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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 AMENDED
MOTION TO CONTINUE THE
HEARING AND TO COMPEL
PRODUCTION OF RECORDS AND
INFORMATION PURSUANT TO NRS
640C.760(2)**

COMES NOW Respondent, ALFRED E. SMITH IV ("Respondent" or "Mr. Smith"),
by and through his attorneys, SPARTACUS LAW FIRM, and hereby submits this Motion to
Compel Production of Records Pursuant to NRS 640C.760(2). This Motion seeks an order (!)
compelling the Nevada State Board of Massage Therapy ("Board") to produce all materials and
information to which Respondent is entitled under NRS 640C.760(2); and (2) continue the
hearing date by ninety (90) days in order to provide Mr. Smith an adequate opportunity to
review these materials and prepare his defense.

Dated this 30th day of April, 2025.



Respectfully submitted,

SPARTACUS LAW FIRM



/s/ Chandon S. Alexander
Chandon S. Alexander, Esq.
Nevada Bar No. 12033
400 South Seventh Street, Suite 100
Las Vegas, Nevada 89101
Attorney for Respondent

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Motion presents an extraordinary situation where the Nevada State Board of Massage Therapy has twice suspended Respondent's professional license—including an improper "indefinite suspension"—while simultaneously denying him access to the evidence upon which these suspensions were based. The Board's actions violate both the express mandate of Nevada law and fundamental principles of due process.

Although the Board did disclose the name of the complainant on April 9, 2025, it only did so after initially referring to the complainant by her initials "L.E.," and after repeated requests from Respondent's counsel. Moreover, this disclosure was made in a manner that caused it to be overlooked by Respondent's counsel, as it was contained in the body of an email rather than in the attached letter from the Board, which stated the name of the complainant would be provided under "separate cover." *See* Declaration of Chandon S. Alexander ("Alexander Decl."), ¶¶ 7-8; Exhibit A. Even if Respondent's counsel had immediately noticed this disclosure, the timing of the disclosure on April 9—less than 30 days before the scheduled hearing on May 7—would not have afforded Mr. Smith adequate time to investigate the complainant and prepare his defense.

Moreover, the Board continues to withhold all other evidence and documents considered in suspending Mr. Smith's license, despite the clear statutory mandate that such

1 records are public. NRS 640C.760(2) could not be clearer: "The charging documents filed with
2 the Board to initiate disciplinary action and all documents and information considered by the
3 Board when determining whether to impose discipline are public records." *Id.* (emphasis
4 added). Yet the Board has flatly refused to produce these statutorily-mandated public records,
5 while rushing toward a May 7, 2025 hearing that could permanently revoke Mr. Smith's
6 license.

7
8 Further compounding this issue, when counsel requested a continuance from Board
9 counsel upon learning of the May 7 hearing date, Board counsel sought to improperly
10 condition any continuance on Respondent's agreement to extend the "indefinite suspension"
11 currently in place. Alexander Decl., ¶ 11.

12
13 Without access to witness statements, complaint details, and other evidence considered
14 by the Board, Mr. Smith is effectively being asked to defend himself blindfolded. The
15 disclosure on April 9 of the complainant's name, unnoticed by Respondent's counsel until
16 April 29, would have been insufficient to satisfy the statutory requirements or constitutional
17 due process even if Respondent's counsel had noticed it on April 9.

18
19 Nevada law, Mr. Smith's constitutional right to due process, and principles of basic
20 fairness demand that this Board immediately disclose all records considered in imposing
21 discipline on Mr. Smith, and continue the May 7 hearing to permit Mr. Smith an adequate
22 opportunity to review these materials and prepare his defense.

23
24 Accordingly, as argued herein, the Board should: (1) issue an order immediately
25 compelling production of all materials and information to which Respondent is entitled under
26 NRS 640C.760(2); and (2) continue the May 7 hearing for ninety (90) days in order to provide
27 Mr. Smith an adequate opportunity to review these materials and prepare his defense.
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1 **II. STATEMENT OF FACTS**

2 Mr. Smith is a licensed massage therapist in the State of Nevada, License No.
3 NVMT.12368. On March 20, 2025, the Board issued a Cease and Desist Order suspending Mr.
4 Smith's license for fifteen (15) days. Alexander Decl., ¶ 2.

5 On March 24, 2025, counsel for Mr. Smith requested "a copy of any and all interviews,
6 statements, and video evidence, as well as a copy of any complaint involving the Client that is
7 uniquely within the Board's possession." Alexander Decl., ¶ 3.

8 In response, the Board claimed that "those records are confidential pursuant to NRS
9 640C.760." Alexander Decl., ¶ 4.

10 On March 27, 2025, the Board issued an Order summarily suspending Mr. Smith's
11 license for an indefinite period "until further Order of the Board." Alexander Decl., ¶ 5.

12 On March 31, 2025, counsel for Mr. Smith again requested the production of all
13 documents and information considered by the Board in imposing discipline, specifically citing
14 NRS 640C.760(2) and explaining that these materials are public records following the
15 imposition of discipline. Alexander Decl., ¶ 6.

16 On April 9, 2025, the Board's counsel responded via email, which contained an
17 attached letter dated April 8, 2025. In the attached letter, the Board refused to produce any
18 records and stated that "the full name of the client who will be testifying against your client
19 will be duly provided under separate cover well in advance of the upcoming hearing."
20 However, in the body of the email itself, Board Counsel Todd Weiss disclosed that "Her name
21 is . . ." See Alexander Decl., ¶ 7, Ex. A.

22 Due to the confusing manner of disclosure—with the letter indicating the name would
23 be provided under "separate cover" while the name was actually included in the email body—
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counsel initially overlooked this disclosure. Alexander Decl., ¶ 8. Even if immediately noticed, however, this disclosure—less than 30 days before the scheduled hearing—would have been insufficient to allow for adequate investigation and preparation.

On April 8, 2025, counsel for Mr. Smith contacted Board Counsel to request a continuance of the May 7, 2025 hearing date. Alexander Decl., ¶ 10. Board Counsel improperly conditioned any continuance on Respondent's agreement to extend the indefinite summary suspension currently in place. Alexander Decl., ¶ 11.

As of the filing of this Motion on April 29, 2025, despite the disclosure of the complainant's name, the Board has still not produced any of the other requested documents, with the hearing scheduled for May 7, 2025—just eight days away. Alexander Decl., ¶ 9. Mr. Smith remains without access to the documents and information upon which the Board relied in suspending his license and which form the basis of the upcoming hearing.

III. ARGUMENT

A. NRS 640C.760(2) Expressly Makes the Requested Records Public

The Nevada Legislature has unambiguously determined that once the Board imposes discipline on a licensee, all documents and information considered by the Board in imposing that discipline become public records. Specifically, NRS 640C.760(2) provides:

“The charging documents filed with the Board to initiate disciplinary action and all documents and information considered by the Board when determining whether to impose discipline are public records.”

The Board has already imposed discipline on Mr. Smith in the form of: (1) a fifteen-day suspension in its March 20, 2025 Cease and Desist Order; and (2) an indefinite suspension in



1 its March 27, 2025 Order. Therefore, pursuant to the express statutory language, "all
2 documents and information considered by the Board" in imposing these disciplinary actions
3 "are public records." NRS 640C.760(2).

4 The Nevada Supreme Court has recognized and applied similar statutory language in
5 related contexts. In *Dutchess Bus. Servs., Inc. v. Nevada State Bd. of Pharmacy*, the Court
6 interpreted analogous language in NRS 639.2485(2), which provides that "[t]he complaint or
7 other document filed by the Board to initiate disciplinary action and all documents and
8 information considered by the Board when determining whether to impose discipline are public
9 records." 124 Nev. 701, 714, 191 P.3d 1159, 1168 (2008). Based on this language, the Court
10 concluded that the respondents in that case "could subpoena witnesses and had access to any
11 statements of potential witnesses that the Board had considered." *Id.* (emphasis added).
12

13 The same principle applies with equal force here. Once the Board imposed discipline in
14 the form of license suspensions, all documents and information considered by the Board in
15 imposing that discipline became public records under NRS 640C.760(2). The Board's
16 continued refusal to produce these records constitutes a clear violation of Mr. Smith's statutory
17 rights.
18

19 The Board has apparently taken the position that it need not release any records
20 pursuant to NRS 640C.760(2), because its "suspension" of Mr. Smith does not constitute
21 "discipline" within the meaning of the statute. *See* Alexander Decl., ¶ 7, Ex. A. However,
22 "suspension" of a licensee is clearly disciplinary, given that the license is a property right
23 protected by due process. *See Potter v. State Bd. of Medical Examiners*, 101 Nev. 369, 371
24 (1985) (a licensee "has a property interest in his license...which is protected by due process.").
25 Moreover, such suspensions are readily recognized as disciplinary in a variety of contexts. *See*,
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27
28



1 e.g., *In re Byrnes*, 2002-NMCA-102, ¶ 23, 132 N.M. 718, 727, 54 P.3d 996, 1005 (“When our
2 Supreme Court suspends an attorney from practice, that action is considered disciplinary and
3 remedial...Just as a Supreme Court suspension is disciplinary in nature, a trial court’s
4 suspension is disciplinary in nature.”).

5 Suspensions do not become non-disciplinary merely because the Board may justify
6 them as an emergency mechanism to protect the public. Indeed, disciplinary action in general
7 is meant to protect the public, rather than to punish. *See, e.g., Matter of Discipline of Arabia*,
8 137 Nev. 568, 571 (2021) (“discipline proceeding is to protect the public” rather than to
9 “punish”).
10

11 Accordingly, NRS 640C.760(2) must be construed in accord with its plain meaning,
12 requiring the Board to produce “all documents and information considered by the Board when
13 determining whether to impose discipline,” which are “public records” since the Board has
14 imposed “discipline” in the form of “suspension” on Mr. Smith.
15

16 **B. The Board’s Withholding of Documents While Setting a Hearing Violates Due**
17 **Process**
18

19 The Board’s actions in withholding relevant documents and information while
20 simultaneously scheduling a hearing for May 7, 2025, clearly violates Mr. Smith’s right to due
21 process. The Nevada Supreme Court has explicitly recognized that licensed professionals have
22 a protected property interest in their professional licenses. In *Potter v. State Bd. of Medical*
23 *Examiners*, the Court held that a licensee “has a property interest in his license to practice
24 medicine which is protected by due process.” 101 Nev. 369, 371 (1985).
25

26 The fundamental requirements of due process include notice and an opportunity to be
27 heard. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). However, the opportunity to be heard is
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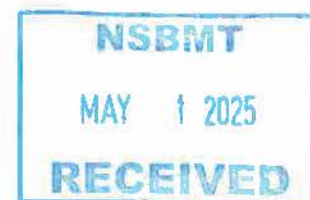


1 rendered meaningless if a licensee is denied access to the very evidence that forms the basis of
2 the charges against him. Without access to "all documents and information considered by the
3 Board" in imposing discipline, Mr. Smith cannot adequately prepare a defense for the
4 upcoming hearing, effectively denying him a meaningful opportunity to be heard.

5 Moreover, the Nevada Supreme Court, following other jurisdictions, recognized in
6 *Sarfo v. Bd. of Med. Examiners* that due process attaches to the adjudication of a formal
7 complaint before the Board. *Sarfo v. Bd. of Med. Examiners*, 134 Nev. 709, 713, 429 P.3d 650,
8 653 (2018); *see also United States v. E. River Hous. Corp.*, 90 F.Supp.3d 118, 136-37
9 (S.D.N.Y. 2015) (holding that due process rights do attach if the agency initiates a formal
10 adjudicatory proceeding); *S.E.C. v. OKC Corp.*, 474 F.Supp. 1031, 1041 (N.D. Tex. 1979)
11 (holding that due process protections may be implicated by the SEC's filing of a complaint).
12

13 In the present case, the Board has moved beyond mere investigation and has already
14 imposed significant discipline in the form of license suspensions. Mr. Smith now faces a
15 hearing, currently set for May 7, that could potentially result in further discipline, including
16 possible revocation of his license. Fundamental fairness and due process require that he be
17 provided with all documents and information considered by the Board in its previous
18 disciplinary decisions.
19

20 Notably, Board's March 27, 2025 Order contains only vague references to alleged
21 misconduct and identifies the complainant only by initials. Without access to the complete
22 record, including any statements, interviews, or other evidence considered by the Board, Mr.
23 Smith is left to speculate about the specific allegations against him and the evidence supporting
24 those allegations. This places him at a severe disadvantage in preparing for the May 7, 2025
25 hearing and constitutes a violation of his due process rights.
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**C. The Belated Disclosure of the Identity of the Complainant Warrants a
Continuance**

While the Board did eventually disclose the identity of the complainant as “
” in the body of an April 9, 2025 email, this disclosure was made in a confusing manner,
with the attached letter stating the name would be provided under “separate cover.” This
caused the disclosure to be initially overlooked by Respondent’s counsel. Alexander Decl., ¶ 8.

Even if immediately noticed, however, this disclosure—made less than 30 days before
the scheduled hearing and only after repeated requests from counsel—would have been
insufficient to allow Mr. Smith adequate time to prepare his defense. The disclosure came
nearly three weeks after the Board’s March 20, 2025 Cease and Desist Order and nearly two
weeks after the Board’s March 27, 2025 indefinite suspension order, leaving Mr. Smith with
limited time to investigate potential motives or biases of the complainant, including her past
record of making allegations of sexual assault and/or her mental health history; review any
prior interactions with the complainant that might provide context for the allegations; identify
and interview potential witnesses who may have knowledge of his professional relationship
with the complainant; and adequately prepare for cross-examination of the complainant at the
hearing.

Further, when counsel requested a continuance upon learning of the May 7 hearing
date, Board Counsel improperly conditioned any continuance on Respondent’s agreement to
extend the indefinite summary suspension currently in place. Alexander Decl., ¶ 11. This
attempt to leverage Mr. Smith’s procedural rights against his substantive right to practice his
profession is fundamentally unfair and violates principles of due process.



1 These circumstances alone—separate from the Board’s statutory obligation to produce
2 all documents and information under NRS 640C.760(2)—warrant a continuance of the May 7,
3 2025 hearing date.

4 **D. The Board’s Continued Withholding of Documents and Information Cannot Be**
5 **Justified**

6 The Board’s initial position that the requested records are “confidential pursuant to
7 NRS 640C.760” fails to account for the specific exception provided in NRS 640C.760(2) for
8 documents and information considered by the Board when imposing discipline. This exception
9 is not discretionary—once discipline is imposed, the records “are public records” by operation
10 of law.
11

12 Moreover, any confidentiality concerns must yield to Mr. Smith’s constitutional right to
13 due process. An opportunity to be heard cannot be “meaningful” if a licensee is denied access
14 to the very evidence upon which the charges against him are based.
15

16 The Board’s continued withholding of these documents while pressing forward with a
17 hearing that could result in the permanent revocation of Mr. Smith’s license cannot be justified
18 under either the express statutory language or constitutional principles of due process.
19

20 **E. NRS 233B.127(3) is Unconstitutional, Both Facially and As Applied**

21 To the extent that the Board is taking the position that it cannot continue the May 7
22 hearing date due to NRS 233B.127(3)’s requirement that “[p]roceedings relating to the order of
23 summary suspension must be instituted and determined within 45 days after the date of the
24 order unless the agency and the licensee mutually agree in writing to a longer period,” the
25 statute is unconstitutional, both facially and as applied in this case.
26

27 **1. NRS 233B.127(3) is Unconstitutional As Applied in This Case**
28



1 The Board's application of NRS 233B.127(3) in this case has created a constitutionally
2 impermissible Hobson's choice for Mr. Smith: either (a) agree to extend an improper and
3 indefinite suspension that exceeds the Board's statutory authority (as outlined in Respondent's
4 concurrently filed Motion to Vacate the Indefinite Suspension as *ultra vires*), or (b) proceed to
5 the May 7 hearing without the information and documents the Board was required to disclose
6 under NRS 640C.760(2) but has failed to provide.

8 This situation is not of Mr. Smith's making. Rather, it is the direct result of the Board's
9 improper conduct in imposing an indefinite suspension that exceeds its statutory authority;
10 withholding statutorily mandated public records; and conditioning any continuance on Mr.
11 Smith's agreement to extend an already *ultra vires* suspension.

13 The Supreme Court has repeatedly held that due process is violated when a
14 governmental entity forces an individual to choose between two constitutionally protected
15 rights. *See Simmons v. United States*, 390 U.S. 377, 394 (1968) (finding it "intolerable that one
16 constitutional right should have to be surrendered in order to assert another"). "Under the well-
17 settled doctrine of 'unconstitutional conditions,' the government may not require a person to
18 give up a constitutional right ... in exchange for a discretionary benefit" *Dolan v. City of*
19 *Tigard*, 512 U.S. 374, 385 (1994).

21 Here, Mr. Smith is being forced to choose between (1) his right to due process,
22 including adequate time to prepare for the hearing with full access to the evidence against him;
23 and (2) his property interest in his professional license, which would remain indefinitely
24 suspended if he agrees to a continuance on the Board's terms. This application of NRS
25 233B.127(3) is fundamentally unfair and violates Mr. Smith's constitutional right to due
26 process.
27
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To the extent NRS 233B.127(3) is interpreted to require Respondent's "voluntary agreement" to extend the suspension as a condition of continuing the hearing date, the statute is unconstitutional.

2. NRS 233B.127(3) is Facially Unconstitutional

Beyond its unconstitutional application in this case, NRS 233B.127(3) is facially unconstitutional for multiple reasons

a. The 45-Day Mandate Violates Due Process

The statute's requirement that proceedings "must be instituted and determined within 45 days" fails to provide adequate time for a respondent to prepare a meaningful defense in cases involving complex allegations. Due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

A 45-day window from suspension to final determination is insufficient to allow for meaningful preparation in cases like this one, where a professional's entire livelihood is at stake. Professional licensees facing potential license revocation must be afforded sufficient time to obtain and review all relevant documents; investigate the allegations and the complainant; identify and interview potential witnesses; consult with experts if necessary; prepare for cross-examination of adverse witnesses; and develop legal arguments and defenses.

Forty-five days is simply inadequate to complete these essential preparatory tasks, particularly when, as here, the Board withholds crucial information until well into this period. The rigid 45-day mandate therefore violates due process by preventing suspended licensees from developing a meaningful defense.

b. The Statute Creates an Unconstitutional Condition



1 NRS 233B.127(3) imposes an unconstitutional condition by forcing suspended
2 licensees to choose between: (1) agreeing to extend their suspension, or (2) proceeding to a
3 hearing without adequate preparation time. This structure effectively punishes those who
4 exercise their right to adequate preparation time by extending the deprivation of their property
5 interest in their professional license.
6

7 The doctrine of unconstitutional conditions prohibits the government from requiring a
8 person to give up a constitutional right in exchange for a discretionary benefit. *Dolan v. City of*
9 *Tigard*, 512 U.S. 374, 385 (1994) (holding that the government may not deny a benefit to a
10 person on a basis that infringes his constitutionally protected interests). Here, the “benefit” of
11 adequate preparation time in accord with due process comes at the cost of an extended
12 suspension, which constitutes an unconstitutional condition.
13

14 **c. The Statute is Unconstitutionally Vague**

15 NRS 233B.127(3) is unconstitutionally vague because the phrase “[p]roceedings
16 relating to the order of summary suspension must be instituted and determined” fails to clearly
17 specify what proceedings are required. It is unclear whether the statute requires only a limited
18 proceeding addressing the propriety of the emergency suspension itself; or requires a full
19 hearing on the merits of all underlying allegations in the complaint.
20

21 The Board’s counsel has apparently interpreted this provision to require a full hearing
22 on the merits within 45 days, as evidenced by the scheduling of the May 7 hearing. However,
23 this interpretation renders the statute unconstitutional, as it would be impossible in many
24 complex cases for a respondent to adequately prepare for a full merits hearing within such a
25 compressed timeframe.
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1 The vagueness of this provision violates due process, as it fails to provide fair notice of
2 what proceedings must occur within the 45-day window. *See F.C.C. v. Fox Television Stations,*
3 *Inc.*, 567 U.S. 239, 253 (2012) (“A fundamental principle in our legal system is that laws
4 which regulate persons or entities must give fair notice of conduct that is forbidden or
5 required.”).

6
7 **d. The Statute Violates Equal Protection**

8 NRS 233B.127(3) also violates equal protection by creating two classes of respondents
9 subject to disparate procedural rights. Those subject to emergency suspensions, who must
10 defend themselves within 45 days or agree to extend their suspension; and those *not* subject to
11 emergency suspensions, who have no similar time constraints and can fully prepare their
12 defense without sacrificing their right to practice their profession.

13
14 Equal protection demands that the law treat similarly situated persons similarly. *Rico v.*
15 *Rodriguez*, 121 Nev. 695, 703, 120 P.3d 812, 817 (2005). NRS 233B.127(3) fails this test by
16 imposing a unique procedural burden on respondents subject to emergency suspensions
17 without adequate justification.

18
19 **IV. CONCLUSION**

20 For the foregoing reasons, Respondent Alfred E. Smith IV respectfully requests that
21 this Board issue an order compelling the immediate production of all documents and
22 information considered by the Board in imposing the March 20, 2025 and March 27, 2025
23 suspensions; and continuing the hearing for ninety (90) so that all documents and information
24 considered by the Board may be provided to Mr. Smith and his counsel, with reasonable time
25 to review the materials and prepare for hearing.
26
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1 Dated this 30th day of April, 2025.

2 Respectfully submitted,

3 **SPARTACUS LAW FIRM**

4
5 /s/ Chandon S. Alexander

6 Chandon S. Alexander, Esq.

7 Nevada Bar No. 12033

8 400 South Seventh Street, Suite 100

9 Las Vegas, Nevada 89101

10 *Attorney for Respondent*

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1 **DECL**

2 Chandon S. Alexander, Esq.
3 Nevada Bar No. 12033

4 **SPARTACUS LAW FIRM**
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7 Tel: (702) 660-1234
8 Fax: (702) 441-1626
9 *Attorney for Respondent*

10 **BEFORE THE NEVADA STATE BOARD OF MASSAGE THERAPY**

11 In the Matter of:

Case No.: NVMT-C-25022

12 Alfred E. Smith IV,
13 Licensed Massage Therapist
14 Nevada License No. NVMT 12368,
15 Respondent.

16 **DECLARATION OF CHANDON S. ALEXANDER, ESQ. IN SUPPORT OF**
17 **RESPONDENT'S AMENDED MOTION TO CONTINUE THE HEARING AND TO**
18 **COMPEL PRODUCTION OF RECORDS AND INFORMATION PURSUANT TO NRS**
19 **640C.760(2)**

20 CHANDON S. ALEXANDER, ESQ., hereby deposes and states the following under
21 the pains and penalties of perjury:

22 1. I am an attorney duly licensed to practice law in the State of Nevada and am the
23 attorney of record for Respondent Alfred E. Smith IV ("Mr. Smith") in the above-captioned
24 matter. I have personal knowledge of the facts set forth herein, and if called as a witness, could
25 and would testify competently thereto under oath.

26 2. On March 20, 2025, the Nevada State Board of Massage Therapy ("Board")
27 issued a Cease and Desist Order suspending Mr. Smith's license for fifteen (15) days.
28



1 3. On March 24, 2025, I sent an email to Elisabeth Barnard, Executive Director of
2 the Board, requesting “a copy of any and all interviews, statements, and video evidence, as
3 well as a copy of any complaint involving the Client that is uniquely within the Board’s
4 possession.”

5 4. On the same day, March 24, 2025, Ms. Barnard responded by email stating that
6 “those records are confidential pursuant to NRS 640C.760.”

7 5. On March 27, 2025, the Board issued an Order summarily suspending Mr.
8 Smith’s license for an indefinite period “until further Order of the Board.” This Order
9 identified the complainant only by the initials “L.E.”

10 6. On March 31, 2025, I sent a letter to Ms. Barnard, specifically citing NRS
11 640C.760(2) and explaining that the requested documents and information are public records
12 following the imposition of discipline. In this letter, I renewed our request for all documents
13 and information considered by the Board in imposing discipline on Mr. Smith.

14 7. On April 9, 2025, the Board responded with an email from Todd M. Weiss,
15 Senior Deputy Attorney General, which contained an attached letter dated April 8, 2025. In the
16 attached letter, the Board continued to refuse to produce any of the requested documents and
17 stated that “the full name of the client who will be testifying against your client will be duly
18 provided under separate cover well in advance of the upcoming hearing.” However, in the
19 body of the email itself, Mr. Weiss stated: “Please consider this our formal disclosure of the
20 identity of Mr. Smith’s accuser and testifying witness against him; Her name is I
21 am disclosing that information to you as a courtesy from one legal professional to another and
22 fully expect that it will not be utilized for any improper purpose.” A true and correct copy of
23 this email and attached letter is attached hereto as **Exhibit A**.

24 8. Due to the confusing manner of disclosure—with the letter indicating the name
25 would be provided under “separate cover” while the name was actually included in the email
26 body—I initially overlooked this disclosure when reviewing these communications.
27
28



1 9. As of the filing of this Motion on April 29, 2025, despite the disclosure of the
2 complainant's name, the Board has still not produced any of the other requested documents,
3 despite the hearing being scheduled for May 7, 2025—just eight days away.

4 10. On April 8, 2025, I sent an email to Board Counsel Todd M. Weiss requesting a
5 continuance of the May 7, 2025 hearing date, informing him that I was unavailable on that date
6 and noting that less than 30 days' notice had been provided for the hearing.

7 11. On the same day, April 8, 2025, Mr. Weiss responded by email stating that he
8 "would be willing to discuss scheduling for an alternate hearing date, but only if your client is
9 willing to agree in writing to extension of the summary suspension up until the time of the
10 rescheduled hearing date." In other words, Board Counsel improperly conditioned any
11 continuance on Respondent's agreement to extend the indefinite summary suspension currently
12 in place.

13 12. Even if I had immediately noticed the disclosure of the complainant's name on
14 April 9, 2025, this disclosure—made less than 30 days before the scheduled hearing and only
15 after repeated requests—would not have provided Mr. Smith adequate time to investigate the
16 complainant and prepare his defense for the May 7, 2025 hearing.

17 13. The Board's continued withholding of documents and information, combined
18 with the belated disclosure of the complainant's identity, has severely hampered Mr. Smith's
19 ability to prepare for the upcoming hearing and effectively defend himself against the
20 allegations that have resulted in the suspension of his professional license.

21 14. Based on my experience as a professional licensing defense attorney, Mr. Smith
22 would require a minimum of ninety (90) days after receipt of all relevant documents and
23 information to adequately prepare for a hearing of this nature, which could potentially result in
24 the permanent revocation of his professional license.
25

26
27 I declare under penalty of perjury pursuant to the laws of the State of Nevada (NRS
28



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T: (702) 660-1234 F: (702) 441-1626

53.045)¹

DATED this 30th day of April, 2025.

/s/ Chandon S. Alexander
Chandon S. Alexander, Esq.



¹ NRS 53.045 Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially the following form: 1. If executed in this State: "I declare under penalty of perjury that the foregoing is true and correct."

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 30th day of April, 2025 I caused the preceding document entitled **RESPONDENT'S AMENDED MOTION TO CONTINUE THE HEARING AND TO COMPEL PRODUCTION OF RECORDS AND INFORMATION PURSUANT TO NRS 640C.760(2)** to be served on the following parties via electronic mail:

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

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





EXHIBIT A

AARON D. FORD
Attorney General

CRAIG A. NEWBY
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

1 State of Nevada Way, Suite 100
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April 8, 2025

TERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
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HEIDI PARRY STERN
Solicitor General

Via Electronic Mail

Chandon S. Alexander, Esq.
Spartacus Law Firm
Chandon@Spartacuslawfirm.com



Re: Alfred Smith

Dear Mr. Alexander:

This is a response to your letter dated March 31, 2025, regarding your client Massage Board licensee Alfred Smith.

As to the various concerns with process and procedure that you have raised, while we appreciate your position on those matters, the Board respectfully disagrees. Notably, a summary suspension issued under NRS 233B.127 is not "discipline". Rather, it is a lawful, short-term, emergency action warranted when the Board Chair makes finding that protection of public health, safety and welfare requires immediate action that simply cannot wait for the usual disciplinary process to play out. By its' plain language, however, certain due process is baked into it, namely 1). The suspension cannot last longer than a maximum of 45 days and a merit proceeding must take place within that timeframe and 2). The Board Chair is excluded from participating in any further disciplinary proceedings involving your client. This matter is set to be heard on the merits on May 7, 2025, well within 45 days from the date of the summary suspension order in question. As such, there is nothing "indefinite" about this process.

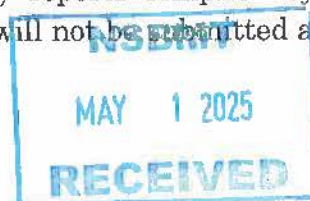
Further, nothing about the summary suspension process under NRS 233B.127 requires advance notice to Mr. Smith or allowance of Mr. Smith to make a pre-

suspension showing. As noted above, this is an emergency use procedure to be utilized in cases, as here, where every minute that passes with the licensee actively maintaining that license puts public health and safety further at risk. As far as the specific, factual findings underpinning the Board Chair's emergency order, please see paragraphs 3-4, repeated here below for convenience.

3. "On or about February 8, 2025, while working for BigToeYoga, SMITH performed an in-room massage in the hotel room of client L.E. During said massage, SMITH improperly draped L.E.'s body leading to multiple instances of breast exposure. SMITH further entered L.E.'s underwear and forcefully digitally penetrated her vagina.
4. During the above referenced massage, SMITH told female client L.E. that he wanted to have sex with her. After L.E. rejected this offer, SMITH continued to make sexual advances including trying to kiss her."

Based on the serious and heinous nature of the allegations against your client, Mr. Smith, it was the finding and order of Board Chair Dorangricchia that this sort of emergency action was warranted and necessary. Chair Dorangricchia is subsequently excluded from further participating in the forthcoming disciplinary action against Mr. Smith. As such, in addition to that action not being "discipline", Chair Dorangricchia nor anything she was privy to leading to her the issuance of her order will or can be a part of the forthcoming disciplinary proceeding that will take place nearly a month from now on May 7, 2025.

As you are well aware, only evidence that is going to be submitted for consideration by the Board during that forthcoming disciplinary prosecution of your client is discoverable. While the allegations will be very similar to what was stated in the previous summary suspension order, a full complaint is being served on, April 8, 2025 which clearly states the alleged facts and violations of law in which your client is free to contest at the upcoming May 7th hearing. That complaint is, of course, the "charging document" that initiates the possible disciplinary action under NRS 640C.760. The original complaint filed with the Board (verbally in this case) and any other investigatory reports compiled by the Board as part of the investigatory process, but that will not be submitted as ev-



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idence against your client at his upcoming hearing, are and remain expressly confidential under NRS 640C.760. That provision is unrelated and unaffected by the Board Chair's previous issuance of summary suspension order, which, again, is an emergency public protection action and not part of the "discipline" process.

NRS 640C.760 Confidentiality of certain records of Board; exceptions.

1. Except as otherwise provided in this section and NRS 239.0115, a complaint filed with the Board, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action against a person are confidential, unless the person submits a written statement to the Board requesting that such documents and information be made public records. [Emphasis added].

Further, on the issue of discovery, there are currently no documents that we plan on introducing at that hearing against your client. Rather, the client Mr. Smith is alleged to have victimized will be appearing and testifying personally about what happened to her. Should those plans change, and documentary evidence is later discovered that the prosecution intends to introduce as evidence during the upcoming hearing, said documents will be turned over post haste.

While I do not personally believe your claim that Mr. Smith is completely in the dark as to the identity of the complaining client, based on having been previously provided initials of the client as well as the date of service, the full name of the client who will be testifying against your client will be duly provided under separate cover well in advance of the upcoming hearing. As I hope you can understand, there is a balancing act between protecting the privacy of the complaining client, especially in light of the nature of the allegations, while also ensuring your client's right to confront his accuser. Which, most importantly, Mr. Smith will have full and fair opportunity to do in the very near future on May 7th.

Thank you.



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Sincerely,

/s/ Todd M. Weiss

Todd M. Weiss, Esq.

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the Nevada Board of Massage Therapy
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From: **Todd M. Weiss** <tweiss@ag.nv.gov>
Date: Wed, Apr 9, 2025, 1:35 PM
Subject: RE: Alfred Smith
To: Chandon Alexander <chandon@spartacuslawfirm.com>
Cc: Joseph P. Ostunio <jostunio@ag.nv.gov>

Chandon,

I am attaching an official letter response to your letter from last week which directly addresses your concerns concerning Mr. Smith's suspension.

You are free to make any objections or filings as you see fit, regardless of how specious they may be. I would only add that nothing going on with Mr. Smith is based on "anonymous" allegations. His accuser is the very same massage patron that he victimized. And she herself will be testifying against him at the 5/7 hearing.

Please consider this our formal disclosure of the identity of Mr. Smith's accuser and testifying witness against him: Her name is [REDACTED] I am disclosing that information to you as a courtesy from one legal professional to another and fully expect that it will not be utilized for any improper purpose. Thank you for your anticipated professionalism.

There are no documents I intend to submit as evidence during the administrative prosecution of Mr. Smith at this time.

Thank you.

Sincerely,

Todd M. Weiss, Esq.

Senior Deputy Attorney General- Boards and Open Government Division Office of the Nevada Attorney General

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From: Chandon Alexander <chandon@spartacuslawfirm.com>
Sent: Tuesday, April 8, 2025 7:44 PM
To: Todd M. Weiss <tweiss@ag.nv.gov>
Cc: Joseph P. Ostunio <jostunio@ag.nv.gov>
Subject: Re: Alfred Smith

[Quoted text hidden]



Response Letter .pdf

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