

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

2 In the Matter of:

3 )  
4 **Jing Xu, LMT** )  
5 )  
6 License No. MT-10749 )  
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 10-107 (Notice) this matter came before the Arizona  
11 Board of Massage Therapy (Board) on September 26, 2011.

12 Dennis Beye, president, presided at the meeting with Board members Victoria Bowman, John  
13 Ortega, and Earl Duskey 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. Jing Xu (Respondent) was present and represented by Paul Rybarsak, *Esq.*

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-10749, which allows her to practice as a  
25 massage therapist in the state of Arizona.  
26 3. Under A.R.S. §§ 32-3202 and 32-4201 through 32-4259, the Board has jurisdiction over  
27 the subject matter and over the Respondent as a licensee of the Board.

**FINDINGS OF FACT**

1  
2 1. On August 24, 2009, while working as a massage therapist, Respondent engaged in  
3 sexual intercourse with a massage therapy client while the client was naked. This case proceeded  
4 as Mesa Municipal Court case docket number 2009058640.

5 2. On March 23, 2010, in Mesa Municipal Court case docket number 2009058640,  
6 Respondent was convicted of prostitution in violation of A.R.S. § 13-3214(A); administering a  
7 massage to a person whose specified anatomical areas<sup>1</sup> are not covered by opaque material in  
8 violation of Mesa City Code § 5-12-9-(A)(5); and touching of specified anatomical areas during  
9 a massage in violation of Mesa City Code § 5-12-9(A)(7).

10 3. Respondent appealed her convictions in Mesa Municipal Court case docket number  
11 2009058640 to the Superior Court of Maricopa County. On February 17, 2011, the Superior  
12 Court affirmed the convictions.

13 4. On August 11, 2009, while working as a massage therapist, Respondent performed a  
14 handjob for a massage therapy client whose genitals were exposed. At the time, Respondent's  
15 genitals were also exposed. This case proceeded as Mesa Municipal court case docket number  
16 2009055804.

17 5. On March 23, 2010, in Mesa Municipal Court case docket number 2009055804,  
18 Respondent was convicted of prostitution in violation of A.R.S. § 13-3214(A); administering a  
19 massage to a person whose specified anatomical areas<sup>2</sup> are not covered by opaque material in  
20 violation of Mesa City Code § 5-12-9(A)(5); administering when the massage therapist's  
21 specified anatomical areas are not covered by opaque material in violation of Mesa City Code §

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<sup>1</sup> At the time of the violations, Mesa City Code § 5-12-1 defined "specified anatomical areas" to include the "pubic region" and "human genitals."

<sup>2</sup> At the time of the violations, Mesa City Code § 5-12-1 defined "specified anatomical areas" to include the "pubic region" and "human genitals."

1 5-12-9(A)(6); and touching of specified anatomical areas during a massage in violation of Mesa  
2 City Code § 5-12-9(A)(7).

3 6. Respondent appealed her convictions in Mesa Municipal Court case docket number  
4 2009055804 to the Superior Court of Maricopa County. On February 17, 2011, the Superior  
5 Court affirmed the convictions.

6  
7 **CONCLUSIONS OF LAW**

8 1. The convictions described in the findings of fact paragraphs 1 through 6 are grounds for  
9 discipline under A.R.S. § 32-4253(A)(4) (Being convicted of a felony or other offense involving  
10 moral turpitude or conviction for prostitution, solicitation, or other similar offense. A conviction  
11 by a court of competent jurisdiction is conclusive evidence of the commission of the crime).

12 2. The conduct described above in paragraphs 1 through 6 of the Findings of Fact  
13 constitutes sexual activity in violation of A.R.S. § 32-4253(B)(2)(a) (“Sexual activity” means  
14 sexual conduct).

15 3. The conduct described above in paragraphs 1 through 6 of the Findings of Fact  
16 constitutes sexual activity in violation of A.R.S. § 32-4253(B)(2)(c) (“Sexual activity” means  
17 making sexual advances, requesting sexual favors, or engaging in other verbal conduct or  
18 physical contact of a sexual nature with a client).

19 4. The conduct described above in paragraphs 1 through 6 of the Findings of Fact  
20 constitutes sexual activity in violation of A.R.S. § 32-4253(B)(2)(d) (“Sexual activity” means  
21 intentionally viewing a completely or partially disrobed massage therapy client in the course of  
22 treatment if the viewing is not related to treatment under current practice standards and is  
23 intended to appeal to the prurient interest of the massage therapy client or the massage therapist).

24 5. The conduct described above in paragraphs 1 through 6 of the findings of Fact constitutes  
25 sexual activity in violation of A.R.S. § 32-4253(B)(2)(h) (“Sexual activity” means exposing the  
26 massage therapist’s anus or genitals to a client).  
27



1 ORIGINAL OF THE FOREGOING FILED  
2 this 27<sup>th</sup> day of September, 2011 with the:  
3 Arizona State Board of Massage Therapy  
4 1400 West Washington, Suite 300  
5 Phoenix, AZ 85007

6  
7 EXECUTED COPY OF THE FOREGOING MAILED  
8 BY CERTIFIED & REGULAR FIRST-CLASS MAIL  
9 this 27<sup>th</sup> day of September, 2011, to:


10  
11 Jing Xu  
12 847 W Ivanhoe St  
13 Chandler, Arizona 85225-4463  
14 Respondent/Licensee

15  
16 COPY OF THE FOREGOING MAILED  
17 this 27<sup>th</sup> day of September, 2011, to:

18  
19 Paul M. Rybarsak, Esq.  
20 7322 E. Thomas  
21 Scottsdale, AZ 85251-7216  
22 Attorney for Respondent

23  
24 Christopher Munns  
25 Assistant Attorney General  
26 1275 W. Washington Street, CIV/SGO  
27 Phoenix, Arizona 85007  
28 Attorney for the Board

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30 Elizabeth Campbell  
31 Assistant Attorney General  
32 1275 W. Washington Street, CIV/LES  
33 Phoenix, Arizona 85007  
34 Attorney for the State

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