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**BEFORE THE ARIZONA STATE BOARD OF
MESSAGE THERAPY**

In the Matter of:

LANE KILLIAN BERK
Holder of License No. **MT-24679**

BOARD CASE NOS. 19-112 & 19-113

For the Practice as a Massage Therapist
In the State of Arizona

DECISION AND ORDER

RESPONDENT

10 On December 17, 2018, the Arizona State Board of Massage Therapy (“Board”) convened
11 to hold an Administrative Hearing in the above referenced matter. Lane Killian Berk
12 (“Respondent”) did not appear and was not represented by legal counsel. Assistant Attorney
13 General Michael Raine was present and represented the State. Assistant Attorney General, Mary
14 DeLaat Williams, of the Licensing and Enforcement Section of the Attorney General’s Office,
15 appeared in person to provide independent legal advice to the Board. At issue was the State’s
16 Motion to Deem Allegations Admitted regarding the Complaint and Notice of Hearing in this
17 matter and the imposition of the appropriate disciplinary action(s) pursuant to A.R.S. § 32-128(F).
18 The Board, after considering the State’s Motion, granted the Motion to Deem the Allegations
19 Admitted and issued the following Findings of Fact, Conclusions of Law and Order (“Decision
20 and Order”):

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PARTIES AND JURISDICTION

1. The Board is the duly constituted authority for licensing and regulating the practice of massage therapy in the State of Arizona.
2. Respondent is the holder of license number MT-24679, which allows Respondent to practice as a massage therapist in the State of Arizona.
3. Under A.R.S. § 32-4201, et seq., the Board possess jurisdiction over the subject matter and over Respondent as a licensee of the Board.

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2 **FINDINGS OF FACT**

3 **Case No. 19-112**

4 1. On August 18, 2018, Respondent provided massage therapy services to client BH
5 at Massage Envy in Phoenix, AZ.

6 2. During the massage, Respondent undraped and massaged BH's breasts.

7 3. BH had not given oral or written consent to a breast massage.

8 4. During the massage, Respondent, while massaging BH under the drape, touched
9 BH's genitals.

10 **Case No. 19-113**

11 5. On July 12, 2018, Respondent provided massage therapy services to NP at Massage
12 Envy in Phoenix, AZ.

13 6. During the massage, Respondent massaged NP's breasts under the drape and
14 pinched her nipples.

15 7. NP had not given oral or written consent to a breast massage.

16 8. On April 16, 2018, Respondent was arraigned in Scottsdale City Court case number
17 CR-2018008601 for possession of drug paraphernalia, among other charges that were later
18 dismissed.

19 9. On May 4, 2018, Respondent pleaded guilty to possessing drug paraphernalia, a
20 class-six felony.

21 10. Respondent did not notify the Board of the criminal charges against him or of his
22 conviction within ten days of either event.

23 **CONCLUSIONS OF LAW**

24 1. The conduct and circumstances described above constitute grounds for discipline
25 pursuant to A.R.S. § 32-4253(A)(4) (being convicted of a felony).

1 2. The conduct and circumstances described above constitute grounds for discipline
2 pursuant to A.R.S. § 32-4253(A)(6) (engaging in any act or practice in violation of this chapter or
3 any board rule), as it relates to any alleged statute or rule violation asserted below.

4 3. The conduct and circumstances described above constitute grounds for discipline
5 pursuant to A.R.S. § 32-4253(A)(8) (committing an act of malpractice, gross negligence, or
6 incompetency).

7 4. The conduct and circumstances described above constitute grounds for discipline
8 pursuant to A.R.S. § 32-4253(A)(10) (engaging in conduct that could harm the public).

9 5. The conduct and circumstances described above constitute grounds for discipline
10 pursuant to A.R.S. § 32-4253(A)(14) (engaging in substandard care due to deliberate or negligent
11 conduct, whether or not it results in actual injury to a client).

12 6. The conduct and circumstances described above constitute grounds for discipline
13 pursuant to A.R.S. § 32-4253(A)(15) (engaging in any “sexual activity” with a client, as that term
14 is defined in A.R.S. §§ 32-4253(B)(2)(a) (defining “sexual activity” to include “sexual conduct”)
15 as it relates to A.R.S. § 32-4253(B)(3) (defining “sexual conduct” to include direct or indirect
16 touching of the genitals to any part of the body) and -4253(B)(2)(e) (defining “sexual activity” to
17 include a breast massage without prior written consent).

18 7. The conduct and circumstances described above constitute grounds for discipline
19 pursuant to A.R.S. § 32-4253(A)(16) (failing to adhere to the recognized standards and ethics of
20 the profession) as it relates to the standards set forth in A.A.C. R4-15-103(c) (“Provide massage
21 therapy only when the licensee believes that it will be advantageous to the client”), -103(e)
22 (“Provide draping that ensures the safety, comfort, and privacy of the client;”), and -103(h)
23 (“Refrain from sexual activity with the client.”).

24 8. The conduct and circumstances described above constitute grounds for discipline
25 pursuant to A.R.S. §§ 32-3208 (requiring health professionals to disclose felony charges to the
26 Board within ten days) and -4225(D) (requiring massage therapists to disclose felony convictions
to the Board within ten days).

1 **ORDER**

2 Based on the Board's adoption of the Findings of Fact and Conclusions of Law, the Board
3 issues the following Order:

4 It is ordered **REVOKING** Respondent's massage therapy license no. MT-24679.

5 **NOTICE OF APPEAL RIGHTS**

6 Respondent is hereby notified that he has the right to request a rehearing or review by filing a
7 petition with the Board's Executive Director within 30 days after service of this Decision and
8 Order. Service of this Decision and Order is effective on the date of personal delivery or five days
9 after the date of mailing. A.R.S. § 41-1092.09. The request for a rehearing or review must set
10 forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-15-401(C). If a
11 motion for rehearing or review is not filed, the Board's Decision and Order becomes effective 35
12 days after it is mailed to Respondent. Respondent is further notified that the filing of a motion for
13 rehearing or review is required to preserve any rights of appeal to the Superior Court.

14 DATED this 19th day of December, 2018

15 ARIZONA STATE BOARD OF MASSAGE THERAPY

16
17 By: 
18 Ryan P. Edmonson, Executive Director

19 Original Decision and Order
filed this 19th day of December 2018 with the:

20 Arizona State Board of Massage Therapy
21 1740 West Adams Street, Suite 3401
22 Phoenix, Arizona 85007

23 Copy of the foregoing sent via
24 Regular and Electronic mail this
18th day of December 2018 to:

25 Alberto Valverde
26 6249 West Elm Street
Phoenix, Arizona 85033
albertovalverde974@gmail.com

1 Copy of the foregoing sent via
Electronic mail this 19th day of December 2018 to:

2 Michael Raine, Assistant Attorney General
3 Office of Arizona Attorney General – SGD/LES
4 2005 North Central Avenue
Phoenix, Arizona 85067
michael.raine@azag.gov
5 Attorney for the State

6 Mary DeLaat Williams, Assistant Attorney General
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2005 North Central Avenue
Phoenix, Arizona 85067
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9 Independent Attorney Advisor

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11 By:  _____

12 DOC#7509777

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