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Attorneys for the State

7  
8 **BEFORE THE ARIZONA STATE**  
9 **BOARD OF MASSAGE THERAPY**

10 In the Matter of

11 **CALEB CHERRY, LMT**

12 Holder of License No. MT-18207  
As a Massage Therapist  
13 In the State of Arizona

Board Case No. 19-147

**MOTION TO DEEM ALLEGATIONS  
ADMITTED**

14 The State of Arizona hereby requests that the Arizona State Board of Massage  
15 Therapy vacate the hearing scheduled for April 26, 2019, and deem the allegations  
16 contained in the Board's Complaint and Notice of Hearing admitted pursuant to A.R.S. §  
17 32-4254(H). A copy of the Complaint and Notice of Hearing is attached as **Exhibit A**.

18 On March 25, 2019, the Board issued an Order of Summary Suspension in this  
19 case. Respondent's license remains suspended.

20 The Complaint notified Respondent that A.R.S. § 32-4254(H) required  
21 Respondent to prepare and file with the Board a written Answer to the allegations in the  
22 Complaint within thirty days after service. It further notified Respondent that the Board  
23 could consider Respondent's failure to timely respond within thirty days an admission by  
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1 default to the allegations stated in the Complaint, and that the Board could then take  
2 disciplinary action without conducting a hearing.

3         The Board mailed the Complaint and Notice of Hearing by first-class and certified  
4 mail on March 25, 2019, to Respondent's address of record with the Board. Notice of a  
5 complaint and hearing is effective when it has been sent by certified mail to the licensee's  
6 last known address if record. A.R.S. § 32-4254(N). Respondent's answer was therefore  
7 due on or before April 24, 2019. As of April 26, 2019, Respondent has not filed an  
8 answer to the Complaint.  
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10         On April 5, 2019, Respondent—through counsel—acknowledged receipt of the  
11 Board's complaint, but he did not submit an Answer or otherwise deny or admit the  
12 allegations in the Board's Complaint and Notice of Hearing. *See Exhibit B.* Respondent  
13 stated that he did not plan to attend the hearing and had no intention of requesting a  
14 hearing in the future. *Id.* He also stated that he had no intention of using his massage  
15 therapy license in the future. The State does not consider this to be an Answer under  
16 A.R.S. § 32-4254(H). Instead, the State considers this an express waiver of hearing.

17         Because Respondent has failed to file an Answer within the time permitted by  
18 statute and has expressly waived his right to a hearing, the State requests that the Board  
19 vacate the scheduled hearing and that the allegations contained in the Complaint and  
20 Notice of Hearing be deemed admitted pursuant to A.R.S. § 32-4254(H).  
21

22                 RESPECTFULLY SUBMITTED this 26th day of April, 2019.

23                                 MARK BRNOVICH  
24                                 Attorney General

25                                 /s/ Michael Raine  
26                                 Assistant Attorney General

1 Original of the foregoing filed via e-mail  
this 26<sup>th</sup> day of April, 2019, with:

2 Arizona Board of Massage Therapy  
3 [thomas.ugherton@massageboard.az.gov](mailto:thomas.ugherton@massageboard.az.gov)

4 Copy of the foregoing mailed and e-mailed  
this 26<sup>th</sup> day of April, 2019, to:

5 Daniel Kaffana  
6 c/o Brenda Sanchez  
7 Lerner & Rowe Law Group  
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11 By: Jami White  
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