

**IN THE CIRCUIT COURT OF CLINTON COUNTY  
STATE OF MISSOURI**

MISSOURI VETERINARY MEDICAL BOARD )  
3605 Missouri Boulevard )  
P.O. Box 1335 )  
Jefferson City, MO 65102 )

*Petitioner,* )

vs. )

BROOKE RENE GRAY )  
6227 SE Perren Road )  
Holt, Missouri 64048 )

Case No. 10CN-CV00842

and )

B & B EQUINE DENTISTRY )  
6227 SE Perren Road )  
Holt, Missouri 64048 )

*Defendants.* )

**DEFENDANT'S ANSWER – JURY TRIAL DEMANDED**

Defendants, Brooke Rene Gray and B &B Equine Dentistry, by and through counsel, answer the Petition for Preliminary and Permanent Injunction submitted by the Missouri Veterinary Medical Board (MVMB) as follows:

Answer to Introduction. The Defendants admit that the MVMB brought this action to request the Court to enjoin the Defendants from engaging in certain acts. The Defendants deny that those acts constitute the practice of veterinary medicine, or that those acts present a substantial risk of harm to the health of animals and the interests of people in this state; the Defendants demand strict proof of any “substantial risk of harm” that horse teeth floating presents to “the health of animals and the interests of people in this state.”

The Defendants also deny that the MVMB's Petition is "not intended to remedy past wrongs, but to enjoin illegal and harmful conduct in the future." To the contrary, the MVMB is using this action as a pretext to obtain evidence that it will then turn over for use in criminal proceedings against Mrs. Gray and others.

1. Paragraph 1 of the Petition states a conclusion of law not requiring an admission or denial; to the extent that Paragraph 1 cites a statute, the statute speaks for itself and requires no admission or denial; to the extent that Paragraph 1 constitutes an allegation of any facts, Respondent denies the same and demands strict proof thereof.

2. Paragraph 2 of the Petition states a conclusion of law not requiring an admission or denial; to the extent that Paragraph 2 cites a statute, the statute speaks for itself and requires no admission or denial; to the extent that Paragraph 2 constitutes an allegation of any facts, Respondent denies the same and demands strict proof thereof.

3. Admit.

4. Admit.

5. Admit.

6. Denied. The MVMB's action does not comply with § 340.276.

7. Defendants exercise their right, protected under the Fifth and Fourteenth Amendments of the U.S. Constitution, not to provide information that might be used to incriminate them.

8. Denied. The MVMB's action does not comply with § 340.276.

9. Paragraph 9 of the Petition states a conclusion of law not requiring an admission or denial; to the extent that Paragraph 9 cites a statute, the statute speaks for itself and

requires no admission or denial; to the extent that Paragraph 9 constitutes an allegation of any facts, Respondent denies the same and demands strict proof thereof.

10. Paragraph 10 of the Petition states a conclusion of law not requiring an admission or denial; to the extent that Paragraph 10 cites a statute, the statute speaks for itself and requires no admission or denial; to the extent that Paragraph 10 constitutes an allegation of any facts, Respondent denies the same and demands strict proof thereof.

11. Paragraph 11 of the Petition states a conclusion of law not requiring an admission or denial; to the extent that Paragraph 11 cites a statute, the statute speaks for itself and requires no admission or denial; to the extent that Paragraph 11 constitutes an allegation of any facts, Respondent denies the same and demands strict proof thereof.

12. Paragraph 12 of the Petition states a conclusion of law not requiring an admission or denial; to the extent that Paragraph 12 cites a statute, the statute speaks for itself and requires no admission or denial; to the extent that Paragraph 12 constitutes an allegation of any facts, Respondent denies the same and demands strict proof thereof.

13. Paragraph 13 of the Petition states a conclusion of law not requiring an admission or denial; to the extent that Paragraph 13 cites a statute, the statute speaks for itself and requires no admission or denial; to the extent that Paragraph 13 constitutes an allegation of any facts, Respondent denies the same and demands strict proof thereof.

14. Defendants incorporate by reference each of the above answers as though fully set forth herein.

15. Defendants exercise their right, protected under the Fifth and Fourteenth Amendments of the U.S. Constitution, not to provide information that might be used to incriminate them.

16. Paragraph 16 of the Petition states a conclusion of law not requiring an admission or denial; to the extent that Paragraph 16 cites a statute, the statute speaks for itself and requires no admission or denial; to the extent that Paragraph 16 constitutes an allegation of any facts, Defendants exercise their right, protected under the Fifth and Fourteenth Amendments of the U.S. Constitution, not to provide information that might be used to incriminate them.

17. Paragraph 17 of the Petition states a conclusion of law not requiring an admission or denial; to the extent that Paragraph 17 cites a statute, the statute speaks for itself and requires no admission or denial; to the extent that Paragraph 17 constitutes an allegation of any facts, Defendants exercise their right, protected under the Fifth and Fourteenth Amendments of the U.S. Constitution, not to provide information that might be used to incriminate them.

18. Defendants exercise their right, protected under the Fifth and Fourteenth Amendments of the U.S. Constitution, not to provide information that might be used to incriminate them.

19. Defendants exercise their right, protected under the Fifth and Fourteenth Amendments of the U.S. Constitution, not to provide information that might be used to incriminate them.

20. Defendants exercise their right, protected under the Fifth and Fourteenth Amendments of the U.S. Constitution, not to provide information that might be used to incriminate them.

21. Defendants are without exact knowledge or information sufficient to form a belief as to the truth of the statements made in Paragraph 21 of the Petition; they can neither admit nor deny the same and demand strict proof thereof.

22. Paragraph 22 of the Petition states a conclusion of law not requiring an admission or denial; to the extent that Paragraph 22 cites a statute, the statute speaks for itself and requires no admission or denial; to the extent that Paragraph 22 constitutes an allegation of any facts, Defendants exercise their right, protected under the Fifth and Fourteenth Amendments of the U.S. Constitution, not to provide information that might be used to incriminate them.

23. Defendants exercise their right, protected under the Fifth and Fourteenth Amendments of the U.S. Constitution, not to provide information that might be used to incriminate them.

24. Paragraph 24 of the Petition states a conclusion of law not requiring an admission or denial; to the extent that Paragraph 24 cites a statute, the statute speaks for itself and requires no admission or denial; to the extent that Paragraph 24 constitutes an allegation of any facts, Defendants exercise their right, protected under the Fifth and Fourteenth Amendments of the U.S. Constitution, not to provide information that might be used to incriminate them.

25. Defendants exercise their right, protected under the Fifth and Fourteenth Amendments of the U.S. Constitution, not to provide information that might be used to incriminate them; furthermore, Defendants explicitly deny that the practice of equine dentistry is “resulting in continuing harm to persons and animals in the State of Missouri” and they demand that the MVMB specifically identify all persons and horses allegedly harmed by this practice.

26. Paragraph 26 of the Petition states a conclusion of law not requiring an admission or denial; to the extent that Paragraph 26 cites a statute, the statute speaks for itself and requires no admission or denial; to the extent that Paragraph 26 constitutes an allegation of any facts, Defendants exercise their right, protected under the Fifth and Fourteenth Amendments of the U.S. Constitution, not to provide information that might be used to incriminate them.

27. Any and all allegations and/or averments in the Plaintiff’s Petition that have not been directly answered, admitted, explained, or denied in the above paragraphs are hereby specifically and categorically denied.

28. The Defendants deny that the MVMB is entitled to any relief sought within the Petition.

**FIRST AFFIRMATIVE DEFENSE – SUBSTANTIVE DUE PROCESS**  
**(RIGHT TO EARN A LIVING)**

29. For further answer, as an affirmative defense and without admitting any potentially incriminating fact alleged in the Petition, the Defendants assert that even if the MVMB’s allegations were true, the Fifth and Fourteenth Amendments of the U.S.

Constitution guarantee citizens' fundamental rights to earn a living by applying their skills in a lawful and useful business that presents no threat to the public health, safety, or welfare.

30. People have been floating horses' teeth for hundreds of years, with the service typically being performed by non-veterinarian laypersons.

31. A number of non-veterinarians in Missouri have, through formal education and/or hands-on experience, become skilled floaters.

32. There is nothing inherently unlawful about floating horses' teeth; under §340.216.1(5), floating may lawfully be performed not only by licensed veterinarians, but also by horse owners, their full-time employees, and other uncompensated laypersons.

33. Under §340.216.1(5), the Defendants could lawfully perform floating, so long as they did not accept compensation for doing so.

34. The MVMB possesses no research indicating that floating represents a bona fide threat to the health, safety, or welfare of Missouri's citizens.

35. The MVMB possesses no research indicating that floating represents a bona fide threat to the health, safety, or welfare of Missouri's horses.

36. The MVMB possesses no research indicating that any bona fide threat that floating might pose to the health, safety, or welfare of Missouri's citizens is either increased or diminished if the person doing the floating is compensated for their work.

37. Nonetheless, §340.216 (in conjunction with §340.294) makes it a criminal offense for a non-veterinarian who is not a full-time employee of the horse's owner to accept compensation for floating horses' teeth.

38. Under §340.294, each separate animal assisted by a non-veterinarian floater constitutes a separate Class A misdemeanor, punishable by a fine of up to \$1,000 and up to a year in prison.

39. Because §340.216 infringes upon citizens' fundamental right to earn a living in the lawful, useful, and safe business of horse teeth floating, the statute violates the Due Process clauses of the Fifth and Fourteenth Amendments.

## **SECOND AFFIRMATIVE DEFENSE – SUBSTANTIVE DUE PROCESS**

### **(ARBITRARY CLASSIFICATIONS)**

40. For further answer, as an affirmative defense and without admitting any potentially incriminating fact alleged in the Petition, the Defendants assert that even if the MVMB's allegations were true, the Fifth and Fourteenth Amendments of the U.S. Constitution, and Article I, section 10, and Article III, section 40(30), of the Missouri Constitution prohibit laws that make arbitrary distinctions among groups of citizens.

41. In its Petition the MVMB asserts that §340.216.1 only permits licensed veterinarians and full-time employees of horse owners to accept compensation for floating horses' teeth.

42. Floating is not a part of the core curriculum at any veterinary school.

43. Many non-veterinarian floaters receive training at specialized schools, such as the Academy of Equine Dentistry, where the entire curriculum is dedicated to the practice.

44. Most veterinarians who regularly float horses' teeth learn the practice either from an experienced floater or at one of the specialized equine dentistry schools.



45. Under the MVMB's application of Chapter 340, RSMo., a licensed veterinarian with zero training or experience in equine dentistry would be permitted to accept compensation for floating horses' teeth; a non-veterinarian layperson with decades of training and experience in floating horses' teeth and a perfect safety record would face severe criminal penalties for doing the same.

46. As applied to the practice of floating, the statute's distinction between licensed veterinarians and non-veterinarian floaters is completely arbitrary and unreasonable.

47. The MVMB also possesses no evidence indicating that floating services performed for compensation pose any greater threat to the health, safety, or welfare of Missourians than floating services performed free of charge.

48. Thus, the distinction that §340.216.1 makes between services performed for compensation and services performed free of charge is completely arbitrary and unreasonable.

49. Because the statutory rules imposed on the practice of floating are utterly disconnected from any legitimate government interest that might be served by restricting the practice, the MVMB's attempted application of §340.216.1 exceeds the government's lawful exercise of its police power.

**THIRD AFFIRMATIVE DEFENSE – RIGHT TO LIBERTY, THE PURSUIT OF  
HAPPINESS, AND THE ENJOYMENT OF THE GAINS OF INDUSTRY**

50. For further answer, as an affirmative defense and without admitting any potentially incriminating fact alleged in the Petition, the Defendants assert that even if the MVMB's allegations were true, Article I, section 2, of the Missouri Constitution declares

“that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry[.]”

51. Rather than attempt to float their animals’ teeth themselves, many horse owners would prefer to have someone who specializes in floating perform this task.

52. Many horse owners would be happy to pay experienced non-veterinarian floaters for this service.

53. Section 340.216.1 would permit unlicensed floaters to provide this service as long as no compensation is involved, but it prohibits unlicensed floaters from accepting compensation from the horse owners they assist.

54. The prohibition against accepting compensation violates Article I, section 2, of the Missouri Constitution by depriving these unlicensed floaters of their right to enjoy “the gains of their own industry”.

**FOURTH AFFIRMATIVE DEFENSE – FREEDOM OF SPEECH**

55. For further answer, as an affirmative defense and without admitting any fact alleged in the Petition, the Defendants assert that even if the MVMB’s allegations were true, §340.216.1 violates the expressive liberties safeguarded by the First Amendment of the U.S. Constitution (made applicable to the states through the Fourteenth Amendment of the U.S. Constitution) and Article I, section 8, of the Missouri Constitution because it prohibits or requires punishment of the communication of truthful, non-misleading information.

56. The Petition alleges that §340.216.1 forbids non-veterinarians from sharing any information related to horse teeth floating.

57. Where a law imposes a restriction on speech, the party seeking to uphold the restriction bears the burden of justifying it.

58. The statute includes no exception for truthful, harmless information about either the practice of floating or the training and experience that an unlicensed person might have floating horses' teeth.

59. The MVMB cannot name any Missouri horse owner who has been harmed as a result of receiving truthful, non-misleading information about the practice of floating.

60. Absent any demonstrable and immediate threat to the health, safety, or welfare of Missouri's horse owners, a law whose application would prohibit the communication of truthful, non-misleading information is invalid under the First Amendment and Article I, section 8, of the Missouri Constitution.

61. Additionally, the MVMB's proposed application of §340.216.1 would allow the government to pick and choose which private speakers are permitted to offer precisely the same information.

62. Restrictions distinguishing among different speakers, allowing speech by some but not by others, are prohibited under the First Amendment.

#### **FIFTH AFFIRMATIVE DEFENSE – PROCEDURAL DUE PROCESS**

63. For further answer, as an affirmative defense and without admitting any fact alleged in the Petition, the Defendants state that even if the MVMB's allegations were true, the Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, section 10, of the Missouri Constitution require government agencies to provide procedural due process of law.

64. The statutory prohibitions relied upon by the MVMB have been in place since at least 1992.

65. Since the adoption of these statutory prohibitions, members of the MVMB have been aware that non-veterinarian horse teeth floaters were providing services in Missouri for compensation.

66. Until it filed this case against the Defendants, the MVMB had never asked a court to rule that floaters fell under these statutory prohibitions.

67. The MVMB's recent decision that the law prohibits non-veterinarians from floating horses' teeth did not follow any formal rulemaking or other formal explanation of why the MVMB was changing its approach to enforcing Chapter 340, RSMo., against floaters.

68. In deciding to take action against horse teeth floaters, the MVMB never considered any evidence or public testimony suggesting that floaters posed a bona fide threat to the health, safety, or welfare of Missouri horse owners.

69. In deciding to take action against horse teeth floaters, the MVMB never considered any evidence or public testimony regarding whether, in the absence of non-veterinarian floaters, there are enough licensed veterinarians providing floating services to meet the needs of Missouri's horse owners.

70. In deciding to take action against horse teeth floaters, the MVMB never considered any evidence or public testimony regarding the danger posed to the health of Missouri's horse population if an inadequate number of veterinarians are providing floating services.

71. Thus, in abandoning its prior toleration of horse teeth floaters, the MVMB has failed to provide procedural due process of law, violating the Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, section 2, of the Missouri Constitution.

#### **SIXTH AFFIRMATIVE DEFENSE – EQUAL PROTECTION**

72. For further answer, as an affirmative defense and without admitting any fact alleged in the Petition, the Defendants state that the Fourteenth Amendment to the U.S. Constitution and Article I, section 2, of the Missouri Constitution require governments to provide equal protection of the laws.

73. Since the prohibitions of §340.216.1 were enacted, the MVMB has been aware that non-veterinarian laypersons in Missouri accept compensation for providing animal husbandry services such as horseshoeing, branding, birthing, dehorning, tail docking, castration, and artificial insemination.

74. Many of these other practices are far more likely than floating to endanger the health, safety, or welfare of Missourians and their livestock.

75. The MVMB has not asked any court to rule that horseshoeing for compensation falls under the prohibitions of §340.216.1.

76. The MVMB has not asked any court to rule that branding animals for compensation falls under the prohibitions of §340.216.1.

77. The MVMB has not asked any court to rule that birthing animals for compensation falls under the prohibitions of §340.216.1.

78. The MVMB has not asked any court to rule that dehorning animals for compensation falls under the prohibitions of §340.216.1.

79. The MVMB has not asked any court to rule that tail docking animals for compensation falls under the prohibitions of §340.216.1.

80. The MVMB has not asked any court to rule that castrating animals for compensation falls under the prohibitions of §340.216.1.

81. The MVMB has not asked any court to rule that artificially inseminating animals for compensation falls under the prohibitions of §340.216.1.

82. There is no conceivable rational basis for the MVMB's decision to initiate action against horse teeth floaters while declining to take similar action against any other category of workers engaged in similar animal husbandry services.


83. There is no conceivable rational basis for allowing the full-time non-veterinarian employee of an animal owner to accept compensation for providing any of these services, but criminalizing compensation for non-veterinarian laypersons who specialize in these services.

### **JURY TRIAL DEMANDED**

84. Defendants demand a jury trial on all issues triable in this case.

WHEREFORE, Defendants respectfully request this Court to deny the MVMB's prayer for relief and to find that the protections enshrined in the U.S. Constitution and the Missouri Constitution bar the MVMB from prohibiting or punishing the practice of horse teeth floating as requested in the Petition.

Respectfully submitted,



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**ATTORNEY FOR DEFENDANTS.**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was served by email, on October 26, 2010, addressed to:

Edwin Frownfelter  
Office of the Attorney General  
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Kansas City, MO 64106

  
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Attorney for Defendants