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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR REVOCATION

For the Practice of Respiratory Care In the State of Arizona

FINDINGS OF FACT

4. The complaint specifically alleged that towards the end of the massage session while DS was lying in the prone position, the Respondent began massaging her left leg and

1 working toward her inner thigh where he then removed the sheet from her lower half exposing
2 DS's buttocks. He then proceeded to pull her underwear down below her buttocks.

3 5. The complaint further alleges that after the Respondent removed the sheet and her
4 underwear exposing her buttocks, he then inserted his right hand between DS's thighs, resting his
5 fingertips on her vulva while lifting her pelvic region up. The Respondent then used his
6 fingertips to massage DS's vulva in a circular and pulsating rhythm, while asking her if she
7 wanted him to go "deeper". DS asked the Respondent to move back to her hips in an attempt to
8 move him away from her vulva, however, the Respondent went right back to applying a circular
9 pulsating pressure to DS's vulva.

10 6. DS stated that when the Respondent moved back to her vulva for a second time
11 she again requested he apply pressure to her hips and the Respondent snapped DS's underwear
12 back into place and abruptly ended the 90 minute session ten minutes early. DS noted that during
13 the whole time that the Respondent was attempting to massage her vulva, he did not once
14 massage her left leg, which was the body part he was supposed to be working on at the time.
15 During the Board's March 29, 2021, meeting DS was present telephonically and explained that
16 she felt that the Respondent knew exactly what he was doing when he was massaging her vulva,
17 as she was actually stimulated by his technique.

18 7. Within two hours of the incident DS reported what happened to the Respondent's
19 employer. Within 5 hours of the alleged conduct DS reported the incident to the Phoenix Police
20 Department and by the end of the day had filed a complaint with the Arizona Board of Massage
21 Therapy. DS's story has been consistent throughout this process.

22 8. The Respondent did not indicate anything abnormal occurring during the massage
23 in his SOAP notes for the appointment in question and per the Phoenix Police Department
24 Incident Report dated September 18, 2020, the Respondent's employer indicated that she spoke
25 with the Respondent only after receiving a call from DS two hours after the incident. There is no
26 indication that the Respondent alerted his employer to any abnormal occurrence before being
approached by the employer regarding the incident. Although Respondent did not indicate

1 anything abnormal in his SOAP notes or report anything out of the ordinary to his employer
2 following the massage, he indicated in his response to the complaint that DS was making “noises
3 of pleasure and satisfaction,” and that it was DS who requested and wanted the Respondent to
4 move back to massaging her inner thighs.

5 9. At its March 29, 2021, meeting the Board voted to move this matter forward to
6 formal hearing possible revocation of the Respondent’s license to practice massage therapy in
7 the state of Arizona.

8 CONCLUSIONS OF LAW

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

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

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

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

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

23 ORDER

24 Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY**
25 **ORDERED THAT** License No. 23968 issued to Respondent shall be **REVOKED** on the
26 effective date of this Order.

1 The effective date of this order is the date which it is signed by the Boards Executive
2 Director on behalf of the Board.

3 **NOTICE**

4 In order to be eligible for judicial review pursuant to Title 12, Chapter 7, Article 6, you
5 are required to exhaust your administrative remedies by filing a motion for rehearing or review
6 of the Board's decision within thirty-five days after these Findings of Fact, Conclusions of Law,
7 and Order are mailed to you at your last known address, or thirty days after they are personally
8 served upon you. Pursuant to A.R.S. § 41-1092.09(B), you are notified that failure to file a
9 motion for rehearing or review in writing at the Board's office by that date has the effect of
10 prohibiting you from seeking judicial review of the Board's decision.

11
12 DATED THIS 15TH DAY OF JULY, 2021.

13 ARIZONA STATE BOARD OF MASSAGE THERAPY

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15
16 By: 

17 Thomas Augherton, Executive Director
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1 Original Findings of Fact, Conclusions
2 Of Law, and Order for Revocation of License to
Practice Massage Therapy filed
this 15th day of July, 2021 with the:

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

5 Copy of the foregoing sent by Electronic,
6 Certified and Regular mail
This 15th day of July, 2021 to:

7 Fabian Garcia
8 4802 North 19th Avenue, #A211
Phoenix, Arizona 85019
9 *Respondent*

10 Copy of the foregoing sent by inter-
Agency mail this 15th day of July, 2021 to:

11 Seamus Monaghan, Assistant Attorney General
12 Office of Arizona Attorney General
2005 North Central Avenue, SGD/LES
13 Phoenix, AZ 85004
14 *Attorney for the State*

15 Mary D. Williams, Assistant Attorney General
16 Office of Arizona Attorney General
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17 *Independent Attorney Advisor*

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19 Doc #9660307