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Board Case No.

21-132

CONSENT AGREEMENT FOR SURRENDER OF MASSAGE THERAPY LICENSE

In the interest of a prompt and judicious settlement of this case, consistent with the public interest, statutory requirements and the responsibilities of the Arizona State Board of Massage Therapy (Board) under A.R.S. § 32-4201, *et. seq.*, Martin Espuma (Respondent), holder of Massage Therapist License Number MT-17539 in the State of Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order for Voluntary Surrender of licensure (Consent Agreement) as a final disposition of this matter.

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1. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.

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

3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

1 4. Respondent understands that this Consent Agreement or any part of the agreement
2 may be considered in any future disciplinary action by the Board against Respondent.

3 5. Respondent understands this Consent Agreement deals with Board case number 21-
4 132 involving allegations that Respondent engaged in conduct that would subject Respondent to
5 discipline under the Board's statutes and rules. The investigation into these allegations against
6 Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

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

11 7. Notwithstanding any language in this Consent Agreement and Order, this Consent
12 Agreement and Order does not preclude in any way any other State agency or officer or political
13 subdivision of this state from instituting proceedings, investigating claims, or taking legal action
14 as may be appropriate now or in the future relating to this matter or other matters concerning
15 Respondent, including but not limited to, violations of Arizona's Consumer Fraud Act. Respondent
16 acknowledges that, other than with respect to the Board, this Consent Agreement and Order makes
17 no representations, implied or otherwise, about the views or intended actions of any other state
18 agency or officer or political subdivisions of the State relating to this matter or other matters
19 concerning Respondent.

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

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

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

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

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

ACCEPTED AND AGREED BY RESPONDENT

Martin Espuma see attached sheet

Dated: 5/8/2021

MARTIN ESPUMA

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-17539 to practice as a Massage Therapist in the State of Arizona.

3. On January 26, 2021, the Board received a complaint from K.O., who received massage therapy services from the Respondent on January 10, 2021, at MassageLuXe in Chandler.

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

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

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

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

ACCEPTED AND AGREED BY RESPONDENT


MARTIN ESPUMA

Dated:

5/8/21

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-17539 to practice as a Massage Therapist in the State of Arizona.

3. On January 26, 2021, the Board received a complaint from K.O., who received massage therapy services from the Respondent on January 10, 2021, at MassageLuXe in Chandler, Arizona. The complaint alleged that the respondent committed multiple actionable violations of board statutes and rules against K.O. during the session.

1 Arizona. The complaint alleged that the respondent committed multiple actionable violations of
2 board statutes and rules against K.O. during the session.

3 4. Specifically, the complaint alleged that during the course of the massage session
4 while the Respondent was massaging K.O.'s upper-inner thigh he inserted his fingers into her
5 vagina for roughly 10 seconds. The Respondent then went back to massaging K.O.'s thighs. A few
6 minutes later, the Respondent again inserted his fingers into K.O.'s vagina and rubbed the inside
7 of K.O.'s vagina for roughly 30 seconds to a minute. K.O. was shocked by the conduct of the
8 Respondent and froze. When the massage session ended she just wanted to get out of there and left
9 without speaking to anyone.

10 5. The following day K.O. reported the incident to the Chandler Police Department
11 and the owners of MassageLuXe. The Respondent was terminated from his employment on
12 January 30, 2021, following an internal investigation by the massage studio.

13 6. At its April 26, 2021, meeting the Board voted to move this matter forward to
14 formal hearing for possible revocation of the Respondent's license to practice massage therapy in
15 the state of Arizona pursuant to its authority under A.R.S. 32 § 4254(G), but in the interim
16 authorized this consent to be offered in lieu of formal hearing.

17 CONCLUSIONS OF LAW

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

20 2. The Board possesses statutory authority to enter into a consent agreement with a
21 massage therapist and accept the surrender of an active license from a massage therapist who
22 admits to having committed an act, which would subject the licensee to discipline under the
23 Board's statutes or rules. *See* A.R.S. § 32-4254(O)(2).
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1 3. The conduct and circumstances described above constitute grounds for discipline
2 pursuant to A.R.S. § 32-4253 (A)(10), which states, “engaging in conduct that could harm the
3 public.”

4 4. The conduct and circumstances described above constitute grounds for discipline
5 pursuant to A.R.S. § 32-4253(A)(13), which states, “practicing or offering to practice beyond the
6 scope of the practice of massage therapy.”

7 5. The conduct and circumstances described above constitute grounds for discipline
8 pursuant to A.R.S. § 32-4253(A)(14), which states, “Engaging in the performance of substandard
9 care by a massage therapist due to a deliberate or negligent act or failure to act, regardless of
10 whether actual injury to the person cared for is established.”

11 6. The conduct and circumstances described above constitute grounds for discipline
12 pursuant to A.R.S. § 32-4253(A)(15), which states, “engaging in sexual activity with a client,” as
13 it relates to A.R.S. § 32-4253(B)(2)(a) defining “sexual activity” to be “sexual conduct,” as it
14 relates to A.R.S. § 32-4253(B)(3), which defines “sexual conduct” as, “[any] direct or indirect
15 touching, fondling or manipulating of any part of the genitals or anus by any part of the body or
16 by any object or causing a person to engage in that conduct.”

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

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

IT IS HEREBY ORDERED that License Number MT-17539 issued to Martin Espuma to practice as a massage therapist in the State of Arizona is hereby **SURRENDERED**.

DATED this 11th day of May, 2021.

ARIZONA STATE BOARD OF MASSAGE
THERAPY

(Seal)

By: _____

Thomas Augherton
Executive Director

1 ORIGINAL OF THE FORGOING FILED
this 11th day of May 2021, with:


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

4 EXECUTED COPY OF THE FOREGOING MAILED/E-MAILED
5 this 11th day of May 2021, to:

6 Martin Espuma
5726 East Calle Sonora Street
7 Guadalupe, Arizona 85283
Respondent

8 Copy of the foregoing emailed
9 this 11th day of May, 2021, to:

10 Seamus Monaghan, AAG
2005 North Central Avenue, SGD/LES
11 Phoenix, Arizona 85004
Attorney for the State

12 By: _____ abwjrl 
13 #9475393