

1 State of Alaska  
2 Department of Commerce, Community and Economic Development  
3 Division of Corporations, Business and Professional Licensing  
4

5 BOARD OF MASSAGE THERAPISTS  
6

7 MINUTES OF THE MEETING

8 December 6-7, 2018  
9

10 *Written meeting minutes reflects a brief overview of the business conducted by the board during their meeting. For a more*  
11 *detailed account, please request a copy of the meeting's audio recording at*  
12 *<https://www.commerce.alaska.gov/web/cbpl/PublicRecordsRequests.aspx>.*  
13

14 By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a  
15 scheduled meeting of the Board of Massage Therapists was held telephonically on  
16 December 6-7, 2018.  
17

18 **Agenda Item 1** **Call to Order/Roll Call:**  
19

20 *On the record at 9:00 a.m.*  
21

22 **Board Members present, constituting a quorum:**  
23

24 David Edwards-Smith- Board Chair, Licensed Massage Therapist  
25 Traci Gilmour, Licensed Massage Therapist  
26 Ron Gibbs, Licenses Massage Therapist  
27 Jill Motz, Licensed Massage Therapist  
28 Rebecca McCoy, Public Member  
29

30 **Division Staff present:**  
31

32 Dawn Dulebohn, Occupational Licensing Examiner  
33 Dawn Hannasch, Records and Licensing Supervisor  
34 Sonia Lipker, Senior Investigator  
35 Christina Bond, Investigator II  
36 Charles Ward, Acting Deputy Director  
37 Marylene Wales, Accountant III  
38 Jun Maiquis, Regulations Specialist  
39 Sher Zinn, Regulations Specialist  
40

41 **Joining Telephonically:**  
42

43 Erika McConnell, Director, Alcohol & Marijuana Control Office  
44 Robert Carter, Agronomist III, Department of Natural Resources  
45

46 **Agenda Item 2** **Ethics Reporting:**  
47

48 The Board Chair opened the floor to any board member that may have an ethics violation or  
49 inquiry. None were presented.

50

51 **Agenda Item 3** **Review/Approve Agenda:**

52

53 The board reviewed the agenda and discussed any proposed changes. Chair Edwards-Smith  
54 proposes the board add items to discuss such as previous denials being contacted regarding the  
55 board's new Fitness to Practice procedures under Agenda Item 14, 6 application reviews under  
56 Agenda Item 14, and FSMTB Executive Summit under Agenda Item 8

57

58 **In a motion duly made by Traci Gilmour, seconded by Jill Motz, and passed unanimously, it**  
59 **was RESOLVED to ACCEPT the agenda as amended.**

60

61 **Agenda Item 4** **Investigative Case Review and Probation Reports**

62

63 *Chair Dave Edwards-Smith calls a short recess at 9:06 a.m.*

64 *Back on the record at 9:15 a.m.*

65

66 *Investigators Sonia Lipker and Christina Bond join the meeting telephonically at 9:15 a.m.*

67 *Supervisor Hannasch left at 9:15 a.m.*

68

69 Investigator Lipker begins the Investigative Case Review. She states that during the period of  
70 August 21- November 30, 2018 16 cases were opened and 17 cases were closed. 20 matters remain  
71 on-going and/or under active investigation. There are no license actions to present at this time.

72

73 Chair Edwards-Smith requests comparable data from Investigations regarding licensing case load.  
74 Investigator Lipker states that she will look at programs with approximately the same number of  
75 licensees and will present the data at the next board meeting. Board member Traci Gilmour inquires  
76 about 2 cases on the list that are more than 12 months old. Investigator Lipker reports that those  
77 cases are open and active and awaiting cooperation from the Respondent. Ms. Gilmour asks if cases  
78 ever "age out" and Investigator Lipker replies that cases will always have to have some sort of  
79 conclusion.

80

81 Investigator Bond begins with the Probation Report. She states there are 8 licensees on probation  
82 and everyone is in compliance. Board member Ron Gibbs asks about the probation process and  
83 how the licensees are check up on. Investigator Bond replies that it will depend on the stipulation  
84 of their consent agreements but normally there are background reports and self- attestations in the  
85 form of quarterly reports. OLE Dulebohn reminds the board that Investigator Carl Jacobs sent a  
86 list of requirements for probation and it is located in the November 2018 board packet.

87

88 *Christina Bond and Sonia Lipker left the meeting at 9:22 a.m.*

89

90 **Agenda Item 5** **Review Previous Task Lists**

91

92 OLE Dulebohn presents items from the September 10-11 and November 15, 2018 board meetings.  
93 Some of the highlights are:

- 94 • The Paralegal reports that continuing education must be competed between October 1 and  
95 September 30 of a licensing period.
- 96 • The implementation of MTLD has been reviewed by Program Coordinator Colleen Kautz  
97 who has decided that, at this time, the state’s IT department does not have the resources  
98 (time) to take of a project of this complexity and magnitude.
- 99 • Board member Jill Motz has contacted Linda Story at Alaska Career College for a letter of  
100 commitment to allow applicants to complete remedial hours as determined by the board. As  
101 of this board meeting it has not been received.

102  
103 There was comment by Ms. Gilmour that some therapists that took advantage of early renewal in  
104 July 2017 took CE classes in August believing since they have individually renewed, the class they  
105 took in August would could count towards the 2019-2021 licensing period. OLE Dulebohn replies  
106 that renewing a license so early, while appreciated, is a choice but the licensing period doesn’t  
107 actually end until September 30. The Board asks OLE Dulebohn to craft an FAQ on this subject  
108 and post it to the website.

109  
110 **In a motion duly made by Traci Gilmour, seconded by Ron Gibbs, and passed unanimously**  
111 **with a roll call vote, it was RESOLVED to ALLOW continuing education for the 2017-2019**  
112 **renewal period to begin on July 1, 2017 and end on September 30, 2019.**

113  
114 **Agenda Item 6** **Division/Financial Update**

115  
116 *Acting Deputy Director Charles Ward and Accountant III Marylene Wales join the meeting at 9:40 a.m.*

117  
118 Mr. Ward and Ms. Wales addresses the board regarding the Division Financial Update.

119  
120 **FY 2018 Schedule of Revenues and Expenditures 1<sup>st</sup>- 4th Quarter:**

121

MAS	2018
<b>\$347,666</b>	<b>Total Revenue</b>
-275,296	Direct Expenditures
-105,954	Indirect Expense
<b>\$381,250</b>	<b>TOTAL EXPENSES</b>
-33,584	Annual Surplus
264,127	Beginning Cumulative Surplus
<b>\$231,543</b>	<b>2018 Ending Cumulative Surplus</b>

122  
123 The board asked Ms. Wales for specifics for Inter-Agency Safety, Inter- Agency Legal, and Inter-  
124 Agency Hearing/Mediation. She was also asked to find comparative data for the years 2016-2018  
125 and with other programs with the same licensee base in order to trend costs for the future. OLE  
126 Dulebohn reminds the board that Melissa Dumas reported that information to the board in the

127 September meeting. OLE Dulebohn will resend Ms. Dumas's report to the board for their  
128 reference. Ms. Wales will compile reports and submit them to the board.

129  
130 There was a decrease in revenue for 2017 but that would be related to the decrease in licensing fees.  
131 A fee analysis is scheduled for March of 2019 and Ms. Wales will have those numbers available in  
132 the June 2019 meeting for board review and approval. On a side note, Ms. Wales reports that  
133 massage therapists account for 1.7% of licensees in Alaska. Mr. Ward and Ms. Wales reports that  
134 they believe the board is in a good financial position to go into a non-renewal fiscal year.

135  
136 The Division website has Quarterly Reports for all boards.

137  
138 *Mr. Ward and Ms. Wales left the meeting at 10:08 a.m.*

139  
140 **Agenda Item 7** **National Certification Board for Therapeutic Massage**

141  
142 Chair Edwards- Smith directs the board to the discussion on the National Certification Board for  
143 Therapeutic Massage (NCBTMB). He has submitted research showing that the NCBTMB only  
144 reviews and authorized schools in order for candidates to sit for their exam.

145  
146 Ms. Motz and Ms. Gilmour have a discussion on the research Ms. Motz completed on how the  
147 NCBTMB vets their instructors for continuing education. Ms. Motz states that she is unimpressed  
148 with their requirements and their main concern seems to be self-serving as an income generator.  
149 She believes they have a good intention but there is not much criteria that needs to be met before  
150 they approve schools or instructors. She believes the board should contact NCBTMB to see if they  
151 would be open to suggestion on this topic.

152  
153 The board goes on to discuss allowing NCBTMB to be included as a nationally recognized  
154 accrediting agency as defined in AS 08.61.100(1)(B). Chair Edwards-Smith states that NCBTMB's  
155 website states that they are not an accrediting agency. He also mentions that one of the  
156 requirements to sit for their current board exam is that you must already be licensed. Ms. Motz  
157 states that the NCBTMB used to have a national licensing exam prior to January 31, 2015 (which is  
158 when the Federation of State Massage Therapy Boards instituted the MBLEx) which the board still  
159 accepts as part of the requirements of licensure.

160  
161 **In a motion duly made by Traci Gilmour, seconded by Jill Motz, and passed unanimously**  
162 **with a roll call vote, it was RESOLVED to NOT RECOGNIZE National Certification**  
163 **Board for Therapeutic Massage as a nationally recognized accrediting agency in reference**  
164 **to AS 08.61.100.**

165  
166 Regarding the NCBTMB being approved as a course sponsor for continuing education, the board  
167 believes that this will be an ongoing discussion and should evaluate courses on a case-by-case basis.  
168 Ms. Motz interjects with information from the research that she has done on how NCBTMB  
169 chooses their instructors and its potential for harm. NCBTMB allows instructors to attest to their  
170 competency without verifying specialties or that they are staying within their scope. Ms. Motz goes  
171 on that there are vulnerable populations at risk and it is the board's job to protect the public. When  
172 Ms. Motz contacted NCBTMB they told her that they do not recheck an instructor's qualifications  
173 to teach every class. Chair Edwards-Smith states that when he called NCBTMB he was given  
174 different information. It is agreed that the board would like to send a letter to NCBTMB to ask

175 how they keep their instructors accountable with an outline on how they qualify instructors. Chair  
176 Edwards-Smith volunteers to contact NCBTMB for a statement letter on how they approve  
177 instructors and programs.

178  
179 Ms. Gilmour would like OLE Dulebohn to draft a FAQ describing how anyone would complain if  
180 they take an unsatisfactory continuing education course.

181

182 **Agenda Item 5 (cont.)** **Review Previous Task Lists**

183

184 **Sexually Explicit Advertising**

185

186 Ms. Motz reports on her research on Sexually Explicit Advertising. In her research, Ms. Motz could  
187 not find a cohesive, specific definition and instead suggests that advertising should be “oriented  
188 towards wellness, therapy, massage, or be related to the conduction of massage business.” The  
189 board agrees that any complaint would be evaluated on a case-by-case basis. To answer a question  
190 from the November 15, 2018 meeting, Regulations Specialist Zinn was consulted and she confirms  
191 that the board has the right to regulate advertising for both therapists and establishments. The  
192 board states that they would like to consult LAW on this subject when AAG Harriet Milks is in  
193 attendance tomorrow.

194

195 **Agenda Item 9** **Report on FSMTB Annual Meeting**

196

197 Chair Dave Edwards-Smith reports on the FSMTB Annual Meeting that he attended in October  
198 2018. During the meeting he came to appreciate the work that the Alaska board is doing even more.  
199 He did notice that boards were starting to see anti-regulation actions. After consulting other states,  
200 he reiterates how important it is to form relationships with legislators to keep them apprised of your  
201 profession. Ms. Gilmour volunteers to start meeting with legislators and staff and mentions that is a  
202 great reason to have the board’s next in-person meeting in Juneau.

203

204 One of the bullet points in the report under the heading of Human Trafficking, Fraud, and  
205 Prostitution has to do with how Tennessee requires persons accompanying/translating for  
206 applicants (“handlers”) to state appointments regarding licensure should have to show identification.  
207 A conversation ensues on the legality of doing that in Alaska. In addition, the board would like a  
208 LAW consultation on this topic and whether an affidavit of assistance can be required for anyone  
209 helping an applicant fill out their application for licensure.

210

211 The Chair continues by saying that this was a very valuable experience and he would like to continue  
212 sending a delegate from Alaska.

213

214 **Agenda Item 14** **Administrative Business**

215

216 **Proposed Regulations**

217

218 The board reviewed the proposed regulations that closed public comment on December 3, 2018 that  
219 included:

220

- Hours will be increased from 500 to 625 hours on July 1, 2019

221

- Curriculum breakdown for both 500 and 625 hour programs

- 222       • Reduction of fingerprint requirements for renewal to at least once every 6 years  
223       • Reduction of bloodborne pathogens requirement to applicants applying by examination  
224       from 4 to 2 hours.  
225       • Acceptance of apprenticeship program standards

226  
227 The board reviewed the comments submitted to the regulations specialist and found none that  
228 impacted the regulation as written.

229  
230 **In a motion duly made by Jill Motz, seconded by Ron Gibbs, and passed unanimously with**  
231 **a roll call vote, it was RESOLVED to ADOPT the regulations that closed public comment**  
232 **on December 3, 2018 (DOL File #2018200985).**

233  
234 OLE Dulebohn will mail the Adoption Order for these regulations for signature.

235  
236 Notification to Previously Denied Applicants

237  
238 Given the adoption of a new Fitness to Practice Review as drafted by Acting Director Sara  
239 Chambers, the board reviews how they would like to re-open files of applicants previously denied  
240 because of criminal activity. In the interest of due process, the board will allow applicants with  
241 criminal activity the opportunity to submit additional documentation and participate in an interview  
242 before a decision of licensure is made by the board.

243  
244 **In a motion duly made by Traci Gilmour, seconded by Ron Gibbs, and passed unanimously**  
245 **with a roll call vote, it was RESOLVED that the licensing examiner will CONTACT all**  
246 **applicants denied on the basis of criminal activity (background reports) to ask if the**  
247 **applicants would like their file re-opened to utilize the board’s new Fitness to Practice**  
248 **review process. Applicant’s that appealed and went through a ALJ process will not be**  
249 **notified for reconsideration.**

250  
251 FSMTB Executive Summit

252  
253 Chair Edwards-Smith asks the board to consider sending OLE Dulebohn to the FSMTB Executive  
254 Summit in April 2019. He believes that the Summit is a benefit to the board and it is 100% funded  
255 by FSMTB.

256  
257 **In a motion duly made by Traci Gilmour, seconded by Jill Motz, and passed unanimously**  
258 **with a roll call vote, it was RESOLVED to APPROVE travel for Dawn Dulebohn to attend**  
259 **the FSMTB Executive Summit in April 2019 for additional training.**

260  
261 FSMTB State Licensure Roster

262  
263 The Federation for State Massage Therapy Boards (FSMTB) has compiled a list of requirements for  
264 licensure by state. OLE Dulebohn has suggested these might be a valuable tool in evaluating  
265 applications by credentials to ensure that applicants are applying with a state license that meets or  
266 exceeds the standards set by Alaska in accordance with AS 08.61.040(9)(A).  
267 Upon review, inaccuracies were detected in the Summary of Initial Education Curriculum  
268 Requirements for State Massage Therapy Licensure. Under the “Approved School” heading for

269 Alaska, it was noted that “schools must be recognized by one of the following  
270 accrediting/credentialing agencies: AMTA, ABMP, NCBTMB, COMTA.” The only national  
271 agency the board currently recognizes to accredit schools is the Commission on Massage Therapy  
272 Accreditation (COMTA).

273  
274 **In a motion duly made by Jill Motz, seconded by Traci Gilmour, and passed unanimously, it**  
275 **was RESOLVED to AUTHORIZE OLE Dulebohn to contact FSMTB about the**  
276 **corrections to their information on Alaska’s school authorizing agencies.**

277  
278 Chair Edwards-Smith asks that OLE Dulebohn make FSMTB aware that we will be using their  
279 roster as a research tool. Board member Ron Gibbs has asked that OLE Dulebohn create a matrix  
280 using this information for the board to use as a tool in reviewing applications for licensure.

281  
282 Review/Approve Past Meeting Minutes

283  
284 The board reviewed minutes from the September 10-11, October 12, and November 15, 2018  
285 meetings. Mr. Edwards-Smith, Ms. Gilmour, and Ms. Motz had questions and/or comments on the  
286 minutes. Ms. Gilmour noted a typo in the October 12, 2018 minutes, line 261 to change the word  
287 “clause” to “class”.

288  
289 OLE Dulebohn also asks permission from the board to add the following disclaimer to the top of all  
290 written minutes: *Written meeting minutes reflects a brief overview of the business conducted by the board during*  
291 *their meeting. For a more detailed account, please request a copy of the meeting’s audio recording at:*  
292 <https://www.commerce.alaska.gov/web/cbpl/PublicRecordsRequests.aspx>. The reason being that  
293 everyone will be aware that meeting minutes are a summary written by the licensing examiner. The  
294 board agreed that would be helpful to persons reading the minutes.

295  
296 **In a motion duly made by Traci Gilmour, seconded by Jill Motz, and passed unanimously**  
297 **with a roll call vote, it was RESOLVED to APPROVE the meeting minutes from September**  
298 **10-12, October 12, and November 15, 2018 as amended.**

299  
300 Correspondence

301  
302 *Traci Gilmour out at 11:45 a.m.*  
303 *Back at 11:47 a.m.*

304  
305 The board reviewed correspondence sent in by Michael Hollstein. Mr. Hollstein has requested that  
306 the board allow him to apply by transition. The board discussed the request and ultimately decided  
307 to uphold regulation 12 AAC 79.120 that states that to apply by this method applications must have  
308 been received before July 1, 2017. They ask that OLE Dulebohn craft a response to Mr. Hollstein’s  
309 correspondence on behalf of the board.

310  
311 The board reviewed correspondence sent in by the Rolf Institute of Structural Integration. The  
312 board does not feel that this letter impacts their current standard for RISI graduates. Board member  
313 Jill Motz notes that the letter states “while this program does exceed the minimum requirements,  
314 students should not consider the program as a terminal certificate for massage alone, but rather as

315 preparation to be Structural Integrators. No reply was requested or assigned to be crafted by the  
316 board.

317  
318 OLE Dulebohn asks the board if the recently approved massage curriculum breakdown will be  
319 applied to every transcript from applicants applying by examination to determine education  
320 requirements have been met or just the transcripts coming from schools that do not have a defined  
321 massage program (such as RISI). The board answered that, yes, they will apply the curriculum  
322 breakdown to all transcripts going forward.

323  
324 Meeting Calendar

325  
326 No changes to the meeting calendar were made at this time.

327  
328 *Chair Edwards-Smith called a break for lunch at 11:53 a.m. until 1:15 p.m.*

329  
330 Agenda Item 10 Public Comment

331  
332 *Back from lunch at 1:12 p.m. Board members Edwards-Smith, Gilmour, Motz, McCoy, and Gibbs present.*

333  
334 While waiting to see if anyone wants to speak at public comment, Chair Edwards-Smith digressed  
335 into the next item on the agenda.

336  
337 Agenda Item 11 ACPE School Approvals

338  
339 In an e-mail on November 9, 2018 from Kierke Kussart from Alaska Commission on Postsecondary  
340 Education, Ms. Kussart informed the board that at the ACPE meeting on October 30, 2018, the  
341 Alaska Academy of Advanced Cosmetology has been reauthorized for 2 more years through  
342 October 31, 2020.

343  
344 Agenda Item 10 (continued) Public Comment

345  
346 Joining the meeting telephonically for Public Comment is:

347  
348 Lisa Hunt, Licensed Massage Therapist

349  
350 The board prepared to hear public comment. Having only one person, Board Chair David  
351 Edwards-Smith allotted Ms. Hunt 5 minutes for her comments. Ms. Hunt's statement was as  
352 follows:

353  
354 "Ok. I was listening today to the discussion on apprentice programs for massage therapists and if  
355 the regulations and things haven't been decided yet, I would like to encourage you guys to look at  
356 how Hawaii has done their school program because that's the program that I originally went through  
357 with licensing and I think that Hawaii has a lot of things in common with Alaska. We are both  
358 dealing with remote situations and challenges in those ways and then with their grandfathering they  
359 were looking at trying to protect the group of people that learned massage generationally and  
360 handed down. In the future, trying to support that structure as well as schools. When we look at  
361 ours, how we did it (when I was there, at least) they had Level One schooling that contained the  
362 basics that we want all therapists to know like anatomy and physiology. A basic idea on the different



363 categories and modalities are and basic information that we want all therapists to be competent in  
364 knowing. That would cover all things that we be in a state test. And then they have a Level 2  
365 training that could be either an apprenticeship program with a bit of continuing ed or more  
366 continuing ed. where you would go into your specific training if you wanted to specialize your  
367 career. Otherwise, the apprenticeship program that they had made it so that you would be with a  
368 therapist that would be a licensed massage therapist for a minimum of two years. Every therapist  
369 could have two apprentices. There was also a limit on the number of conglomerations that you  
370 could have, like, you could have a massage establishment with three massage therapists working and  
371 each one of those were allowed to have two massage apprentices. Anyway, the board can look into  
372 the details of that but it may be something we would want to entertain ‘cause it was a really nice way  
373 to incorporate new therapists into working area of massage therapy. I thought it was a really nice  
374 way to enter into it all and I think it might work well for Alaska. I forget what the other statement I  
375 wanted to make was...thank you for your time and efforts in all of these matters.”

376  
377 Board Chair Edwards-Smith thanked Lisa for her public comment. Seeing no one else signed up for  
378 public comment, the board moves on to other business. The board found themselves with 15  
379 minutes before the next scheduled agenda item. They decided to take this time to review the 6  
380 applications in their file.

381  
382 *Chair Edwards-Smith called a short break at 1:22 p.m.*  
383 *Back on the record at 1:31 p.m.*

384  
385 **Agenda Item 12** **Use of CBD Oil**

386  
387 *In addition to all board members, joining the meeting at 1:32 p.m. are Regulations Specialist Jun Maiquis, Rob*  
388 *Carter with the Department of Natural Resources (DNR), and Director Erika McConnell with the Alcohol and*  
389 *Marijuana Control Office (AMCO).*

390  
391 Chair David Edwards-Smith begins the discussion with some history on the board meetings and to  
392 state that the board’s current position is that the board doesn’t have the authority to regulate  
393 whether massage therapists could use cannabidiol (CBD) oils. He referenced the Standards of  
394 Practice and Code of Ethics that massage therapists must practice with consultation and permission  
395 of the client. There are currently massage therapists in Alaska that are promoting CBD Oil Massage  
396 and Mr. Edwards- Smith wants to know the legality of using the substance.

397  
398 Board member Traci Gilmour joins the discussion by stating that CBD is available commercially;  
399 nation-wide and online. Board member Rebecca McCoy states that she sells CBD oil in her shop  
400 for human and pet consumption since there is nothing that prohibits her from selling it in her retail  
401 store.

402  
403 Director of AMCO, Erika McConnell gives a brief history of marijuana and its products to the  
404 board:

- 405 • Prior to April 13, 2018, all products made from *Cannabis Sativa L* were defined as marijuana  
406 and were subject to the restrictions and requirements of AS 17.30.08 which governs  
407 commercial marijuana establishments and established the Marijuana Control Board.  
408 Everything that came from the plant was under the jurisdiction of the Marijuana Control  
409 Board (MCB) with minor exceptions.

- 410 • While AMCO has seized some unregulated CBD, the board has directed staff (because of  
411 limited resources) to focus enforcement efforts on licensees and unlicensed businesses that  
412 are selling conventional marijuana rather than focusing on health food stores and retail  
413 establishments selling CBD.
- 414 • On April 13, 2018, Senate Bill 6 became law. That bill changed the definition of marijuana  
415 to carve out industrial hemp. It defined industrial hemp as “all parts and varieties of the  
416 plant *Cannabis Sativa L* containing not more than 0.3% of Delta 9 THC  
417 (tetrahydrocannabinol).”
- 418 • SB 6 also created a regulatory program for industrial hemp that is under the purview of the  
419 Department of Natural Resources which would remove CBD from the jurisdiction of  
420 AMCO.
- 421 • On a final note, once CBD oil is created, it is impossible to know if it came from industrial  
422 hemp or marijuana. When extracts of industrial hemp are concentrated, you can end up with  
423 a product that has more THC than expected. The Department of Law has determined that  
424 industrial hemp may only be grown, processed, and marketed through the DNR program  
425 and that it is not to be imported from other places. It is known that CBD is available from a  
426 variety of markets and in various products.

427  
428 Rob Carter from Department of Natural Resources (who is currently drafting regulation for  
429 industrial hemp) shares some insights:

- 430 • SB 6 has outlined the identification and the process of industrial hemp and industrial hemp  
431 products. Industrial hemp and industrial hemp products are grown, manufactured, and  
432 offered for sale because prior to the 2014 Farm Bill (Agricultural Act of 2014), industrial  
433 hemp (including its plants and plant parts) were federally illegal. Technically even this bill  
434 did not legalize industrial hemp, production, or marketing of any of its plant parts unless an  
435 individual state has, on law, has an industrial hemp pilot program that is regulated by each  
436 individual state.
- 437 • SB 6 has provided the law and now the Department of Agriculture is building the regulatory  
438 framework for a pilot program that will allow for registrations for production, cultivation,  
439 and marketing of plant, plant parts, and extracts such as CBD.
- 440 • Currently, any CBD or industrial hemp plant or plant part that is within the state is  
441 technically illegal.
- 442 • Alaska has SB 6 but it has not been interpreted into regulation yet. Once regulations are  
443 finished, they will be out for public comment and anyone who wants to produce, cultivate,  
444 or market plants or plants parts (such as CBD oil products) are encouraged to comment. SB  
445 6 did not mandate a deadline for regulations but did have an immediate effective date to  
446 allow DNR to draft regulation.
- 447 • All industrial hemp products will need to meet or exceed Alaska’s testing standards before  
448 they will be allowed to be offered for sale or transport within the state.

449  
450 Chair Edwards-Smith clarifies by stating that once regulation is in place, any massage therapist  
451 looking to use CBD oil in a massage, would need to register with DNR to market the product and  
452 be in compliance with the law. DNR will have to provide a list of registrants to the Department of  
453 Public Safety (DPS) and AMCO each year. Mr. Carter goes on to offer to provide the list of  
454 registrants each year to the Board of Massage Therapists as a courtesy.

455

456 Board member Ron Gibbs brings up the question of: Does the board want to start regulating the  
457 topical lotions/oils that a therapist uses? He feels since there is another agency that would oversee  
458 CBD oils, there would be no need to over-regulate. Board member Jill Motz wonders if the board  
459 has a culpability or a responsibility to keep the public safe in this regard. If licensees are breaking  
460 the law in the course of providing massage therapy, where is the boards role?

461 The board requests that an FAQ be drafted on the subject on CBD with a link to Alaska Plant  
462 Materials Center and the Department of Law Consumer Advisory on Unregulated CBD Oil. Board  
463 member Jill Motz requests that in addition to the FAQ, a mass e-mail be sent out to licensees on this  
464 subject. The board discusses that, while they do not normally send out e-mail notifications because  
465 they trust that licensees will take on the personal responsibility to obey the law and keep themselves  
466 educated, since they have already decided to send out a mass e-mail on continuing education date  
467 ranges, the CBD information can be included in that e-mail.

468  
469 The board thanks both Ms. McConnell and Mr. Carter for joining the meeting and providing such  
470 important information.

471

472 *Rob Carter and Erika McConnell left the meeting at 1:59 p.m.*

473

474 **Agenda Item 14 (continued)** **Administrative Business**

475

476 *Chair Edwards-Smith calls a short recess at 2:00 p.m.*

477 *Back on the record at 2:04 p.m.*

478

479 **Review Applications**

480

481 The board takes time to review the 6 applications put before them today.

482

483 **In a motion duly made by Traci Gilmour, seconded by Jill Motz, it was RESOLVED to**  
484 **ENTER into Executive Session in accordance with AS 44.62.310(c), and Alaska**  
485 **Constitutional Right to Privacy Provisions, for the purpose of discussing “matters which by**  
486 **law, municipal charter, or ordinance are required to be confidential”. OLE Dulebohn to**  
487 **remain during Executive Session.**

488

489 *Off the record at 2:05p.m.*

490 *Back on record from Executive Session at 2:21 p.m.*

491

492 **Agenda Item 13** **Review Drafted Regulations**

493

494 *Meeting is joined by Regulations Specialist Sber Zinn at 2:22 p.m.*

495

496 **Code of Conduct**

497

498 The board discusses the update to Code of Ethics #8 in regard to sexual advertising and it's  
499 regulation. Ms. Zinn states that she consulted Assistant Attorney General Harriet Milks when it  
500 came to regulating advertising of massage establishments and was informed that board has the  
501 authority to regulate advertising. Ms. Zinn goes on to say that if the board has the authority to  
502 regulate advertising for an establishment then they also have the authority to regulation advertising  
503 for individual massage therapists. Board Member Ron Gibbs interjects that there could be a

504 loophole for advertising that is on social media or un-paid. Ms. Zinn replies that that would be a  
505 question for the Attorney General. Board member Jill Motz answers that recently she had reported  
506 someone to Investigations and was told by Investigations that there is a difference between personal  
507 social medial and business social media accounts when it comes to content.

508  
509 The updated Code of Conduct #8 would read: “I will not, in any circumstance, initiate or engage in  
510 sexual conduct, activities, advertising, or sexualizing behavior involving a client, even if the client  
511 attempts to sexualize the relationship.” The board has no amendment to its drafted language.

512  
513 In-Class Supervised

514  
515 Ms. Zinn leads the discussion on a regulation further defining “in-class supervised” to read: “(c) In  
516 this section, ‘in-class supervised instruction’ means education received either in a physical classroom  
517 or through online distance education. Online courses must meet the requirements of (b)(2)(A) or  
518 (B) of this section”.

519  
520 Ms. Zinn goes on to talk the financials of posting these for public comment (\$500.00 for the  
521 Anchorage Daily News posting and 55 cents an envelope to mail notices to licensees and interested  
522 parties) and the board decides that to be fiscally responsible, they will wait and publish these in  
523 conjunction with the Massage Establishment Licensing (MEL) regulations that it plans to complete  
524 the following day in order to get ahead of legislative session.

525  
526 **In a motion duly made by Jill Motz, seconded by Ron Gibbs, and passed unanimously with**  
527 **a roll call vote, it was RESOLVED to APPROVE regulation changes for “Code of Conduct”**  
528 **and “In-Class Supervised” to go out for public comment.**

529  
530 The board follows up with Ms. Zinn on the Department of Law questions from the November 15,  
531 2018 meeting:

- 532 • If the board decides to license establishments owned only by non-therapists, they may not  
533 inspect establishments owned by licensed massage therapists (exempt establishments).
- 534 • The board can require LMT’s to have a valid identification on them at all times. Valid ID  
535 would be a state or federally issued ID with picture, birthdate, and expiration date. This is to  
536 ensure that the licenses displayed match the massage therapists currently working.
- 537 • The board can create regulations for massage establishment licensing that states that the  
538 primary place of business cannot serve alcohol.
- 539 • The board can require liability insurance for a massage establishment but Ms. Zinn would  
540 like the board to double check that with Ms. Milks at tomorrow’s meeting.
- 541 • The board cannot require therapists working in massage establishments be United States  
542 citizens. They can require that therapists are legally allowed to work in the U.S.

543  
544 *Sber Zinn left the meeting at 2:43 p.m.*

545  
546 **Agenda Item 14 (continued)** **Administrative Business**

547  
548 Chair Dave Edwards-Smith directed the board to go back to reviewing application.

549  
550 Review Applications (continued)

551  
552 In a motion duly made by Traci Gilmour, seconded by Jill Motz, it was **RESOLVED** to  
553 **ENTER** into Executive Session in accordance with AS 44.62.310(c), and Alaska  
554 **Constitutional Right to Privacy Provisions**, for the purpose of discussing “matters which by  
555 law, municipal charter, or ordinance are required to be confidential”. OLE Dulebohn to  
556 remain during Executive Session.

557  
558 *Off the record at 2:44 p.m.*  
559 *Back on record from Executive Session at 3:07 p.m.*

560  
561 *Board member Rebecca McCoy left the meeting at 3:00 p.m.*

562  
563 In a motion made by Jill Motz, seconded by Ron Gibbs, and passed unanimously with a roll  
564 call vote noting the absence of Rebecca McCoy, it was **RESOLVED** to **APPROVE** the  
565 application for a massage therapist license for Christina Barela.

566  
567 In a motion made by Jill Motz, seconded by Ron Gibbs, and passed unanimously with a roll  
568 call vote noting the absence of Rebecca McCoy, it was **RESOLVED** to **APPROVE** the  
569 application for a massage therapist license for Kukapuouhaa Gunderson **PENDING** a  
570 passing score on the MBLEx.

571  
572 In a motion made by Traci Gilmour, seconded by Ron Gibbs, and passed unanimously with  
573 a roll call vote noting the absence of Rebecca McCoy, it was **RESOLVED** to **REFER** the file  
574 for **K.K.** back to Investigations for additional information and further review.

575  
576 In a motion made by Jill Motz, seconded by Ron Gibbs, and passed unanimously with a roll  
577 call vote noting the absence of Rebecca McCoy, it was **RESOLVED** to **APPROVE** the  
578 application for a massage therapist license for Chad Morgan.

579  
580 In a motion made by Jill Motz, seconded by Ron Gibbs, and passed unanimously with a roll  
581 call vote noting the absence of Rebecca McCoy, it was **RESOLVED** to **APPROVE** the  
582 application for a massage therapist license for Jeanette Santana.

583  
584 In a motion made by Jill Motz, seconded by Ron Gibbs, and passed unanimously with a roll  
585 call vote noting the absence of Rebecca McCoy, it was **RESOLVED** to **APPROVE** the  
586 application for a massage therapist license for Darla Velador.

587  
588 Document Signing

589  
590 Approved meeting minutes for June, September, October, and November 2018 meetings, a wall  
591 certificate for Jayme Powers, and Order of Adoption for Regulations will be sent to Chair Dave  
592 Edwards-Smith for his signature.

593  
594 **Agenda Item 15** **Adjourn or Recess**

595  
596 *Chair Edwards-Smith has recessed for the day and will reconvene the meeting at 10:00 a.m. on December 7, 2018.*  
597 *Off the record at 3:39p.m.*

598

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Friday, December 7, 2018

Agenda Item 16 Call to Order/Roll Call

*On the record at 10:04 a.m.*

Board Members present, constituting a quorum:

- David Edwards-Smith, Board Chair-Licensed Massage Therapist
- Traci Gilmour, Licensed Massage Therapist
- Ron Gibbs, Licenses Massage Therapist
- Jill Motz, Licensed Massage Therapist
- Rebecca McCoy, Public Member

Division Staff present:

- Dawn Dulebohn, Occupational Licensing Examiner
- Greg Francois, Chief Investigator
- Sher Zinn, Regulations Specialist II
- Harriet Dinegar, Department of Law
- Sara Chambers, Acting Director
- Dawn Hannasch, Records and Licensing Supervisor

Observing Telephonically:

- Michelle McMullen

Agenda Item 17 Review Agenda

Agenda was reviewed by the board.

**In a motion duly made by Traci Gilmour, seconded by Jill Motz, and passed unanimously with a roll call vote, it was RESOLVED to APPROVE the agenda for December 7, 2018.**

Agenda Item 18 Disciplinary Matrix Revision

Chair Edwards-Smith led the board to discuss what was once the “Barrier Crimes Matrix”. He directs the board to change it from “barrier crime” to something that would warrant a mandatory board review. The board determined that a prostitution conviction is a crime that would automatically trigger a Fitness to Practice review.

To clarify, Sara Chambers asked if all items that are listed on the current “Barrier Crimes Matrix” that are not in would be stripped out of the matrix and was given an affirmative by the board. Board member Traci Gilmour suggests starting a matrix from scratch. The board tasked OLE Dulebohn to create a new matrix that will be presented at the next meeting for review and adoption. Ms. Chambers interjects that there is nothing statutorily that allows the board to blanketly deny a license because of a criminal conviction. The board will always have to review the applicants criminal background and apply the new Fitness to Practice process to determine if an individual can



695 The board understands that the intimate and vulnerable nature of clients require a licensed massage  
696 therapist to be competent and safe to practice. The board is doing everything they can to prevent a  
697 case of a client to falling victim to an actor who has not been thoroughly vetted for crimes of moral  
698 turpitude. Waiting for a clear background check is in compliance with AS 08.61.030(9) and (5) gives  
699 the board the tool to complete that.” He goes on to state that (5) gives the power to fingerprint and  
700 goes hand-in-hand with (9) that requires the board to review cases of criminal convictions. Mr.  
701 Edwards-Smith muses that the board cannot determine if a person has committed a crime of moral  
702 turpitude and has been vetted appropriately if (5) and (9) do not go together. In the board’s  
703 interaction with Law on this subject, the board never felt as though it was going against directives.  
704

705 Ms. Milks responds to the Chair by stating that AS 08.61.030(5)(9) are somewhat inconsistent. (5)  
706 states that applicants just need to be fingerprinted and pay the applicable fees and (9) states that the  
707 board shall issue a license to practice massage therapy to someone who has not been convicted of  
708 certain crimes. She goes on to state that the board is correct in its interpretation because it is hard to  
709 know who has been convicted unless the board waits for the background report. Ms. Milks  
710 continues by stating that the board may have a compelling reason to lean more heavily on (9) than  
711 (5). That decision would be a policy call by the board, who has the authority to interpret the statutes  
712 in a way that places more emphasis on (9) than (5). She goes on to state that if the board says their  
713 #1 goal is to protect the public and the board cannot do that unless the persons convicted of crimes  
714 of moral turpitude have been weeded out as a matter of public safety, the board can withhold active  
715 licensure until the background report has been received. Ms. Milks suggests the board revamp 12  
716 AAC 79.130(c) to reflect their valid argument concerning public safety. She goes on to state that the  
717 applicant base be made aware that the board waiting for the background reports may add additional  
718 time to their application processing but it will be something they need to prepare for when applying  
719 for a massage therapist license. To expedite the process, some boards have delegated authority to  
720 their licensing examiner and that is something the board can consider. If the board chooses to  
721 delegate authority, would need to be clearly formulated into regulations.  
722

723 OLE Dulebohn states, for the record, that in the initial licensing period the Department of Public  
724 Safety was returning background checks in an excess of 3 months but, according to her records, in  
725 2018 the Department of Public Safety has been returning background reports within an average of  
726 1-2 months. She goes on to say that when people ask questions about the application process, she  
727 always informs applicants of the background report processing time and encourages them to send  
728 their fingerprint card and fingerprint processing fees in ahead of their application so background  
729 report processing can begin and will not hold up board review. The board requests OLE Dulebohn  
730 to craft and post a FAQ on fingerprint processing and the reasoning behind sending the cards in  
731 early.  
732

733 Ms. Motz joins the conversation by stating that though it may be frustrating to applicants, most  
734 professions that require background reports do not work with vulnerable populations that may find  
735 themselves in various stages of undress. Being that the board considers public safety to be of the  
736 utmost importance, she does not think it unreasonable that therapists performing services be  
737 thoroughly vetted before being released on the public. Ms. Chambers responds by stating that she  
738 wanted an open dialogue with the board, on the record, to explain and understand why they are  
739 operating differently than any other licensing program that requires fingerprinting. In her research,  
740 Ms. Chambers found no board vote or action that clearly laid out the board’s reasoning for not  
741 reviewing applications until a background report has been received by Division. Without having the  
742 board’s position clearly laid out, the Division cannot properly respond to concerns from applicants,



743 governor's office, ombudsman's office, or legislators. Ms. Chambers goes on to state that, with the  
744 board making this distinction on the record, Division can now respond to inquiring authoritative  
745 bodies and applicants that the board has the right to make these decisions, the process was logically  
746 considered, they have the authority to make such decisions, and have instructed staff to process  
747 applications in this way.

748  
749 Board Chair Edwards-Smith requests council from Ms. Chambers on language for a position  
750 statement about fingerprint processing and background checks in regard to application review by the  
751 board. With permission from Ms. Chambers, Ms. Milks answers the Chair's question by advising  
752 the board to make a statement on their website, inform applicants in whatever means possible, but  
753 whenever the board does something that will have an impact on the general public and licensees in  
754 general, ultimately the decision should be made into a regulation. She goes on to say that it is  
755 particularly important with the unclear statutes so the public knows how the board is harmonizing  
756 the two sections. Ms. Milks recommends that the board look into amending 12 AAC 79.130(c) to  
757 make their position clear that the application process will process, however, the license will not be  
758 issued until the criminal background check is received. Going through this process will assure  
759 applicant's that their application is not being "stalled" pending receipt of background reports.

760  
761 Ms. Motz asks questions about DPS's timeframe of processing background reports from fingerprint  
762 cards. OLE Dulebohn informs her that there is no timeframe and it would depend on DPS's  
763 workload on any given day. Ms. Motz suggests that schools send in their student's fingerprint cards  
764 up to 3 months ahead of graduation to allow for background report processing times. OLE  
765 Dulebohn replies that, although an FAQ may be valuable to students too, more often the not, the  
766 people upset by the time that background reports take are persons applying by credentials.  
767 Applicants applying by Credentials often move to Alaska before applying for licensure and are  
768 inundated with the stress of moving to a new state, not having any income, and not understanding  
769 the hold-up that background check processing presents.

770  
771 Public board member Rebecca McCoy asks why the board doesn't have a time frame for application  
772 processing stated in statute or regulation and why there is no temporary licensing? OLE Dulebohn  
773 responds that there is no timeframe for application processing because there are many factors  
774 outside of the control of the applicants, staff, and board. Exam scores, transcripts, and license  
775 verifications must come directly from the school or agency and background reports must come from  
776 the Department of Public Safety. OLE Dulebohn goes on to state that the reason there are no  
777 temporary licenses for massage therapists is because that would not line up with the board's primary  
778 concern (which is to protect public safety).

779  
780 Board member Ron Gibbs reminds everyone that the board has had incompetent licensing  
781 examiners in the past that the board trusted to follow statutes and regulation by approving  
782 applications pending a clear background check. That examiner instead issued licensed without  
783 background reports being received by Division. Though Mr. Gibbs acknowledges that the board  
784 has a different caliber of examiner now, they will never know who the state will assign their board as  
785 a license examiner in the future. Chair Edwards-Smith thanks Mr. Gibbs for his insight and recalls  
786 that licenses being issued by previous examiners was actually a ding on the board's last audit/sunset  
787 review. The Chair goes on to interpret that if the auditor construed the act of issuing a license  
788 without a background report as a negative, that reinforces the board's position that background  
789 reports should always be received before licenses are issued to an applicant.

790

791 The board discusses the language it would like to present for a position statement on how  
792 background reports impact the application process. To allow crafting of the position statement  
793 language, the Board Chair calls for a short break.

794

795 *Off the record at 11:12 a.m.*

796 *Back on the record at 11:19 a.m.*

797

798 **In a motion made by Traci Gilmour, seconded by Ron Gibbs, and passed unanimously with**  
799 **a roll call vote, a position statement was ADOPTED that, in the interest of public safety, the**  
800 **Board of Massage Therapists will consider an application file incomplete and not**  
801 **reviewable by the board until a state and national criminal history background report has**  
802 **been received by Division.**

803

804 The board would like to clarify that the administrative processing of applications will continue up  
805 until the background report has been received by Division and that incomplete applications impact  
806 the date on which the board will review completed applications. Staff will still process incoming  
807 documents and send status updates prior to background reports being received.

808

809 Board Chair Edwards-Smith asks for council from AAG Harriet Milks on language to the suggested  
810 amendment to regulation 12 AAC 79.130(c). Ms. Milks asks the board to proceed as scheduled  
811 while she considers the request.

812

813 **Agenda Item 5 (continued)**                      **Review Previous Task Lists**

814

815 Traci Gilmour takes the break in schedule as an opportunity to address the board on an incomplete  
816 item on the task list. Ms. Gilmour was supposed to contact the fire marshal concerning inspections  
817 and thought she did not contact them, she did research some of the codes and consulted  
818 Regulations Specialist Sher Zinn on the subject. Her research led to a blanket statement that the  
819 board could use stating that according to AS 08.10.170 that all establishments and therapists must  
820 abide by fire safety codes in Alaska. That statement would also need to include all local fire and  
821 safety codes as well.

822

823 **Agenda Item 19 (continued)**                      **Holding Applications for Background Reports**

824

825 Ms. Milks signals the board that she has prepared possible language regarding an amendment of 12  
826 AAC 79.130(c). Ms. Milks reiterates that this language is subject to the full and complete public  
827 process. She feels the language is reasonable and supported by the board's expression of its position  
828 regarding application processing and background reports. The board hears the suggestion and find  
829 that the language is clear and concise and moves forward with a motion.

830

831 Chair Edwards-Smith takes advice from Sara Chambers on moving the lunch break up from 1:00  
832 p.m. Shortly thereafter the Chair had technical difficulties disconnecting him from the meeting so  
833 the board decided to break for lunch earlier than originally anticipated.

834

835 *The board breaks for lunch. Off the record at 11:37 a.m.*

836 *Back on the record at 12:47 p.m.*

837

838 **Agenda Item 19 (continued)**                      **Holding Applications for Background Reports**

839  
840 *In attendance are Sara Chambers, Dawn Hannasch, Harriet Milks, Greg Francois, Traci Gilmour, Rebecca*  
841 *McCoy, Ron Gibbs, Jill Motz, and David Edwards-Smith.*

842  
843 **In a motion made by Traci Gilmour, seconded by Jill Motz, and passed unanimously with a**  
844 **roll call vote, it was RESOLVED to AMEND 12 AAC 79.130(c) to read: “The request under**  
845 **(b) of this section for a criminal justice information report does not delay administrative**  
846 **processing of the applicant’s license application” and INSERT “an application will not be**  
847 **considered complete until the criminal justice information required in (a) is received by the**  
848 **board.”**

849  
850 Chair Edwards-Smith will complete the Regulation Changes Questionnaire that needs to accompany  
851 this regulation project and submit it after the meeting concludes.

852  
853 **Agenda Item 20** **Massage Establishment Licensing (M.E.L.)**

854  
855 *Michelle McMullen joins the meeting telephonically at 12:54 p.m. to observe.*

856  
857 Ms. Chambers reveals to the board that with the departure of Director Janey McCullough and her  
858 being made Acting Director, she has made herself more familiar with current legislation. In  
859 preparation for the meeting earlier this week, Ms. Chambers discovered something concerning in the  
860 HB 110 legislation passed in 2018 so she sought a consultation with Harriet Milks and others in the  
861 Department of Law. Ms. Chambers regrets to inform the board that the statute that was passed  
862 does not give the board the authority to license massage establishments.

863  
864 The statute passed gives the board the authority to regulate massage establishments but there is  
865 nothing in the statute that specifically said the board could set a barrier or threshold to entry (which  
866 is licensure). Ms. Chambers conducted research, read through all the minutes from legislative  
867 committees and applicable documentation, and found there was a very clear assumption and  
868 expectation on the part of the board, division director, and legislators participating on those  
869 committees. However, the actual wording of the statute does not give the board the authority to  
870 license massage establishments.

871  
872 Ms. Chambers proposes the following options moving forward:  
873 1. Since the board has done extensive work on the licensing regulations and the intent of the  
874 legislature was clear, the board should proceed in the planned discussion for today and work  
875 on moving the process forward. The board still has the ability and expectation to regulate  
876 massage establishments on July 1, 2019. The board can just pull back on the licensing  
877 aspects moving forward.  
878 2. The board can work quickly to secure a legislative sponsor before the 2019 legislative session  
879 that would propose legislation on the board’s behalf. The sponsor would ask to amend the  
880 2018 legislation to read “licensure and regulation of massage establishments” and allow it to  
881 move forward in the legislature. There would be no need for a fiscal note since there would  
882 be no change from last year from what was expected and adopted. If it all worked out, the  
883 original implementation date of July 1, 2019 could stand.

884  
885 Ms. Chambers concluded her monologue by apologizing to the board and offering her and Ms.  
886 Milks services in helping the board move forward. Ms. Milks adds that it may look to some that the

887 new statute giving the board the authority to regulate massage establishments is the same as licensing  
888 but it really is not because, if you are not issuing a license, there is no license for the board to revoke  
889 as a consequence of actions if they misbehave. She believes that the board should move forward  
890 with amending the statute for the board to gain licensing rights for massage establishments.

891  
892 Chair Edwards-Smith begins the conversation by asking how it was possible to regulate  
893 establishments without licensing. He muses by stating that the board would need to define what a  
894 massage establishment is and disciplinary sanctions associated with that would need to be a fine  
895 since the board could not take away their right to be in business without them having a license. Ms.  
896 Milks agrees with the Chair's summation of the situation. The board can issue an approval or  
897 endorsement and discipline through fines but without the statutory authority to license, there is no  
898 license to revoke as a disciplinary action. The Chair goes on to ask of Ms. Milks whether the board  
899 will still have the authority to inspect properties for compliance with regulations. Ms. Chambers  
900 replies that having the authority to regulate gives the board ability to state what can and cannot  
901 happen in a massage establishment. She goes on that it would seem reasonable that the board be  
902 able to investigate establishments to ensure the standards outlined in regulation are being met.

903  
904 Ms. Chambers explains to the board that authority to license cannot exist without regulation but  
905 regulations can exist without the power to license because licensing is an entry to practice. As it  
906 stands, anyone can have a massage establishment, but in doing so must abide by the board's  
907 statutory ability to set regulations during the course of providing massage therapy services. She  
908 expands by saying that the current statute doesn't give the board a license to take away but it allows  
909 the board to set standards for that faction of the industry. The Chair surmised that having only  
910 regulatory power eliminates the application process but does not eliminate the board from  
911 addressing a situation at a massage establishment, should it arise. Ms. Chambers goes on to say that  
912 by the board defining a massage establishment, it will clear the way for enforcement of regulation in  
913 the same way that the board defined who and who was not a massage therapist.

914  
915 Ms. Chambers continues the conversation by stating that the board could require registration of  
916 massage establishments even though there would be no criteria for entry. A possible trigger to that  
917 registration is obtaining a business license for a massage establishment. Another program that has  
918 registration in lieu of licensing is the Board of Chiropractic Examiners who has the ability require  
919 registration of assistants and interns.

920  
921 The Chair and Ms. Chambers discuss whether the board wants to enact dual requirements for  
922 establishments concerning massage establishment registration. The Chair reflects that the reason for  
923 exemption (when there was going to be establishment licensing) was to spare qualified health care  
924 professionals the application process and cost but if there is no longer an application process and  
925 fee, exemptions are a moot point.

926  
927 *Sher Zinn joined the meeting at 1:06 p.m.*

928  
929 The board expresses their disappointment and frustration at the news that they do not have the  
930 authority to license massage establishments. They have worked very hard for so long to get  
931 legislation passed to license establishments, were told they have been granted the correct legislation,  
932 and have been working on regulations for establishment licensing for months only to be told they  
933 have wasted their considerable amounts of their personal time and money as well as the board's  
934 time.

935  
936 Mr. Gibbs informs the board that he fails to see the similarities of what the chiropractors have done  
937 with registering assistants and what the massage board is trying to do with establishments. Mr.  
938 Gibbs goes on to say that the board's goal was to shut down illegal business and hinder human  
939 trafficking. Mr. Gibbs states that those goals are not the same as a profession wanting to have  
940 employees that work under the guidance of their licensees. He expresses that if the board is not  
941 going to be able to license establishments as they set out to do then the board should seek out  
942 advice on how to just not regulate establishments at all. Ms. Chambers replies to Mr. Gibbs with  
943 sympathy and understanding for his feelings and concerns. She does not know why this error was  
944 not caught by the legislators or the legislative legal team but she reiterates that what the Division can  
945 do now is help the board figure out how it would like to move forward with the legal authority it has  
946 been granted or getting the statutory authority to license if that is something the board wants to  
947 pursue.

948  
949 Ms. Milks, through Sara Chambers, reminds the board that with regulatory authority, the board can  
950 fine, send cease and desist letters, and inspect properties which are sufficient tools too achieve their  
951 goals of assisting law enforcement in hindering human trafficking. Ms. Chambers reminds the board  
952 that they are not a law enforcement body and will never be able to shut down human trafficking in  
953 Alaska. What the board does have is the ability to alert law enforcement of things untoward in the  
954 industry by being a screening tool. The Chair replies that the board is aware of the board's role with  
955 law enforcement but felt like licensing to allow inspections would give authorities access to enforce  
956 human trafficking violations that otherwise may not be discovered. Chair Edwards-Smith goes on  
957 to state that the disclosure that the board does not have the authority to license establishments may  
958 be a good thing because it would greatly decrease the costs to the board with the removal of the  
959 application process. He feels that as long as the board has the authority to regulate and inspect  
960 establishments, the tools will still be in place for the board to have a positive impact on public safety  
961 and human trafficking.

962  
963 Ms. Motz joins the conversation to express her differing opinion. She feels like the board set out to  
964 both license and regulate massage establishments. Ms. Motz worries that regulating establishments  
965 without the bees generated by applications for licensure will be a financial burden to massage  
966 therapists. She wants to know what the board is obligated to have done by July 1, 2019 and she  
967 wants to know where the board went wrong in their lobbying efforts. Ms. Motz laments that the  
968 board members spent a lot of their personal time away from their families and businesses (which  
969 equates to personal income lost) while striving to get this legislation passed with the assumption that  
970 Division and/or the legal team were supporting the board in their mission. She echoes Mr. Gibbs  
971 sentiment that the board give up on anything relating to establishment licensing and asks if that is a  
972 viable option for the board at this point.

973  
974 Chair Edwards-Smith acknowledges the boards concerns but states that he would like to begin to  
975 move forward to complete some of the tasks at hand concerning regulation of massage  
976 establishments. He would like to have the board consider what the definition of massage  
977 establishment is and the requirements the board needs to establish in regulation. The Chair states  
978 that the board should look for the tools it will use in the event of a complaint and/or an inspection.  
979 Finally, he wants the board to think of what the disciplinary matrix will be for establishments.

980  
981 Mr. Gibbs digresses from the Board Chair's direction wanting an answer for Ms. Motz questions  
982 about what the revenue source will be for regulating massage establishments. Mr. Gibbs references

983 what the board’s investigative costs were for massage therapists and worries about what the  
984 immense cost will be to the board once investigations start doing inspections of establishments. He  
985 renews his interest in rescinding the amendment to House Bill 110 that relates to massage  
986 establishment. Ms. Motz joins the conversation with the concern of the new governor’s possible  
987 take on a bill that regulates Alaska businesses. She believes the board should have a better  
988 understanding of the new administration before they entertain the possibility of going back to the  
989 legislature and sacrificing more of their personal time and money. Ms. Motz want to know what the  
990 board’s minimum obligations are concerning the bill at this time.

991  
992 Ms. Chambers replies to the board’s questions and concerns starting with the law that says that the  
993 board shall adopt regulations governing massage therapy establishments. She informs the board that  
994 the next legislative audit will look for evidence that the board adopted regulations pertaining to  
995 massage therapy establishments. She goes on to say that there is nothing that says the board has do  
996 anything on July 1, 2019. Ms. Chambers continues that previously it was planned that the board  
997 would have a pathway to licensure for establishments by July 1<sup>st</sup>. Without authority and that  
998 expectation not being stated in statute, the board does not have to have anything ready on July 1<sup>st</sup>  
999 but they have the ability. Ms. Chambers goes on to state that this means that nothing has to change  
1000 concerning massage establishments and that things will only change by the board adopting new  
1001 regulations governing those establishments.

1002  
1003 Ms. Chambers next guides the board to fee setting abilities under administrative purview under AS  
1004 08.61.090 says that “the department shall set fees under our fee setting statute for applications,  
1005 license issuance, license renewal, and investigation under this chapter.” She goes on to explain that  
1006 investigative fees can be set under statute and she would like to have a conversation in the future  
1007 with legal counsel about setting those fees for establishments so the board may use fees as a revenue  
1008 source to cover legitimate expenses.

1009  
1010 Traci Gilmour asks the Chair for the opportunity to express her thoughts on this situation for the  
1011 record. She confirms with Ms. Chambers that the only word missing out of HB 110 is “license.”  
1012 Ms. Gilmour expresses frustration at the amount of personal time that she took to lobby the  
1013 legislature to get HB 110 passed. She expresses severe disappointment in everyone who counseled  
1014 the board in this matter. Ms. Gilmour regrets that the board will not be able to complete their  
1015 commitment to the City of Anchorage and the Federal Bureau of Investigations in licensing massage  
1016 establishments. Ms. Chambers responds to Ms. Gilmour by reiterating that the board has the  
1017 authority to regulate establishments which will allow them to identify establishments and set  
1018 standards for what is happening within them. Ms. Chambers feels that the board lacking licensure  
1019 for establishments does not do anything for criminal law enforcement. Ms. Chambers recalls a  
1020 meeting she had with the Municipality of Anchorage (prior to the formation of the massage board)  
1021 in which they admitted not knowing which establishments are out there. She continues by saying if  
1022 the board can provide a list to the interested parties through registration of establishments, they  
1023 would be amassing a body of information that, through the Chief Investigator and his team, can  
1024 work with municipal, state, and federal law enforcement. Mr. Edwards-Smith interjects that if the  
1025 board can still complete the same goals without the licensing process, then he feels that is what the  
1026 board needs to move forward with achieving. Ms. Chambers agrees that though they may look  
1027 different, completing these goals will give a sense of peace to the board. Ms. Chambers reassures  
1028 the board that she and Ms. Milks will provide adequate assistance to complete those goals effectively  
1029 and efficiently. Ms. Chambers mentions that the medical board also has persons that are not

1030 federally required to be licensed but they have been authorized to keep a registry in order to know  
1031 who is practicing medicine legally in the state.

1032  
1033 Ms. Milks weighs in on the conversation to say that she agrees with everything that Ms. Chambers  
1034 said to the board and reiterates that the board still has a statute that says the board shall regulate  
1035 massage therapy establishments. The board's job now is to put on the record, discuss, and  
1036 accumulate all the regulations they would be normally discussing, except for licensure.

1037  
1038 *Dawn Hannasch left the meeting at 1:51 p.m.*

1039  
1040 OLE Dulebohn asked the board, for the record, if they were willing to pursue sponsorship to  
1041 amend the current bill to add the word "license". The board responded that it was not willing to  
1042 entertain such notion at this time. Ms. Motz asks the board to entertain the thought of stepping  
1043 back from the establishment regulations to allow Division to discuss topics brought up during this  
1044 meeting and allow the board to regroup.

1045  
1046 OLE Dulebohn informs the board that if they will not be introducing legislation for 2019, their  
1047 request to have their February 28- March 1, 2019 meeting in Juneau will most likely not be approved  
1048 due to its considerable cost over meeting in Anchorage. Ms. Motz, Ms. Gilmour, and Mr. Gibbs do  
1049 not necessarily oppose the introduction of legislation for 2019, they just do not want to discuss the  
1050 topic now.

1051  
1052 Ms. Gilmour states that she is willing to work on massage establishment definition and asks Ms.  
1053 Chambers to advise the board as to what is absolutely necessary for the board to complete in the  
1054 next few months. Ms. Gilmour continues that there is a responsibility for the board to meet in  
1055 Juneau if for no other reason to update their legislators on what is happening with the board and  
1056 build relationships for future endeavors.

1057 Public board member Rebecca McCoy comes forward to ask the board how they plan to compel  
1058 massage establishments to voluntarily register. Ms. Chambers respond that there is a law in place  
1059 that lets establishments know they will be regulated. People applying for or renewing a business  
1060 license will have to first register with professional licensing and there will be a wide net cast with  
1061 applicable professions to ensure everyone is informed of the current registration requirements. The  
1062 board continues to discuss possibilities for grace periods, what would be involved in searching for  
1063 massage establishments, human trafficking tactics, and ways to encourage establishment owners to  
1064 come forward to register. Ms. Gilmour asks Ms. Chambers and Ms. Milks if a board member could  
1065 walk into an establishment and compel them to comply with statute and the answer is a resounding  
1066 "no".

1067 The board recognizes that they put other regulations projects on hold in anticipation of sending out  
1068 all projects together. Since there will be no draft regulations for massage establishment licensing  
1069 sent to the Regulations Specialist today, the board decides to send the already approved draft  
1070 regulations out for public comment and/or formatting of language.

1071

1072 **In a motion made by Traci Gilmour, seconded by Jill Motz, and passed unanimously with a**  
1073 **roll call vote, it was RESOLVED to send In-Class Supervised & Code of Conduct draft**  
1074 **regulations out for public comment.**  
1075

1076 Ms. Chambers suggests that the board create a framework that she and Ms. Milks could review for  
1077 massage establishment regulations. Ms. Milks advises the board to use broad categories such as  
1078 hours, physical establishment requirements, inspections, etc. and she reminds them that the specifics  
1079 will be worked out later when they go to Regulations Specialist Zinn. When Ms. Milks and Ms.  
1080 Chambers receive the board's list, they will go through and see how they work with regulations,  
1081 what recourse the board has for person's not following regulation, investigative fees, and whether a  
1082 fee can be assessed for registration.

1083  
1084 *Missus Chambers, Milks, and Zinn left the meeting at 1:59 p.m.*  
1085

1086 *The Chair called a short break. Off the record at 2:00 p.m.*  
1087 *Back on the record at 2:05 p.m.*  
1088

1089 *Greg Francois left the meeting at 2:06 p.m.*  
1090

1091 The board discusses items to include in regulations for massage establishments. Ms. Motz revisits  
1092 whether therapists will be exempt from establishment regulation to which the Chair responded that  
1093 no longer matters as the purpose of exemption was to exclude therapists from the licensing  
1094 application process and cost, which no longer exists. Ms. Motz and Gilmour disagree and insist  
1095 that the wish list requires exemptions. Ms. Gilmour states that she doesn't want to insult businesses  
1096 owned by a licensed massage therapist or on the exemption list to make sure they are not illicit. Ms.  
1097 McCoy joins the conversation by asking if all the board members are sole proprietors of their  
1098 massage business to which they all agree they are (Ms. Motz's business is a LLC). Ms. McCoy  
1099 continues by asking the board if they feel that they are biased because they have a special interest being  
1100 that they are all massage therapists that own their own businesses. Ms. Gilmour explains that the  
1101 board does not want to include LMT owned businesses in establishment regulation because they are  
1102 already bound by the statutes and regulations of the Board of Massage Therapists. Ms. McCoy goes  
1103 on to state that, as a licensed esthetician and a shop owner, if she chooses to rent space to someone,  
1104 that person is required to have their own business license. Ms. McCoy feels like if the Board of  
1105 Massage Therapists require owners of a location to get a registration to allow a licensed massage  
1106 therapist to work under their roof, people will not rent to massage therapists. Ms. Motz explains  
1107 that the board's intention with the introduction of this legislation, was not to burden legitimate  
1108 massage therapists with too much regulation. The board's aim is to hold independent contractors  
1109 that are not massage therapists, legally responsible for their actions regarding human trafficking. Ms.  
1110 McCoy reminds the board that while massage therapists are under the blanket jurisdiction of the  
1111 board, their establishments are not. To exclude massage therapist owned establishments from  
1112 regulation would be to relinquish control over regulating their establishment as the massage therapy  
1113 license is not the same as the new regulation passed in 2018. Mr. Gibbs agrees that some of the



1114 items that the board wants to regulate through massage establishment and hold persons accountable  
 1115 for such as locking doors, inspections, sexual conduct, and dress are not authorized by statute for  
 1116 massage therapists. He continues that if a therapist is working out of their house, what's the  
 1117 difference between that and paying rent somewhere? Mr. Gibbs feels there is a legal question to be  
 1118 addressed here by LAW. At the end of the conversation, the board was still divided on whether  
 1119 LMT's will have to register under the new massage establishment regulations.

1120  
 1121 Possible Working Definition of Massage Establishment

- 1122 1. performs massage therapy as per statute for compensation
- 1123 2. a fixed place of business of two or more individuals or of a partnership, firm, association,  
 1124 corporation, or business entity or any other combination of individuals which:  
 1125 a. Uses the word massage in any solicitation or advertisement  
 1126 b. Engages in, conducts, carries-on or permits massage or massage therapy to be conducted  
 1127 or carried on for money or other consideration.
- 1128 3. Anyone who houses a massage therapist (who is not a massage therapist), whether the  
 1129 spaces are loaned, leased, or rented.

1130  
 1131 Establishment Wish List

- 1132 1. Random inspection/legal access to establishments
- 1133 2. Operations requirements (reference #4 from previous meeting)
- 1134 3. Registry of establishment and/or self- inspection
- 1135 4. Massage workers in establishment
- 1136 5. Can the definition not include business owned by licensed massage therapists?
- 1137 6. Fee setting ability for investigation (to generate revenue)
- 1138 7. Can there be a registration fee?

1139  
 1140 Ms. Gilmour asks how the board can more effectively communicate with division and LAW to  
 1141 avoid issues like these in the future? OLE Dulebohn reminds the board that things sometimes get  
 1142 missed through no one person's fault. Board members testified, legislators reviewed, legal staff read,  
 1143 and no one caught this oversight because everyone had the same intention to allow the board the  
 1144 authority to license massage establishments.

1145  
 1146 Agenda Item 14 (continued) Administrative Business

1147  
 1148 **In a motion made by Traci Gilmour, seconded by Jill Motz, and passed unanimously with a**  
 1149 **roll call vote, it was RESOLVED to APPROVE Anchorage as an alternate location for the**  
 1150 **February 28- March 1, 2019 meeting (if Juneau is not approved).**

1151  
 1152 New Task List:

**TASK LIST**  
**December 6-7, 2018**

#	Task	Who to complete?	When is the deadline?	Distribute to the Board?	Completed
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1	Get comparable cases for other programs with the same number of licensees on how many INV cases are pending/ have been referred	Sonia Lipker	Before March 2019 meeting	Yes, via OnBoard	
2	Create and post FAQ on CE date range for 2019 renewal and beyond. (Send mass e-mail to licensees)	Dawn	Before March 2019 meeting	Yes, via OnBoard	
3	What are the 3088- Inter-Agency Legal, 3094- Inter-Hearing/Mediation, 3100- Inter- Agency Safety?	Marylene/Charles	ASAP	In December meeting	
4	Comparable data for Investigative and Administrative Hearing costs for 2016, 2017, 2018	Marylene/Charles	ASAP	In December Meeting	
5	Letter to NCBTMB to ask about qualifications for instructors and classes	Dave	Before March 2019 meeting	Yes, via OnBoard	
6.	Create/Post an FAQ about how licensees may report/complain about unsatisfactory CE courses	Dawn	Before March 2019 meeting	Yes, via OnBoard	
7	Legality of asking for an applicant "handler's" ID. Affidavit of someone helping to fill out application (included in application)	Dawn- to LAW	Before March 2019 meeting	Yes, via OnBoard	
8	Does the board have the statutory ability to define "compensation" for MEL regulations	Dawn- to LAW	Before March 2019 meeting	Yes, via OnBoard	
9.	Create/Post FAQ about why background reports are fingerprint card generated	Dawn	Before March 2019 meeting	Yes, via OnBoard	
10.	Contact applicants denied because of criminal convictions (have not gone through ALJ process) to ask if they want their applications reconsidered.	Dawn	Before March 2019 meeting	Yes, via OnBoard	
11	Craft reply to Hollstein correspondence explaining why grandfathering in is no longer an option, that he should apply by exam, and that there are study materials available for MBLEx	Dawn	Before March 2019 meeting	No.	
12	Create/Post FAQ for CBD oil usage w/ links provided by DNR and AMCO. Include a SOP reference. Include on mass e-mail.	Dawn	Before March 2019 meeting	Yes, via OnBoard	
13	Create/Post FAQ about sexual advertising	Dawn	Before March 2019 meeting	Yes, via OnBoard	
14	Update Disciplinary Matrix 1. Remove items not in definition 2. Remove "barrier"- insert automatic FTP 3. Clean up/update according to 23 moral turp. regs	Dawn/Sara/Hannasch	Before March 2019 meeting	Yes, via OnBoard	

15	Research on Ethics Courses- Curriculum	Board/Traci	Before March 2019 meeting	Yes, via OnBoard	
16	Create/Post FAQ on the importance of sending your fp card early and the reasoning behind it.	Dawn	Before March 2019 meeting	Yes, via OnBoard	
17	Complete Regulations Questionnaire for 12 AAC 79.130 change	Dave	ASAP	No	
18	Send regulations projects from December meeting to Sher	Dawn	ASAP	No	
19.	Send message establishment regulations “wish list” to Sara and Harriet	Dawn	ASAP	No	
20.	Send framework on Massage Establishment regulations to Board	Sara/ Harriet	ASAP	Yes, via OnBoard	
21	Submit individual questions on massage establishment regulations for Harriet	Board	ASAP	No.	
22	Look at other states definition on what is and is not a massage establishment.	Board	Before March 2019 meeting	Yes, via OnBoard	
23	Contact Investigations about licensees breaking the law by offering CBD oil massage	Dawn	ASAP	No.	
24.	Send the questions asked by the board to LAW/Regulations Specialist with answers to board members	Dawn	ASAP	Yes, via e-mail.	
25.	Can an ethics course be required in continuing education regulation	Dawn	Before March 2019 meeting	Yes, via e-mail	
26.	Create/Post an FAQ on the application process with timelines	Dawn	Before March 2019 meeting	Yes, via e-mail	
27.	Send samples of correspondence sent to applicants (status updates, sent to INV, ect) to board for general knowledge	Dawn	Before March 2019 meeting	Yes, via e-mail	
28.	Ask Sara about: 1. Possible conflict of interest in exempting sole proprietors 2. Can there be a registration fee for massage establishments?	Dawn	Before March 2019 meeting	Yes, via e-mail	

1153

1154 At this time, the board concluded all scheduled Board Business.

1155

1156 **Agenda Item 23** **Adjourn**

1157

1158 **In a motion made by Jill Motz, seconded by Traci Gilmour, and passed unanimously, it was**

1159 **RESOLVED to adjourn.**

1160

1161 Hearing nothing further, Chair David Edwards-Smith adjourned the meeting and the record ended  
1162 at 2:49 p.m.

1163

1164 **Respectfully Submitted,**

1165

1166

1167

1168

  
\_\_\_\_\_

Dawn Dulebohn, Licensing Examiner

3/4/19  
Date

1169

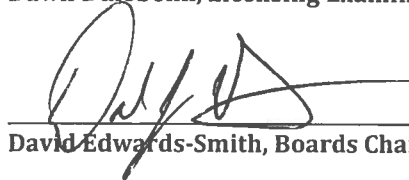
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David Edwards-Smith, Boards Chair

3-1-19  
Date