1	MARK BRNOVICH		
2	Attorney General (Firm State Bar No. 14000)		
3	Seamus Monghan Assistant Attorney General		
4	State Bar No. 034660		
5	2005 N. Central, SGD/LES   Phoenix, Arizona 85004		
	Tel: (602) 542-7980		
6	Fax: (602) 364-3202 Attorneys for the State		
7			
8	BEFORE THE ARIZONA STATE		
9	BOARD OF MASSAGE THERAPY		
	In the Matter of		
10	FERNANDO TREJO, LMT	Board Case No. 21-118	
11			
12	Holder of License No. MT-15514 As a Massage Therapist	MOTION TO DEEM ALLEGATIONS ADMITTED AND VACATE	
	In the State of Arizona	FORMAL HEARING	
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15	The State of Arizona hereby requests that the Arizona State Board of Massage		
16	Therapy vacate the hearing scheduled for February 22, 2021, at 9:45 a.m., and deem the		
17	allegations contained in the Board's Complaint and Notice of Hearing admitted pursuant		
18	to A.R.S. § 32-4254(H). A copy of the Complaint and Notice of Hearing is attached as		
19	Exhibit A.		
20	On or before January 31, 2020, Respondent timely filed his renewal application		
21	and Respondent's license is effective through January 31, 2022.		
22	The Complaint notified Responder	nt that A.R.S. 8 32-4254(H) required	
	The Complaint notified Respondent that A.R.S. § 32-4254(H) required		
23	Respondent to prepare and file with the Board a written Answer to the allegations in the		
24	Complaint within thirty days after service. It further notified Respondent that the Board		
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could consider Respondent's failure to timely respond within thirty days an admission by default to the allegations stated in the Complaint, and that the Board could then take disciplinary action without conducting a hearing. See Exhibit B.

The Board mailed the Complaint and Notice of Hearing by first-class and certified mail on December 22, 2020, to Respondent's address of record with the Board. Notice of a complaint and hearing is effective when it has been sent by certified mail to the licensee's last known address of record. A.R.S. § 32-4254(N). See Exhibit C. Respondent's answer was therefore due on or before January 25, 2021. As of January 26, 2021, Respondent has not filed an answer to the Complaint.

On January 11, 2021, at 11:20 a.m., Respondent retrieved the certified letter containing the Board's Complaint and Notice of Hearing from his local postal facility, but he did not submit an Answer to the allegations in the Board's Complaint and Notice of Hearing. See Exhibit D.

Because Respondent has failed to file an Answer within the time permitted by statute, the State requests that the Board vacate the scheduled hearing and that the allegations contained in the Complaint and Notice of Hearing be deemed admitted pursuant to A.R.S. § 32-4254(H).

RESPECTFULLY SUBMITTED this 26th day of January, 2021.

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MARK BRNOVICH Attorney General

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/s/ Seamus Monaghan Assistant Attorney General

1	Original of the foregoing filed via e-filed this 26 <sup>th</sup> day of January, 2021, with:
2	
3	Arizona Board of Massage Therapy thomas.augherton@massageboard.az.gov
4	Copy of the foregoing mailed and e-mailed this 26 <sup>th</sup> day of January, 2021, to:
5	
6	Fernando Trejo, LMT 12362 West Highland Avenue Avondale, Arizona 85392
7	Ftrejo.massage@gmail.com
8 9	Copy of the foregoing mailed and e-mailed this 26 <sup>th</sup> day of January, 2021, to:
10	Michael Raine, AAG Office of the Attorney General
11	2005 North Central Ave., SGD/LES Phoenix, Arizona 85004 Independent Attorney Advisory
12	, , ,
13	Seamus Monaghan, AAG Office of the Attorney General 2005 North Central Ave., SGD/LES
14	Phoenix, Arizona 85004 Attorney for the Board
15	Thursday for the Board
16	Dry /s/ Anitus Hannans
17	By: /s/ Anitra Herrera Legal Secretary #9239921
18	117237721
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# EXHIBIT A

# BEFORE THE ARIZONA BOARD OF MASSAGE THERAPY EXAMINERS

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In the Matter of

Board Case No. 20-118

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FERNANDO TREJO, LMT

NOTICE OF HEARING AND COMPLAINT

Holder of License No. MT-15514 As a Massage Therapist In the State of Arizona.

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#### I. NOTICE OF PUBLIC HEARING.

YOU ARE HEREBY NOTIFIED, the Arizona Board of Massage Therapy (Board) will conduct an administrative hearing at the following place and time, to determine whether grounds exist to discipline Massage Therapist License No. MT-15514 held by Fernando Trejo, LMT ("Respondent"):

Arizona Board of Massage Therapy 1740 West Adams Street, Telephonic Board Meeting Phoenix, Arizona 85007 On February 22, 2020 at 9:45 a.m.

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and continuing on successive days until concluding, concerning the matters set forth in this Complaint and Notice of Hearing, at which time and place, evidence, testimony and argument in support of the charges set forth in the Complaint will be presented. If you desire to make a defense to the charges at the hearing, you may appear at the hearing in person and may be represented by legal counsel and may at that time cross-examine the witnesses against you and present testimony of witnesses, evidence and argument in your own behalf.

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Whether or not you intend to appear at the hearing, pursuant to A.R.S. § 32-4254(H), YOU ARE REQUIRED to prepare and file a written Answer to the allegations alleged in the above Complaint with the Board within thirty (30) days

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after service of this Complaint and Notice of Hearing. THE BOARD MAY CONSIDER YOUR FAILURE TO RESPOND WITHIN THIS TIME AS YOUR ADMISSION BY DEFAULT TO THE ALLEGATIONS STATED IN THE COMPLAINT. *Id.* The Board may then take disciplinary action without conducting a hearing. If you Answer and fail to appear for the hearing, the Board may proceed in your absence.

After the hearing, if the Board determines that you have committed unprofessional conduct or otherwise violated the Board's statutes and rules, it may revoke or suspend your license, impose a civil penalty of up to \$10,000 for each violation, issue a decree of censure, impose probation, order the payment of restitution, or take other disciplinary action. A.R.S. § 32-4254. If the Board determines that you have violated its statutes or rules, it may also charge you the costs of the formal hearing. A.R.S. § 32-4254(K).

In accordance with Title II of the Americans with Disabilities Act (ADA), the Board does not discriminate on the basis of disability in admission to and participation in hearings. Should you, or anyone you call as a witness need special accommodations, please contact the Board office at (602) 542-8225 at least three working days before the hearing.

If you require the services of an interpreter, you are responsible for paying the cost of that interpreter. The interpreter must be certified to perform interpretation services in legal proceedings in Arizona.

Pursuant to A.R.S. § 32-3206, you have the right to request a copy of the following information from the Board:

- 1. Any review conducted by an expert or consultant providing an evaluation of or opinion on the allegations.
- 2. Any records on the patient obtained by the board from other health care providers.
- 3. The results of any evaluations or tests of the health professional conducted at the board's direction.
- 4. Any other factual information that the board will use in making its determination.

Please be advised that if you obtain the above-referenced information from the Board, you may not release it to any other person or entity or use it in any proceeding or action except the administrative proceeding or appeals related to the administrative proceeding. Violation of this restriction constitutes an act of unprofessional conduct per A.R.S. § 32-3206(B). Also, please be advised that pursuant to A.R.S. § 32-3206(C), you or your attorney may be charged for the cost of providing the information received up to the fee for making a copy of each page as prescribed by A.R.S. § 12-284(A).

#### 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-15514, 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.

#### FACTUAL ALLEGATIONS

- On October 6, 2020, the Board received a complaint from SL and accompanying documentation from LeMonds Spa. SL had received massage services from the Respondent on September 20, 2020, at LeMonds Spa in Litchfield Park, Arizona.
- 2. The complaint alleges that during the massage Respondent committed multiple violations against her including massaging SL's bare buttocks without utilizing a covering sheet.
- 3. The complaint further alleges that Respondent massaged SL's breast without prior written or oral consent and that after Respondent began massaging SL's inner thighs he digitally penetrated her vagina.
- 4. SL reported this conduct to both Respondents employer, as well as, the Board. Due to the allegations Respondent has been terminated by LeMonds Spa.

5. On October 22, 2020, Respondent indicated in response to the complaint and allegations that he would like to resign and surrender his license to practice massage therapy.

### ALLEGED VIOLATIONS

- 1. The conduct and circumstances described above constitute grounds for discipline pursuant to A.R.S. § 32-4253(A)(6) (engaging in any act or practice in violation of this chapter or any board rule), as it relates to any alleged statutory violation asserted below, and Board Rule A.A.C. R4-15-103(h) (refrain from sexual activity with a client).
- 2. The conduct and circumstances described above constitute grounds for discipline pursuant to A.R.S. § 32-4253 (A)(10), which states, "Engaging in conduct that could result in harm or injury to the public."
- 3. The conduct and circumstances described above constitute grounds for discipline pursuant to A.R.S. § 32-4253(A)(15) (engaging in any "sexual activity" with a client, as that term is defined in A.R.S. § 32-4253(B)(2)(e) (engaging in massage therapy to the breasts of a female client unless the client requests breasts massage and signs a written consent form), and as the term is defined in A.R.S. § 32-4253(B)(2)(a) (sexual conduct.) Pursuant to A.R.S. § 32-4253(B)(3), ("sexual conduct" means any direct or indirect touching, fondling or manipulating of any part of the genitals or anus by any part of the body or by any object or causing a person to engage in that conduct.)
- 4. The conduct and circumstances described above constitute grounds for discipline pursuant to A.R.S. § 32-4253(A)(16), which states, "failing to adhere to the recognized standards and ethics of the massage therapy profession."
- 5. The conduct and circumstances described above constitute grounds for discipline pursuant to A.R.S. § 32-4253(A)(23), which states, "violating this chapter, board rules or written order of the board."

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DATED this 22<sup>nd</sup> day of December, 2020.

ARIZONA BOARD OF MASSAGE THERAPY

By:

Thomas Augherton Executive Director

1	Original of the foregoing filed this 22 <sup>nd</sup> day of December, 2020, with:
2   Arizona Board of Massage Therapy	Arizona Board of Massage Therapy
3	1740 W. Adams St., Suite 3401   Phoenix, Arizona 85007
4	
5	Executed Copy of the foregoing mailed via regular first-class U.S. mail and certified mail this 22 <sup>nd</sup> day of December, 2020, to:
6	Fernando Trejo
7 8	12362 West Highland Avenue Phoenix, Arizona 85051 Respondent
9	Copy of the foregoing e-mailed
	this 22 <sup>nd</sup> day of December, 2020, to:
10	Seamus Monaghan Assistant Attorney General
12	2005 North Central Ave., SGD/LES Phoenix, AZ 85004
13	Attorney for the State
14	By:
15	Doe# 9170190v1
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# EXHIBIT B

### A.R.S. 32-4254(H)

# Investigative powers; emergency action; disciplinary proceedings; formal interview; hearing; civil penalty

H. A licensee shall respond in writing to the board within thirty days after notice of the hearing is served. The board may consider a licensee's failure to respond within this time as an admission by default to the allegations stated in the complaint. The board may then take any disciplinary action allowed pursuant to this chapter without conducting a hearing.

# EXHIBIT C

### A.R.S. 32-4254(N)

# <u>Investigative powers; emergency action; disciplinary proceedings;</u> <u>formal interview; hearing; civil penalty</u>

N. Notice of a complaint and hearing is effective by a true copy of it being sent by certified mail to the licensee's last known address of record in the board's files. Notice of the complaint and hearing is complete on the date of its deposit in the mail. The board shall begin a formal hearing within one hundred twenty days after that date.

# EXHIBIT D

## ALERT: USPS IS EXPERIENCING UNPRECEDENTED VOLUME INCREASES AND LIMITED EMPL...

## **USPS Tracking®**

FAQs >

### Track Another Package +

Tracking Number: 9489009000276139790924

Remove X

Your item was picked up at a postal facility at 11:20 am on January 11, 2021 in PHOENIX, AZ 85009.

## **⊗** Delivered

January 11, 2021 at 11:20 am Delivered, Individual Picked Up at Postal Facility PHOENIX, AZ 85009

Get Updates ∨

Text & Email Updates	
Return Receipt Electronic	
Tracking History	
Product Information	

See Less ∧

## BEFORE THE ARIZONA BOARD OF MASSAGE THERAPY EXAMINERS

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### FERNANDO TREJO, LMT

In the Matter of

Holder of License No. MT-15514 As a Massage Therapist In the State of Arizona.

Board Case No. 20-118

### NOTICE OF HEARING AND COMPLAINT

### I. NOTICE OF PUBLIC HEARING.

YOU ARE HEREBY NOTIFIED, the Arizona Board of Massage Therapy (Board) will conduct an administrative hearing at the following place and time, to determine whether grounds exist to discipline Massage Therapist License No. MT-15514 held by Fernando Trejo, LMT ("Respondent"):

> Arizona Board of Massage Therapy 1740 West Adams Street, Telephonic Board Meeting Phoenix, Arizona 85007 On February 22, 2020 at 9:45 a.m.

and continuing on successive days until concluding, concerning the matters set forth in this Complaint and Notice of Hearing, at which time and place, evidence, testimony and argument in support of the charges set forth in the Complaint will be presented. If you desire to make a defense to the charges at the hearing, you may appear at the hearing in person and may be represented by legal counsel and may at that time cross-examine the witnesses against you and present testimony of witnesses, evidence and argument in your own behalf.

Whether or not you intend to appear at the hearing, pursuant to A.R.S. § 32-4254(H), YOU ARE REQUIRED to prepare and file a written Answer to the allegations alleged in the above Complaint with the Board within thirty (30) days