

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DO NO HARM, INC., a nonprofit
corporation,

Civil File No. 0:25-cv-00287
(KMM/JFD)

Plaintiff,

v.

**ANSWER TO COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

DR. BROOKE CUNNINGHAM, in
her official capacity as Commissioner
of the Minnesota Department of
Health,

Defendant.

Defendant Dr. Brooke Cunningham, in her official capacity as Commissioner of the Minnesota Department of Health, for her answer to Plaintiff Do No Harm, Inc.'s Complaint in this matter, states and alleges as follows:

1. Except as expressly admitted, denied, or otherwise qualified, Defendant denies every allegation in Plaintiff's Complaint.
2. With respect to the allegations in paragraph 1 of the Complaint, Defendant admits that the Minnesota Health Equity Advisory and Leadership ("HEAL") Council is an advisory council to Defendant and to the Minnesota Department of Health ("the Department"). Defendant affirmatively states the HEAL Council's duties are set forth in Minn. Stat. § 145.987 and denies any allegation inconsistent with or contrary to the statute.
3. With respect to the allegations in paragraph 2 of the Complaint, Defendant admits that the HEAL Council consists of 18 members appointed by Defendant for two-year terms. Defendant affirmatively states the composition of the HEAL Council is set

forth in Minn. Stat. § 145.987 and denies any allegation inconsistent with or contrary to the statute.

4. Defendant denies the allegations in paragraph 3 of the Complaint.

5. Defendant is without sufficient knowledge and information as to the truth or falsity of the remaining allegations in paragraph 4 of the Complaint. Defendant affirmatively states that Plaintiff did not identify Member A.

6. With respect to the allegations in paragraph 5 of the Complaint, Defendant denies any alleged violation of the constitutional rights of Plaintiff's member. Defendant is without sufficient knowledge and information as to the truth or falsity of the remaining allegations in paragraph 5.

7. With respect to the allegations in paragraphs 6 and 7 of the Complaint, Defendant admits that this Court has jurisdiction over the claims brought and that venue in this Court is proper.

8. With respect to the allegations in paragraph 8 of the Complaint, Defendant denies any alleged violation of constitutional rights. Defendant is without sufficient knowledge and information as to the truth or falsity of the remaining allegations in paragraph 8.

9. Defendant is without sufficient knowledge and information as to the truth or falsity of the allegations in paragraph 9 of the Complaint. Defendant affirmatively states that Plaintiff did not identify Member A.

10. Defendant admits the allegations in paragraph 10 of the Complaint.

11. With respect to the allegations in paragraph 11 of the Complaint, Defendant answers that the HEAL Council first met in January 2018. Defendant admits that Minn. Stat. § 145.987 was enacted in 2023.

12. Paragraphs 12, 13, and 14 of the Complaint contain legal conclusions for which no response is required. To the extent a response is required, Defendant answers that the law speaks for itself and denies any characterization of the law that is contrary to what the law is.

13. Defendant denies the allegations in paragraph 15 of the Complaint. Defendant further answers that the referenced document speaks for itself and denies any allegation inconsistent with the document.

14. With respect to the allegations in paragraph 16 of the Complaint, Defendant answers that the HEAL Council had three vacancies in 2024 and that the Minnesota Secretary of State's application portal for the HEAL Council was open from approximately May to December 2024. Defendant admits that each of these open positions was not reserved for any individual of a particular race, ethnicity, or other community. Upon information and belief, Defendant admits that the Minnesota Secretary of State's application portal did not list pending appointments. Defendant denies any allegations in paragraph 16 that are inconsistent with the foregoing. Defendant is without sufficient knowledge and information as to the truth or falsity of the remaining allegations in paragraph 16. Defendant affirmatively states that Plaintiff did not identify Member A.

15. With respect to the allegations in paragraph 17 of the Complaint, Defendant admits that the open positions on the Council were filled. Defendant is without sufficient

knowledge and information as to the truth or falsity of the remaining allegations in paragraph 17. Defendant affirmatively states that Plaintiff did not identify Member A.

16. With respect to the allegations in paragraph 18 of the Complaint, Defendant admits that the term for each current member on the HEAL Council will end on December 1, 2025 and that applications can be submitted for open positions. Defendant is without sufficient knowledge and information as to the truth or falsity of the remaining allegations in paragraph 18.

17. Defendant is without sufficient knowledge and information as to the truth or falsity of the allegations in paragraph 19.

18. Defendant is without sufficient knowledge and information as to the truth or falsity of the remaining allegations in paragraph 20 of the Complaint. Defendant affirmatively states that Plaintiff did not identify Member A.

19. Defendant denies the allegations in paragraph 21 of the Complaint.

20. Defendant is without sufficient knowledge and information as to the truth or falsity of the remaining allegations in paragraph 22 of the Complaint.

21. Paragraph 23 of the Complaint does not require a response. To the extent that a response is required, Defendant restates and incorporates by reference her responses to the cited paragraphs.

22. Paragraphs 24, 25, and 26 of the Complaint contain legal conclusions for which no response is required. To the extent a response is required, Defendant answers that the law speaks for itself and denies any characterization of the law that is contrary to what the law is.

23. Defendant denies the allegations in paragraphs 27, 28, 29, 30, and 31 of the Complaint.

24. Defendant denies that Minn. Stat. § 145.987, subd. 1, contains a “racial mandate.”

25. Paragraph 32 of the Complaint does not require a response. To the extent that a response is required, Defendant restates and incorporates by reference her responses to the cited paragraphs.

26. Paragraphs 33, 34, 35, 36, and 37 of the Complaint contain legal conclusions for which no response is required. To the extent a response is required, Defendant answers that the law speaks for itself and denies any characterization of the law that is contrary to what the law is.

27. Defendant denies the allegations in paragraphs 38 and 39 of the Complaint.

28. Defendant denies any alleged violation of the constitutional rights of Plaintiff’s member and denies that Plaintiff is entitled to any or all of the stated relief.

AFFIRMATIVE DEFENSES

1. Plaintiff’s Complaint fails to state a claim against Defendant for which the Court may grant relief.

2. Plaintiff’s claims are barred because Plaintiff lacks standing.

3. Plaintiff’s claims are barred because they are not ripe.

4. Plaintiff’s claims are barred because it has suffered no harm or damages as a result of any action by Defendant.

5. Plaintiff's claims, in whole or in part, are barred by Eleventh Amendment sovereign immunity.

6. Defendant reserves the right to assert additional defenses as they become known or available.

WHEREFORE, Defendant requests the Court to issue Order and Judgment as follows:

1. Denying the relief requested in the Complaint;
2. Dismissing the Complaint with prejudice;
3. Awarding Defendant her costs and disbursements; and
4. Granting such other and further relief as the Court deems appropriate.

Dated: February 20, 2025

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

s/Jennifer Moreau

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