BEFORE THE ARIZONA STATE BOARD OF MASSAGE THERAPY

In the Matter of: **JUVALL CALMESE** Holder of License No. **MT-20214** For the Practice as a Massage Therapist In the State of Arizona RESPONDENT	**BOARD CASE NOS. 19-173** **DECISION AND ORDER**

On October 28, 2019, during a regularly scheduled board meeting, the Arizona State Board of Massage Therapy (Board) held an Administrative Hearing to hear evidence, testimony and arguments regarding this case. Assistant Attorney General Michael Raine represented the State. Juvall Calmese (Respondent) was present and represented himself. Assistant Attorney General, Marc Harris, of the Licensing and Enforcement Section of the Attorney General's Office, appeared, in person, to provide independent legal advice to the Board. After hearing all of the evidence and arguments presented by the parties, the Board issues the following Findings of Fact, Conclusions of Law and Order (Order):

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-20214, 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.

FINDING OF FACT

1. On May 22, 2019, Respondent provided massage therapy services to client NA at Envision Health Spa in Tucson, Arizona.

2. During the massage, Respondent provided NA with a breast massage without advance oral or written consent.

CONCLUSIONS OF LAW

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

2. The conduct and circumstances described above constitute grounds for discipline pursuant to A.R.S. § 32-4253(A)(15) (engaging in any "sexual activity" with a client, as that term is defined in A.R.S. §§ 32-4253(B)(2)(c) [defining "sexual activity" to include "physical contact of a sexual nature with a client"] and -4253(B)(2)(e) [defining "sexual activity" to include "massaging, touching or applying any instrument or device by a licensee in the course of practicing or engaging in massage therapy to the breasts of a female client unless the client requests breast massage and signs a written consent form."].

3. The conduct and circumstances described above constitute grounds for discipline pursuant to A.R.S. § 32-4253(A)(16) (failing to adhere to the recognized standards and ethics of the profession) as it relates to Arizona Administrative Code R4-15-103(1)(h) ("Refrain from engaging in sexual activity with the client").

ORDER

Based on the forgoing Findings of Fact and Conclusions of Law, it is hereby Ordered:

SUSPENSION

License number MT-20214 issued to Juvall Calmese for the practice of massage therapy in the State of Arizona is **suspended** for one year as of the effective date of this Order and subject to the following additional terms and conditions.

CONTINUING EDUCATION

In addition to the continuing education requirements of A.R.S. § 32-4225, within 12 months of the effective date of this Order, Respondent shall take and complete six hours of continuing education in each of the following content areas: 1) Communication; 2) Business Practices; 3) Ethics; and 4) Draping for a total of 24 hours of continuing education. All required continuing education shall be pre-approved by the Board Chair or designee. Upon completion, Respondent shall submit certificates of completion of the required continuing education.

CIVIL PENALTY

It is further Ordered that within 12 within of the effective date of this Order, Respondent shall pay a Civil Penalty in the amount of $250.00 to the Board. Payment of the civil penalty shall be made by certified check or money order payable to the Board.

GENERAL PROVISIONS

1. Respondent shall pay all necessary fees and complete all continuing education requirements throughout the term of his probation to maintain his massage therapy license. Throughout the term of Respondent's probation, Respondent shall personally appear before the Board when requested to do so by the Board or Board staff.

2. Respondent shall obey all federal and state laws and rules governing the practice of Massage Therapists.

3. Respondent shall pay all costs associated with complying with this Order.

4. If Respondent violates this Order in any way or fails to fulfill the requirements of this Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke, suspend or take other disciplinary actions against Respondent's license. The issue at such a hearing will be limited solely to whether this Order has been violated.

5. Prior to his release from probation, and not before 12 months from the effective date of this Order, Respondent must submit a written request to the Board for release from the terms of this Order. Respondent shall appear before the Board and provide evidence that he has successfully satisfied all terms and conditions in this Order. The Board has the sole discretion to determine whether all terms and conditions of this Order have been met and whether Respondent has adequately demonstrated that he has addressed the issues contained in this Order. In the event that the Board determines that any or all terms and conditions of this Order have not been met, the Board may conduct such further proceedings as it determines are appropriate to address those matters.

6. The effective date of this Order is the date that is signed by Board's Executive Director.

NOTICE OF APPEAL RIGHTS

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

DATED this 4th day of November, 2019

ARIZONA STATE BOARD OF
MASSAGE THERAPY

By: Thomas Augherton
Thomas Augherton
Executive Director

ORIGINAL Decision and Order filed
this 4th day of November, 2019 with the:

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

COPY of the foregoing sent via Regular and Electronic Mail
this 4th day of November, 2019 to:

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2781 W Anklam Rd.
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COPIES of the foregoing sent via Electronic Mail
this 4th day of November, 2019 to:

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By:_____
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