: any conduct involving inappropriate physical  
23 contact or sexual misconduct which includes: sexual violation which is sex between the LMT and the client,  
24 whether initiated by the client or not, engaging in any conduct with a client that is sexual, or may be  
25 reasonably interpreted as sexual, including, but not limited to: oral to genital contact; or encouraging the  
26 client to masturbate in the presence of the LMT or masturbation by the LMT while the client is present; and



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9.

If you fail to timely request a hearing, withdraw a hearing request, or fail to appear at a scheduled hearing, you shall have waived your right to a hearing and the Board may issue a Final Order by Default and impose against you the above sanctions. If the Board issues a Final Order by Default, it designates its file on this matter as the record for the purposes of proving a *prima facie* case.

DATED AND SERVED upon the above-named Respondent by regular and certified mail, addressed to Respondent at last known address, this 4<sup>th</sup> day of June, 2013.

BOARD OF MASSAGE THERAPISTS  
State of Oregon

**Signature on File**