

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 November 15, 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 November 15,
16 2018.
17

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

20 *On the record at 9:20 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 Greg Francois, Chief Investigator
34 Carl Jacobs, Investigator III
35 Sonia Lipker, Senior Investigator III
36 Sher Zinn, Regulations Specialist
37 Dawn Hannasch, Records & Licensing Supervisor
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 Jill Motz, seconded by Traci Gilmour, and passed unanimously, it**
49 **was RESOLVED to APPROVE the agenda as written.**

50

51 **Agenda Item 5** **Massage Establishment Licensing Regulations Project**

52

53 Board Chair Dave Edwards-Smith lead the board in formulating draft regulations for massage
54 establishment licensing (M.E.L.) in accordance with the passing of HB 110 in 2018. The Chair
55 speaks of his time at the Federation of State Massage Therapy Boards (FSMTB) Annual Meeting in
56 October and how other states affirmed that Alaska was doing well with their time and research
57 efforts.

58

59 Mr. Edwards- Smith addresses the fact the board did not delve into all the research the board had
60 completed in their September meeting. He asks Traci Gilmour to elaborate on her contributions.
61 Ms. Gilmour confides that she is working on wrapping her brain around her task. She feels that
62 renewal applications should be pretty standard but in the initial application she has narrowed down
63 her topics to: Application content, definitions, qualifications and responsibilities, license denial and
64 revocation, fees, lead therapist, workers comp requirements, will therapists employed be
65 independent contractors or employees, requirement of liability insurance, location restrictions, self-
66 inspections, physical inspections, operational requirements, and records retention. Ms. Gilmour
67 noted that the research from Idaho, Chicago, Tennessee, Florida was very helpful.

68

69 The Chair brought back the outline of all topics that the board had been working with in the
70 September meeting to allow revisions and additions by the board as a group. Mr. Edwards-Smith
71 noted that he had made some notes on the outline since the last meeting. Some of the topics
72 discussed by the board were whose responsibility was it to get a massage establishment license,
73 whether pictures and/or video should accompany self-inspection reports, whether liability insurance
74 can be required, hygiene and sanitation, whether a landline should be required for the business,
75 outcall language, sexually suggestive advertising, a population cap for M.E.L., and Code of Conduct
76 for shop owners.

77

78 The board discussed and agreed that the correct terminology for a therapist in charge of the facility
79 should be "Lead Therapist". Going forward, Lead Therapist will be the verbiage that is used and
80 there should be a clear definition accompanying it.

81

82 In a discussion on self-inspections, the board states that it would be valuable to decrease work load,
83 cost of travel, and to make clear the expectations of the board to the shop owners, and will hold
84 shop owners accountable in the event of a physical inspection. Jill Motz broaches the idea of
85 requiring accompany photos and video with the self-inspection. Traci Gilmour replies by stating
86 that trust is a must so that the self-inspection does not become cumbersome to the Division.
87 Investigator Carl Jacobs informs the board that it is very easy for someone to stage a scene for a
88 photo and requiring them would not determine compliance.

89

90 *The Chair called for a short break. Off the record at 10:39 a.m.*

91 *Back on the record at 10:49 a.m.*

92

93 Traci Gilmour begins by stating that it may be very hard to achieve all the board members version of
94 perfect and at some point, general knowledge must be assumed. Chair Dave Edwards-Smith agrees
95 and continues by going back to the working outline under Self Inspections. Rebecca McCoy

96 believes that reference to OSHA standards as they pertain to sanitation and linens. Jill Motz
97 disagrees as the board has yet to make reference to OSHA standards in any other statutes or
98 regulation and instead believes that the board should continue citing Universal and Standard
99 Precautions as they have previously done. Ms. McCoy wondered if Universal and Standard
100 Precautions covered equipment as well. The board discussed the requirements for restroom
101 requirements and hand cleansing facilities and referenced the regulations from Tennessee.
102

103 During the discussion on sexual contact and sexually explicit advertising, Ron Gibbs referenced
104 notes from Sara Chambers asking for a definition of “sexual advertising” and “sexual contact”. He
105 goes on to state that there may be a 1st amendment violation because advertising on social media is
106 not paid advertising.
107

108 Jill Motz respectfully disagreed because it doesn’t matter if advertising is paid for, it is advertising for
109 a business and not an individual. Ms. Motz was tasked with finding a definition of sexual
110 advertising.
111

112 Regulations Specialist Sher Zinn brought to the board’s attention definitions for “attempted sexual
113 contact”, “sexual contact”, “sexual impropriety”, “sexual misconduct”, and “in connection with the
114 delivery of professional services to patients” as found in the Medical regulation 12 AAC 40.990(b, 1-
115 5) as it relates to AS 08.64.326. The board chair asked that those definitions be delivered to the
116 board members prior to the December 2018 meeting.
117

118 When discussing possible exemptions to having a massage establishment license, the board
119 continued the pros and cons of various professions including salons, athletic trainers, and fitness
120 centers. The general consensus was to exclude only licensed healthcare professionals. Creating a
121 Code of Conduct for massage establishments was briefly discussed.
122

123 This agenda item ended with this working outline:
124

125 *Obtaining a massage establishment license shall be the responsibility of the entity which controls the physical location*
126 *where the services are provided, which entity may be a sole proprietor, lessee, owner, partnership, corporation,*
127 *cooperative, association, or other legal entity.*
128

- 129 1. Application Requirements: An applicant for an establishment license shall submit a
130 completed application on a form provided by the department. A completed application
131 must include:
- 132 a. Payment of the fees
 - 133 b. Name of the owner or lessee
 - 134 c. Business name of the establishment
 - 135 d. Mailing and street address of the shop
 - 136 e. If the establishment owner is not a licensed practitioner, name and license number of the
137 license massage therapist who is employed as the manager of the establishment
 - 138 f. Listing of all other establishments the applicant owns which included the businesses
139 name, mailing address, and street address of each
 - 140 g. Disciplinary actions for failure to comply as per 08.01.075
 - 141 h. Municipal health and safety inspection verification
 - 142 i. A complete self-inspection of the premises on a form provided by division
143

- 144 2. Renewal Application
- 145 a. Bi-annual renewal
- 146 b. Fingerprinting Requirements
- 147 c. Self-Inspection
- 148 d. Licensing Fee
- 149 e. Employee roster
- 150
- 151 3. Inspections
- 152 a. Physical Inspections
- 153 I. The division may make periodic inspections of all massage establishments, either
- 154 licensed or unlicensed.
- 155 II. An agent of the division may enter and inspect during business hours, without
- 156 prior notice, and massage establishment. Such inspections may include, but need
- 157 not be limited to, confirmation that the site is being utilized for massage therapy
- 158 and determination of whether the establishment is in compliance with the laws
- 159 and rules governing the establishment's operation, facilities, personnel, safety,
- 160 and sanitary requirements.
- 161
- 162 b. Self- Inspection
- 163 I. On a form provided by the division, the establishment owner inspects and
- 164 attests compliance with operations:
- 165 A. Standards of Practice and Code of Ethics for Massage Therapists is
- 166 displayed in a location available to the public.
- 167 B. Massage Establishment License is full view of the public
- 168 C. All employed massage therapists license in full view of the public
- 169 D. There is a written and/or digital system of maintaining client records for at
- 170 least five years
- 171 E. Maintain general liability insurance for location and premise and provide
- 172 proof upon request.
- 173 F. Maintain all equipment pertaining to the practice of massage therapy used to
- 174 perform massage therapy services on the premises in a safe and sanitary
- 175 condition.
- 176 G. Maintain compliance with all applicable state and local building and fire
- 177 codes
- 178 H. Provide for the removal of garbage and refuse in a sanitary manner.
- 179 I. Provide for safe storage and/or removal of soiled linens as per universal and
- 180 Standard Precaution practices.
- 181 J. Any room or cubicle that massage or massage therapy practices are
- 182 performed in are not equipped with an externally locking door.
- 183 K. Rest room facilities shall include at least one sink with hot and cold running
- 184 water and shall be equipped with a soap dispenser with soap or other hand
- 185 cleaning materials, clean towels or other hand-drying device such as a wall-
- 186 mounted electric blow dryer, and waste receptacle. Hand cleansing
- 187 L. Each massage facility and temporary massage facility shall have a toilet and
- 188 a hand-washing sink with hot and cold water accessible to patrons provided
- 189 with soap and single-use towels.
- 190 M. Establishment owners shall provide for safe and unobstructed human
- 191 passage in the public areas of the premises

192 N. Every massage establishment shall be equipped with a workable telephone
193 for emergency calls.
194

195 4. Operations:

- 196 a. Employment- License holder will only employ or permit to practice on the premises
197 only licensed or officially enrolled student massage therapists to perform massage
198 therapy as defined in statute and regulations
199 I. Student enrollment documentation must be current, on premises, and
200 presented for inspection upon request.
- 201 b. Hours of Operation- no massage establishment shall operate or be open for business
202 between the hours of 12:00 a.m. and 5:00 a.m.
- 203 c. Restricted Business Activity- no massage establishment shall operate where a primary
204 business is: alcohol beverage sales, photography studio, model studio, art studio,
205 telephone answering service, motion picture theatre, or adult-oriented business
- 206 d. Employee Dress- establishment shall ensure that no inappropriate employee dress is
207 permitted. Inappropriate dress includes clothing which exposes the breasts, buttock,
208 genitalia or attire that shows the practitioners undergarments. No swim attire is
209 permitted unless treatment provided is a water modality.
- 210 e. Telephone- Every massage establishment shall be equipped with a workable land line
211 telephone for emergency calls. Rural exemptions may be made on population.
- 212 f. Massage Room Requirements- No person shall perform massage or massage therapy
213 cubicle, room, or area equipped with an externally locking door
- 214 g. Onsite Living Restrictions- No massage establishment shall be used as a shelter or living
215 quarters for any person. No owner or manager shall allow a licensed massage
216 establishment to be used for housing, sheltering, or harboring any person(s), or as living
217 or sleeping quarters for a person(s). If a massage establishment is located within, but is
218 ancillary to, a business such as a hotel or motel, this prohibition shall apply only to the
219 areas designed, designated, or used as a massage establishment.
- 220 h. Outcall- A massage establishment may dispatch a licensed massage therapist to perform
221 outcall massage, but only if the therapy is to take place at the client's transient lodging,
222 temporary or permanent residence, or at the client's place of business.
- 223 i. Age Restriction- No owner, manager, massage therapist, or employee shall administer
224 services to any person under the age of eighteen (18) years without a parent or legal
225 guardian present or written consent of parent or legal guardian.
- 226 j. Unprofessional Conduct- No owner, manager, massage therapist, or employee shall
227 promote, solicit, initiate, engage in, permit, or allow any act that violates AS 08.61 et seq,
228 regulations of the Alaska Board of Massage Therapists, or the Code of Ethics or
229 Standards of Practice set forth by the board. No owner, manager, massage therapist, or
230 employee shall initiate or engage in unprofessional conduct in any massage
231 establishment, including but not limited to the following:
232 I. Engaging in sexually suggestive advertising related to massage
233 services
234 II. Engaging in any form of sexual activity on the premise of a massage
235 establishment where massage is provided for compensation.
- 236 k. Sex Device Prohibited- No owner, manager, massage therapist, or employee shall keep,
237 or allow to be kept, within any massage establishment any item known as or commonly
238 used as a marital or sexual aid, including, but not limited to, any contraceptive item or
239 device, vaginal or anal lubricant, or any sex toy.

- 240 l. Restriction of Video/Photography- No owner, manager massage therapist, or employee
 241 shall allow television, video or recording equipment in any room where massage services
 242 are being provided, but a security surveillance monitor that can only receive images of
 243 the inside of the common areas of the establishment may be located in these rooms at
 244 any time. With written client consent, a massage therapist may use video and
 245 photography equipment for therapeutic purposes.
- 246 m. Mirrors- Any mirrors and windows in the massage establishment will be positioned or
 247 covered in a manner to maintain the privacy of the person receiving the massage at all
 248 times during the massage and while the client is dressing and undressing.
- 249 n. Documentation Required While Working- All licensed massage therapists must have
 250 legal identification available upon inspection.
- 251 o. Transfer of License- in the event the licensed establishment is sold, subleased, or legal
 252 possession of the establishment is changed, the new owner, lessee, or legal possessor of
 253 the establishment shall be required to submit a completed application to the division
 254 within ten (10) business days of the change of ownership, lessee, or legal possess. The
 255 establishment license is not assignable or transferable.
- 256
- 257 5. Alcohol and Controlled Substances:
- 258 a. The distribution or consumption of alcohol is not permitted in the massage
 259 establishment.
- 260 b. No controlled substances shall be allowed in the massage establishment
- 261 c. Special event permits must be obtained from the Alcohol and Marijuana Control Board
 262 I. Division must be notified in writing prior to any special event.
- 263
- 264 6. Exceptions: The following are exempt from the massage establishment license requirement:
- 265 a. Hospitals, residential care facilities, and assisted living facilities licensed by the state of
 266 Alaska.
- 267 b. Public and private secondary schools or accredited colleges and universities who are
 268 approved by the board and when massage is performed in a massage therapy school
 269 curriculum.
- 270 c. Sports venues at which massage may be conducted on the members of professional
 271 sports franchises by athletic trainers employed by professional sports or collegiate sports
 272 franchises.
- 273 d. Acupuncturist, athletic trainer, chiropractor, midwife, nurse, occupational therapist,
 274 physical therapist, physician, physician assistant, podiatrist, respiratory care practitioner
 275 currently licensed in the state of Alaska who are contractually or directly employing
 276 licensed massage therapists to provide massage therapy as part of the person's practice.
- 277 e. Place of business located and operated on property owned by the federal government
 278 such a military base.
- 279 f. A business or corporation majority owned and operated by massage therapists currently
 280 licensed by the state of Alaska.
- 281

282 *The Chair called for a break for lunch. Off the record at 12:46 p.m.*

283

284 Agenda Item 6 Lunch

285

286 Agenda Item 7 Fitness to Practice Review

288 *Back on the record at 2:04 p.m.*
289 *In addition to all board members, staff includes Dawn Dulebohn, Dawn Hannasch, Sonia Lipker, and Carl Jacobs.*

290
291 Board Chair David Edwards- Smith begins the Fitness to Practice Review agenda item by asking the
292 board to review the document by Sara Chambers of the same name. He goes on to talk about the
293 creation of the barrier crimes matrix that the board has used as a reference tool up until recently.
294 Using the barrier crimes matrix, the board was determining that if an applicant had a certain
295 conviction come up in their background check, the board would deny them a license. Since there
296 was a lot of research put into creating the barrier crimes matrix, it will be used as a basis when the
297 board reformulates it in their December meeting into a Disciplinary Matrix. After council from Sara
298 Chambers, the board has decided to revamp their procedures when it comes to certain criminal
299 convictions of moral turpitude blanketly resulting in a denial of license.

300
301 The Chair goes on to say that according to statute, the board needs to really focus on whether an
302 applicant can safely and competently practice massage therapy on a case by case basis. To facilitate a
303 fair and consistent interview process, the board has developed the following procedures in
304 conjunction with the *Fitness to Practice Review: Criminal Conviction on Initial Application* draft that Ms.
305 Chambers has provided. The board has a discussion on the draft language line by line and
306 determined that a fitness to practice review will consist of additional documentation provided by the
307 applicant and a 30-minute interview either in person or telephonically. Interviews will be conducted
308 in executive session unless the applicant would prefer it on the record.

309
310 The documents that the applicant will be asked to submit prior to their interview are:

- 311
312 1. Detailed Letter of Explanation that includes:
- 313 a) What were the circumstances of the offense or offenses?
 - 314 b) How old were you at the time of your conviction?
 - 315 c) Has there been an absence of misconduct since the conviction?
 - 316 d) Have you been in compliance with the conditions of any order applicable to the
317 conviction?
 - 318 e) Personal assurances, supported by corroborating evidence of an intention to conduct
319 oneself in an exemplary fashion in the future.
- 320
- 321 2. Complete work history since your graduation from massage school using the form provided.
322 If you have any lapses in employment of 60 days or longer, please explain why those lapses
323 occurred.
- 324
- 325 3. Demonstration of a good reputation for professional ability (examples are: letters of
326 reference from previous employers, co-workers, or clients).
- 327
- 328 4. Any other relevant information that you feel will help prove to the board your ability to
329 practice completely and safely in accordance with AS 08.61.030(9).
- 330

331 If applicable to your situation, provide the following:

- 332 1. Please demonstrate the productive use of your time for the benefit of society, particularly in
333 an occupation, community, or civic service (Examples could be volunteer activities, letters of
334 recommendation, etc.).
335
336 2. Proof of restitution of funds or property.
337
338 3. Evidence that you have been sufficiently compliant with a treatment or management
339 regimen for substance abuse and that would prove that a return to abuse is unlikely.
340
341 4. Letter from the applicant's probation/parole officer documenting compliance with their
342 parole/probation. A copy of the final probation/parole report must also be included.
343
344 5. If court ordered therapy, clinical evaluation, or counseling has been ordered as a result of the
345 applicant's conviction, a letter or report from the organization or individual who provided
346 the evaluation, counseling, or therapy is required. The letter or report should indicate if
347 treatment is ongoing or if it has been completed and whether it was considered to have been
348 successful. The letter should also indicate that the counselor/ therapist believes that the
349 applicant is suitable to perform the duties of the profession. An applicant may be requested
350 to submit a similar letter even if therapy, counseling, or evaluation was not required by the
351 court.

352 Interview questions may include:

- 353
354 1. Tell us about the circumstances of your conviction.
355
356 2. Do you feel your conviction will affect your ability to practice competently and
357 safely?
358
359 3. What changes have you made in your life to ensure you will not have a negative impact on
360 society?
361
362 4. What support system do you have in place to ensure you do not re-offend and you can
363 practice competently and safely?
364
365 5. Are you aware of possible disciplinary actions that could be implemented by the Board of
366 Massage Therapists for non-compliance of Statutes and Regulations?
367
368 6. Have you read and can you abide by the Board of Massage Therapists Code of Ethics and
369 Standards of Practice?

370 Applicants who will be the subject of a Fitness to Practice Review will be required to adhere to a
371 deadline to submit documents and will be given an interview time during a board meeting.
372 Applicants will be allowed to ask to be rescheduled if they are unable to attend at the scheduled time
373 if request is submitted before a deadline.
374

375 The board discusses potential stipulations of consent agreements that may be a result of the
376 interviews. Taking into consideration the sample consent agreements and probation conditions
377 FAQ that were provided to the board by Investigations, the board discusses possibilities for consent
378 agreements that include probation and ethics courses. Investigator Carl Jacobs states that as long as
379 the board is consistent, they do not need to strictly adhere to the disciplinary measures shown in the
380 sample consent agreements or outlined in centralized statute AS 08.01.075(a)(7). Advice from the
381 Department of Law is that once the board decides what they may be adding to consent agreements
382 most frequently, they may want to consider adding them to regulations.

383

384 *Chief Greg Francois joined the meeting at 3:17 p.m.*

385 *Dawn Hannasch left the meeting at 3:18 p.m.*

386

387 Jill Motz stated for the record that she appreciated getting to see consent agreements from other
388 programs as it gave her another perspective on their authority. She follows with questions about
389 how long an investigation takes in order to provide applicants with a timeline. Chief Greg Francois
390 answers that there is no definitive timeline for investigations to conclude their research. Chief
391 Francois provides a brief review of the reviewing board member and ALJ process. He goes on to
392 state the main thing the court wants to see is that the board is making decision based on the board's
393 guidelines as found in their statutes and regulations and precedents they have set.

394

395

396 Agenda Item 8 Administrative Business

397

398 Chair Edwards-Smith asks that there be time on the December 2018 meeting agenda to talk to law
399 enforcement and Investigations about the massage establishment licensing inspections with Chief
400 Francois and Inv. Jacobs. The object of this is to see how the board can foster and strengthen
401 relationships between the three organizations.

402

403 Correspondence

404

405 The board discussed correspondence received in an e-mail sent by the Director, Educational
406 Standards Division of the California Massage Therapy Council (CAMTC) Joe Bob Smith. He
407 wanted to advise the board that on September 19, 2018 the Governor signed SB 1480 into law.
408 Among other things, this bill changed the Massage Therapy Act so that starting on January 1, 2019
409 and going through December 31, 2020, California will not require the passage of a national exam for
410 CAMTC certification. The board acknowledges that now, in addition to asking the applicant to
411 verify their school was authorized if they were licensed prior to July 1, 2016, the applicant who has
412 been licensed between January 1, 2019 and December 31, 2020 will have to contact FSMTB and
413 have their MBLEx exam submitted directly to the division.

414

415 Previous Task List

416

417 Traci Gilmour clarifies that when things are stated as being distributed via OnBoard in the task list,
418 does that mean that they will be a separate document or in the board packet? OLE Dulebohn
419 answers that unless someone has specifically asked that things be distributed prior to the
420 dissemination of the board packet, everything will be included there.

421

422

423 Meeting Calendar

424

425 Jill Motz proposes moving the March 4-5, 2018 meeting in Juneau to February 28-March 1, 2018
426 because of a scheduling conflict.

427

428 **In a motion made by Jill Motz, seconded by Traci Gilmour, and passed unanimously, it was**
429 **RESOLVED to CHANGE the March 4-5, 2018 meeting in Juneau to February 28- March 1,**
430 **2018.**

431

432 As requested by Supervisor Hannasch, OLE Dulebohn stresses the importance of the board reading
433 not only their board packet but especially the interview documents requested of applicants that will
434 have a scheduled fitness to practice interview to not only make good use of time but to also allow
435 themselves to be as prepared as possible to conduct a thorough and complete interview. Ms.
436 Gilmour follows up by saying this is also important for the board to be able to complete their
437 regulations project for M.E.L. before legislative session begins in January 2019. OLE Dulebohn
438 continues that with the time crunch between the November and December meetings, it is of the
439 utmost importance that any feedback or documentation for the December meeting needs to be
440 received by Friday, November 23, 2018. The applicants for interviews will be asked to submit their
441 documentation by November 30, 2018 to allow them 10 business days to gather and submit.

442

443 Agenda Item 9 Adjourn

444

445 **In a motion made by Jill Motz, seconded by Traci Gilmour, and passed unanimously, it was**
446 **RESOLVED to adjourn.**

447

448 Hearing nothing further, Chair David Edwards-Smith adjourned the meeting and the record ended
449 at 3:44 p.m.

450

451 **Respectfully Submitted,**

452

453

454

455

456

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458

459

460

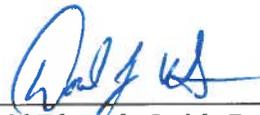
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462



Dawn Dulebohn, Licensing Examiner

12/27/18
Date



David Edwards-Smith, Boards Chair

12-13-18
Date