

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 October 12, 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 October 12, 2018.  
17

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

20 *On the record at 8:11 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 (joined at 8:15 a.m.)  
29

30 **Division Staff present:**  
31

32 Dawn Dulebohn, Occupational Licensing Examiner  
33 Greg Francois, Chief Investigator  
34 Carl Jacobs, Investigator  
35 Sara Chambers, Deputy Director of the Division of Corporations, Business, and  
36 Professional Licensing  
37 Dawn Hannasch, Occupational Licensing Examiner  
38

39 **Agenda Item 2** **Ethics Reporting:**  
40

41 The Board Chair opened the floor to any Board member that may have an ethics violation or  
42 inquiry. None were presented.  
43

44 **Agenda Item 3** **Review/Approve Agenda:**  
45

46 The board reviewed the agenda and approved the agenda.  
47

48 **In a motion duly made by Traci Gilmour, seconded by Jill Motz, it was RESOLVED to**  
49 **APPROVE the agenda as written.**

50

51 **Agenda Item 4** **Motion to Reconsider Action**

52 Chair Edwards-Smith leads the discussion in the board's reconsideration of license decisions from  
53 the September 10-11, 2018 meeting. Mr. Edwards-Smith gives a brief historical overview that lead  
54 up to the board's decision-making process of certain applications noting:

- 55 • The board was asked by Investigator Jasmin Bautista to adopt a disciplinary matrix  
56 as a tool to aid Investigations in crimes of moral turpitude
- 57 • The matrix format that was presented to the Board was based off the matrix used by  
58 the Board of Nursing
- 59 • The board decided that the crime of prostitution was a permanent barrier crime
- 60 • The matrix was supposed to be used as a guideline to ensure fairness and  
61 consistency

62

63 Mr. Edwards-Smith was recently made aware by Deputy Director Sara Chambers that the board  
64 does not have the statutory authority to propose that any crime be a barrier to licensure. The  
65 board's regulation defining moral turpitude should trigger a method of due process to the applicant  
66 to determine whether they can practice massage therapy safely and competently. The Chair now  
67 realizes that denial of license is a last resort case scenario after due process intended to prevent  
68 someone who is not safe and competent to be licensed.

69

70 *Rebecca McCoy joined the meeting telephonically at 8:15 a.m. The board greets her and welcomes her to the board.*

71

72 The board recently denied two applicants based on the disciplinary matrix guidelines and the moral  
73 turpitude regulation. The Chair believes that both cases have not met with the application's due  
74 process since the board never had the authority to create a permanent barrier for crimes of moral  
75 turpitude. Applicants needs to go through a standard process and the be given the opportunity to  
76 prove that they are safe and competent to practice. The Chair expands by stating due process 1)  
77 protects the board by providing a paper trail showing the public that the board has done their due  
78 diligence to determine this person was safe and competent to practice and 2) protects the applicant  
79 by allowing them to state their case. He goes on to say that one of the primary roles of the board is  
80 to provide due process for each application. The Chair hopes with the guidance of Sara Chambers  
81 and Greg Francois, the board can come up with a framework for processing these types of  
82 applications.

83

84 Board member Ron Gibbs joins the conversation by stating that if the only gauge the board has in  
85 determining if an applicant is safe to practice is an arrest records then there is a problem. The only  
86 other options for information is if a sting occurs or a client complains, which could be sporadic. He  
87 goes on to say that whatever the board does to determine if the applicant is capable, it needs to go  
88 above and beyond the arrest record. If the board is not given evidence that the applicant can  
89 practice competently and safely then the board should error on the side of caution and deny the  
90 license.

91

92 The Chair continues by asking if the applicant has an arrest record that shows a crime of moral  
93 turpitude, what are the steps that the board can take (interview, documentation) to protect the board

94 and the applicants? He invites more conversation from the board members and encourages new  
95 board member, Rebecca McCoy to ask questions.

96  
97 Jill Motz joins the conversation by stating that Division led the board to believe that their current  
98 method were the correct steps needed to be taken by the board but it has now come to light that  
99 barrier crimes are not in their statute. She goes on to state that in the past, the board had a  
100 discussion with a judge on a few cases and the judge stated that the board had to establish a  
101 precedent for prostitution convictions. The judge told them it is well within their purview to deny  
102 licensure based on prostitution to establish consistent fairness. She goes on to state that this one of  
103 the reasons the board developed the matrix so that the rules were enforced equally. Ms. Motz voices  
104 concerns about the board not having a policy or regulation that says prostitution isn't a serious  
105 hurdle to licensure. If the board takes all crimes of prostitution case by case there will be sad stories  
106 that will make their hearts soft. Once the board approves one applicant with a conviction of  
107 prostitution, it will be a slippery slope to approving all applicants with prostitution charges. She  
108 goes on to state that the board was led to believe by Division that all of their processes were correct  
109 and wants to know where the safety net was for the board.

110  
111 Sara Chambers addresses the board and states that this topic is too big to cover today. She agrees  
112 these questions all need to be addressed and answered but, with time in mind, she recommends that  
113 the board think of how they want to address the two licenses denials that are being reconsidered and  
114 determine by the end of this meeting if they want to continue with the denial or rescind the denials  
115 and move forward with a different process. In the next meeting the board could dedicate time on  
116 the agenda to the disciplinary matrix, whether the board wants to review any past denials, and the  
117 process the board want to take moving forward. Ms. Chambers offers her assistance to the board  
118 with these progressions.

119  
120 Rebecca McCoy joins the conversation by asking whether the board could deny an application based  
121 on a process that has yet to be solidified? Until a new way is established, would the board continue  
122 to uphold the current process? Ms. Chambers replies that after consulting Chief Investigator  
123 Francois and board attorney Harriet Milks, the matrix that the board has adopted has gone above  
124 and beyond what the board legally has authority to do. Ms. Chambers goes on to state that the  
125 regulatory citation on the board's matrix is not their own but a citation from Health and Social  
126 Services. The statutes for Health and Social Services allow establishment of barrier crimes that are  
127 non-negotiable. The Board of Massage Therapists does not have the authority to decide that any  
128 crime is a barrier to licensure. The board does have authority over applicants and licensees to  
129 impose discipline. The board's mandate from the legislature is to find applicants who will practice  
130 competently and safely.

131  
132 Ms. Motz interjects with a question of whether they should be discussing Ms. Ballard's details on the  
133 record. Ms. Chambers answers by stating that Ms. Ballard has been denied a license and therefore  
134 her case can be discussed on the record and that her criminal past is a matter of public record. Ms.  
135 Chambers continues that there may be items in her file that are confidential but the fact that she was  
136 denied a license because of a conviction of prostitution is a public fact.

137  
138 Ms. Chambers continues to discuss Ms. Ballard's case noting that everything that Ms. Ballard  
139 provided was of her own volition and the board never completed an investigation to determine  
140 whether Ms. Ballard was safe and competent to practice. In the Letter of Explanation form  
141 provided in the application, it only asks for the applicant to disclose what happened but there is

142 nothing that states that the burden in on the applicant to show they can practice competently and  
143 safely, have turned their life around, and have no convictions since the one being discussed. Ms.  
144 Chambers believes that none of the licenses denied for criminal convictions have had the  
145 opportunity to present proof to the board that they can practice competently and safely and the law  
146 says the board must consider that information.

147  
148 Mr. Gibbs states that the board has had applicants come to meetings to discuss cases before in the  
149 past. Ms. Chambers states that if the board has developed a process for what the board wants to see  
150 in terms of documentation in regard to a moral turpitude charge, she is not aware of it. Every  
151 applicant needs to be provided with the board's expectation of documentation and when the board  
152 would like to hear from them so the applicant can prove their case as best they can.

153  
154 Chair Edwards-Smith states that at the Federation of State Massage Therapy Boards (FSMTB)  
155 Annual Meeting that he recently attended, he recalled that no one had a statutory authority to allow  
156 for barrier crimes. All the state board members that he talked to had a process in place that included  
157 an interview and requested documents. The Chair agrees with Ms. Chambers that the board can  
158 take some time to digest the information given today and that further discussion should take place at  
159 the next board meeting. The Chair hopes that the board can contribute information and form a new  
160 idea of this application process so it can be put in place as quickly as possible.

161  
162 Board Member Traci Gilmour joins the conversation with a few questions prior to discussion of  
163 specific application. Ms. Gilmour weighs in that the draft of *Procedures for a Fitness to Practice Review:  
164 Criminal Conviction on Initial Application* created by Sara Chambers is incredibly helpful and she wished  
165 the board would have had access to it from the beginning. She states that the *Procedures for a Fitness to  
166 Practice Review* has shed a new light on cases where the applicant has had a long stretch of time  
167 between when they offended and when they have applied for licensure, such as Ms. Ballard. Ms.  
168 Gilmour muses whether it would be the board or investigations that would follow-up on any  
169 consent agreement/probation that would be put in place and whether the board will need to re-  
170 evaluate any denial that has been issued in the last 4 years. She goes on to state that the board was  
171 led to believe that they could produce and use for as a tool, the matrix and that since the crime of  
172 prostitution is a crime of moral turpitude, the board has the power to deny a license to anyone that  
173 has committed that offense. Ms. Gilmour brings up the issue of applicants that live in other states  
174 not being able to attend an in-person interview. She feels the board somehow got off the track of  
175 interviewing applicants and asking for more documentation as they have done in the past. She  
176 believes that prostitution is one of the most heinous crimes in their profession next to human  
177 trafficking and, because of this, will find it difficult to change her outlook but concedes that the  
178 board can definitely work with a new process and ask for more information when considering  
179 applicants that have crimes of moral turpitude. Ms. Gilmour states that she believes that the board  
180 may have a hard time not issuing denials to applicants in this category but does think there is room  
181 for an improvement to the due process procedures in place.

182  
183 Ms. Chambers replies that she believes that this board is a relatively new board, is very  
184 conscientious, and she thinks very highly of them. She goes on to state that even though the board  
185 has made some missteps, they have shown that they care deeply and want to do the job they have  
186 been called on by the Governor to achieve. Ms. Chambers believes that when the barrier crimes  
187 matrix was created jointly by Investigations and the Board, that it was created in good faith. She  
188 points out that there are so many moving parts to licensure that sometimes it takes feedback to  
189 generate awareness. Ms. Chambers suggests in the interest of timeliness, that the board make a

190 motion regarding the two applications from September, then discuss how to vote on the motion,  
191 and then talk about how to address the situation. She suggests that the next meeting would be a  
192 good time to discuss applications of the past and how to move forward with future applications.  
193

194 The Chair asks whether the board should enter executive session to discuss the applications from  
195 September. Ms. Chambers responds that there is only need of executive session if the information  
196 to be discussed is confidential. Mr. Gibbs interjects that he would like to have some assurance that  
197 the investigative process will be restructured as well so the board can have a valid assessment that  
198 applicants who have been put on probation are being checked on. The Chair replies that since  
199 consent agreements are a flexible tool, conditions of probation could be made a requirement. Chief  
200 Francois responds that Investigations begins its process by referral, then they refer to documents  
201 provided by the applicant/licensee and gather new information, then they contact the  
202 licensee/applicant. Investigations needs to gather verifiable facts to allow the board member (who  
203 may reviews the file) enough information to make a determination. Once Investigations gets an  
204 indication of what the board wants in terms of probation, counseling, ect there are a variety of  
205 consent agreements available as long as those are within the board's authority. Chief Francois  
206 continues by telling the board that Investigations is in the process of developing an inspection  
207 process for locations and it could possible pertain to persons on probation. Currently, people on  
208 probation have to check-in, do self-evaluations, quarterly evaluations, possible employer evaluations.  
209 Chair Edwards-Smith asks if there is a document listing the available options to the board in regard  
210 to consent agreements. Chief Francois states that he can generate generic consent agreements that  
211 will show the concept but cautions that the board must be careful to stay within their statutes and  
212 regulations for disciplinary action. He suggests that the word "barrier" be removed from everyone's  
213 vocabulary since there is no such thing as a "barrier" crime as far as this board is concerned. He  
214 goes on to state that what determines a barrier in terms of convictions is a person's inability to  
215 practice competently and safely. Investigations is here to support the board and if they come across  
216 an issue and have further questions, there is nothing wrong with "tabling" the application and  
217 sending it back to Investigations with a specific list of questions that they would like answered by  
218 their Investigator. Should the Reviewing Board Member have questions while in the act of  
219 reviewing an applicant's file, they may also ask questions of their Investigator.  
220

221 The board discusses the options for today's agenda in terms of what they want to accomplish  
222 regarding the license denials of Bayinna Ballard and Yun McCabe. Ms. Chambers interjects a point  
223 of order stating that before any further decisions can be made, the two denials need to be rescinded  
224 reverting the status back to a live application. Ms. Motz asks the question of whether these  
225 applications can be tabled since they were already tabled once during the application process. Ms.  
226 Chambers assures the board that tabling an application again is favorable to denying a license  
227 without due process and the board can discuss the timeframe of the table during discussion of the  
228 motion.  
229

230 **In a motion duly made by Ron Gibbs, seconded by Traci Gilmour, and passed unanimously**  
231 **with a roll call vote, it was RESOLVED to RESCIND the DENIAL for Bayinna Ballard.**  
232

233 The board then, with the guidance of Sara Chambers, discussed the application motion options.  
234

235 **In a motion duly made by Traci Gilmour, seconded by Ron Gibbs, it was RESOLVED to**  
236 **APPROVE the application of Bayinna Ballard for discussion purposes.**  
237

238 Traci Gilmour leads the discussion on Ms. Ballard’s application by stating that she was glad they  
239 were discussing again. She goes on to say that 30 years is a long time to not re-offend and continue  
240 to be punished. Ms. Gilmour goes on to state that the board will continue to draw a hard line on  
241 prostitution but she will entertain an interview with the applicant and the possibility of a consent  
242 agreement with probation. Ms. Motz wants to make sure that there are no hasty decisions made by  
243 the board concerning this new way of evaluating applications of this nature. She wants to remind  
244 the board that every approval sets a precedent. Mr. Gibbs agrees that setting a precedent is  
245 important and that the board should establish a process that includes an interview. The Chair goes  
246 on to note that Ms. Ballard has been licensed in Arizona as a massage therapist with no disciplinary  
247 actions. He goes on to state that he doesn’t believe that having a conversation with the applicant of  
248 criminal activities that happened 30 years ago is going to make any difference. The Chair expands  
249 by saying he sees no reason why Ms. Ballard’s application will not be approved. Ms. Motz dissents  
250 and believes in light of all the new information in terms of what the process for applicants with  
251 criminal convictions should be, that due process would not be served by approving either of the  
252 applications today. The Chair and Ms. Chambers have a conversation about how to go about  
253 building a framework for the interview process and their possible options for making a more  
254 informed decision on the applications in question. Ms. Motz asks that the board add an agenda item  
255 to the scheduled November meeting as to what the board wants an interview process to look like  
256 and contain and then they can apply that to the December meeting with scheduled interviews.  
257

258 **In a motion duly made by Jill Motz, seconded by Ron Gibbs, and passed unanimously with**  
259 **a roll call vote, it was RESOLVED to TABLE the application for Bayinna Ballard until the**  
260 **December 6-7, 2018 meeting.**

261  
262 The Chair directs the board to consider the denial issued in the September 10-11, 2018 meeting for  
263 Yun McCabe. Traci Gilmour expresses that should the board choose to rescind the denial for Yun  
264 McCabe that there should be an ethics class discussed for a possible consent agreement.  
265

266 *Traci Gilmour left the meeting at 9:13 a.m.*  
267

268 Ms. Chambers councils the board that the item the board is deciding is not to give licensure but to  
269 give the process more time by rescinding the denial and possibly tabling Ms. McCabe’s application  
270 to allow the board time to make a more informed decision.  
271

272 **In a motion duly made by Ron Gibbs, seconded by Jill Motz, and passed unanimously**  
273 **(noting the absence of Ms. Gilmour) with a roll call vote, it was RESOLVED to RESCIND**  
274 **the DENIAL for Yun Song McCabe.**

275  
276 **In a motion duly made by Ron Gibbs, seconded by Jill Motz, and passed unanimously**  
277 **(noting the absence of Ms. Gilmour) with a roll call vote, it was RESOLVED to TABLE the**  
278 **application for Yun Song McCabe until the December 6-7, 2018 meeting.**

279  
280 **Agenda Item 5** **Discussion of the Interpretation of AS 08.61.030(9)**

281  
282 Chair David Edwards-Smith asks the board to do individual research on due process in regards to  
283 boards and applicant interviews. He suggests the board use the *Procedures for a Fitness to Practice Review*  
284 that was introduced to the board to help aid in developing a framework to use during the December  
285 meeting. The Chair asks OLE Dulebohn how the applicants will be notified of a possible interview

286 and the documentation the board would like to review. Ms Chambers reminds the board that the  
287 *Procedures for a Fitness to Practice Review* offers details of possible documentation the board could ask  
288 for and that they will decide what to request of applicants prior to and during their interview in the  
289 November meeting. Ms. Chambers suggests the board develop their process with anyone with a  
290 criminal conviction in mind. Anything the board asks people to do or ask people to provide should  
291 be consistent despite their criminal past. The Chair states that, at minimum, there will need to be a  
292 motion in the November meeting to trigger the adoption of framework in order for it to go into  
293 place for the December meeting.

294  
295 Ms. Motz addresses Chief Francois about questions as a reviewing board member for Ms. Ballard's  
296 case. Chief Francois mentions that it is hard to get court documents if a conviction is very old.  
297 Chief Francois asks OLE Dulebohn to provide him with Ms. Motz contact information so he and  
298 Ms. Motz can speak next week.

299  
300 **Agenda Item 6** **Adjourn**

301  
302 Prior to adjournment, the board discussed correspondence sent in by Tristan Cobine. Mr. Cobine  
303 would like the board to make a decision on whether the National Certification Board for  
304 Therapeutic Massage & Bodywork (NCBTMB) is an approved nationally recognized accrediting  
305 agency in accordance with AS 08.61.100(1)(B). The board discussed the request and while they were  
306 unable to vote to approve NCBTMB they did note that Mr. Cobine's school, Esalen Institute in Big  
307 Sur, CA is on the California Massage Therapy Council (CAMTC) approved school list which is a  
308 board recognized authorizing agent in accordance with AS 08.61.100(1)(A). The board discusses a  
309 possibility of researching NCBTMB standards for authorizing school and beginning a regulations  
310 project to define what the board approved nationally accrediting agencies are besides the  
311 Commission on Massage Therapy Accreditation (COMTA).

312  
313 **In a motion made by Ron Gibbs, seconded by Jill Motz, and passed unanimously, it was**  
314 **RESOLVED to adjourn.**

315  
316 Hearing nothing further, Chair David Edwards-Smith adjourned the meeting and the record ended  
317 at 9:39 a.m.

318  
319 **Respectfully Submitted,**

320  
321   
322 \_\_\_\_\_  
323 Dawn Dulebohn, Licensing Examiner

12/27/18  
\_\_\_\_\_  
Date

324  
325   
326 \_\_\_\_\_  
327 David Edwards-Smith, Boards Chair

12-13-18  
\_\_\_\_\_  
Date