

BEFORE THE ARIZONA BOARD OF MASSAGE THERAPY

In the Matter of:

| | | |
|-------------------------------|---|--|
| |) | |
| CHARLES UDVARNOKY, LMT |) | |
| |) | |
| License No. MT-09188 |) | |
| As a Massage Therapist |) | |
| In the State of Arizona |) | |

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

Pursuant to Notice of Hearing Number 13-129 (Notice) this matter came before the Arizona Board of Massage Therapy (Board) on March 24, 2014.

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

The State was represented by the Office of the Attorney General, Elizabeth Campbell, Assistant Attorney General, Licensing and Enforcement Section. Chris Munns of the Solicitor General’s Section of the Attorney General’s Office was present and available to provide independent legal advice to the Board. Charles Udvarnoky (Respondent) was present and was represented by attorney Steven B. Perlmutter.

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

AUTHORITIES 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-09188, which allows him to practice as a massage therapist in the state of Arizona.
3. Under A.R.S. § 32-4201 et seq., the Board has jurisdiction over the subject matter and over the Respondent as a licensee of the Board.

FINDINGS OF FACT

1
2 1. On March 13, 2013, female massage therapy client KM received a massage from
3 Respondent.

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

CONCLUSIONS OF LAW

6
7 1. Under A.R.S. § 32-4201 *et seq.*, the Board has jurisdiction over the subject matter and
8 over the Respondent as a licensee of the Board.

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

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

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

24 6. The conduct and circumstances described above constitute sexual activity in violation of
25 A.R.S. § 32-4253(B)(2)(e) ("Sexual activity" means massaging, touching or applying any
26 instrument or device by a licensee in the course of practicing or engaging in massage therapy to

1 the breasts of a female client unless the client requests breast massage and signs a written
2 consent.).

3 **ORDER**

4
5 Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED**
6 that Respondent's license number MT-09188 is placed on suspension for 90 days followed by
7 probation for two years beginning on the last day of probation. In addition to the 24 hours of
8 continuing education required for renewal, Respondent must complete 20 hours of staff
9 preapproved continuing education in ethics and communication and six hours of staff
10 preapproved continuing education in post-surgical medical massage before his renewal date of
11 May 23, 2015. The classes must be completed in class and not on-line. Respondent must appear
12 before the Board to request termination of probation.

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.

Dated and signed this 26th day of March, 2014.

ARIZONA BOARD OF MASSAGE THERAPY

By: Kathleen Phillips
Kathleen Phillips
Executive Director

ORIGINAL OF THE FOREGOING FILED
this 26 day of March, 2014 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 26 day of March, 2014, to:

Charles Udvarnoky
Address of Record
Respondent/Licensee

COPY OF THE FOREGOING MAILED
this 26 day of March, 2014

Steven Perlmutter
Attorney for Charles Udvarnoky
8655 E. Via de Ventura, Ste.G-200
Scottsdale, AZ 85258

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