

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

3 In the Matter of

Board Case No.

4  
5 **ADRIAN HERNANDEZ, LMT**

**22-106**

6 Holder of License No. MT-24483  
7 As a Massage Therapist  
In the State of Arizona

**CONSENT AGREEMENT FOR  
SURRENDER OF MASSAGE THERAPY  
LICENSE**

8 In the interest of a prompt and judicious settlement of this case, consistent with the public  
9 interest, statutory requirements and the responsibilities of the Arizona State Board of Massage  
10 Therapy (Board) pursuant to A.R.S. § 32-4201, *et. seq.*, Adrian Hernandez (Respondent), holder  
11 of Massage Therapist License Number MT-24483 in the State of Arizona, and the Board enter  
12 into the following Recitals, Findings of Fact, Conclusions of Law and Order for Voluntary  
13 Surrender of licensure (Consent Agreement) as a final disposition of this matter.

14 **RECITALS**

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

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

24 3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.  
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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  
4 22-106 involving allegations that Respondent engaged in conduct that would subject Respondent  
5 to 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.  
16 Respondent acknowledges that, other than with respect to the Board, this Consent Agreement  
17 and Order makes no representations, implied or otherwise, about the views or intended actions of  
18 any other state agency or officer or political subdivisions of the State relating to this matter or  
19 other matters 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  
25 parties in writing.  
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1           9.       The Consent Agreement is subject to the Board’s approval, and will be effective  
2 only when the Board accepts it by signature below. In the event the Board in its discretion does  
3 not approve this Consent Agreement, this Consent Agreement is withdrawn and shall be of no  
4 evidentiary value, nor shall it be relied upon or introduced in any disciplinary action by any party  
5 hereto, except that Respondent agrees that should the Board reject this Consent Agreement and  
6 this case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by  
7 its review and discussion of this document or of any records relating thereto.

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

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

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

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

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21 **ACCEPTED AND AGREED BY RESPONDENT**

22  
23 Adrian H.

Dated: 03/03/2022

24 Adrian Hernandez, LMT

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1 **FINDINGS OF FACT**

2 1. The Board is the duly constituted authority for licensing and regulating the  
3 practice of Massage Therapy in the State of Arizona.

4 2. Respondent is the holder of license number MT-24483 to practice as a Massage  
5 Therapist in the State of Arizona.

6 3. On or about November 18, 2021, the Board received a complaint from BH. The  
7 complaint alleged that on October 29, 2021, while at Elements Massage in Mesa, Arizona,  
8 receiving massage therapy services, Respondent committed multiple actionable violations of  
9 Board statute and rule.

10 4. On December 7, 2021, Board staff interviewed BH who substantiated the  
11 allegations she made in the written complaint. Specifically, BH alleged that the Respondent  
12 began by making inappropriate comments and asking very personal questions. Respondent then  
13 asked BH to remove her underwear because it was “in the way” even though it was thong  
14 underwear. Shortly after BH removed her underwear the Respondent asked if he could make  
15 contact with her inner thigh, to which she consented. Respondent then proceeded to digitally  
16 penetrate BH’s vagina. BH attempted to stop the Respondent and then asked him to stop. At that  
17 point the Respondent lay on top of BH and asked her to be quiet while still keeping his fingers in  
18 her vagina. BH stated she froze, but after what felt like 3-5 minutes she was able to lift herself up  
19 and remove his hand from her vagina. After BH was able to get the Respondent off her she rolled  
20 over on her back. While on her back Respondent asked BH if she liked it and if there was  
21 anything else he could to help her reach orgasm. Respondent then moved over to the side of the  
22 bed and began touching BH’s breasts while asking her personal questions about her vagina, as  
23 well as the method of birth used for her child. At no point did BH consent to a breast massage or  
24 to being “sexually assaulted”.

1 5. On December 9, 2021, the Board interviewed Detective Carmichael of the Mesa  
2 Police Department, who was assigned to this case. During that interview Det. Carmichael stated  
3 he had already spoken with the Respondent and that the Respondent admitted to digitally  
4 penetrating BH’s vagina during the massage on October 29, 2021. Detective Carmichael has  
5 submitted the case to the Maricopa County Prosecutors office for formal charges.

6 6. On December 14, 2021, the Board telephonically interviewed the Respondent.  
7 The Respondent admitted to Board staff on the call that he had did multiple things wrong during  
8 the massage, including poor draping. Respondent also admitted that he digitally penetrated BH  
9 for roughly 5-7 minutes and asked her what else he could to help her reach orgasm.

10 7. The Board reviewed the preliminary investigative materials at its December 20,  
11 2021, regular Board meeting and based on the facts presented, the admission of the Respondent  
12 and the testimony from the complainant including the potential harm to the public health, safety  
13 or welfare the Board determined the matter required emergency action and moved to Summarily  
14 Suspend Respondent’s license pending a formal hearing.

15 **CONCLUSIONS OF LAW**

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

18 2. The Board possesses statutory authority to enter into a consent agreement with a  
19 massage therapist and accept the surrender of an active license from a massage therapist who  
20 admits to having committed an act, which would subject the licensee to discipline under the  
21 Board’s statutes or rules. *See* A.R.S. § 32-4254(O)(2).

22 3. The conduct and circumstances described above constitute grounds for discipline  
23 pursuant to A.R.S. § 32-4253(A)(8), which states, “committing an act of malpractice, gross  
24 negligence or incompetency.”  
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1 4. 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 result in  
3 harm or injury to the public.”

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

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

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

16 **ORDER**

17 **IT IS HEREBY ORDERED THAT** License Number 24483 issued to Adrian  
18 Hernandez, LMT shall be **VOLUNTARILY SURRENDERED** upon the acceptance of this  
19 consent agreement by the Respondent and the thereafter signing of this Order by the Executive  
20 Director of the Board at the approval of the Board.

21 **IT IS FURTHER ORDERED** that the Respondent may not apply to the Board for  
22 reinstatement of his license for at least five calendar years from the issuance date of this Order,  
23 as specified in A.R.S. § 32-4222(A).

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DATED this 3 day of March, 2022.

ARIZONA STATE BOARD OF MASSAGE  
THERAPY

(Seal)



By: \_\_\_\_\_  
Thomas Augherton  
Executive Director

ORIGINAL OF THE FORGOING FILED  
this    day of February, 2022, with:

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

EXECUTED COPY OF THE FOREGOING MAILED/E-MAILED  
this    day of February, 2022, to:

Adrian Hernandez  
Address of Record  
*Respondent*

Copy of the foregoing emailed  
this    day of February, 2022, to:

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

By: \_\_\_\_\_

   #10183612