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BEFORE THE NEVADA STATE BOARD OF MASSAGE THERAPY

In the Matter of:

Case No.: NVMT-C-25022

Alfred E. Smith IV,
Licensed Massage Therapist
Nevada License No. NVMT 12368,
Respondent.

**RESPONDENT'S ANSWER TO
COMPLAINT**

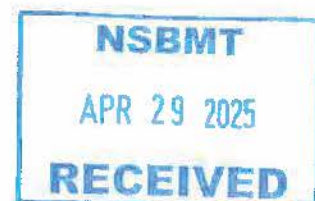
COMES NOW, Respondent Alfred E. Smith IV ("Respondent"), by and through his counsel of record, Chandon S. Alexander, Esq. of the SPARTACUS LAW FIRM, and in response to the Complaint filed by the Nevada State Board of Message Therapy ("Board"), answers as follows:

JURISDICTION

Respondent admits only that at all relevant times mentioned in the Complaint, he was actively licensed as a massage therapist (NVMT.12368). The remaining allegations in this unnumbered paragraph state only legal conclusions for which no answer is required.

ALLEGED FACTS

1. In response to Paragraph 1 of the Complaint, Respondent admits only that he is licensed by the Board as a massage therapist, license no. NVMT.12368.



2. In response to Paragraph 2 of the Complaint, Respondent admits only that he is subject to the jurisdiction of the Board and the provisions of NRS Chapter 640C and NAC Chapter 640C.

3. In response to Paragraph 3 of the Complaint, Respondent denies the allegations of this paragraph in their entirety.

4. In response to Paragraph 4 of the Complaint, Respondent denies the allegations of this paragraph in their entirety.

5. In response to Paragraph 5 of the Complaint, Respondent denies the allegations of this paragraph in their entirety.

6. In response to Paragraph 6 of the Complaint, Respondent denies the allegations of this paragraph in their entirety.

VIOLATIONS OF LAW

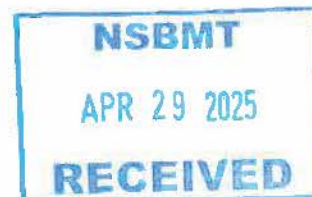
7. In response to paragraph 7 alleging a violation of law (Count One), Respondent denies the allegations of this paragraph in their entirety.

8. In response to paragraph 8 alleging a violation of law (Count Two), Respondent denies the allegations of this paragraph in their entirety.

9. In response to paragraph 9 alleging a violation of law (Count Three), Respondent denies the allegations of this paragraph in their entirety.

10. In response to paragraph 10 alleging a violation of law (Count Four), Respondent denies the allegations of this paragraph in their entirety.

11. In response to paragraph 11 alleging a violation of law (Count Five), Respondent denies the allegations of this paragraph in their entirety.



1 12. In response to paragraph 12 alleging a violation of law (Count Six), Respondent
2 denies the allegations of this paragraph in their entirety.

3 **PRAYER FOR RELIEF**

4 In response to the Prayer for Relief, Respondent denies that discipline is warranted. The
5 remaining allegations in this section state only legal conclusions for which no answer is
6 required.
7

8 **RESPONDENT ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES**

9 As separate and distinct affirmative defenses, Respondent alleges as follows:

10 **FIRST AFFIRMATIVE DEFENSE**

11 **(Failure to State a Claim)**

12 Petitioner's Complaint fails to state a claim against Respondent upon which relief can
13 be granted.
14

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(Laches, Unclean Hands, Equity)**

17 Respondent alleges that the Petitioner's claims are barred by the equitable doctrines of
18 laches, unclean hands, and/or failure to do equity.
19

20 **THIRD AFFIRMATIVE DEFENSE**

21 **(Due Process)**

22 The Board's actions violate both procedural and substantive due process under the
23 Fourteenth Amendment of the U.S. Constitution and the Nevada Constitution. Procedurally,
24 the Board's failure to provide the requested documents and information to Respondent, as
25 required by NRS 640C.760(2) and Respondent's right to due process, deprives Respondent of
26 fair notice and a meaningful opportunity to be heard. Substantively, the Board's imposition of
27
28



1 an indefinite suspension without adequate procedural safeguards is arbitrary, lacks a sufficient
2 nexus to the State's legitimate regulatory interests, and was imposed without a basis for
3 purported emergency action.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 **(Statutory Violations)**

6
7 The Board's withholding of documents and information considered in imposing
8 discipline violates NRS 640C.760(2), which explicitly states that "all documents and
9 information considered by the Board when determining whether to impose discipline are public
10 records." This statutory violation has substantially prejudiced Respondent's ability to defend
11 against the allegations.
12

13 **FIFTH AFFIRMATIVE DEFENSE**

14 **(Lack of Substantial Evidence)**

15 The allegations in the Complaint are not supported by substantial evidence, as required
16 by NRS 233B.135(3)(e) and (f).
17

18 **SIXTH AFFIRMATIVE DEFENSE**

19 **(Statute of Limitations/Mootness)**

20 To the extent the allegations in the Complaint are based on events that occurred outside
21 any applicable limitations period, such claims are barred or otherwise moot.
22

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 **(Failure to Follow Regulatory Procedures)**

25 The Board has failed to follow its own regulatory procedures in the investigation and
26 prosecution of this matter, including but not limited to those set forth in NRS Chapter 640C
27 and NAC Chapter 640C.
28



EIGHTH AFFIRMATIVE DEFENSE

(Unlawful Pre-Judgment)

The Board's March 20, 2025 Cease and Desist Order and March 27, 2025 Order summarily suspending Respondent's license demonstrate unlawful pre-judgment of the allegations in the Complaint before Respondent has had an opportunity to be heard, in violation of Respondent's due process rights and right to a fair hearing. Further, the Board's Orders lacked a factual basis for suspension or any other purported disciplinary or emergency action, and failed to articulate such a basis. As such, the Board's action was arbitrary and capricious.

NINTH AFFIRMATIVE DEFENSE

(Exceeding Statutory Authority)

The Board's indefinite suspension of Respondent's license exceeds the Board's statutory authority and is *ultra vires* action, as NRS 640C.710 authorizes only temporary suspensions, not indefinite ones. Further, the Board's Orders lacked a factual basis for suspension or any other purported disciplinary or emergency action, and failed to articulate such a basis. As such, the Board's action was arbitrary and capricious.

TENTH AFFIRMATIVE DEFENSE

(Insufficiency of Process)

The initiation of these proceedings is procedurally defective.

ELEVENTH AFFIRMATIVE DEFENSE

(Deprivation of Constitutional and Statutory Rights)

Respondent has been deprived of rights guaranteed under the United States Constitution, the Nevada Constitution, and applicable statutes.

TWELFTH AFFIRMATIVE DEFENSE



(No Probable Cause and Insufficient Evidence)

The Board has proceeded against Respondent without probable cause and without sufficient evidence to warrant the charges. Upon information and belief, the Board never received a written complaint or verbal complaint that would justify the initiation of these proceedings. The Board's action against Respondent is therefore arbitrary, capricious, and an abuse of discretion. The Board's failure to base its charges on a legitimate complaint renders the entire proceeding *void ab initio* and deprives the Board of authority to proceed with disciplinary action.

THIRTEENTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

Respondent reserves the right to assert additional affirmative defenses as they become apparent through discovery and investigation.

PRAAYER FOR RELIEF

WHEREFORE, Respondent prays for relief as follows:

1. That Petitioner take nothing by way of the Complaint;
2. That the Board's March 20, 2025 Cease and Desist Order and March 27, 2025 Order summarily suspending Respondent's license be vacated;
3. That Respondent be awarded reasonable attorney's fees and costs incurred in defending this action;
4. For any such other and further relief as the Nevada State Board of Massage Therapy may deem just and proper in this case.

Dated this 29th day of April, 2025.



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SPARTACUS LAW FIRM

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 29th day of April, 2025,
I caused the preceding document entitled **RESPONDENT'S ANSWER TO COMPLAINT** to
be served on the following parties via the U.S. Postal Service:

NEVADA STATE BOARD OF MASSAGE THERAPY
1755 E. Plumb Lane, Suite 252
Reno, NV 89502
ATTN: Elisabeth Barnard

Todd M. Weiss, Esq.
Senior Deputy Attorney General
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/s/ Chandon S. Alexander
An Employee of SPARTACUS LAW FIRM

