

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

In the Matter of

KEVIN CHAU, LMT,

Holder of License No. MT-14646
As a Massage Therapist
In the State of Arizona

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER**

Pursuant to Notice of Hearing Number 15-113, this matter came before the Arizona Board of Massage Therapy (Board) on February 23, 2015.

Dennis Beye, Chair, presided at the meeting with Board members Victoria Bowman, John Ortega, Earl Duskey, and Diane Pruetz in attendance.

The state was represented by the Office of the Attorney General, Elizabeth Campbell, Assistant Attorney General, Licensing and Enforcement Section. Chris Munns, of the Solicitor General's Section of the Attorney General's Office was present and available to provide independent legal advice to the Board. Kevin Chau (Respondent) was present and was not represented by counsel. The Board, after considering the testimony and evidence presented, hereby issues the following Findings of Fact, Conclusions of Law, and 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-14646, which allows him 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.

FINDINGS OF FACT

1. On September 3, 2014, female massage therapy client MG received a massage from Respondent at Intricate Touch in Tucson, Arizona.
2. During the massage, which was MG's second massage with Respondent, Respondent touched and massaged MG's breasts and genitals. MG had verbally consented to a breast massage, but she had not signed a written consent for the breast massage.
3. During the massage, Respondent discussed a sexual fantasy with MG and asked if MG would be willing to participate. MG declined Respondent's invitation to participate in acting out Respondent's sexual fantasy.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter and over Respondent pursuant to A.R.S. § 32-4201 *et seq.*
2. The Board may discipline a massage therapist who has engaged in sexual activity with a client. A.R.S. § 32-4253(A)(15).
3. The conduct and circumstances described above constitute sexual activity in violation of A.R.S. § 32-4253(B)(2)(a) ("Sexual activity" means sexual conduct). "Sexual conduct" means any direct or indirect touching, fondling, or manipulating of any part of the genitals or anus by any part of the body or by any object or causing a person to engage in that conduct. A.R.S. § 32-4253(B)(3).
4. The conduct and circumstances described above constitute sexual activity in violation of A.R.S. § 32-4253(B)(2)(b) ("Sexual activity" means offering to engage in sexual conduct).
5. The conduct and circumstances described above constitute sexual activity in violation of A.R.S. § 32-4253(B)(2)(c) ("Sexual activity" means making sexual advances,

requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a client).

6. The conduct and circumstances described above constitute sexual activity in violation of A.R.S. § 32-4253(B)(2)(e) (“Sexual activity” means massaging, touching or applying any instrument or device by a licensee in the course of practicing or engaging in massage therapy to the breasts¹ of a female client unless the client requests breast massage and signs a written consent).

ORDER

Based on the foregoing Finding of Fact and Conclusions of Law, **IT IS HEREBY ORDERED** that Respondent’s license number **MT-14646 IS REVOKED.**

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent has the right to petition for a rehearing or review of this Order. Pursuant to A.R.S. § 41-1092.09 and A.A.C. R4-15-401(A), the petition must be filed with the Board within thirty-five (35) days from the date of mailing if the Order was served by certified mail. The petition must set forth legally sufficient reasons for granting the rehearing or review pursuant to A.A.C. R4-15-401(C). The timely filing of a petition for rehearing or review shall stay the enforcement of the Board’s Order. If a petition for rehearing or review is not filed, the Board’s Order becomes effective thirty-five (35) days after it is mailed, unless pursuant to A.A.C. R4-15-401(F), the Board has expressly found good cause to believe the Order shall be effective immediately upon the issuance and has so stated in the Order. The failure to file a petition for rehearing or review within thirty-five (35) days after mailing has the effect of prohibiting the parties from seeking judicial review of the Board’s decision.

DATED this 26th day of FEBRUARY, 2015.

¹ “Breast” means any portion of the female breast below a point immediately above the top of the areola. A.R.S. § 32-4253(B)(1).

ARIZONA BOARD OF MASSAGE THERAPY

By: Kathleen Phillips
KATHLEEN PHILLIPS,
Executive Director

ORIGINAL OF THE FORGOING FILED
this 26th day of February, 2015, with:

Arizona Board of Massage Therapy
1400 West Washington, Suite 300
Phoenix, Arizona 85007

COPY OF THE FOREGOING MAILED
BY CERTIFIED & REGULAR FIRST-CLASS MAIL
this 26th day of February, 2015, to:

Kevin Chau
4786 S. Camino Paso Doble
Tucson, Arizona 85714
Respondent

COPY OF THE FOREGOING MAILED
this 26th day of February, 2015, to:

Christopher Munns
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