

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

3 In the Matter of

4 **WEN DING, LMT,**

5 Holder of License No. MT-17871
6 As a Massage Therapist
7 In the State of Arizona

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

8 Pursuant to Complaint and Notice of Hearing, Case Number 16-123 (Notice) this matter
9 came before the Arizona Board of Massage Therapy (Board) on September 26, 2016.

10 Victoria Bowman, Chairperson, presided at the meeting with Board members John
11 Ortega, Earl Duskey, and Diane Pruetz in attendance.

12 The State was represented by the Office of the Attorney General, Elizabeth Campbell,
13 Assistant Attorney General, Licensing and Enforcement Section. Bridget Harrington,
14 Assistance Attorney General, was present and available to provide independent legal
15 advice to the Board. Wen Ding (Respondent) was present and was not represented by an
16 attorney.

17 The Board after considering the testimony and evidence presented, hereby issues the
18 following Findings of Fact, Conclusions of Law, and Order.

19 **AUTHORITIES AND JURISDICTION**

20 1. The Board is the duly constituted authority for licensing and regulating the
21 practice of massage therapy in the State of Arizona.

22 2. Respondent holds license number MT-17871 as a massage therapist in the
23 State of Arizona.

24 3. Under A.R.S. §§ 32-4201 through -4259, the Board has jurisdiction over
25 the subject matter and over Respondent as a licensee of the Board.
26

1 **FINDINGS OF FACT**

2 1. On April 8, 2015, while working as a massage therapist at Arizona Seasons
3 Massage in Scottsdale, Arizona, Respondent exposed a male massage therapy client's
4 genitals, exposed her breasts to the male massage therapy client, and agreed to perform a
5 hand job. The massage therapy client was an undercover Scottsdale Police Officer.

6 **ALLEGED VIOLATIONS**

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

9 2. The conduct described above in the Findings of Fact is grounds for
10 discipline under A.R.S. § 32-4253(A)(15) (Engaging in sexual activity with a client).

11 3. The conduct described above in the Findings of Fact constitutes sexual
12 activity in violation of A.R.S. § 32-4253(B)(2)(b) ("Sexual activity" means offering to
13 engage in sexual conduct). "Sexual conduct" means any direct or indirect touching,
14 fondling or manipulating of any part of the genitals or anus by any part of the body or by
15 any object or causing a person to engage in that conduct). A.R.S. § 32-4253(B)(3).

16 4. The conduct described above in the Findings of Fact constitutes sexual
17 activity in violation of A.R.S. § 32-4253(B)(2)(c) ("Sexual activity" means making
18 sexual advances, requesting sexual favors or engaging in other verbal conduct or physical
19 contact of a sexual nature with a client).

20 5. The conduct described above in the Findings of Fact constitutes sexual
21 activity in violation of A.R.S. § 32-4253(B)(2)(d) ("Sexual activity" means intentionally
22 viewing a completely or partially disrobed massage therapy client in the course of
23 treatment if the viewing is not related to treatment under current practice standards and is
24 intended to appeal to the prurient interest of the massage therapy client or the massage
25 therapist).

1 6. The conduct described above in the Findings of Fact constitutes sexual
2 activity in violation of A.R.S. § 32-4253(B)(2)(i) ("Sexual activity" means exposing her
3 breasts to a client).

4 7. The conduct described in the Findings of Fact constitutes grounds for
5 discipline under A.R.S. § 32-4253(A)(16) (Failing to adhere to the recognized standards
6 and ethics of the massage therapy profession). A.R.S. § 32-4251(B) further requires that
7 a massage therapist adhere to the recognized standards and ethics of the massage therapy
8 profession. A licensee shall provide draping that ensures the safety, comfort, and privacy
9 of the client. A.A.C. R4-15-103(1)(E).

10 8. The conduct described in the Findings of Fact constitutes grounds for
11 discipline under A.R.S. § 32-4253(A)(16) (Failing to adhere to the recognized standards
12 and ethics of the massage therapy profession). A.R.S. § 32-4251(B) further requires that
13 a massage therapist adhere to the recognized standards and ethics of the massage therapy
14 profession. A licensee shall refrain from engaging in sexual activity with the client even
15 if the client attempts to sexualize the relationship. A.A.C. R4-15-103(1)(H).

16 **ORDER**

17 Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY**
18 **ORDERED** that Respondent's license number MT-17871 is **REVOKED**.

19 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

20 Respondent has the right to petition for a rehearing or review of this Order. Pursuant to
21 A.R.S. § 41-1092.09 and A.A.C. R4-15-401(A), the petition must be filed with the Board
22 within thirty-five days from the date of mailing if the Order was served by certified mail.
23 The petition must set forth legally sufficient reasons for granting the rehearing or review
24 pursuant to A.A.C. R4-15-401(C). The timely filing of a motion for rehearing or review
25 shall stay the enforcement of the Board's Order. If a motion for rehearing or review is not
26

1 filed, the Board's Order becomes effective 35 days after it is mailed, unless pursuant to
2 A.A.C. R4-15-401(F), the Board has expressly found good cause to believe that this
3 Order shall be effective immediately upon the issuance and has so stated in this Order.
4 The failure to file a motion for rehearing or review within 30 days after service of the
5 decision has the effect of prohibiting the parties from seeking judicial review of the
6 Board's decision.

7 DATED this 29th day of September, 2016.

8 ARIZONA BOARD OF MASSAGE THERAPY

9
10
11 By:

Kathleen Phillips
KATHLEEN PHILLIPS
Executive Director

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15 ORIGINAL OF THE FORGOING FILED
16 this 28th day of Sept, 2016, with:

17 Arizona Board of Massage Therapy
18 1400 West Washington, Suite 300
19 Phoenix, Arizona 85007

20 COPY OF THE FOREGOING MAILED
21 BY CERTIFIED & REGULAR FIRST-CLASS MAIL
22 this 28th day of Sept, 2016, to:

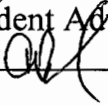
23 Wen Ding
24 Address of Record
25 Respondent/Licensee

26 COPY OF THE FOREGOING MAILED
this 28th day of Sept, 2016, to:

Elizabeth A. Campbell
Assistant Attorney General
1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007
Attorney for the State

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Bridget Harrington
Assistant Attorney General
1275 W. Washington Street, CIV/LES
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