

1 BEFORE THE ARIZONA BOARD OF MASSAGE THERAPY

2 In the Matter of:

3 )  
4 **CHAD MASSENA, LMT** )

5 )  
6 License No. MT-04159P )

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 11-116 (Notice) this matter came before the Arizona  
11 Board of Massage Therapy (Board) on September 24, 2012.

12 Dennis Beye, president, presided at the meeting with Board members Victoria Bowman, John  
13 Ortega, Earl Duskey, and Diane Pruetz in attendance.

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. Chad Massena (Respondent) was present and represented by counsel.

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-04159P, which allows him to practice as  
25 a massage therapist in the state of Arizona.

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

1 **FINDINGS OF FACT**

2 1. In September 2011, female massage therapy client CK received a massage from  
3 Respondent.

4 2. During the massage, respondent exposed CK's breasts and touched and licked CK's  
5 genitals and breasts. Respondent also penetrated CK's vagina with his fingers and tongue. CK  
6 had not consented to a breast massage.

7 **CONCLUSIONS OF LAW**

8 1. Under A.R.S. § 32-4201 *et seq.*, the Board has jurisdiction over the subject matter and  
9 over the Respondent as a licensee of the Board.

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

12 3. The conduct and circumstances described above with regard to CK constitutes sexual  
13 activity in violation of A.R.S. § 32-4253(B)(2)(a). ("Sexual activity" means sexual conduct).  
14 "Sexual conduct" means any direct or indirect touching, fondling, or manipulating of any part of  
15 the genitals or anus by any part of the body or by any object or causing a person to engage in that  
16 conduct. A.R.S. § 32-4253(B)(3).

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

21 5. The conduct and circumstances described above with regard to CK constitute sexual  
22 activity in violation of A.R.S. § 32-4253(B)(2)(d) ("Sexual activity" means intentionally viewing  
23 a completely or partially disrobed massage therapy client in the course of treatment if the  
24 viewing is not related to treatment under current practice standards and is intended to appeal to  
25 the prurient interest of the massage therapy client or the massage therapist.

1 6. The conduct and circumstances described above with regard to CK constitute sexual  
2 activity in violation of A.R.S. § 32-4253(B)(2)(e) (“Sexual activity” means massaging, touching  
3 or applying any instrument or device by a licensee in the course of practicing or engaging in  
4 massage therapy to the breasts of a female client unless the client requests breast massage and  
5 signs a written consent.).

6 7. The conduct and circumstances described above with regard to CK constitute grounds for  
7 disciplinary action under A.R.S. § 32-4253(A)(10) (Engaging in conduct that could result in  
8 harm or injury to the public).

9 **ORDER**

10 Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED**  
11  
12 that Respondent’s license number **MT-04159P** is **REVOKED**.

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

14 Respondent has the right to petition for a rehearing or review of this Order. Pursuant to A.R.S. §  
15 41-1092.09 and A.A.C. R4-15-401(A), the petition must be filed with the Board within thirty-  
16 five (35) days from the date of mailing if the Order was served by certified mail. The petition  
17 must set forth legally sufficient reasons for granting the rehearing or review pursuant to A.A.C.  
18 R4-15-401(C). The timely filing of a motion for rehearing or review shall stay the enforcement  
19 of the Board’s Order. If a motion for rehearing or review is not filed, the Board’s Order becomes  
20 effective thirty-five (35) days after it is mailed, unless pursuant to A.A.C. R4-15-401(F), the  
21 Board has expressly found good cause to believe that this Order shall be effective immediately  
22 upon the issuance and has so stated in this Order. The failure to file a motion for rehearing or  
23 review within thirty days after service of the decision has the effect of prohibiting the parties  
24 from seeking judicial review of the Board’s decision.

25 Dated and signed this 25 day of September, 2012.

26 ARIZONA BOARD OF MASSAGE THERAPY

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By: Kathleen Phillips  
Kathleen Phillips  
Deputy Director

ORIGINAL OF THE FOREGOING FILED  
this 25<sup>th</sup> day of September, 2012 with the:  
Arizona State Board of Massage Therapy  
1400 West Washington, Suite 300  
Phoenix, AZ 85007

EXECUTED COPY OF THE FOREGOING MAILED  
BY CERTIFIED & REGULAR FIRST-CLASS MAIL  
this 25<sup>th</sup> day of September, 2012, to:

Chad Massena  
8408 E Avalon Dr  
Scottsdale, Arizona 85251  
Respondent/Licensee

COPY OF THE FOREGOING MAILED  
this 25<sup>th</sup> day of September 2012  
Tracey Westerhausen  
355 East Palm Lane  
Phoenix, Arizona 85004  
Attorney for Respondent

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Assistant Attorney General  
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Phoenix, Arizona 85007  
Attorney for the Board

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

S. Berger

NOV 15 2012

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12 **BEFORE THE ARIZONA STATE**  
13 **BOARD OF MASSAGE THERAPY**

14 In the Matter of:

15 **CHAD MASSENA, LMT**

16 Holder of License No. MT-04159P for the  
17 Practice of Massage Therapy in the State of  
18 Arizona.

19 Respondent.

20 Case No. 11-116

21 **RESPONSE TO PETITION**  
22 **FOR REHEARING**

23 The State of Arizona, through the undersigned Assistant Attorney General, files its  
24 Response to Chad Massena's ("Respondent") Petition for Rehearing filed in this matter.  
25 For the reasons more fully explained in the following Memorandum of Points and  
26 Authorities, the State respectfully requests that the Arizona State Board of Massage  
Therapy ("Board") deny Respondent's request.

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 **I. There Were No Irregularities in the Board's Administrative Process.**

29 Respondent claims that the settlement discussion among the State, the Board, and  
30 Respondent's counsel prior to the hearing was prejudicial and therefore constituted an  
31 irregularity under A.A.C. R4-18-106(C)(1) requiring a rehearing. He makes essentially  
32 the same claim with respect to his decision not to testify. Respondent is incorrect.

1 In this case, Respondent's attorney made the strategic decision that it was in her  
2 client's best interests to participate in settlement discussions in order to avoid an  
3 evidentiary hearing. Those discussions did not result in settlement. Additionally, either  
4 Respondent or his attorney, or both, made the tactical decision that Respondent would not  
5 testify on his own behalf. Respondent cannot now argue that he was somehow  
6 prejudiced by how he and his attorney chose to handle his case.

7 The Findings of Fact and Conclusion of Law found by the Board in its Order were  
8 supported by the hearing testimony of CK. At hearing, CK testified that Respondent had  
9 engaged in sexual activity during her massage in September 2011.

10 Further, the acts of public officials are presumed to be correct and legal absent  
11 clear and convincing evidence to the contrary. *Burri v. Campbell*, 102 Ariz. 541, 543,  
12 434 P.2d 627, 629 (1967). All decision makers, including administrative tribunals, are  
13 entitled to a presumption of honesty and integrity. *Emmett McLoughlin Realty, Inc. v.*  
14 *Pima County*, 212 Ariz 351, 357, 132 P.3d 290, 296 (App. 2006). To rebut this  
15 presumption, a party must show actual bias; mere speculation is insufficient. *Id.*

16 Without the necessary clear and convincing evidence, Respondent argues that the  
17 Board was improperly influenced in making its decision, not only by the settlement  
18 discussions but also by his physical appearance. That, however, is mere speculation and  
19 does not constitute a legitimate basis for a rehearing.

20 Respondent also argues that he is entitled to a rehearing under A.A.C. R4-18-  
21 106(C)(5) for an excessive penalty. In light of Respondent's egregiously unprofessional  
22 conduct with C.K., it cannot be said that the Board's remedial sanction constitutes an  
23 abuse of discretion under *Coplan v. Arizona State Board of Appraisal*, 222 Ariz. 599, 218  
24 P.3d 1056 (App. 2009).

25 ...

26 ...

1 **CONCLUSION**

2 Based on the foregoing, the State respectfully requests that the Board deny  
3 Respondent's rehearing request.

4 Respectfully submitted this 15<sup>th</sup> day of November, 2012.

5 Thomas C. Horne  
6 Attorney General

7 

8 Elizabeth Campbell  
9 Assistant Attorney General

10 **ORIGINAL** filed and this  
11 15 day of November 2012, with:

12 The Arizona State Board of Massage Therapy  
13 1400 West Washington, Suite 300  
14 Phoenix, AZ 85007

15 **COPY** of the foregoing mailed this  
16 15 day of November, 2012 to:

17 Mr. Chad Massena  
18 8408 East Avalon Drive  
19 Scottsdale, AZ 85251  
20 Respondent

21 Christopher Munns  
22 Assistant Attorney General  
23 1275 West Washington  
24 Phoenix, AZ 85007  
25 Attorney for the Board

26 By: 

#2935652