

1                                   **BEFORE THE ARIZONA BOARD**  
2                                   **OF MASSAGE THERAPY EXAMINERS**

3           In the Matter of

Board Case Nos.

4           **SAMUEL CARTES, LMT**

**20-140**

5           Holder of License No. MT-18590  
6           As a Massage Therapist  
7           In the State of Arizona

**CONSENT AGREEMENT AND  
ORDER FOR SUSPENSION OF  
MASSAGE THERAPY LICENSE**

8           In the interest of a prompt and judicious settlement of this case, consistent with the  
9           public interest, statutory requirements and the responsibilities of the Arizona State Board  
10          of Massage Therapy (Board) under A.R.S. § 32-4201, *et. seq.*, Samuel Cartes  
11          (Respondent), holder of Massage Therapist License Number MT-18590 in the State of  
12          Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions  
13          of Law and Order for Suspension (Consent Agreement) as a final disposition of this  
14          matter.

15                                   **RECITALS**

16           1.       While Respondent neither admits nor denies the following Findings of Fact  
17          and Conclusions of Law, Respondent acknowledges that, should this matter proceed to  
18          hearing, the Board **could** establish by a preponderance of the evidence that Respondent  
19          engaged in conduct which, if found to have committed in the future, could be used to  
20          order discipline under the Board's statutes or rules. Therefore, Respondent has agreed to  
21          enter into this Consent Agreement as an economical and practical means of resolving this  
22          case.

23           2.       Respondent has read and understands this Consent Agreement and has had  
24          the opportunity to discuss this Consent Agreement with an attorney, or has waived the  
25          opportunity to discuss this Consent Agreement with an attorney.  
26

1           3.     Respondent understands that he has a right to a public administrative  
2 hearing concerning this matter, at which hearing Respondent could present evidence and  
3 cross-examine witnesses. By entering into this Consent Agreement, Respondent  
4 knowingly and voluntarily relinquishes all right to such an administrative hearing, as well  
5 as rights of rehearing, review, reconsideration, appeal, judicial review or any other  
6 administrative and/or judicial action, concerning the matters set forth herein.

7           4.     Respondent affirmatively agrees that this Consent Agreement shall be  
8 irrevocable.

9           5.     Respondent understands that this Consent Agreement or any part of the  
10 agreement may be considered in any future disciplinary action by the Board against  
11 Respondent.

12          6.     Respondent understands this Consent Agreement deals with Board case  
13 number 20-140 involving allegations that Respondent engaged in conduct that would  
14 subject Respondent to discipline under the Board's statutes and rules. The investigation  
15 into these allegations against Respondent shall be concluded upon the Board's adoption  
16 of this Consent Agreement.

17          7.     Respondent understands that this Consent Agreement does not constitute a  
18 dismissal or resolution of any other matters currently pending before the Board, if any,  
19 and does not constitute any waiver, express or implied, of the Board's statutory authority  
20 or jurisdiction regarding any other pending or future investigation, action or proceeding.

21          8.     Notwithstanding any language in this Consent Agreement and Order, this  
22 Consent Agreement and Order does not preclude in any way any other State agency or  
23 officer or political subdivision of this state from instituting proceedings, investigating  
24 claims, or taking legal action as may be appropriate now or in the future relating to this  
25 matter or other matters concerning Respondent, including but not limited to, violations of  
26

1 Arizona's Consumer Fraud Act. Respondent acknowledges that, other than with respect to  
2 the Board, this Consent Agreement and Order makes no representations, implied or  
3 otherwise, about the views or intended actions of any other state agency or officer or  
4 political subdivisions of the State relating to this matter or other matters concerning  
5 Respondent.

6 9. Respondent acknowledges and agrees that, upon signing this Consent  
7 Agreement and returning this document to the Board's Executive Director, Respondent  
8 may not revoke Respondent's acceptance of the Consent Agreement or make any  
9 modifications to the document regardless of whether the Consent Agreement has been  
10 signed by the Executive Director. Any modification to this original document is  
11 ineffective and void unless mutually agreed by the parties in writing.

12 10. This Consent Agreement is effective only when signed by the Executive  
13 Director on behalf of the Board.

14 11. If a court of competent jurisdiction rules that any part of this Consent  
15 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
16 shall remain in full force and effect.

17 12. Respondent understands that this Consent Agreement constitutes  
18 disciplinary action and is a public record that may be publicly disseminated as a formal  
19 action of the Board and may be reported as required by law to the National Practitioner  
20 Data Bank or other such databases.

21 13. Respondent agrees that the Board will adopt the following Findings of Fact,  
22 Conclusions of Law and Order.

23  
24 ACCEPTED AND AGREED BY RESPONDENT  
25  
26



2/19/2021

Dated: \_\_\_\_\_

Samuel Cartes

**FINDINGS OF FACT**

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-18590 to practice as a Massage Therapist in the State of Arizona.

3. On December 21, 2019, Respondent provided massage therapy services to client LB at Massage Envy-Carefree in Scottsdale, Arizona.

4. On December 28, 2019, LB filed a complaint stating that Respondent massaged LB's upper breast/pectoral area above the nipples, without written or oral consent, and committed other actionable violations of Board rule and statute.

5. LB stated that Respondent placed LB's hands on her pubic area, directly on LB's skin, and that Respondent then leaned over LB and kissed her three times including on the lips.

6. LB further stated that the Respondent massaged LB's inner thigh very close to her vaginal area, while telling her how beautiful her body was, leaving LB unable to move due to fear.

7. LB's husband made a report to Respondent's employer, Massage Envy, on December 21, 2019, shortly after the incident and LB filed a report with the Scottsdale Police Department on December 24, 2019, as well as a complaint to the Board on or about December 28, 2019.

8. Based on the report from LB's husband to Respondent's employer, the employer placed Respondent on suspension pending an investigation. The results of the 3<sup>rd</sup> party investigation indicated that Respondent admitted to placing his hand underneath

1 while laying LB's hands beside her hips. The investigation concluded this conduct was a  
2 violation of policy and Respondent was terminated. The Respondent stated to the 3<sup>rd</sup>  
3 party investigator that nothing sexual occurred.

4 9. During the course of the Board's investigation, the Board obtained  
5 Respondent's notes from the session with LB from December 21, 2019. The post-session  
6 notes contained no references to any inappropriate or sexual behavior by LB. The notes  
7 indicate the massage was routine and unremarkable.

8 10. Respondent's version of the events did not contain allegations against LB  
9 until a month after the incident occurred when he spoke to the Police investigator from  
10 Scottsdale Police Department. During this interview the Respondent mentions for the first  
11 time that it was actually LB who kissed him during the massage.

12 11. Based on the allegations contained in the investigative report and testimony  
13 by LB, the Board voted at its October meeting to move this case to a formal hearing.

14 12. Respondent contests the veracity of the statements made by the  
15 complainant in paragraphs 4 thru 10, regarding this matter.

#### 16 CONCLUSIONS OF LAW

17 1. The Board possesses jurisdiction over the subject matter and over  
18 Respondent pursuant to A.R.S. § 32-4201 *et seq.*

19 2. The Board possesses statutory authority to enter into a consent agreement  
20 with a massage therapist to limit or restrict the licensee's practice or to rehabilitate the  
21 licensee, protect the public and ensure the licensee's ability to safely engage in the  
22 practice of massage therapy. The Board may also require the licensee to successfully  
23 complete a Board approved rehabilitative, retraining, continuing education or assessment  
24 program. *See* A.R.S. § 32-4254(D).



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

4. The conduct and circumstances described above constitute grounds for discipline pursuant to A.R.S. § 32-4253(A)(16), which states, “failing to adhere to the recognized standards and ethics of the profession.”

5. The conduct and circumstances described above constitute grounds for discipline pursuant to A.R.S. § 32-4253(A)(23), which states, “violating Board statutes, rules, or orders.”

## ORDER

IT IS HEREBY ORDERED that License Number MT-18590 issued to Samuel Cartes to practice as a massage therapist in the State of Arizona is hereby placed on suspension for **6 months** subject to the following terms and conditions:

### 1. Continuing Education.

During the term of suspension, Respondent shall complete **20 hours** of continuing education, which must include courses covering the following subjects: ethics and communication. **10 hours** must be in the area of ethics and the other **10 hours** must be in the area of communication. These continuing education hours shall be in addition to and shall not be used to satisfy the hours required for the renewal of Respondent's massage therapist license under A.R.S. § 32-4225. Respondent shall seek and obtain pre-approval of his continuing education courses from Board or its designee (staff). Respondent shall provide the Board or its staff with proof of successful completion of the continuing education hours in satisfaction of this requirement **within 6 months** of the effective date of this order.

## 2. Civil Penalty.

1 During the term of suspension, Respondent shall remit a \$250.00 civil penalty via  
2 certified funds to the Board's administrative office within 6 months of the effective  
3 date of this order.

4 **3. General Provisions.**

5 a. Respondent shall pay all necessary fees throughout the term of Respondent's  
6 suspension to maintain Respondent's massage therapy license in active status.

7 b. Respondent shall pay all costs associated with complying with this Order.

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

13 d. This Order shall terminate 6 months from the effective date of the Order, but  
14 only if all terms and conditions have been successfully completed to the satisfaction of  
15 the Board, and Respondent requests and is granted release by the Board.

16 DATED this 22<sup>nd</sup> day of FEB, 2021.

17  
18 ARIZONA STATE BOARD OF MASSAGE  
THERAPY

19 (Seal)

20  
21 By: \_\_\_\_\_

22 Thomas Augherton  
Executive Director

23  
24  
25  
26  
for

1 ORIGINAL OF THE FORGOING FILED  
this 22<sup>nd</sup> day of February 2021, with:

2 Arizona State Board of Massage Therapy  
3 1740 West Adams, Suite 3401  
4 Phoenix, Arizona 85007

5 EXECUTED COPY OF THE FOREGOING MAILED/E-MAILED  
this 22<sup>nd</sup> day of February 2021, to:

6 Samuel Cartes  
7 8032 East El Toro Circle #212  
8 Tucson, Arizona 85715  
9 Respondent

10 Bernie J. Pistillo  
11 Morrison & Foerster, LLP  
12 425 Market Street  
13 San Francisco, California 94105  
14 [BPistillo@mofo.com](mailto:BPistillo@mofo.com)  
15 Attorney for Respondent

16 Seamus Monaghan, AAG  
17 2005 North Central Avenue, SGD/LES  
18 Phoenix, Arizona 85004  
19 Attorney for the Board

20 By:  \_\_\_\_\_

21 #9264350  
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