

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

2 In the Matter of:

3)
4 Gabriel Lopez, LMT)

5)
6 License No. MT-00936P)

7 As a Massage Therapist)

8 In the State of Arizona)
9

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

10 Pursuant to Notice of Hearing Number 14-139 (Notice) this matter came before the Arizona
11 Board of Massage Therapy (Board) on September 22, 2014.

12 Victoria Bowman presided at the meeting with Board members, Earl Duskey, Diane Pruetz, and
13 John Ortega in attendance. Board member Dennis Beye was not present.

14 The State was represented by the Office of the Attorney General, Elizabeth Campbell, Assistant
15 Attorney General, Licensing and Enforcement Section. Chris Munns of the Solicitor General’s
16 Section of the Attorney General’s Office was present and available to provide independent legal
17 advice to the Board. Gabriel Lopez (Respondent) was not present.

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

20 **AUTHORITIES AND JURISDICTION**

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

24 2. Respondent is the holder of license number MT-00936P, which allows him to practice as
25 a massage therapist in the state of Arizona.

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

1 **FINDINGS OF FACT**

2 1. On June 18, 2014, female massage therapy client BF received a massage from
3 Respondent at Massage Envy in Tempe, Arizona.

4 2. During the massage, Respondent uncovered BF's breasts and touched BF's breast,
5 including placing his mouth on BF's left nipple. BF had not consented to a breast massage.

6 **CONCLUSIONS OF LAW**

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

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

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

14 4. The conduct and circumstances described above constitute sexual activity in violation of
15 A.R.S. § 32-4253(B)(2)(d) ("Sexual activity" means intentionally viewing a completely or
16 partially disrobed massage therapy client in the course of treatment if the viewing is not related
17 to treatment under current practice standards and is intended to appeal to the prurient interest of
18 the massage therapy client or the massage therapist).

19 5. The conduct and circumstances described above constitutes sexual activity in violation of
20 A.R.S. § 32-4253(B)(2)(e) ("Sexual activity" means massaging, touching or applying any
21 instrument or device by a licensee in the course of practicing or engaging in massage therapy to
22 the breasts of a female client unless the client requests breast massage and signs a written
23 consent).

24 **ORDER**

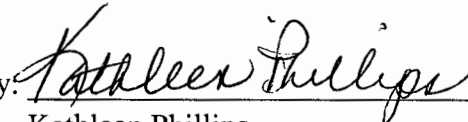
25
26
27 Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED
28 that Respondent's license number MT-00936P is REVOKED.

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

4 Respondent has the right to petition for a rehearing or review of this Order. Pursuant to A.R.S. §
5 41-1092.09 and A.A.C. R4-15-401(A), the petition must be filed with the Board within thirty-
6 five (35) days from the date of mailing if the Order was served by certified mail. The petition
7 must set forth legally sufficient reasons for granting the rehearing or review pursuant to A.A.C.
8 R4-15-401(C). The timely filing of a motion for rehearing or review shall stay the enforcement
9 of the Board's Order. If a motion for rehearing or review is not filed, the Board's Order becomes
10 effective thirty-five (35) days after it is mailed, unless pursuant to A.A.C. R4-15-401(F), the
11 Board has expressly found good cause to believe that this Order shall be effective immediately
12 upon the issuance and has so stated in this Order.

13 Dated and signed this 29th day of September, 2014.

14 ARIZONA BOARD OF MASSAGE THERAPY

15 By: 

16 Kathleen Phillips
17 Executive Director
18

19 ORIGINAL OF THE FOREGOING FILED
20 this 29th day of September, 2014 with the:
21 Arizona State Board of Massage Therapy
22 1400 West Washington, Suite 300
23 Phoenix, AZ 85007
24

25 EXECUTED COPY OF THE FOREGOING MAILED
26 BY CERTIFIED & REGULAR FIRST-CLASS MAIL
27 this 29th day of September, 2014, to:

28
29 Gabriel Lopez
30 Address of Record
31 Respondent
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33 COPY OF THE FOREGOING MAILED

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this 29th day of September, 2014, to:
Christopher Munns
Assistant Attorney General
1275 W. Washington Street, CIV/SGO
Phoenix, Arizona 85007
Attorney for the Board

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