

**BEFORE THE ARIZONA BOARD
OF MASSAGE THERAPY**

In the Matter of

Derick Fringer, LMT,

Holder of License No. MT- 17228

As a Massage Therapist

In the State of Arizona

Board Case No. 16-124

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

On December 5, 2016, the Arizona Board of Massage Therapy (“the Board”) considered the state’s Motion to Deem Allegations Admitted. Elizabeth Campbell, Assistant Attorney General, appeared on behalf of the State. Neither Respondent nor Respondent’s attorney appeared at the Board meeting. Mary D. Williams, Assistant Attorney General, was available to provide independent legal advice to the Board.

After reviewing the record, the Board granted the State’s Motion to Deem Allegations Admitted. Based upon A.R.S. § 32-4254(H) and the Complaint and Notice of Hearing filed in this matter, the Board 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-17228, 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 1. On November 8, 2015, female massage therapy client CS received a massage
2 from Respondent at a hotel spa in Sedona, Arizona.

3 2. During the massage, Respondent touched CS's genitals and between CS's
4 buttocks. While CS was on her stomach, Respondent stroked the side of her breasts multiple
5 times. Respondent also pressed his erect penis into CS's hand and wrist. Respondent failed to
6 provide draping that ensures the safety, comfort, and privacy of CS, and during the massage,
7 CS's breasts and buttocks were exposed.

CONCLUSIONS OF LAW

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

10 2. The Board may discipline a massage therapist who has engaged in conduct that
11 could result in harm or injury to the public. A.R.S. § 32-4253(A)(10)

12 3. The conduct described above constitutes grounds for discipline under A.R.S. § 32-
13 4253(A)(16) (Failing to adhere to the recognized standards and ethics of the massage therapy
14 profession). A.R.S. § 32-4251(B) requires that a massage therapist adhere to the recognized
15 standards and ethic of the massage therapy profession. A licensee shall provide draping that
16 ensures the safety, comfort, and privacy of the client. A.A.C. R4-15-103(1)(e).

17 4. The conduct described above constitutes grounds for discipline under A.R.S. § 32-
18 4253(A)(16) (Failing to adhere to the recognized standards and ethics of the massage therapy
19 profession). A.R.S. § 32-4251(B) further requires that a massage therapist adhere to the recognized
20 standards and ethics of the massage therapy profession. A licensee shall refrain from engaging in
21 sexual activity with the client even if the client attempts to sexualize the relationship. A.A.C. R4-
22 15-103 (1)(h).

23 5. The Board may discipline a massage therapist who has engaged in sexual activity
24 with a client. A.R.S. § 32-4253(A)(15).

25 6. The conduct and circumstances described above constitute sexual activity in
26 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

1 genitals or anus by any part of the body or by any object or causing a person to engage in that
2 conduct. A.R.S. § 32-4253(B)(3).

3 7. The conduct and circumstances described above constitute sexual activity in
4 violation of A.R.S. § 32-4253(B)(2)(c) ("Sexual activity" means making sexual advances,
5 requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature
6 with a client).

7 8. The conduct described above constitutes sexual activity in violation of A.R.S. § 32-
8 4253 (B)(2)(d) ("Sexual activity" means intentionally viewing a completely or partially disrobed
9 massage therapy client in the course of treatment if the viewing is not related to treatment under
10 current practice standards and is intended to appeal to the prurient interest of the massage therapy
11 client of massage therapist).

12 9. The conduct and circumstances above constitute sexual activity in violation of
13 A.R.S. § 32-4253(B)(2)(e) ("Sexual activity" means massaging, touching or applying any
14 instrument or device by a licensee in the course of practicing or engaging in massage therapy to
15 the breasts¹ of a female client unless the client requests breast massage and signs a written consent).
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25 ¹ "Breast" means any portion of the female breast below a point immediately above the top of the areola. A.R.S. §
26 32-4253(B)(1)

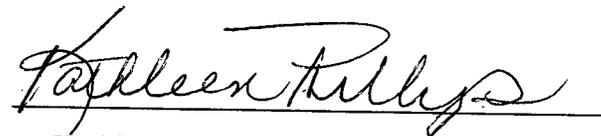
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ORDER

IT IS HEREBY ORDERED that Respondent's license is **Revoked**.

DATED this 13th day of December, 2016

**ARIZONA STATE BOARD OF MASSAGE
THERAPY**

By: 
Kathleen Phillips
Executive Director

NOTICE

Any aggrieved party may appeal this decision by filing a written request for Rehearing or Review with the Board within thirty (30) days of service of this Decision. Service of this Decision is effective on personal delivery or five days after the day of mailing. A Motion for Rehearing or Review shall conform to the requirements set forth in the Board's rules at A.A.C. R4-15-401 and shall be served on the opposing party. The filing of a Motion for Rehearing or Review is required in order to exhaust a party's administrative remedies. The failure to file a Motion for Rehearing or Review will preclude a party to seeking judicial review of this Decision.

ORIGINAL OF THE FORGOING FILED

this ____ day of December 13, 2016, with: 

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

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COPY OF THE FOREGOING MAILED
BY CERTIFIED & REGULAR FIRST-CLASS MAIL
this 13th day of December , 2016, to:

Derick Fringer
(Address of Record)
Respondent *arl*

COPY OF THE FOREGOING MAILED
this 13th day of December, 2016, to:

Mary D. Williams
Assistant Attorney General
1275 W. Washington Street, CIV/SGO
Phoenix, Arizona 85007
Attorney for the Board *arl*

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

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