

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 January 13, 2020
9

10 By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a
11 scheduled meeting of the Board of Massage Therapists was held by video conference on
12 January 13, 2020.
13

14 Agenda Item 1 Call to Order/Roll Call:
15

16 *On the record at 9:00 a.m.*
17

18 Board Members present, constituting a quorum:
19

20 David Edwards-Smith- Board Chair, Licensed Massage Therapist
21 Traci Gilmour- Vice Chair, Licensed Massage Therapist
22 Jill Motz, Licensed Massage Therapist (joined at 9:41 a.m.)
23 Ron Gibbs, Licensed Massage Therapist
24 Julie Endle, Public Member
25
26

27 Division Staff present:
28

29 Dawn Dulebohn, Occupational Licensing Examiner
30 Sara Chambers, Director of Corporations, Business, and Professional Licensing
31 Sher Zinn, Regulations Specialist II
32

33 Joining Telephonically:
34

35 Carl Jacobs, Investigator III
36 Sonia Lipker, Senior Investigator III
37

38 Agenda Item 2 Ethics Reporting
39

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

43 Agenda Item 3 Review/Approve Agenda
44

45 The board reviewed the agenda and discussed any proposed changes.
46

47 In a motion made by Ron Gibbs, seconded by Traci Gilmour, and passed unanimously with
48 a roll call vote, it was **RESOLVED** to **APPROVE** the agenda as written.

49

50 Agenda Item 4 Massage Establishments

51

52 *Director Chamber and Investigators Lipker and Jacobs joined the meeting at 9:10 a.m.*

53

54 Chair Edwards-Smith reviews the purpose of this special meeting was to discuss the pending
55 regulation of massage establishment and the investigations that will be an integral part of that
56 process. The Chair references a letter that he sent to Chief Investigator Greg Francois on January
57 10, 2020 outlining the board's mission statement for regulating massage establishments, whether it is
58 pertinent for the board to establish investigation guidelines, and the random inspections that have
59 been carried out prior to the implementation of establishment regulations and without the board's
60 expressed consent. Chair Edwards-Smith closes the letter asking for guidance on this subject.

61

62 Chair Edwards-Smith went on to state that in previous board meetings the board had expressed an
63 intent that inspections be complaint driven. The board discovered that a policy of random
64 inspections had been implemented by Investigations and believes the board should learn more about
65 this new course of action. Mr. Edwards-Smith would like to discuss, once there is a plan for
66 establishment inspections, what criteria will be included in those inspections. Ms. Gilmour stated
67 the Division has always contributed to the board's mission in good faith but the board is not always
68 made aware of those actions. Ms. Gilmour prepared a statement about information sharing which,
69 after permission from the Chair, she read into the record:

70

71 "The inspection information will help the board with moving forward with massage establishment
72 regulation in that we now know that inspections have been and will be held. I would like the
73 board's OLE to be cc'd on approvals so she can keep the board abreast of coming inspections. I
74 would also like the board to receive inspection reports, post inspection. This also helps us
75 understand the meaning of financial statements and ask more informed questions of the Division
76 during presentations. We have asked over time about expenditures and were not informed of any
77 inspections held, nor follow up reports received as to how those went for the businesses, and
78 infractions, or closures. I may have missed this in translation and I understand. I am not trying to
79 accuse anyone or offend. As we move through our journey of learning all the arms of Division and
80 how we work together and move towards a more cohesive relationship, sharing information that
81 pertains to our work, and how we spend the licensee's dollars (for me, that is the biggest message:
82 we do not understand in our financial statements...and we've asked for a better breakdown).
83 Because we believed these were complaint driven inspections, we did not know this was happening.
84 The travel report from Inspector Jacobs, we realized that this is the first time an establishment has
85 been inspected. I love that there is inspections that have happened but we have not gotten any
86 reports to tell us what has happened, and the establishments are ours. They are our information and
87 our licensees and our dollars. We, as a board, are very frugal. I believe the state works in our best
88 interest. We just need to able to have that conversation. Poor Investigator Jacobs was really '...uhh,
89 I thought I was doing my job'. To be fair to him (and he's great at his position) we need to be not
90 taken by surprise. After 5 years, we should have known inspections were happening and I would
91 like to see the follow-up reports because we are not seeing those either. We are seeing the
92 Investigative Report but we are not seeing any written information. I would love Dawn to be cc'd

93 on travel approvals to give us a head's up so we know it's coming. Then we can informed questions
94 and go: 'what'd you find out?' That's my take on it."

95
96 Chair Edward- Smith thanks Ms. Gilmour and stated he wants to get the board on the same page
97 with Investigations. Chair Edwards-Smith reminded everyone that the board's mission statement
98 regarding establishments is: "Massage establishment regulations will serve the purpose of
99 safeguarding legitimate massage establishments, therapists, and the public from illicit massage
100 establishments and human trafficking activity."

101
102 The Chair continued the board, in previous conversations, had determined that the best avenue to
103 complete that mission was to have compliance checks be complaint driven. The board would
104 educate the public on that process and that there are tools for complaint driven compliance checks.
105

106 OLE Dulebohn stated she believes the problem between Investigations implementing random
107 inspections and the board's wish to have all inspections be complaint driven is that the board has
108 been actively discussing a change in inspections regarding establishments for the last year and a half.
109 Ms. Dulebohn stated she believes that Investigations heard that once the establishment regulations
110 were in place there would have to be compliance checks for the establishments as they are not
111 licensed massage therapists and took that direction out of context and started establishment
112 inspections before regulations were in place. In board conversations with Investigator Jacobs, he
113 had stated that Investigations was carrying out the board's direction on inspections. Chair Edwards-
114 Smith agreed with that assessment and stated these discrepancies are the reason for the scheduling
115 of this meeting.
116

117 Mr. Gibbs agreed the board should not be caught by surprise but, in the future, having only
118 complaint driven referrals will probably not be very effective for the board. Mr. Gibbs went on to
119 state that typically the clientele that go to an illicit establishment are not the client base that will file a
120 complaint regarding that establishment. Mr. Gibbs suggested brainstorming other triggers for
121 investigations such as online research. The Chair replied that the board had hoped to create more
122 awareness of the complaint process so complaint driven investigations would be more effective.
123 Chair Edwards-Smith directed the board back to the mission statement of protecting legitimate
124 massage therapists. The Chair relayed that, with the implementation of random compliance checks,
125 he hopes that the random investigation process would be honed. Ms. Gilmour expanded that clients
126 of illicit establishments would not be the only member of the public to be able to submit complaints;
127 members of the community will be able to submit complaints too. She continued that
128 establishments registering should be easier to inspect since part of their application will be a self-
129 inspection.
130

131 Board member Julie Endle asked if random inspections would be for all massage establishments or
132 just the ones registering as they are not owned by someone on the exempt list. Chair Edwards-
133 Smith stated that the compliance checks would be for anyone. Chair Edwards-Smith stated that if
134 the board is on the same page for complaint driven compliance checks, the next thing is to ensure
135 the investigators have the tools necessary to carry out the compliance checks. He continued that the
136 easiest method of doing this is to have a clear direction from the board. Referencing the draft
137 Standards of Operation (SOO), Chair Edwards-Smith stated there are many things on the list that
138 are not "black and white" and would require specific training. He believes SOO items #4-7 are
139 those that would require specific training in order to effectively perform a compliance check. The

140 Chair suggested that there be a notation that says SOO 1-3 & 8-10 are subject to compliance checks.
141 Mr. Gibbs interjected that he doesn't believe specialized training is needed to know whether "safe
142 storage" is being followed. Mr. Edwards-Smith asked if hazmat or bloodborne pathogens training
143 should be provided for investigators? Mr. Edwards-Smith also asked the board how the
144 investigators will know about how to ascertain "all applicable state and local building/fire codes".
145 Ms. Gilmour reminded the board that SOO #5 is not in their purview and would best be inspected
146 by a fire marshal. Ms. Gilmour believes that giving the investigators more information may be all
147 that is needed for them to fully complete everything on the board's list. Ms. Gilmour continued that
148 investigations have been conducted for Barbers and Hairdressers for a long time and what the
149 massage board is asking is similar to what has already been done. At this time, Chair Edwards-Smith
150 invited Investigators Lipker and Jacobs to join the conversation.

151
152 Investigator Lipker stated that the Board of Barbers and Hairdressers (BAH) investigators do not
153 look for violations regarding sanitary safety. These types of inspections are done by other
154 departments such as OSHA. Ms. Lipker stated that she would be uncomfortable with Investigations
155 trying to enforce sanitary regulations.

156
157 Director Chambers joined the conversation to give context from Division's standpoint. Ms.
158 Chambers informed the board that investigators are trained in licensing violations for the 44
159 licensing programs but safety and sanitation have never been under the jurisdiction of
160 Investigations. Historically, the Department of Environmental Conservation (DEC) is the safety
161 and sanitation inspecting body for the state. The DEC writes the standards for the Board of
162 Barbers and Hairdressers (BAH) safety and sanitation according to statute and not the board. Ms.
163 Chambers went on to state that, last year, Division received the authority to inspect in place of DEC
164 and that is when the Board of Massage Therapists and the Board of Barbers and Hairdressers
165 became involved with safety and sanitation. Ms. Chambers stated that she has spoken about the
166 similarities between inspection and investigation with Chief Francois and believes that Division
167 investigators are competent and capable of performing inspections. Ms. Chambers stated that the
168 Division investigators conducting facility inspections is a brand-new facet of Investigations and not
169 all investigators will receive inspection training. Director Chambers agreed with Chair Edwards-
170 Smith that the Division needs to ensure that investigators are provided with training to ensure they
171 can adequately enforce regulations since that is what the board has said is the law. Ms. Chambers
172 stated that there is no point in having a regulation if it is not enforceable. Ms. Chambers continued
173 that the Division has a legal responsibility to train teams to be able to inspect according to regulation
174 and educate the public, licensees, and establishments so they are able to meet the standards. Ms.
175 Chambers stated that it is our responsibility to ensure that the permit holder can meet all the
176 standards and obtain any pertinent information. Ms. Chambers stated that the SOO look to be
177 straight forward and are probably pretty accessible.

178
179 Chair Edwards-Smith reminded meeting attendees that the establishment registrants will complete a
180 self-inspection affidavit as part of their application. Chair Edwards-Smith stated he would like the
181 board to evaluate the necessity of maintaining SOO #4-7 in terms of compliance checks. Ms.
182 Chambers replied that if the board has concerns about Investigations being unable to complete their
183 inspection standard checklist, there may be other agencies (such as the fire marshal for SOO #5)
184 that could be enlisted and perhaps the SOO could be changed to have language, for example,
185 "Received fire inspection at least once every x number of years".

186

187 Ms. Gilmour stated the self-inspection report is a tool for massage establishments but will also
188 provide a tool for investigators and should be a mirror of the SOO.

189
190 **TASK: OLE Dulebohn will add item to March meeting for creation of Self Inspection**
191 **checklist. Possibly invite BAH inspectors for aid once draft is assembled.**

192
193 Ms. Chambers reminded the board that any SOO must be clear and defensible. If there are
194 differences between the self-inspection report and what is found in an inspection, how can it be
195 articulated should the inspection results be appealed? Director Chambers asks the board how they
196 will ensure that people actually know what they are attesting that they are complying with, what
197 generates an inspection, and what standards are being inspected? She feels it would be useful for the
198 licensing staff and the investigator to meet to align the processes so that there is not two different
199 trainings for the same goal.

200
201 **TASK: Board will delve into SOO #4-7 for compliance and inspection requirements**
202 **with the mission to make them “clear and defensible” and more “black and white”.**

203
204 Ms. Gilmour requested a presentation from Investigations regarding their inspection process. Ms.
205 Gilmour would also like to see Investigator Jacobs include concerns from licensees, gaps in
206 compliance & understanding, and patterns in violations to the Investigative Report.

207
208 Chair Edwards-Smith asks Director Chambers and Investigators Lipker and Jacobs if the board
209 needs to make a motion to convey, at this time, inspections should only be complaint driven. Ms.
210 Gilmour stated that she believes the board should “prefer” complaint driven inspections but also
211 understand that Investigations has the opportunity to do inspections on the board’s behalf in
212 conjunction with other boards. Ms. Gilmour went on to state it would be wrong to tie the hands of
213 Investigations when it is possible for them to share investigative costs with other boards.

214
215 OLE Dulebohn reminded the board that during the December 2019 meeting, the board asked the
216 cost of Investigator Jacobs August 2019 trip to Fairbanks. After conferring with Accountant III,
217 Marylene Wales, the board was informed the trip cost was \$855.00.

218
219 Investigator Lipker joined the conversation and referenced Chair Edwards-Smith and Chief Francois
220 spoke on this subject prior to the meeting. Investigator Lipker stated that Investigations will not be
221 conducting any inspection unless a complaint is submitted regarding possible unlicensed practice.
222 Ms. Lipker continued, at this point, establishment regulations have not been adopted so investigative
223 staff cannot utilize any of the SOO and Investigations will just focus on current regulations for
224 licensees. Ms. Lipker went on to state that they will report any onsite license checks at the board’s
225 quarterly meetings but they will not be able to divulge specifics for open files.

226
227 *Board Member Jill Motz joins the meeting at 9:41 a.m.*

228
229 Ms. Gilmour asked Investigator Lipker if the board could see the details of the compliance checks
230 once a case is closed and are no longer confidential? Ms. Lipker stated this information can be
231 shared via a public records request but isn’t sure if it could be shared with the board. Ms. Lipker
232 stated she will check with Chief Francois for confirmation. Ms. Chambers stated that it would be
233 helpful if Investigator Jacobs includes in his board report what types of violations are they seeing

234 and concerns they are hearing from licensees (registrants). Ms. Chambers stated the board would
235 benefit more from the statistics and gaps in compliance (data driven decision making).

236
237 **TASK: OLE Dulebohn will add Compliance Check to March board meeting agenda**
238 **to include report from Investigations on data gathered in August 2019 random inspection**
239 **and a workgroup session with Investigations on how to better improve methods to improve**
240 **establishment compliance checks in the future.**

241
242 OLE Dulebohn verified with Investigators Jacobs and Lipker that the upcoming compliance checks
243 during the fiscal year of 2020 were no longer going to happen. Investigator Jacobs confirmed that,
244 per the direction of the board, there are no scheduled or unscheduled inspections pending for the
245 2020 fiscal year. Mr. Jacobs stated that investigative staff will still continue to perform complaint
246 driven inspections.

247
248 *Investigators Lipker and Jacobs and Director Chambers left the meeting at 9:50 a.m.*

249
250 *Chair Edwards-Smith calls for a short break.*

251 *Off the record at 9:50 a.m.*

252 *Back on the record at 10:00 a.m.*

253

254 Agenda Item 5 Regulations

255

256 Regulations Specialist Sher Zinn joined the meeting at 10:00 a.m.

257

258 Board Chair Edwards-Smith directs the board to 12 AAC 79.200 which currently read “an applicant
259 for renewal of a massage therapy license must meet the requirements of AS 08.61.050 and this
260 section. A massage therapist applying for license renewal must submit (4) a current certification in
261 cardiopulmonary resuscitation through the American Red Cross, American Heart Association,
262 American Safety and Health Institute, or an equivalent organization.” The board was given a
263 suggestion by Division to change this language to read “(4) documentation of a current certification
264 in cardiopulmonary resuscitation through the American Red Cross...” This suggested change would
265 allow Division to accept an attestation from the licensee that they had a current cardiopulmonary
266 resuscitation (CPR) certification but would not require the licensee provide proof.

267

268 After the board adopted the change to this regulation, Regulations Specialist Zinn and OLE
269 Dulebohn discovered that CPR certification was not included in the board’s continuing education
270 audit and if a change was not made, there would never be a compliance check of the CPR
271 certification requirement in accordance with AS 08.61.050. To fix this, Ms. Zinn proposed a change
272 to the continuing education regulation 12 AAC 79.210 by adding a new paragraph to read: “(4)
273 must document completion of a cardiopulmonary resuscitation course as required by 12 AAC
274 79.210(b)(4).” Ms. Zinn informed the board that this change would ensure, if a licensee is audited,
275 they would be required to submit proof of their current CPR certification.

276

277 Ms. Gilmour asked Ms. Zinn if this regulation change is necessary as she does not want to burden
278 licensees with any additional regulation. Ms. Zinn replied that the board could choose to go back to
279 the previous regulations project and remove the change to 12 AAC 79.100. Ms. Gilmour stated she
280 does not want to change the renewal process for licensees again. OLE Dulebohn interjected that

281 the regulation had not been changed to require the proof of CPR; the required proof of CPR for
282 renewals just wasn't requested by Division for the 2017 renewal due to an oversight. OLE
283 Dulebohn went on to state the board's adoption the change to 12 AAC 79.210 would be less of a
284 burden to the licensee base by not requiring proof of CPR be submitted with a renewal application
285 and instead would only require the proof of CPR upon audit. Ms. Dulebohn also states this change
286 would also remove the need to hand process the CPR certificates for all licensees which would be a
287 cost saving for the board. Ms. Zinn reminded Ms. Gilmour that the comments from the public on
288 that change in the last regulation project was largely positive and in favor of not having to submit a
289 current CPR card with renewal applications. Ms. Gilmour thanked Ms. Zinn for the feedback and
290 withdrew her objection to the change in continuing education regulation regarding CPR.

291
292 Ms. Gilmour stated at some point she wants to have a meeting in 2020 that does not include
293 regulation project. Chair Edwards-Smith replied that, as a board, they will need to make changes
294 and be continually adapting as there is growth in the industry. Ms. Gilmour agreed but stipulated
295 regulations should be adopted for the right reasons and wonders if the board is perhaps not delving
296 deep enough in their discussions to catch all the possible repercussions. Ms. Gilmour went on to
297 state the board should be more familiar with their own statutes and regulations so some of the
298 follow-up with regulation projects can be avoided.

299
300 Ms. Zinn also presented the board with other regulations changes concerning massage
301 establishments. Ms. Zinn informed the board that these amendments can go out together in one
302 package at no additional expense to the board. Ms. Zinn advised the board they do not need to
303 send these amendments out immediately unless there is a pressing need; the board can wait and send
304 them out after the next board meeting. Chair Edwards-Smith reminded the board that they will be
305 looking at their Standards of Operations during the March 2020 meeting and, should any changes be
306 made, that would need to be in regulation 12 AAC 79.900. Ms. Zinn suggested the board wait to
307 public notice today's amendments if they believe they will have another change after the March 2020
308 meeting. Chair Edwards-Smith asked for a motion on the changes made earlier but will wait to send
309 them out for public comment until the March 2020 meeting.

310
311 Ms. Endle stated she would like to discuss the regulation amendment that addresses renewal fees for
312 massage establishments. Ms. Gilmour and Mr. Edwards-Smith reminded Ms. Endle that the board
313 does not set fees. Fees are set by Division and, at this time, a renewal fee has not been calculated.
314 Ms. Gilmour stated the Division does take the board opinion on fees into consideration and once
315 registrations happens, the renewal wouldn't be happening until 2021. Ms. Endle states that initial
316 establishment registration has been set at \$300 and wonders if that means that renewals would also
317 be \$300? Chair Edwards-Smith reiterates that, at this time, there is no renewal fee for
318 establishments. Chair Edwards-Smith went on to state the regulation amendment the board is
319 currently reviewing states there will be a renewal fee but not what that fee is. Division will set the
320 renewal fee based on registrants and investigative costs. Ms. Gilmour stated, despite the regulation
321 about fees being in the Board of Massage Therapists, the board does not set any fee and Division is
322 responsible for calculating and deciding on all fees. Ms. Zinn reminded the board that there is a
323 statute that requires the Division must take into account the board's wishes but they do not have to
324 implement them. Chair Edwards-Smith suggested discussing fees and how they are set in the next
325 Outreach and Educational Subcommittee meeting.

326

327 In a motion made by Traci Gilmour, seconded by Ron Gibbs, and passed unanimously with
328 a roll call vote, it was **RESOLVED** to **AMEND** regulation

- 329 • 12 AAC 79.210(a)(4)- Must document proof of completion of CPR course as required
330 by 12 AAC 79.200(b)(4)
- 331 • 12 AAC 79.930(f)- A massage therapy establishment required to be registered under
332 this section must renew the registration on or before September 30 of every odd
333 numbered year by submitting
 - 334 1) Complete registration renewal form; and
 - 335 2) The fee required under 12 AAC 02.396(5)
- 336 • 12 AAC 79.930(g)- A massage therapy establishment owner must notify the
337 department in writing not later than 15 days after the establishment ceases
338 operations.
- 339 • 12 AAC 79.940- Unless exempt from registration under 12 AAC 79.930(b), if an
340 inspection or complaint of an unregistered massage therapy establishment results in
341 an investigation, the unregistered massage therapy establishment owner shall pay
342 the investigation fee required by 12 AAC 02.396 to the department.
- 343 • 12 AAC 02.396(5)- to add “and renewal fee”
344

345 The board stated these amendments will not go out for public comment until after the March 2020
346 meeting.

347
348 Ms. Endle reiterated Division will set the establishment renewal fee and then the board will have a
349 chance to discuss and submit their opinion of that renewal fee for consideration. Ms. Endle stated
350 that a renewal fee of \$300 is too costly. OLE Dulebohn informed the board that there is no data on
351 how many people will register for establishments, how many investigations will occur, or what the
352 investigative costs will be. OLE Dulebohn went on to state that until these factors are known, there
353 cannot be speculation as to what the establishment renewal fee will be. Ms. Dulebohn stated that
354 the board has historically been adamant that fees massage therapists pay for licensure should not be
355 used to regulate massage establishments. The fees brought in by establishment registrations need to
356 pay for all of the costs associated with that registration and inspections.
357

358 *Regulations Specialist Zinn left the meeting at 10:29 a.m.*
359

360 OLE Dulebohn presented the board with additional information regarding the motion made at the
361 December 2-3, 2019 meeting regarding the Division’s utilization of Policy & Procedure 28 as it
362 relates to the “No Investigations Needed” document. OLE Dulebohn reminded the board that they
363 previously made a motion to direct the Division not to refer applicants to Investigation if the
364 applicant failed to disclose on their application any item that is on the board’s “No Investigations
365 Needed” list. This new direction will remain an internal process but will hopefully decrease issues of
366 communication between Investigations, the Board, and Division. OLE Dulebohn informed the
367 board that after the December 2019 meeting she consulted with Records and Licensing Supervisor
368 Renee Hoffard who reviewed the board’s direction and stated it is within the board’s purview to
369 delegate this to Division per P&P 28 if the board removed the section about “at Division’s
370 discretion” to release the Division of any responsibility when evaluating what will be referred to
371 Investigations. At direction of Supervisor Hoffard, OLE Dulebohn is bringing this subject back to

372 the board to request they rescind their motion regarding investigative referrals made at the
373 December 2019 meeting and replace it with the suggested language change.

374

375 **In a motion made by Traci Gilmour, seconded by Ron Gibbs, and passed unanimously with**
376 **a roll call vote, it was RESOLVED to RESCIND the motion from the December 2-3, 2019**
377 **meeting, lines 1609-1615.**

378

379 **In a motion made by Traci Gilmour, seconded by Julie Endle, and passed unanimously with**
380 **a roll call vote, it was RESOLVED to AMEND the board’s “No Investigations Needed” list**
381 **to add internal direction that a failure to disclose convictions on an application that**
382 **occurred 10 or more years ago will not result in a referral to Investigations. Additionally,**
383 **Division will send out an informational letter to applicants for failure to disclose.**

384

385

386 **Agenda Item 6 Adjourn**

387

388 At this time, the board concluded all scheduled board business.

389

390 **In a motion made by Ron Gibbs, seconded by Jill Motz, and passed unanimously, it was**
391 **RESOLVED to ADJOURN.**

392

393 Hearing nothing further, Chair David Edwards-Smith adjourned the meeting and the record ended
394 at 10:34 a.m.

395

396

397 **Respectfully Submitted,**

398

399

400

401

402

403

404

405

406

407



Dawn Dulebohn, Licensing Examiner

6/19/20
Date



David Edwards-Smith, Board Chair

6/19/20
Date