

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

3
4 In the Matter of:

Board Case No. 22-120

5 **CHARLES PECK**

DECISION AND ORDER FOR
PROBATION AND SUSPENSION

6 Holder of License No. **MT-07703**
7 For the Practice as a Massage Therapist
8 In the State of Arizona

9 RESPONDENT

10 On January 24, 2022, during a regularly scheduled board meeting, the Arizona State
11 Board of Massage Therapy (“Board”) conducted a Formal Hearing with Charles Peck
12 (Respondent) pursuant to A.R.S. § 32-4254(G). The State was represented by Assistant
13 Attorney General Seamus Monaghan, while the Board was represented by Independent
14 Legal Advisor Monique Coady. Respondent appeared and was represented by counsel.
15 Following the Formal Hearing, the Board substantiated violations of its statutes and issues
16 the following adopted Findings of Fact, Conclusions of Law and Order:

17 **FINDINGS OF FACT**

18 1. The Board is the duly constituted authority for licensing and regulating the
19 practice of massage therapy in the State of Arizona.

20 2. Respondent is the holder of license number MT-07703, which allows
21 Respondent to practice as a massage therapist in the State of Arizona.

22 3. Under A.R.S. § 32-4201, et seq., the Board possess jurisdiction over the
23 subject matter and over Respondent as a licensee of the Board.

24 4. On or about September 21, 2021, the Board received information from a
25 Detective A. M. Johnson, that the Respondent had committed an actionable violation of
26 Board statute and rule while providing massage therapy services to VH on June 2, 2021, at
Carefree Therapy Massage in Carefree, Arizona. The police report (MCSO Report

1 #21017562 and Event #MC21109512) received by the Board indicated that on the day in
2 question VH fell asleep while receiving a massage from the Respondent. She indicated that
3 she was lying on her back and was partially awake at one point and noticed that the
4 Respondent had his hands between her legs in a “very sexual way.” At this point VH alleges
5 that she was fully awake and stated both his hands were now on her vagina. VH asked what
6 the Respondent was doing and pushed his hands away from her body. VH felt that he was
7 trying to arouse her and that she did in fact feel sexual arousal. VH indicated that the
8 Respondent then apologized for his actions.

9 5. On October 11, 2021, the Board received back the investigative
10 questionnaire sent to the Respondent. In the investigative questionnaire the Respondent
11 admits that “in a moment’s lack of focus the last stroke went beyond the inguinal crease
12 and touched VH’s genitalia.” Respondent indicated that it was a mistake and that he
13 immediately apologized to VH.

14 6. Based on the information the Board conducted an interview with VH on
15 December 8, 2021. During that call VH reiterated what she had told the police. The Board
16 also interviewed the Respondent the same day. During that interview the Respondent stated
17 that “while working his way up the leg his hand went on her vagina and pushed down.” He
18 stated he apologized there was no sexual intent, that it was a mistake.

19 7. The Board reviewed the preliminary investigative materials including a text
20 message sent from the Respondent on June 2, 2021, apologizing for his actions, at its
21 December 20, 2021, regular Board meeting. Based on the facts presented, the admission of
22 the Respondent and the testimony from the complainant including the potential harm to the
23 public health, safety or welfare the Board determined the matter required emergency action
24 and moved to Summarily Suspend Respondent’s license pending a formal hearing. The
25 Board did not find the Respondent’s reasoning for touching VH’s vagina credible and
26 questioned how an experienced massage therapist could make such an egregious mistake.

1 The Board also found the Respondent’s reasoning inconsistent with the allegation that his
2 hands were in the vaginal area for 30-45 seconds, not an errant stroke of the hands.

3 **CONCLUSIONS OF LAW**

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

6 2. The conduct and circumstances described above constitute grounds for
7 discipline pursuant to A.R.S. § 32-4253(A)(8), which states, “committing an act of
8 malpractice, gross negligence or incompetency.”

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

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

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

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

26 **ORDER**

1 **IT IS HEREBY ORDERED** that License Number MT-07703 issued to Charles
2 Peck to practice as a Massage Therapist in the State of Arizona is hereby placed on
3 Probation for a period of **Two Year(s)** and Suspended for a period of **One Year(s)**. The
4 period(s) of Probation and Suspension shall begin on the effective date of this agreement
5 and shall run concurrently, subject to the following terms and conditions:

6 **1. Continuing Education.**

7 Within **Twelve Months** of the effective date of this Order, Respondent shall
8 complete a total of **9 Hours** of continuing education. The Respondent shall complete a
9 minimum of **3 Hours in Ethics**, a minimum of **3 Hours in Client Communication** and a
10 minimum of **3 Hours in Draping**. These continuing education hours shall be in addition
11 to and shall not be used to satisfy the hours required for the renewal of Respondent's
12 massage therapist license under A.R.S. § 32-4225. Respondent shall seek and obtain pre-
13 approval of his continuing education courses from the Board or its designee (staff).
14 Respondent shall provide the Board or its staff with proof of successful completion within
15 **Fifteen Days** of completing the continuing education hours in satisfaction of this
16 requirement.

17 **2. General Provisions.**

- 18 a. Respondent shall pay all necessary fees throughout the term of Respondent's
19 suspension to maintain Respondent's massage therapy license in active status.
- 20 b. Respondent shall pay all costs associated with complying with this Order.
- 21 c. If Respondent violates this Order in any way or fails to fulfill the requirements of
22 this Order, the Board, after giving the Respondent notice and the opportunity to
23 be heard, may revoke, suspend or take other disciplinary actions against
24 Respondent's license. The issue at such a hearing will be limited solely to
25 whether this Order has been violated.
- 26 d. This Order shall terminate **2 Years** from the effective date of the Order, if all
 terms and conditions have been successfully completed to the satisfaction of the

1 Board and the Respondent petitions the Board in writing to have the Probation
2 terminated.

3 e. Public Record - This Order is a public record that may be publicly disseminated
4 as a formal action of the Board and shall be reported as required by law to the
5 National Practitioner Data Bank.

6 f. Obey all Laws - Respondent shall obey all federal, state and local laws and all
7 rules governing the practice of massage therapy in Arizona. The Board shall
8 consider any violation of this paragraph as a separate violation of the Massage
9 Therapist Practice Act.

10 g. The effective date of this Order is the date it is signed by the Board's Executive
11 Director on behalf of the Board's Chair.

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17 DATED this 03 day of February, 2022

18 ARIZONA STATE BOARD OF MASSAGE THERAPY

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20 By: _____
21 Thomas Augherston, Executive Director

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NOTICE OF APPEAL RIGHTS

1 Respondent is hereby notified that she has the right to request a rehearing or review of the
2 Order by filing a motion with the Board's Interim Executive Director within 30 days after service
3 of this Order. Service of the Order is effective five days after the date of mailing to Respondent.
4 A.R.S. § 41-1092.09. The motion must set forth legally sufficient reasons for granting a rehearing
5 or review. A.A.C. R4-15-401(A) and (C). If a motion for rehearing or review is not filed, the
6 Board's Non-Disciplinary Order for Continuing Education becomes final 35 days after it is mailed
7 to Respondent. Respondent is further notified that failure to file a motion for rehearing or review
8 has the effect of prohibiting judicial review of the Order, according to A.R.S. §41- 1092.09(B) and
9 A.R.S. § 12-904, et seq.

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Original Decision and Order filed –
This __03__ day of February, 2022 with the:

1 Arizona State Board of Massage Therapy
2 1740 West Adams Street, Suite 3401
3 Phoenix, Arizona 85007

4 Copy of the foregoing sent via Certified, Regular, and Electronic mail –
5 This 03__ day of February, 2022 to:

6 Charles Peck, LMT
7 Address of Record
8 *Respondent*

9 COPY of the forgoing emailed -
10 This _03_ day of February, 2022 to:

11 James P. Buesing, Esq.
12 Keist Thurston O'Brien
13 10150 West Desert River Blvd., Suite A-130
14 Peoria, Arizona 85383
15 james@ktolawfirm.com
16 *Attorney for the Respondent*

17 Seamus Monaghan
18 Assistant Attorney General
19 2005 North Central Avenue SGD/LES
20 Phoenix, Arizona 85004
21 *Attorney for the Arizona Board of Massage Therapy*

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