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Attorney General
2 (Firm State Bar No. 14000)

3 Seamus Monghan
Assistant Attorney General
4 State Bar No. 034660
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5 Phoenix, Arizona 85004
Tel: (602) 542-7980
6 Fax: (602) 364-3202
Attorneys for the State

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

10 In the Matter of

11 **FERNANDO TREJO, LMT**

12 Holder of License No. MT-15514
As a Massage Therapist
13 In the State of Arizona

Board Case No. 21-118

**MOTION TO DEEM ALLEGATIONS
ADMITTED AND VACATE
FORMAL HEARING**

14
15 The State of Arizona hereby requests that the Arizona State Board of Massage
16 Therapy vacate the hearing scheduled for February 22, 2021, at 9:45 a.m., and deem the
17 allegations contained in the Board's Complaint and Notice of Hearing admitted pursuant
18 to A.R.S. § 32-4254(H). A copy of the Complaint and Notice of Hearing is attached as
19 **Exhibit A.**

20 On or before January 31, 2020, Respondent timely filed his renewal application
21 and Respondent's license is effective through January 31, 2022.

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

4 The Board mailed the Complaint and Notice of Hearing by first-class and certified
5 mail on December 22, 2020, to Respondent's address of record with the Board. Notice of
6 a complaint and hearing is effective when it has been sent by certified mail to the
7 licensee's last known address of record. A.R.S. § 32-4254(N). *See Exhibit C.*
8 Respondent's answer was therefore due on or before January 25, 2021. As of January 26,
9 2021, Respondent has not filed an answer to the Complaint.

10
11 On January 11, 2021, at 11:20 a.m., Respondent retrieved the certified letter
12 containing the Board's Complaint and Notice of Hearing from his local postal facility,
13 but he did not submit an Answer to the allegations in the Board's Complaint and Notice
14 of Hearing. *See Exhibit D.*

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

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21 RESPECTFULLY SUBMITTED this 26th day of January, 2021.

22 MARK BRNOVICH
23 Attorney General

24 /s/ Seamus Monaghan
25 Assistant Attorney General
26

1 Original of the foregoing filed via e-filed
2 this 26th day of January, 2021, with:

3 Arizona Board of Massage Therapy
4 thomas.ugherton@massageboard.az.gov

5 Copy of the foregoing mailed and e-mailed
6 this 26th day of January, 2021, to:

7 Fernando Trejo, LMT
8 12362 West Highland Avenue
9 Avondale, Arizona 85392
10 Ftrejo.massage@gmail.com

11 Copy of the foregoing mailed and e-mailed
12 this 26th day of January, 2021, to:

13 Michael Raine, AAG
14 Office of the Attorney General
15 205 North Central Ave., SGD/LES
16 Phoenix, Arizona 85004
17 Independent Attorney Advisory

18 Seamus Monaghan, AAG
19 Office of the Attorney General
20 205 North Central Ave., SGD/LES
21 Phoenix, Arizona 85004
22 Attorney for the Board

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By: /s/ Anitra Herrera
Legal Secretary
#9239921

EXHIBIT A

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

In the Matter of
FERNANDO TREJO, LMT
Holder of License No. MT-15514
As a Massage Therapist
In the State of Arizona.

Board Case No. 20-118
**NOTICE OF HEARING AND
COMPLAINT**

I. NOTICE OF PUBLIC HEARING.

YOU ARE HEREBY NOTIFIED, the Arizona Board of Massage Therapy (Board) will conduct an administrative hearing at the following place and time, to determine whether grounds exist to discipline Massage Therapist License No. MT-15514 held by Fernando Trejo, LMT ("Respondent"):

**Arizona Board of Massage Therapy
1740 West Adams Street, Telephonic Board Meeting
Phoenix, Arizona 85007
On February 22, 2020 at 9:45 a.m.**

and continuing on successive days until concluding, concerning the matters set forth in this Complaint and Notice of Hearing, at which time and place, evidence, testimony and argument in support of the charges set forth in the Complaint will be presented. If you desire to make a defense to the charges at the hearing, you may appear at the hearing in person and may be represented by legal counsel and may at that time cross-examine the witnesses against you and present testimony of witnesses, evidence and argument in your own behalf.

Whether or not you intend to appear at the hearing, pursuant to A.R.S. § 32-4254(H), YOU ARE REQUIRED to prepare and file a written Answer to the allegations alleged in the above Complaint with the Board within thirty (30) days

1 after service of this Complaint and Notice of Hearing. THE BOARD MAY
2 CONSIDER YOUR FAILURE TO RESPOND WITHIN THIS TIME AS YOUR
3 ADMISSION BY DEFAULT TO THE ALLEGATIONS STATED IN THE
4 COMPLAINT. *Id.* The Board may then take disciplinary action without conducting a
5 hearing. If you Answer and fail to appear for the hearing, the Board may proceed in your
6 absence.

7 After the hearing, if the Board determines that you have committed unprofessional
8 conduct or otherwise violated the Board's statutes and rules, it may revoke or suspend your
9 license, impose a civil penalty of up to \$10,000 for each violation, issue a decree of censure,
10 impose probation, order the payment of restitution, or take other disciplinary action. A.R.S. §
11 32-4254. If the Board determines that you have violated its statutes or rules, it may also charge
12 you the costs of the formal hearing. A.R.S. § 32-4254(K).

13 In accordance with Title II of the Americans with Disabilities Act (ADA), the Board does
14 not discriminate on the basis of disability in admission to and participation in hearings. Should
15 you, or anyone you call as a witness need special accommodations, please contact the Board
16 office at (602) 542-8225 at least three working days before the hearing.

17 If you require the services of an interpreter, you are responsible for paying the cost of that
18 interpreter. The interpreter must be certified to perform interpretation services in legal
19 proceedings in Arizona.

20 Pursuant to A.R.S. § 32-3206, you have the right to request a copy of the following
21 information from the Board:

- 22 1. Any review conducted by an expert or consultant providing an evaluation of or
23 opinion on the allegations.
- 24 2. Any records on the patient obtained by the board from other health care providers.
- 25 3. The results of any evaluations or tests of the health professional conducted at the
26 board's direction.
4. Any other factual information that the board will use in making its determination.

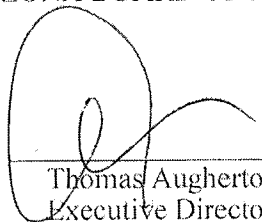
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DATED this 22nd day of December, 2020.

ARIZONA BOARD OF MASSAGE THERAPY



By:



Thomas Aughterton
Executive Director

1 Original of the foregoing filed
this 22nd day of December, 2020, with:


2
3 Arizona Board of Massage Therapy
1740 W. Adams St., Suite 3401
Phoenix, Arizona 85007
4

5 Executed Copy of the foregoing mailed via regular first-class U.S. mail and certified mail
this 22nd day of December, 2020, to:

6
7 Fernando Trejo
12362 West Highland Avenue
Phoenix, Arizona 85051
8 Respondent

9 Copy of the foregoing e-mailed
this 22nd day of December, 2020, to:

10
11 Seamus Monaghan
Assistant Attorney General
2005 North Central Ave., SGD/LES
12 Phoenix, AZ 85004
Attorney for the State

13 By:  _____
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15 Doc# 9170190v1

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EXHIBIT B

A.R.S. 32-4254(H)

Investigative powers; emergency action; disciplinary proceedings; formal interview; hearing; civil penalty

H. A licensee shall respond in writing to the board within thirty days after notice of the hearing is served. The board may consider a licensee's failure to respond within this time as an admission by default to the allegations stated in the complaint. The board may then take any disciplinary action allowed pursuant to this chapter without conducting a hearing.

EXHIBIT C

A.R.S. 32-4254(N)

**Investigative powers; emergency action; disciplinary proceedings;
formal interview; hearing; civil penalty**

N. Notice of a complaint and hearing is effective by a true copy of it being sent by certified mail to the licensee's last known address of record in the board's files. Notice of the complaint and hearing is complete on the date of its deposit in the mail. The board shall begin a formal hearing within one hundred twenty days after that date.

EXHIBIT D

ALERT: USPS IS EXPERIENCING UNPRECEDENTED VOLUME INCREASES AND LIMITED EMPL...



FAQs >

Track Another Package +

Tracking Number: 9489009000276139790924

Remove X

Your item was picked up at a postal facility at 11:20 am on January 11, 2021 in PHOENIX, AZ 85009.

Delivered

January 11, 2021 at 11:20 am
Delivered, Individual Picked Up at Postal Facility
PHOENIX, AZ 85009

Feedback

Get Updates v

Text & Email Updates



Return Receipt Electronic



Tracking History



Product Information



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In the Matter of

Board Case No. 20-118

FERNANDO TREJO, LMT

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