L. MITCHELL JONES (U.S.B. 5979)
Assistant Attorney General
MARK L. SHURTLEFF (U.S.B. 4666)
Attorney General
Commercial Enforcement Division
Heber M. Wells Building
160 East 300 South - Box 146741
Salt Lake City, Utah 84114-6741
Telephone: (801) 366-0310

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF THE ISSUANCE OF A PROBATIONARY LICENSE TO **AARON THOMAS KEEFE** TO PRACTICE AS A MASSAGE THERAPIST IN THE STATE OF UTAH	)))))	**MEMORANDUM OF UNDERSTANDING AND ORDER** **CASE NO. DOPL 2010-** 374

AARON THOMAS KEEFE ("Respondent") submitted an application for initial licensure as a massage therapist in the State of Utah on or about September 13, 2010. On the Qualifying Questionnaire Respondent answered "yes" to questions #19 and #22. Documentation has been received by the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah ("Division") showing that Respondent pleaded guilty, on or about June 22, 2006, to one count of possession of less than one ounce of marijuana, a Class A misdemeanor, in Second District Court, Bountiful City, Davis County, State of Utah. Respondent pleaded guilty, on or about December 11, 2008, to one count of possession of drug paraphernalia, a Class B misdemeanor, in Centerville Justice Court, Davis County, State of Utah. Respondent pleaded guilty, on or about December 11, 2008, to one count of possession of less than one ounce of marijuana, a Class B misdemeanor, in Centerville Justice Court, Davis County, State of Utah. Respondent pleaded guilty, on or about February 10, 2010, to one count of possession of less that one ounce of marijuana, a Class B misdemeanor, in Second District Court, Ogden City, Weber County, State of Utah. Respondent pleaded guilty, on or about February 10, 2010, to one count of attempted cause/permit a child or vulnerable adult to be exposed to a controlled substance, a 3rd degreed felony, amended to a Class A misdemeanor, in Second District Court, Ogden City, Weber County, State of Utah. Respondent has been ordered by the Court to complete substance abuse treatment.

Based upon Respondent's pleas of guilty, Respondent and Division, as evidenced by their

signatures on this Memorandum of Understanding and Order, agree that Respondent shall be issued a probationary license to practice as a massage therapist in the State of Utah, subject to the following terms and conditions, which shall be in effect for a period of three years, commencing upon the date this Memorandum of Understanding and Order is approved by the Division Director as evidenced by his signature.

1. Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (c). Respondent admits that Respondent has engaged in conduct that resulted in Respondent pleading guilty to a criminal offense involving moral turpitude and/or a criminal offense reasonably related to Respondent's ability to safely and/or competently practice as a massage therapist. Respondent understands that the issuance of the Order in this matter is disciplinary action against Respondent's license by the Division pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2).

2. Respondent acknowledges that Respondent enters into this Memorandum of Understanding and Order knowingly and voluntarily, and other than what is contained in this Memorandum of Understanding and Order, no promise or threat whatsoever has been made by the Division, or any member, officer, agent or representative of the Division to induce Respondent to enter into this agreement.

3. Respondent understands that Respondent has the right to be represented by an attorney in this matter, and the Respondent has either sought the advice of counsel or knowingly waives Respondent's right to counsel in this matter.

4. Respondent acknowledges that this Memorandum of Understanding and Order, if adopted by the Director of the Division, will be classified as a public document. The Division may release this Memorandum of Understanding and Order, and will release other information about this disciplinary action against Respondent's license, to other persons and entities.

5. Respondent shall successfully complete and satisfy the following terms and conditions:

    a. Respondent shall meet with the Board at the first scheduled Board meeting following the effective date of this Memorandum of Understanding and Order. Respondent shall then meet with the Board on a bi-monthly basis or at such other greater or lesser frequency as determined by the Board and Division for the duration of the Memorandum of Understanding and Order. Respondent agrees to meet with an assigned staff member prior to the first Board meeting.

    b. Respondent shall complete all terms and conditions of any criminal sanctions, incurred before or during the period of this agreement, including probation or parole. Respondent shall provide the Division with a copy of documentation showing completion of the Court ordered alcohol/substance abuse evaluation/

assessment and compliance with any recommended treatment. If Respondent has not successfully completed all the terms and conditions of Respondent's criminal probation, including completion of the Court ordered drug/alcohol evaluation/ assessment and compliance with any recommended treatment, at the time Respondent's administrative probationary period ends, the period of Respondent's administrative probation shall be extended until all the conditions of Respondent's criminal probation have been successfully completed.

c. If Respondent is arrested or charged with a criminal offense by any law enforcement agency, in any jurisdiction, inside or outside the State of Utah, for any reason, Respondent agrees to cause the Division and Board to be notified immediately. If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, or enters a plea in abeyance to a criminal offense of any kind, including a pending criminal charge, the Division may take appropriate action against Respondent, including imposing appropriate sanctions, after notice and opportunity for hearing. Such sanctions may include revocation or suspension of Respondent's license, or other appropriate sanctions.

d. Although the use and possession of alcohol is generally legal for persons age 21 and older, Respondent agrees to abstain from the personal use or possession of alcohol in any form. Respondent agrees to abstain from the personal use or possession of controlled substances and prescription drugs, unless such controlled substance or prescription drug is lawfully prescribed to Respondent for a current bona fide illness or condition by a licensed practitioner and taken by Respondent in accordance with that practitioner's instructions. Respondent shall abstain from the use of any and all other mood altering substances or use of mood altering substances for any other purpose than the purpose for which the substance is intended.

e. Respondent shall provide samples (urine, blood, saliva, hair, or any other type of sample requested) for alcohol and/or drug analysis upon the request of the Division, to be conducted by any company with which the Division has contracted to conduct alcohol and/or drug testing. The designated company may also request such samples and Respondent shall comply with such requests. The Division shall determine when and where Respondent is to submit himself for testing. Respondent shall call in to a designated phone number every day to determine if Respondent is required to provide a sample for drug analysis. Respondent shall pay for the cost of alcohol and/or drug testing and shall accurately complete and sign any and all release forms requested by the Division or the drug testing company with respect to alcohol and/or drug testing, including but not limited to, forms authorizing the company to send the drug test results to the Division. Any report from an alcohol and/or drug testing company that indicates that Respondent failed to provide a sample for drug analysis as directed will be considered a positive alcohol and/or drug test result for Respondent and will subject Respondent to additional sanctions. Any alcohol and/or drug test result or pattern

of results that indicates that the sample provided by Respondent for alcohol and/or drug analysis is diluted to an extent that it cannot be analyzed, will be considered a positive alcohol and/or drug test result for Respondent and will subject Respondent to additional sanctions.

f. Respondent shall report to the Division within forty-eight (48) hours any and all medications or controlled substances ingested by Respondent from any source.

g. Respondent shall participate in a professional support group to address Respondent's use of controlled substances. Documentation that reflects Respondent's continuing and regular attendance at such support group meetings shall be provided to the Division on a quarterly basis. "Regular attendance" means Respondent shall attend the support group at least two times per month.

h. If Respondent leaves the State of Utah for a period longer than sixty (60) days, Respondent shall notify the Division and Board in writing of the dates of Respondent's departure and return. The licensing authorities of the jurisdiction to which Respondent moves shall be notified by Respondent in writing of the provisions of this Memorandum of Understanding and Order. Periods of residency or practice outside the State of Utah may apply to the reduction of the period this Memorandum of Understanding and Order is in effect, if the new state of residency places equal or greater conditions upon the Respondent as those contained in this Memorandum of Understanding and Order.

i. Respondent shall maintain a current license at all times during the period of this agreement.

j. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.

k. Respondent shall notify the Board in writing within one (1) week of any change of employer, employment status, or practice status. This notification is required regardless of whether Respondent is employed in Respondent's profession.

l. Respondent shall provide to Respondent's employer(s) a copy of this Memorandum of Understanding and Order and cause each employer to acknowledge to the Board in writing that a copy of this Memorandum of Understanding and Order has been provided to the employer.

m. Respondent shall notify any employer of Respondent's restricted status and the terms of this agreement. Respondent shall further cause Respondent's employer to submit performance evaluations to the Board on a monthly basis for six months and quarterly thereafter which shall include acknowledgement by Respondent's employer that a copy of this Memorandum of Understanding and Order has been read by the employer. The receipt of an unfavorable report from an employer may

be considered to be a violation of the terms of this Memorandum of Understanding and Order. If the Respondent is not employed as a massage therapist, Respondent shall submit the required employer report form to the Board on the date it is due and indicate on that form that Respondent is not currently employed in Respondent's licensed occupation or that Respondent is not currently working.

n. In the event Respondent does not practice as a massage therapist for a period of sixty (60) days or longer, Respondent shall notify the Board in writing of the date Respondent ceased practicing. The period of time in which Respondent does not practice shall not be counted toward the time period of this Memorandum of Understanding and Order. It shall be within the discretion of the Board to modify this requirement if Respondent satisfactorily explains to the Board that compliance in Respondent's case was impractical or unduly burdensome. Respondent must work at least eight (8) hours per week and no more than forty-eight (48) hours per week to be considered "practicing" in Respondent's profession.

6. Respondent agrees to abide by all applicable federal and state laws, regulations, rules or orders related to Respondent's licensed area of practice.

7. Respondent understands that the issuance of a license pursuant to this Memorandum of Understanding and Order is a partial denial of licensure, and Respondent hereby waives the right to any administrative or judicial review of that partial denial of licensure.

8. If Respondent successfully completes the terms of this Memorandum of Understanding and Order, the conditions on Respondent's license will be lifted and Respondent's license will not be subject to further restriction.

9. If Respondent violates any term or condition of this Memorandum of Understanding and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.

10. The terms and conditions of this Memorandum of Understanding and Order become effective immediately upon the approval of this Memorandum of Understanding and signing of the Order by the Division Director. Respondent must comply with all the terms and conditions of this Memorandum of Understanding and Order immediately after the Division Director signs the Order page of this Memorandum of Understanding and Order. Respondent shall complete all the terms and conditions contained in the Memorandum of Understanding and Order in a timely manner. If a time period for completion of a term or condition is not specifically set forth in this Memorandum of Understanding and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Board. Failure to complete a term or condition in a timely manner shall constitute a violation of the Memorandum of Understanding and

Order and may subject Respondent to revocation or other sanctions.

11. If the Division files a Petition alleging that Respondent has engaged in new misconduct or files an Order to Show Cause Petition alleging that Respondent has violated any of the terms and conditions contained in this Memorandum of Understanding and Order, the period of Respondent's probation shall be tolled during the period that the Petition or Order to Show Cause Petition has been filed and is unresolved.

12. Respondent understands that the disciplinary action taken by the Division in this Memorandum of Understanding and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state.

13. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties. There are no verbal agreements that modify, interpret, construe or affect this Memorandum of Understanding and Order.

14. Respondent has read each and every paragraph contained in this Memorandum of Understanding and Order. Respondent understands each and every paragraph contained in this Memorandum of Understanding and Order. Respondent has no questions about any paragraph or provision contained in this Memorandum of Understanding and Order.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

BY: _____
SALLY A. STEWART
Bureau Manager

DATE: OCT 28 2010

RESPONDENT

BY: _____
AARON THOMAS KEEFE

DATE: 10-28-10

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: _____
L. MITCHELL JONES
Counsel for the Division

DATE: 19 Oct 10

ORDER

THE ABOVE MEMORANDUM OF UNDERSTANDING, in the matter of **AARON THOMAS KEEFE**, is hereby approved by the Division of Occupational and Professional Licensing. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2). The terms and conditions of the Memorandum of Understanding are incorporated herein and constitute my final Order in this case.

DATED this 4 day of November, 2010.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING

MARK B. STEINAGEL
Director