

INSTITUTE FOR JUSTICE

Diana K. Simpson (CO Bar No. 43591)*

901 North Glebe Road, Suite 900

Arlington, VA 22203

Telephone: 703.682.9320

Email: diana.simpson@ij.org

* *Admitted Pro Hac Vice*

Timothy D. Keller (AZ Bar No. 019844)

Paul V. Avelar (AZ Bar No. 023078)

398 South Mill Avenue, Suite 301

Tempe, AZ 85281

Telephone: 480.557.8300

Email: tkeller@ij.org

pavelar@ij.org

Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

CELESTE KELLY; GRACE GRANATELLI; and
STACEY KOLLMAN,

Plaintiffs,

v.

VICTORIA WHITMORE, in her official capacity
as Executive Director of the Arizona State
Veterinary Medical Examining Board; JIM
LOUGHEAD, JESSICA AMEND, CHRISTINA
BERTCH-MUMAW, D.V.M., J. GREG BYRNE,
D.V.M., NIKKI FROST, C.V.T., LES HATFIELD,
D.V.M., SARAH HEINRICH, D.V.M., DARREN
WRIGHT, D.V.M., and JULIE YOUNG, all in their
official capacities as members of the Arizona
State Veterinary Medical Examining Board,

Defendants.

Case No. CV2014-091906

JUDGMENT BY CONSENT
(Standard Case)

(Assigned to the Honorable David Udall)

1 This Consent Judgment (“Judgment”) is made and agreed upon in the State of Arizona by and
2 between Celeste Kelly, Grace Granatelli, and Stacey Kollman (“Plaintiffs”) and Victoria Whitmore, the
3 executive director of the Arizona State Veterinary Medical Examining Board, Jim Loughead, Jessica
4 Amend, Christina Bertch-Mumaw, D.V.M., J. Greg Byrne, D.V.M., Nikki Frost, C.V.T., Les Hatfield,
5 D.V.M., Sarah Heinrich, D.V.M., Darren Wright, D.V.M., and Julie Young, all members of the Arizona
6 State Veterinary Medical Examining Board (“Defendants”).

7 **RECITALS**

8 Plaintiffs Celeste Kelly, Grace Granatelli, and Stacey Kollman all hold themselves out as animal
9 massage practitioners and all of them would like to engage in the practice of animal massage as a means
10 of gainful employment.

11 Defendant Victoria Whitmore is the executive director of the Arizona State Veterinary Medical
12 Examining Board (the “Board”). Defendants Jim Loughead, Jessica Amend, Christina Bertch-Mumaw,
13 D.V.M., J. Greg Byrne, D.V.M., Nikki Frost, C.V.T., Les Hatfield, D.V.M., Sarah Heinrich, D.V.M.,
14 Darren Wright, D.V.M., and Julie Young are the members of the Board.

15 Plaintiffs filed a civil action against the Defendants in their official capacities in the Superior
16 Court of Arizona, Maricopa County Case No. CV2014-091906 (the “Litigation”).

17 The Superior Court has jurisdiction over this matter pursuant to Ariz. Const. Art. VI, § 14,
18 A.R.S. § 12-123, and 42 U.S.C. § 1983.

19 Venue is proper in Maricopa County Superior Court pursuant to A.R.S. § 12-401(16).

20 On October 17, 2012, the Board voted to issue Plaintiff Celeste Kelly a cease-and-desist order.

21 On September 18, 2013, the Board voted to issue Plaintiff Grace Granatelli a cease-and-desist
22 order.

23 No Plaintiff is licensed by the Board in any capacity.

24 On June 13, 2016, Plaintiffs filed their First Amended Complaint seeking a declaration that the

1 Board's application of the state's veterinary licensing scheme to animal massage practitioners and the
2 practice of animal massage violated the Arizona Constitution's due process and equal privileges or
3 immunities clauses, *see* Ariz. Const., Art. II, § 4; Ariz. Const., Art. II, § 13, and violated the Due
4 Process, Equal Protection, and Privilege or Immunities Clauses of the Fourteenth Amendment of the
5 United States Constitution.

6 The Board approved this Judgment at its January 18, 2017, meeting.

7 For purposes of this Judgment, the practice of animal massage is defined as the manual
8 application of compression, stretch, vibration or mobilization of the organs and tissues beneath the
9 dermis, and any combination of range of motion, directed, assisted, or passive movements of the joints.

10 For purposes of this Judgment, an animal massage practitioner is a person who, within this state,
11 undertakes any of the following for the purposes of animal well-being:

- 12 A. Provides external manipulation or pressure of soft tissues by use of the hands or body.
- 13 B. Uses techniques limited to stroking, percussions, compressions, friction, acupressure,
14 Swedish gymnastics or movements, gliding, kneading, range of motion or stretching, and
15 fascial or connective tissue stretching, with or without the aid of superficial heat, cold,
16 water, lubricants, or essential oils.

17 The parties desire to resolve Plaintiffs' claims rather than engage in protracted and expensive
18 litigation and have agreed to a full settlement of Plaintiffs' claims.

19 **CONSENT JUDGMENT**

20 In consideration of the agreements and provisions contained in this Judgment, the parties agree
21 and declare as follows:

- 22 1. Defendants and their agents and employees hereby agree to not enforce the laws and rules
23 governing the Arizona State Veterinary Medical Board and the practice of veterinary medicine, currently
24 codified at A.R.S. § 32-2201 through A.R.S. § 32-2296 and Ariz. Admin. Code R3-11-101 through Ariz.

1 Admin. Code R3-11-1010, against animal massage practitioners, including Plaintiffs, when they are
2 practicing animal massage in the manner described herein unless there is a legislative change.

3 2. Defendants and their agents and employees hereby agree to refrain from (1) requiring any
4 license from the Board for the practice of animal massage as described herein; (2) requiring animal
5 massage be done only under the supervision of a licensed veterinarian; (3) imposing fines and/or civil
6 penalties regarding animal massage; (4) pursuing criminal penalties regarding animal massage; (5)
7 pursuing injunctions regarding animal massage; (6) mailing letters to unlicensed animal massage
8 practitioners threatening fines and/or criminal penalties regarding animal massage; or (7) otherwise
9 subjecting animal massage practitioners who practice animal massage as described herein, including
10 Plaintiffs, to regulation for engaging in the practice of animal massage without a license from the Board,
11 operating a legitimate animal massage business, or employing or being employed as an animal massage
12 practitioner when they are practicing animal massage in the manner described herein unless there is a
13 legislative change.

14 3. The Board understands, once entered, this agreement will become a public record, and
15 the Board will post the Judgment on its website.

16 4. All parties will bear their own attorneys' fees and costs.

17 5. Waiver and Release of Claims:

18 a. Plaintiffs waive, release, and discharge all of their existing rights to any relief of any kind
19 arising out of or related to the Litigation (known and unknown) from Defendants, and
20 their respective insurers, spouses, affiliates, divisions, directors, board members, officers,
21 employees, agents, successors, and assigns, including without limitation all claims that
22 arise out of or that relate to their practice of veterinary medicine with the State of Arizona
23 or the Arizona State Veterinary Medical Examining Board, all claims that they asserted
24

1 or could have asserted in the Litigation, all claims that arise out of or that relate to any of
2 the statements or actions of the Defendants, all claims for relief or other benefits under
3 any other federal, state, or local statute, ordinance, regulation, rule of decision, or
4 principle of common law, all claims that the Defendants engaged in conduct prohibited
5 on any basis under any federal, state, or local statute, ordinance, regulation, rule of
6 decision, or principle of common law, and all claims for attorneys' fees, liquidated
7 damages, punitive damages, costs, and disbursements (all of which are referred to here
8 collectively as "Claims") except as provided in (c) below.

9 b. Plaintiffs acknowledge and agree that the waiver, release, and discharge in this Judgment
10 are a general release of all existing Claims, known and unknown. Plaintiffs acknowledge
11 that they may hereafter discover Claims, facts, or causes of action presently unknown,
12 unsuspected, or different from those that they now suspect or believe to be true. Plaintiffs
13 expressly waive and assume the risk of any and all claims that exist as of this date, but of
14 which they do not know or suspect to exist, whether through ignorance, oversight, error,
15 negligence, or otherwise, and which, if known, would materially affect their decision to
16 enter into this Judgment. Plaintiffs expressly waive and assume the risk that the facts or
17 law may be other than they believe them to be. Plaintiffs intend by the execution of this
18 Judgment to fully, finally, and forever release all known and unknown Claims,
19 notwithstanding the discovery or existence of any additional or different facts or Claims
20 at any time after they sign this Judgment except as provided in (c) below.

21 c. Nothing contained in this Judgment shall be construed as an admission of liability, fault,
22 or improper or unlawful action on the part of Plaintiffs or Defendants. The Judgment has
23 been reached purely on a settlement basis to resolve litigation.

1 d. This waiver and release of claims covers this Litigation only and does not preclude
2 Plaintiffs from filing a new lawsuit in the event a change of circumstances causes the
3 Board to begin to regulate the practice of animal massage.

4 6. Statements By Defendants. Plaintiffs acknowledge that in deciding whether to agree to
5 this Judgment, they have not relied upon any statements, representations, or promises made by
6 Defendants, other than the statements made in this Judgment.

7 7. Entire Agreement. The parties intend for this Judgment to define the full extent of their
8 legally enforceable undertakings. The parties do not intend that any representations or statements made
9 in any prior conversations, discussions, negotiations, correspondence, or writings between them be
10 legally enforceable, and all other agreements and understandings between them relating to the subject
11 matter of this Judgment are superseded by this Judgment. The parties will execute and deliver to each
12 other any and all such further documents and instruments, and shall perform any and all such other acts,
13 as reasonably may be necessary or proper to carry out or effect the purposes of this Judgment.

14 8. Headings. The descriptive headings of the paragraphs and subparagraphs of this
15 Judgment are intended for convenience only, and do not constitute parts of this Judgment.

16 9. Counterparts. This Judgment may be executed simultaneously in two or more
17 counterparts, each of which will be deemed an original, but all of which together will constitute one and
18 the same instrument.

19 10. Governing Law. This Judgment will be construed in accordance with, and any dispute or
20 controversy arising from any breach or asserted breach of this Judgment will be governed by, the laws of
21 the State of Arizona.

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Approved as to form:

Dated: January 30, 2017

/s/ Michelle Burton

Michelle Burton
Assistant Attorney General
Office of the Attorney General
Attorney for the Defendants

Dated: January 30, 2017

/s/ Diana K. Simpson

Diana K. Simpson
Institute for Justice
Attorney for Plaintiffs

IT IS SO ORDERED.

The Honorable David Udall
Judge of the Superior Court

eSignature Page 1 of 1

Filing ID: 8066799 Case Number: CV2014-091906
Original Filing ID: 8061192

Granted as Submitted



/S/ David Udall Date: 2/2/2017
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2014-091906

SIGNATURE DATE: 2/2/2017

E-FILING ID #: 8066799

FILED DATE: 2/7/2017 8:00:00 AM

MICHELLE BURTON

TIMOTHY DAVID KELLER