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

In the Matter of
JAVIER MARTINEZ, LMT
Holder of License No. MT-17355
As a Massage Therapist
In the State of Arizona

Board Case Nos. 18-127 and 18-135

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

On July 30, 2018, the Arizona Massage Board held a Formal Interview in the above referenced matters pursuant to A.R.S. § 32-4254(E) and (F). Javier Martinez (“Respondent”), having been notified of the Formal Interview procedures and his right to legal counsel, voluntarily appeared and was not represented by legal counsel. Massage therapy client KH appeared and provided testimony.

After conducting the Formal Interview, the Board issues the following Findings of Fact, Conclusions of Law, and Order (“Decision 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-17355, which allows Respondent 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.

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FINDINGS OF FACT

1. On February 17, 2018, Respondent provided massage therapy services to client KH at her home.
2. KH alleged that she fell asleep during the massage and awoke to find Respondent inappropriately touching her.
3. Respondent denied that he touched KH inappropriately, but admitted that he had taken pills that a friend had provided him that he thought were vitamins but that he did not know what they were and that they may have affected his perception.
4. During the formal interview, Respondent had difficulty identifying the proper names for common muscle groups.
5. On February 9, 2015, Respondent was arrested for extreme DUI near Tucson, Arizona.
6. On July 2, 2015, Respondent pled guilty to DUI in case number J-1007-TR20150150 (Green Valley Justice Court).
7. Respondent failed to report the arrest or conviction to the Board within ten days of either event.

CONCLUSIONS OF LAW

1. The conduct and circumstances described above constitute grounds for discipline pursuant to A.R.S. § 32-4253(A)((8) (committing an act of malpractice, gross negligence, or incompetency).
2. The conduct and circumstances described above constitute grounds for discipline pursuant to A.R.S. § 32-4253(A)(10) (engaging in conduct that could result in harm or injury to the public).

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1 not have had a prior doctor/patient relationship with Respondent. The medical
2 professional must be a licensed mental-healthcare provider who is competent to conduct
3 mental health evaluations and substance-abuse evaluations.

4
5 c. Respondent shall fully cooperate with and comply with the Board
6 approved evaluator's evaluation procedures, including any additional assessments that
7 the evaluator may recommend. Respondent shall cooperate with Board staff to the
8 extent necessary to execute any releases or other documents necessary to facilitate the
9 process described in this Order.

10 **2. NON-DISCIPLINARY CONTINUING EDUCATION.**

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12 For his failure to notify the Board of his arrest and conviction, and within the
13 term of probation set forth above, Respondent shall take and complete eight (8) hours of
14 continuing education in **Ethics**. These continuing education hours shall be in addition
15 to and may not be used to satisfy the hours required for the renewal of Respondent's
16 massage therapist license under A.R.S. § 32-4225. Respondent shall seek and obtain
17 pre-approval of his continuing education courses from Board or its designee (staff).
18

19 **3. EARLY TERMINATION.**

20 Respondent may request early termination from his probation in the event he
21 completes the foregoing requirements prior to the expiration of the probation.
22 Respondent must have completed all requirements and the Board must have received
23 the completed mental health and substance abuse evaluations described above prior to
24 considering Respondent's request for early termination. Respondent must make the
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1 request for early termination in writing, and must appear before the Board in person at
2 the meeting where the Board will discuss the matter. The decision whether to grant
3 early release is solely at the Board's discretion.

4 **4. GENERAL PROVISIONS.**

5 a. Respondent shall bear all costs of complying with this Order.

6 b. If requested by Board staff, Respondent shall execute appropriate
7 release of information form(s) and shall not rescind, modify, or nullify the release of
8 information authorization.
9

10 c. If Respondent violates this Order in any way or fails to fulfill the
11 requirements of this Order, the Board, after giving the Respondent notice and the
12 opportunity to be heard, may revoke, suspend or take other disciplinary actions against
13 Respondent's license. The issue at such a hearing will be limited solely to whether this
14 Order has been violated.

15 **NOTICE OF APPEAL RIGHTS**

16 Respondent is hereby notified that he has the right to request a rehearing or review
17 by filing a petition with the Board's Executive Director within thirty (30) days after
18 service of this Decision and Order. Service of this Decision and Order is effective on the
19 date of personal delivery or five days after the date of mailing. A.R.S. § 41-1092.09. The
20 request for a rehearing or review must set forth legally sufficient reasons for granting a
21 rehearing or review. A.A.C. R4-15-401(C). If a motion for rehearing or review is not
22 filed, the Board's Decision and Order becomes effective 35 days after it is mailed to
23 Respondent. Respondent is further notified that the filing of a motion for rehearing or
24 review is required to preserve any rights of appeal to the Superior Court.
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DATED this 12th day of October, 2018.

ARIZONA BOARD OF MASSAGE
THERAPY

By: 
Ryan Edmonson
Executive Director

ORIGINAL OF THE FORGOING FILED
this 12th day of October, 2018, with:

Arizona Board of Massage Therapy
1740 W. Adams St., Suite 3401
Phoenix, Arizona 85004

COPY OF THE FOREGOING MAILED
BY CERTIFIED & REGULAR FIRST-CLASS MAIL
this 12th day of October, 2018, to:

Javier Martinez
1601 W. King Avenue
Tucson, AZ 85713
Respondent

COPY OF THE FOREGOING E-MAILED
this 12th day of October, 2018, to:

Michael D. Raine
Assistant Attorney General
Michael.Raine@azag.gov
Attorney for the State


