

State of Alaska
Board of Massage Therapists

Board Packet

June 10-11, 2019

Video Conference

Originating at:

State Office Building

333 Willoughby Ave, 9th Floor

Conference Room "B"

Juneau, AK

Roll Call

State of Alaska
Office of Boards and Commissions Roster
BOARD OF MASSAGE THERAPISTS

<u>Member</u>	<u>Appointed</u>	<u>Term Expires</u>
Ron Gibbs <i>Licensed Massage Therapist</i>	November 25, 2014	March 1, 2020
Traci K. Gilmour <i>Licensed Massage Therapist</i>	November 25, 2014	March 1, 2021
Julie Endle <i>Public Member</i>	January 24, 2019	March 1, 2021
Chair David Edwards-Smith <i>Licensed Massage Therapist</i>	November 25, 2014	March 1, 2022
Jill Motz <i>Licensed Massage Therapist</i>	Jan 23, 2017	March 1, 2022

Ethics

State of Alaska
DEPARTMENT OF LAW

ETHICS ACT PROCEDURES FOR BOARDS & COMMISSIONS

All board and commission members and staff should be familiar with the Executive Branch Ethics Act procedures outlined below.

Who Is My Designated Ethics Supervisor (DES)?

Every board or commission subject to the Ethics Act¹ has several ethics supervisors designated by statute.

- The chair serves as DES for board or commission members.
- The chair serves as DES for the executive director.
- The executive director serves as DES for the staff.
- The governor is the DES for a chair.²

What Do I Have To Disclose?

The Ethics Act requires members of boards and commissions to disclose:

- Any matter that is a potential conflict of interest with actions that the member may take when serving on the board or commission.
- Any circumstance that may result in a violation of the Ethics Act.
- Any personal or financial interest (or that of an immediate family member) in a state grant, contract, lease or loan that is awarded or administered by the member's board or commission.
- The receipt of certain gifts.

The executive director of the board or commission and its staff, as state employees, must also disclose:

- Compensated outside employment or services.
- Volunteer service, if any compensation, including travel and meals, is paid or there is a potential conflict with state duties.

- For more information regarding the types of matters that may result in violations of the Ethics Act, board or commission members should refer to the guide, *“Ethics Information for Members of Boards and Commissions.”* The executive director and staff should refer to the guide, *Ethics Information for Public Employees.* Both guides and disclosure forms may be found on the [Department of Law’s ethics website](#).

How Do I Avoid Violations of the Ethics Act?

- Make timely disclosures!
- Follow required procedures!
- Provide all information necessary to a correct evaluation of the matter!³
- When in doubt, disclose and seek advice!
- Follow the advice of your DES!

What Are The Disclosure Procedures for Board and Commission Members?

The procedural requirements for disclosures by members are set out in AS 39.52.220 and 9 AAC 52.120. One goal of these provisions is to help members avoid violations of the Ethics Act. The procedures provide the opportunity for members to seek review of matters in advance of taking action to ensure that actions taken will be consistent with the Act.

Procedure for declaring actual or potential conflicts.

Members must declare potential conflicts and other matters that may violate the Ethics Act **on the public record and in writing to the chair**.

Disclosure on the public record. Members must identify actual and potential conflicts orally at the board or commission’s public meeting **in advance** of participating in deliberations or taking any official action on the matter.

- A member must always declare a conflict and may choose to refrain from voting, deliberations or other participation regarding a matter.⁴
- If a member is uncertain whether participation would result in a violation of the Act, the member should disclose the circumstances and seek a determination from the chair.

Disclosure in writing at a public meeting. In addition to an oral disclosure at a board or commission meeting, members’ disclosures must be made in writing.

- If the meeting is recorded, a tape or transcript of the meeting is preserved **and** there is a method for identifying the declaration in the record, an oral disclosure may serve as the written disclosure.
- Alternatively, the member must note the disclosure on the Notice of Potential Violation disclosure form and the chair must record the determination.

Confidential disclosure in advance of public meeting. Potential conflicts may be partially addressed in advance of a board or commission's public meeting based on the published meeting agenda or other board or commission activity.

- A member identifying a conflict or potential conflict submits a Notice of Potential Violation to the chair, as DES, in advance of the public meeting.
- This written disclosure is considered confidential.
- The chair may seek advice from the Attorney General.
- The chair makes a written determination, also confidential, whether the disclosed matter represents a conflict that will result in a violation of the Ethics Act if the member participates in official action addressing the matter.⁵
- If so, the chair directs the member to refrain from participating in the matter that is the subject of the disclosure.
- An oral report of the notice of potential violation and the determination that the member must refrain from participating is put on the record at a public meeting.⁶

Determinations at the public meeting. When a potential conflict is declared by a member for the public record, the following procedure must be followed:

- The chair states his or her determination regarding whether the member may participate.
- Any member may then object to the chair's determination.
- If an objection is made, the members present, excluding the member who made the disclosure, vote on the matter.
- *Exception:* A chair's determination that is made consistent with advice provided by the Attorney General may not be overruled.
- If the chair, or the members by majority vote, determines that a violation will exist if the disclosing member continues to participate, the member must refrain from voting, deliberating or participating in the matter.⁷

If the chair identifies a potential conflict, the same procedures are followed. If possible, the chair should forward a confidential written notice of potential violation to the Office of the Governor for a determination in advance of the board or commission meeting. If the declaration is first

made at the public meeting during which the matter will be addressed, the members present, except for the chair, vote on the matter. If a majority determines that a violation of the Ethics Act will occur if the chair continues to participate, the chair shall refrain from voting, deliberating or participating in the matter. A written disclosure or copy of the public record regarding the oral disclosure should be forwarded to the Office of the Governor for review by the chair's DES.

Procedures for Other Member Disclosures

A member's interest in a state grant, contract, lease or loan and receipt of gifts are disclosed by filling out the appropriate disclosure form and submitting the form to the chair for approval. The disclosure forms are found on the [Department of Law's ethics website](#).

What Are The Disclosure Procedures for Executive Directors and Staff?

Ethics disclosures of the executive director or staff are made in writing to the appropriate DES (chair for the executive director and the executive director for staff).

- Disclosure forms are found on the ethics website, noted above.

Notices of Potential Violations. Following receipt of a written notice of potential violation, the DES investigates, if necessary, and makes a written determination whether a violation of the Ethics Act could exist or will occur. A DES may seek advice from the Attorney General. If feasible, the DES shall reassign duties to cure a potential violation or direct divestiture or removal by the employee of the personal or financial interests giving rise to the potential violation.

- These disclosures are not required to be made part of the public record.
- A copy of a determination is provided to the employee.
- Both the notice and determination are confidential.

Other Disclosures. The DES also reviews other ethics disclosures and either approves them or determines what action must be taken to avoid a violation of the Act. In addition to the disclosures of certain gifts and interests in the listed state matters, state employees must disclose all outside employment or services for compensation.

- The DES must provide a copy of an approved disclosure or other determination the employee.

How Are Third Party Reports of Potential Violations or Complaints Handled?

Any person may report a potential violation of the Ethics Act by a board or commission member or its staff to the appropriate DES or file a complaint alleging actual violations with the Attorney General.

- Notices of potential violations and complaints must be submitted in **writing** and **under oath**.
- Notices of potential violations are investigated by the appropriate DES who makes a written determination whether a violation may exist.⁸
- Complaints are addressed by the Attorney General under separate procedures outlined in the Ethics Act.
- **These matters are confidential**, unless the subject waives confidentiality or the matter results in a public accusation.

What Are The Procedures for Quarterly Reports?

Designated ethics supervisors must submit copies of notices of potential violations received and the corresponding determinations to the Attorney General for review by the state ethics attorney as part of the quarterly report required by the Ethics Act.

- Reports are due in April, July, October and January for the preceding quarter.
- A sample report may be found on the Department of Law's ethics website.
- An executive director may file a quarterly report on behalf of the chair and combine it with his or her own report.
- If a board or commission does not meet during a quarter and there is no other reportable activity, the DES advises the Department of Law Ethics Attorney by e-mail at ethicsreporting@alaska.gov and no other report is required.

If the state ethics attorney disagrees with a reported determination, the attorney will advise the DES of that finding. If the ethics attorney finds that there was a violation, the member who committed the violation is not liable if he or she fully disclosed all relevant facts reasonably necessary to the ethics supervisor's or commission's determination and acted consistent with the determination.

How Does A DES or Board or Commission Get Ethics Advice?

A DES or board or commission may make a **written request** to the Attorney General for an opinion regarding the application of the Ethics Act. In practice, the Attorney General, through the state ethics attorney, also provides **advice by phone or e-mail** to designated ethics supervisors, especially when time constraints prevent the preparation of timely written opinions.

- A request for advice and the advisory opinion are confidential.
- The ethics attorney endeavors to provide prompt assistance, although that may not always be possible.
- The DES must make his or her determination addressing the potential violation based on the opinion provided.

It is the obligation of each board or commission member, as well as the staff, to ensure that the public's business is conducted in a manner that is consistent with the standards set out in the Ethics Act. We hope this summary assists you in ensuring that your obligations are met.

¹ The Act covers a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch of state government.

² The governor has delegated the DES responsibility to Guy Bell, Administrative Director of the Office of the Governor.

³ You may supplement the disclosure form with other written explanation as necessary. Your signature on a disclosure certifies that, to the best of your knowledge, the statements made are true, correct and complete. False statements are punishable.

⁴ In most, but not all, situations, refraining from participation ensures that a violation of the Ethics Act does not occur. Abstention does not cure a conflict with respect to a significant direct personal or financial interest in a state grant, contract, lease or loan because the Ethics Act prohibition applies whether or not the public officer actually takes official action.

⁵ The chair must give a copy of the written determination to the disclosing member. There is a determination form available on the Department of Law's ethics web page. The ethics supervisor may also write a separate memorandum.

⁶ In this manner, a member's detailed personal and financial information may be protected from public disclosure.

⁷ When a matter of particular sensitivity is raised and the ramifications of continuing without an advisory opinion from the Attorney General may affect the validity of the board or commission's action, the members should consider tabling the matter so that an opinion may be obtained.

⁸ The DES provides a copy of the notice to the employee who is the subject of the notice and may seek input from the employee, his or her supervisor and others. The DES may seek advice from the Attorney General. A copy of the DES' written determination is provided to the subject employee and the complaining party. The DES submits a copy of both the notice and the determination to the Attorney General for review as part of the DES' quarterly report. If feasible,

the DES shall reassign duties to cure a potential violation or direct divestiture or removal by the employee of the personal or financial interests giving rise to the potential violation.

6/14

The Attorney General and Department of Law staff may not provide legal advice to private citizens or organizations. Please contact an attorney if you need legal advice. The [Alaska Lawyer Referral Service](#) or your local bar association may be able to assist you in locating a lawyer.

Alaska Department of Law

1031 West 4th Avenue, Suite 200

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Ethics Disclosure Form

<p style="text-align: center;">CONFIDENTIAL REQUEST FOR ETHICS DETERMINATION</p>
--

TO: _____, Designated Ethics Supervisor

(Identify Your Department, Agency, Public Corporation, Board, Commission)

I request advice regarding the application of the Executive Branch Ethics Act (AS 39.52.010 - .960) to my situation. The situation involves the following:

I have provided additional information in the attached document(s).

I believe the following provisions of the Ethics Act may apply to my situation:

- AS 39.52.120, Misuse of Official Position
- AS 39.52.130, Improper Gifts
- AS 39.52.140, Improper Use or Disclosure of Information
- AS 39.52.150, Improper Influence in State Grants, Contracts, Leases or Loans
- AS 39.52.160, Improper Representation
- AS 39.52.170, Outside Employment Restricted
- AS 39.52.180, Restrictions on Employment after Leaving State Service
- AS 39.52.190, Aiding a Violation Prohibited

I understand that I should refrain from taking any official action relating to this matter until I receive your advice. If the circumstances I described above may result in a violation of AS 39.52.110 - .190, I intend that this request serve as my disclosure of the matter in accordance with AS 39.52.210 or AS 39.52.220.

I certify to the best of my knowledge that my statement is true, correct, and complete. In addition to any other penalty or punishment that may apply, the submission of a false statement is punishable under AS 11.56.200 - AS 11.56.240.

(Signature)

(Date)

(Printed Name)

(Division, Board, Commission)

(Position Title)

(Location)

Designated Ethics Supervisor: Provide a copy of your written determination to the employee advising whether action is necessary under AS 39.52.210 or AS 39.52.220, and send a copy of the determination and disclosure to the attorney general with your quarterly report.

Ethics Disclosure Form

Receipt of Gift

TO: _____, Designated Ethics Supervisor, _____
(Agency, Public Corporation, Board,
Commission or Council)

This disclosure reports receipt of a gift with value in excess of \$150.00 by me or my immediate family member, as required by AS 39.52.130(b) or (f).

1. Is the gift connected to my position as a state officer, employee or member of a state board or commission?

Yes No

2. Can I take or withhold official action that may affect the person or entity that gave me the gift?

Yes No

(If you answer "No" to both questions, you do not need to report this gift. If the answer to either question is "Yes," or if you are not sure, you must complete this form and provide it to your designated ethics supervisor.)

The gift is _____

Identify gift giver by full name, title, and organization or relationship, if any:

Describe event or occasion when gift was received or other circumstance explaining the reason for the gift:

My estimate of its value is \$ _____ The date of receipt was _____

The gift was received by a member of my family. Who? _____

If you checked "Yes" to question 2 above, explain the official action you may take that affects the giver (attach additional page, if necessary):

I certify to the best of my knowledge that my statement is true, correct, and complete. In addition to any other penalty or punishment that may apply, the submission of a false statement is punishable under AS 11.56.200 - AS 11.56.240.

(Signature)

(Date)

(Printed Name)

(Division)

(Position Title)

(Location)

Ethics Supervisor Determination: Approve Disapproved

Designated Ethics Supervisor*

(Date)

**Designated Ethics Supervisor: Provide a copy of the approval or disapproval to the employee. If action is necessary under AS 39.52.210 or AS 39.52.220, attach a determination stating the reasons and send a copy of the determination and disclosure to the attorney general with your quarterly report.*

Review of Agenda



**Alaska Board of Massage Therapists
State Office Building
333 Willoughby Ave, Conference Rm. B
Juneau, AK 99801
Conference Line Call In: 1-800-315-6338
Access Code: 14875**

June 10-11, 2019

9:00 a.m.

Zoom Call In: 408-638-0968 or 646-876-9923

Access Code: **Day 1:** 472 395 133 / **Day 2:** 263 705 436

Meeting Agenda (Draft)

Day 1
Time

Subject

Lead

- | | | |
|---------------|---|--|
| 1. 9:00 a.m. | Call to Order/Roll Call | Chair |
| 2. 9:05 a.m. | Ethics Report | Chair |
| 3. 9:10 a.m. | Review/Approve Agenda | Chair |
| 4. 9:15 a.m. | Review/Approve Past Meeting Minutes <ul style="list-style-type: none">• February 28- March 1, 2019• April 9, 2019 | Chair |
| 5. 9:20 a.m. | Old Business <ul style="list-style-type: none">• Task List from February 28-March 1, 2019- INV Tasks #5-7• Disciplinary Matrix Revision | Chair |
| 6. 10:00 a.m. | Division/Financial Update | TBD |
| 7. 10:20 a.m. | Investigative Case Review, Probation Reports,
Memos & Consent Agreements
(Executive Session, if needed) <ul style="list-style-type: none">• J.J.• S.S.• Y.Z.• Role in Record Keeping | Investigators Jacobs &
Homestead

Gilmour |
| 8. 10:40 a.m. | Old Business (continued) <ul style="list-style-type: none">• Task List from February 28- March 1, 2019 (continued)<ul style="list-style-type: none">a. Sponsor Contact Information for Continuing Educationb. Letter of Intent from Alaska Career Collegec. Exempt Status from Alaska Commission of Post-Secondary Educationd. Louisiana's Potential Applicant Criminal Pre-Review | Chair

Gilmour |



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Meeting Agenda (Draft)

Day 1 (continued)

<u>Time</u>	<u>Subject</u>	<u>Lead</u>
9. 11:00 a.m.	Regulations (with Regulations Questionnaire, if needed) <ul style="list-style-type: none">• New Statutes & Regulations- May 2019• 500 hours vs. 625 hours Criteria for Applicants• Potential Regulations Projects<ul style="list-style-type: none">a. Continuing Education- Ethics Requirement- 12 AAC 79.210b. Amend SOP #4- Current License- 12 AAC 79.900c. Amend Rejected Regulation Change- In-class, supervised- 12 AAC 79.100(2)(A)(B)d. Review & Amend Renewal & Reinstatement Regulation-12 AAC 79.200e. Medical/Military Service Exception for Continuing Educationf. Amend Credentialing Entity- 12 AAC 79.110(2)(B)	Zinn
10. 12:00 p.m.	Lunch	
11. 1:15 p.m.	Public Comment	Chair
12. 1:30 p.m.	Administrative Business <ul style="list-style-type: none">• Administrative Statistics• Meeting Calendar<ul style="list-style-type: none">a. Meeting Dates for 2020• FSMTB Annual Meeting and Board Delegates• Document Signing• Election of Vice- Chair• Review/ Update "No Investigations Needed" List- November 2015	Chair
13. 2:30 p.m.	Relationship with Law Enforcement/ Human Trafficking- FBI	TBD
14. 3:15 p.m.	Administrative Business (continued) <ul style="list-style-type: none">• Review FY 2019 Annual Report• FARB Member Board Invitation• Correspondence<ul style="list-style-type: none">1. Betz2. Brown	Chair
15. 4:30 p.m.	Adjourn or Recess until 9:00 a.m. June 11, 2019	Chair



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Meeting Agenda (Draft)

Day 2- June 11, 2019

<u>Time</u>	<u>Subject</u>	<u>Lead</u>
16. 9:00 a.m.	Call to Order/Roll Call	Chair
17. 9:05 a.m.	Review Agenda	Chair
18. 9:10 a.m.	New Business <ul style="list-style-type: none"> • Order of Remand for X.L. • Rescind Denials <ol style="list-style-type: none"> 1. H.K. 2. C.S. 3. Y.Y. • Tabled Applications <ol style="list-style-type: none"> 1. J.E. 2. E.P. 3. M.W. • Board Approved Credentialing Agencies by State • Board Approved School National Accreditation Agencies <ol style="list-style-type: none"> 1. ACCSC • Board Approved School Authorizing Entities by State • Insurance Billing Statute 	Chair Motz
19. 10:45 a.m.	Board Discussion on Application of Curriculum Breakdown	Chair
20. 11:30 a.m.	Board Criteria in Evaluating and Approving Continuing Education <ul style="list-style-type: none"> • How to determine class merit...? • Qualification of Instructor? • Amount of Experience on Subject? • Does Course relate to the Practice of Massage Therapy or Bodywork? 	Chair
21. 12:00 p.m.	Lunch	
22. 1:15 p.m.	Draft Massage Establishment Regulations	Chair, Zinn, Chambers, Francois
23. 4:00 p.m.	Adjourn	Chair

Review/Approve Past Meeting Minutes

February 28- March 1, 2019
Minutes

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 **MINUTES OF THE MEETING**

7 **February 28- March 1, 2019**

8
9
10 *These are **DRAFT** minutes prepared by the staff of the*
11 *Division of Corporations, Business, and Professional Licensing.*

12
13 *These minutes have not been reviewed or approved by the Board.*

14
15 *Written meeting minutes reflects a brief overview of the business conducted by the board during their meeting. For a more*
16 *detailed account, please request a copy of the meeting's audio recording at:*
17 *<https://www.commerce.alaska.gov/web/cbpl/PublicRecordsRequests.aspx>.*
18
19

20 By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a
21 scheduled meeting of the Board of Massage Therapists was held in person on
22 February 28- March 1, 2019.
23

24 **Agenda Item 1** **Call to Order/Roll Call:**

25
26 *On the record at 9:06 a.m.*
27

28 **Board Members present, constituting a quorum:**

29
30 David Edwards-Smith- Board Chair, Licensed Massage Therapist
31 Traci Gilmour, Licensed Massage Therapist
32 Ron Gibbs, Licenses Massage Therapist
33 Jill Motz, Licensed Massage Therapist
34 Julie Endle, Public Board Member
35

36 **Division Staff present:**

37
38 Dawn Dulebohn, Occupational Licensing Examiner
39 Carl Jacobs, Investigator III
40 Sonia Lipker, Senior Investigator III
41 Billy Homestead, Investigator II/Probation Monitor
42 Marylene Wales, Accountant III
43

44 **Joining Telephonically:**

45
46 Volker Hruby, American Massage Therapy Association Chapter President
47
48

49 Joining In Person:

50

51 Bayinna Ballard, Massage Therapist Applicant

52

53 Agenda Item 2 Ethics Reporting:

54

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

57

58 Agenda Item 3 Review/Approve Agenda:

59

60 The board reviewed the agenda and discussed any proposed changes.

61

62 Board Chair Edwards-Smith would like to add a point to the agenda concerning the upcoming
63 American Massage Therapy Association (AMTA) conference in April. That discussion will be added
64 to Agenda Item 13.

65

66 **In a motion duly made by Ron Gibbs, seconded by Jill Motz, and passed unanimously, it**
67 **was RESOLVED to ACCEPT the agenda as amended.**

68

69 Agenda Item 4 Review/Approve Past Meeting Minutes

70

71 Chair Edwards-Smith complimented that the minutes were very comprehensive. OLE Dulebohn
72 stated that there were a few typos that have already been corrected.

73

74 **In a motion duly made by Traci Gilmour, seconded by Jill Motz, and passed unanimously, it**
75 **was RESOLVED to APPROVE the meeting minutes from December 6-7, 2018 as amended.**

76

77 Agenda Item 5 Old Business

78

79 Task List from December 6-7 & September 10-11, 2018:

80

81 OLE Dulebohn presented the task lists from the December 6-7 & September 10-11, 2018 board
82 meetings. Items that were reported in this Board Packet were:

83

- 84 • Investigations has submitted the board requested information on comparables for other
85 programs in terms of investigative cases.
- 86 • All requested FAQ's have been added or amended at the board's request.
- 87 • Marylene Wales has submitted the Administrative Hearing, Investigations, and other cost
88 comparisons the board has requested.
- 89 • An updated Disciplinary Matrix was crafted by OLE Dulebohn for board review and
90 approval. Ms. Dulebohn consulted Investigators Jacobs and Lipker on the creation and the
91 choices that the board has for each infraction.
- 92 • David Edwards-Smith was unable to procure correspondence from NCBTMB on instructor
93 requirements. Mr. Edwards-Smith attempted contact several times and was always referred
94 to the information on their website. NCBTMB verbally stated that they look at the
95 experience and expertise of their instructors. If there is a complaint, NCBTMB will reply
and evaluate them on a case-by-case basis.

96 The board reiterates that there is an FAQ on their website for person's who would like to
97 report any unsatisfactory continuing education (ce) course from any provider. OLE
98 Dulebohn will then take those complaints and forward them to the course sponsor for
99 review. Should the course sponsor choose to update the board on their decisions on those
100 cases, OLE Dulebohn will provide that information in board packets.

101
102 **TASK: OLE Dulebohn will obtain contact information for course sponsors in 12**
103 **AAC79.210(d)(3) in regard to continuing education reporting.**
104

- 105 • OLE Dulebohn will send requests to LAW on applicant handler ID/affidavit & board ability
106 to define compensation for massage establishment regulations after legislative session.
- 107 • OLE Dulebohn will contact applicants denied because of criminal convictions (that have not
108 gone through a ALJ process) to see if they want their applications reconsidered before the
109 next board meeting.
- 110 • Traci Gilmour submitted possible ethics courses.
- 111 • The board's establishment "wish list" was sent to Sara Chambers for a LAW consult and
112 reply with suggested framework. Reply crafted by Ms. Chambers was submitted for board
113 review.
- 114 • The board asked whether an Ethics Course can be required as part of the continuing
115 education requirement. A consult with Regulations Specialist Zinn and Maiquis yielded a
116 "yes" answer.
- 117 • At board request, OLE Dulebohn sent samples of correspondence sent to applicants from
118 the licensing examiner. Samples includes status updates, investigative updates, denial letters,
119 approval letters, and fitness to practice review.
- 120 • Jill Motz has been unable to procure a letter of intent from Alaska Career College (ACC)
121 stating they will accept students for remedial work as determined by the board. Ms. Motz
122 has contacted both Jennifer Deitz and Linda Sture but feels that the reason no response has
123 been received is that ACC wants to be able to vet all students before they are accepted into
124 their program.

125
126 **TASK: OLE Dulebohn will follow-up with Jennifer Deitz on the Letter of Intent for**
127 **board recommended remedial hours that includes ACC's requirements for**
128 **acceptance.**
129

130 *Investigator Jacobs joined the meeting at 9:22 a.m.*
131

132 The board reviewed the information provided by Investigations to see where the Board of Massage
133 Therapists cases lie compared to other programs of approximately the same licensee base.

134
135 *Investigator Lipker joined the meeting at 9:35 a.m.*
136

137 Investigator Jacobs found that the Board of Massage Therapists does have significantly more
138 investigative cases than other programs with the same number of licensees.

139
140 Chair Edwards-Smith asked if the cases are more associated with initial applications or the complaint
141 process. Investigator Jacobs relays that most cases (including massage therapy) relate to the

142 application process in some way. The most common cases relate to criminal history and/or the
143 applicant failing to disclose information. The next most common issue is unlicensed practice.

144
145 Board member Ron Gibbs asks if there is anything the board can do to help reduce the expense of
146 Investigations in regard to failing to disclose information on an application. Board member Traci
147 Gilmour states that the current application available on the board's website is vastly improved from
148 the original with disclosure statements and attestation boxes and that helps the applicant to not fail
149 to disclose information. Ms. Motz comments when she is called upon to be a reviewing board
150 member for Investigations, one of the most cited reasons applicants say they don't disclose criminal
151 convictions is they "didn't think it was relevant" despite the application telling them to disclose
152 everything. The board members discuss how applicants need to remember to disclose all criminal
153 convictions. The board will determine if any of them are relevant and impact public safety.

154
155 Board member Julie Endle suggests charging a fine or fee for any applicant that fails to disclose to
156 help cover the additional investigative cost incurred by the board (and subsequently the licensees).
157 Chair Edwards-Smith replies that the board and division's applications are already sufficient in terms
158 of explaining what is required by applicants. OLE Dulebohn expands on this by reminding the
159 board that any fees or fines (outside of those required for application or processing) do not go back
160 to the board's account but instead go to the General Fund.

161
162 The board asks Investigators Lipker and Jacobs about their pending merge with the Department of
163 Law and if it will impact the board's access to skilled, knowledgeable investigators that are familiar
164 with this board and their specific issues. The Investigators reply that things are still in the works and
165 they have no answers concerning the merger for the board at this time.

166
167 Board member Traci Gilmour brings up a point that applications may be hard to find for some
168 people to find. OLE Dulebohn states that she directs people to google "Alaska Board of Massage
169 Therapists" or "Alaska Massage License" so they are directed to the board's page without having to
170 navigate the entire State of Alaska website.

171 *Marylene Wales joined the meeting at 9:57 a.m.*

172
173 To combat the issue of applicants failing to follow the instructions on the applications (and the
174 resulting investigative costs), the board brainstorms ways that they can help bring more attention to
175 requirements of the application. After quite some deliberation, the board recommends that division
176 revise the current application to modify the 1st informational sheet into a checklist with boxes for
177 each item and a required signature at the bottom.

178
179 **TASK:** The board asks OLE Dulebohn to suggest a revamp the 1st informational
180 page to include check boxes, statement on disclosure and professional fitness
181 questions (PFQ), and applicant signature to Supervisor Hannasch. Also bold
182 the statement on the PFQ for disclosing all criminal convictions to avoid
183 investigation process.

184
185 *Ms. Lipker left the meeting at 10:02 a.m.*

186
187

188 Agenda Item 6 Division/Financial Update

189
190 Marylene Wales, Accountant III, addresses the board regarding the Division Financial Update. Ms.
191 Wales goes over the finances of the board from July 1, 2018- December 31, 2018. She reminds the
192 board that this is not an renewal year and the revenue is not expected to be much.

193
194 FY 2019 Schedule of Revenues and Expenditures 1st- 2nd Quarter:

195

MAS	2019
39, 420	Licensing Revenue
94,489	Direct Expenditures
52,977	Indirect Expense
147,466	TOTAL EXPENSES
(106,255)	Annual Surplus (Deficit)
231,543	Beginning Cumulative Surplus
\$125,288	Ending Cumulative Surplus

196
197 The Division website has Quarterly Reports for all boards.

198
199 Ms. Wales further explains this document line by line at the board’s request. Ms. Wales reminds the
200 board that the “direct expenditures” line is a place holder calculated as 50% of FY18. As the board
201 is only half way through FY19, Ms. Wales projects that the board will double their direct
202 expenditures. This would put them in debt for FY19. Ms. Wales goes on to state that as renewals
203 start in July 2019 and go through September 30, 2019, the board will recover quickly.

204
205 Ms. Motz reminds the board that what Ms. Wales has described was always the risk of running a
206 “lean” budget by reducing the licensing fee from \$350 to \$290. The board asks OLE Dulebohn
207 how many people applied for licensure during a non-renewal year to figure out how much revenue is
208 generated in between renewals.

209
210 **TASK: OLE Dulebohn will find out how many people applied for licensure in the**
211 **non- renewal years to ascertain how much revenue was generated.**

212
213 Ms. Motz continues that even though the board is running low on funds, that was always the
214 guidance given by division to ensure their fees were not too high as to generate a large surplus. Ms.
215 Wales asks the board if they would like to end the Financial Update and move on to the Fee
216 Analysis to allow division to answer some of the current questions. Chair Edwards-Smith directs
217 the board to the Fee Analysis portion of Ms. Wales presentation.

218
219
220
221

222 Fee Analysis

223

224 Ms. Wales presents the division's fee analysis findings for the Board of Massage Therapists. The
225 board members ask for a fee analysis that could be manipulated to show different possible
226 outcomes. Ms. Wales directed OLE Dulebohn to forward her e-mail with that information to the
227 board. The document Ms. Wales has provided show a division recommendation of \$60.00 fee
228 increase for this year's renewals.

229

230 Board member Traci Gilmour asks Ms. Wales that if the board does not vote to raise its fees, it will
231 only be in debt of \$6,650 for a very short time. She goes on to state that since the board only
232 reduced fees in the last renewal period, she would like for them to stay at the current rate of \$290.
233 Ms. Gilmour continues by stating that the board was hoping to reduce costs this licensing period to
234 licensees. If division opts to increase costs by \$60, it would negate the reduction that the board
235 accomplished by not having fingerprint renewals this year. Ms. Gilmour does acknowledge that the
236 board does not set the fees but only offers an educated opinion to division. She is worried that
237 should fees be increased at this time, the board will bear the brunt of the backlash as most licensees
238 do not know that division actually sets the fees.

239

240 Ms. Wales responds that Ms. Gilmour's cost assessment is not entirely accurate. If the board looks
241 at the fee analysis, they will see that if the fees are not increased, the board will not carry enough
242 surplus for the off years in the coming renewal cycles. Ms. Wales states that the board should
243 maintain enough surplus for 1 years' worth of expenditures. If they continue with their current fees,
244 their fees will not be enough to cover the projected cost of \$275,000 it costs to run the board every
245 year.

246

247 Board members recount that the costs for last year that division is basing their analysis on was
248 unusual. The board incurred the costs of a particularly costly legal case which is not typical, an
249 emergency teleconference, and investigative fees that are in the process of being reduced by the
250 introduction of a new, streamlined disciplinary matrix and adoption of civil fines. In addition, with
251 the mandate from the Governor that boards only meet, in-person, once a year there would be a
252 savings of approximately \$6,000. The board thinks that to raise costs based on the last year might
253 be punitive to the licensees that were not responsible for the occurrence of those costs. Ms.
254 Gilmour thinks that it would be preemptive to raise the fees now when the board has taken so many
255 steps to reduce costs in future years.

256

257 *Investigator Homestead joined the meeting at 10:10 a.m*

258

259 Ms. Wales suggests that the board manipulate the spreadsheet with the fee analysis tonight and then
260 vote on this subject during the meeting's second day. Ms. Wales reminds the board that the
261 Director will have the final say on the possibility of a fee increase but that the board's
262 recommendation will be taken very seriously. Mr. Gibbs brings up the point that there are boards
263 that have been operating in serious arrears and they are still around. While Chairman Edwards-
264 Smith reiterates that it is better to operate in the black, Mr. Gibbs states that if the board will only be
265 in the red for a few months, it would be a knee jerk reflex to increase costs when renewals end in
266 September 2019. Chair Edwards-Smith charges the board with Ms. Wales suggested research and
267 ask that the members not see it through their emotions but by the data division has provided the
268 board. He goes on to state that it is the board's responsibility to lobby for the correct amount of
269 funds to allow this program to continue

270
271 *Ms. Wales left the meeting at 10:28 a.m.*

272
273 **Agenda Item 7** **Investigative Case Review and Probation Reports**

274
275 Investigators Homestead and Jacobs join the meeting in person.

276
277 Investigator Homestead begins with the Probation Report. He states there are 8 licensees on
278 probation and everyone is complying. Compliance means that all are subjected to a criminal
279 background report and self-reporting on their status quarterly.

280
281 *Investigator Homestead left the meeting at 10:35 a.m.*

282
283 Investigator Jacobs begins the Investigative Case Review for the period of December 1, 2018-
284 February 21, 2019. He states that the division opened 13 matters, closed 15, and there are 18
285 matters that remain open.

286
287 There is one matter for the board to review today. Investigator Jacobs asks if the board would like
288 to go into Executive Session to discuss this case. Board Chair Edwards- Smith asks if all board
289 members have reviewed the case in question and they all replied that they had. Mr. Edwards-Smith
290 goes on to ask if anyone feels the need to go into Executive Session to discuss this case and they all
291 replied that they did not. The Chair asks for a motion on this case.

292
293 **In a motion duly made by Traci Gilmour, seconded by Ron Gibbs, and passed unanimously**
294 **with a roll call vote, it was RESOLVED to ACCEPT the Consent Agreement as written for**
295 **Shannon Hansen #2018-001035.**

296
297 *Chair Edwards-Smith calls for a short break at 10:37 a.m.*
298 *Back on record at 10:52 a.m. with the entire board, Mr. Hruby, and Mr. Jacobs*

299
300 **Investigations Board Refresher**

301
302 Chair Edwards-Smith asks Investigator Jacobs to present a board member refresher which includes
303 an investigations flowchart, reviewing board member refresher with breakdowns, and sample
304 documents. Mr. Jacobs also reminds the board that public members do not perform the function of
305 a reviewing board member but it is good information for all board members to know and
306 understand as voting members.

307
308 Investigator Jacobs states that the board should strive to be consistent with their disciplinary
309 decisions. Should a case arise where the reviewing board member would want to deviate from the
310 precedent, they would need to give good reason to the rest of the board. At this time, OLE
311 Dulebohn interjects to ensure that board members know that the investigator is just a finder of
312 facts. The reviewing board member would need to cite any law or rule that has been broken and any
313 disciplinary action. That disciplinary action will then be brought to the entire board for review and
314 adoption.

315
316 Board member Jill Motz asks Mr. Jacobs about fines and suspension of fines. She argues that if the
317 board sees fit to assess fines, why would you suspend them? Why would you not just implement a

318 smaller fine? Misterys Gibbs and Edwards-Smith answer that the suspended amount would be for
319 non-compliance of the consent agreement. Investigator Jacobs replies that he believes that is
320 possible but it would cost the board time and money to reinstate the suspended portion of the fine.
321 OLE Dulebohn brings up that the amount the board wants to reinstitute in a suspended fine may be
322 less than the investigation's cost and, once again, the board does not recoup any of that money to
323 help offset the investigative costs.

324

325 **TASK: Investigator Jacobs will confirm suspension of fines in consent agreements**
326 **and what language needs to be implemented in a consent agreement**
327 **designate when suspended fines will be re-instituted.**
328

329 Ms. Motz continues that she believes suspension of fines is a bad idea as it could be cause of
330 vaguery, discrimination claims, and investigative costs. Ms. Gilmour and Mr. Edwards-Smith would
331 prefer a less rigid disciplinary matrix and have more things be at the board's discretion. Chair
332 Edwards-Smith asks the board to pause this line of discussion and pick it back up when the board is
333 discussing the Disciplinary Matrix Revision later in the meeting.

334

335 **TASK: Investigator Jacobs will provide the board with an outline of how and when to**
336 **implement a civil fine.**
337

338 OLE Dulebohn reminds the board that the sanctions for implementation of a civil fine is in their
339 September 10-11, 2018 board packet.

340

341 Unlicensed Practice

342

343 Board member Jill Motz had a disagreement with Investigations over the disciplinary action
344 pertaining to persons accused of unlicensed practice and has asked for clarification on the subject.
345 According to Ms. Motz, she was told that the board had no jurisdiction over complaints of
346 unlicensed practice even though statute says it is a Class B misdemeanor.

347

348 Chief Greg Francois replied to Ms. Motz by e-mail stating that the end result on matters of
349 unlicensed practice is a "Temporary Cease and Desist Order (TCDO). The Order would become
350 permanent after 15 days if the Respondent in the Order does not request a hearing. Our procedure
351 established that once we have a person who we believe is practicing without a license, we will poll
352 the Board for the issuance of a TCDO. Once we have a majority of Board members who do not
353 object to the issuance of the TCDO, one will be prepared and signed by myself. The Respondent
354 will either be served in person or by certified mail...As far as criminal cases, in order to file a case
355 for unlicensed practice we would need to show that an individual is knowingly conducting the
356 practice without a license to practice as a massage therapist. Persons who are accused will testify at
357 hearings that they did not know they needed a license. Ignorance is no excuse of the law but the
358 burden of proof is on the State to show the person was conducting unlicensed practice knowingly.
359 Surveillance on the location would have to be conducted along with a possible undercover operation
360 of posing as a customer, receiving a service and paying for that service. This way you have a witness
361 who can testify in open court as to the unlicensed practice events/service and the Respondent was
362 receiving payment for that service. In addition to proving the case, any advertisements will have to
363 exhibited in a hearing as evidence of the intent to practice."

364

365 **TASK: Investigator Jacobs will ask Chief Francois about the details of the Cease and**
366 **Desist and how the information is reported to the authorities (if there is an**
367 **entity willing to handle the prosecution).**
368

369 OLE Dulebohn informs the board that another form of disciplinary action for unlicensed practice
370 could come from when the accused applies for a massage license since the board does have
371 jurisdiction over applicants and licensees. This was confirmed by Investigators Jacobs.
372

373 *Investigator Jacobs left the meeting at 11:33 a.m.*
374

375 **Agenda Item 8 Review/Revision of 12 AAC 79.110(2)(B)**
376

377 Chair Edwards-Smith directs the board to the next order of business concerning 12 AAC
378 79.110(2)(B). OLE Dulebohn is asked to present and she directs the board to the regulation 12
379 AAC 79.110 which has some incorrect information. It currently states: “The board will issue a
380 license by credentials to practice massage therapy to an applicant who meets the requirements of AS
381 08.61.040 and this section. An applicant for licensure by credentials under this section must submit
382 verification that the applicant holds a current license to practice massage therapy in another state,
383 jurisdiction, or country where licensing requirements are substantially equal to or greater than the
384 requirements of this state; or certified by the American Massage Therapy Association, the National
385 Certification Board for Therapeutic Massage and Bodywork, or other board approved credentialing
386 entity...” Both AMTA and the NCBTMB do not issue licenses or credentials by their own
387 admission and are not recognized by the board as credentialing agencies. OLE Dulebohn
388 recommends that the board remove the two listed agencies and keep “board approved credentialing
389 entity”.
390

391 After discussion in which Mr. Gibbs asked for clarification that this regulation would be for a
392 massage therapy credentialing agency, the Chair asked for a motion.
393

394 **In a motion duly made by Jill Motz, seconded by Traci Gilmour, and passed unanimously**
395 **with a roll call vote, it was RESOLVED to AMEND 12 AAC 79.110(2)(B) by removing**
396 **“certified by the American Massage Therapy Association, the National Certification Board**
397 **for Therapeutic Massage and Bodywork” and have it only read “certified by a board-**
398 **approved credentialing entity”.**
399

400 **TASK: Chair Edwards-Smith will complete the Regulation Questionnaire for this**
401 **amendment and send it in to OLE Dulebohn.**
402

403 Ms. Gilmour expands this topic asking what are the accepted credentialing agencies by state and
404 OLE Dulebohn responds by stating that the only agency the board has recognized is the California
405 Massage Therapy Council but that is a project that board is required to complete in the future.
406 Chair Edwards-Smith states that researching all board accepted credentialing agencies will be a
407 priority in the boards’ future.
408

409 **Agenda Item 9 Review Tabled Applications**
410

411 The board reviewed 3 tabled applications. Chair Edwards-Smith reminds the board of the reasons
412 to go into Executive Session and asks if the board needs to partake of that option. Ms. Motz asks to
413 be reminded if the Reviewing Board Member on a case should engage in discussion and voting on a
414 case. OLE Dulebohn reiterates that Reviewing Board Members should abstain from discussion and
415 voting if they feel like they were given any information in their role that the rest of the board was
416 not privy to and would bias their opinion and not allow an objective vote. Ms. Motz follows up
417 with a question on whether the board can approve an application pending a consent agreement.
418 OLE Dulebohn responds that the board is within their rights to do that but they would need to
419 define the parameters of the consent agreement in this meeting as to provide direction to
420 Investigations when they are drawing up the agreement.

421
422 K.K.

423
424 The board began discussion of a possible consent agreement for K.K. for failing to disclose on her
425 application but when getting to the specifics thought it would be better to create their new
426 disciplinary matrix first to ensure consistency of disciplinary action.

427
428 Agenda Item 10 Lunch

429
430 *Chair Edwards-Smith calls for a lunch break at 11:56 a.m.*
431 *Back from lunch at 1:15 p.m with the entire board and Mr. Hraby present.*

432
433
434 Agenda Item 11 Public Comment

435
436 The board prepares to hear public comment. There is no one on the phone or in person that
437 expresses a wish to address the board during public comment. Mr. Hraby is asked if he would like
438 to participate in public comment. He declines at this time but wants to thank the board for their
439 “amazing work”. After 5 minutes, the Board Chair directs the board to go back to tabled
440 applications.

441
442 Agenda Item 9(continued) Review Tabled Applications

443
444 Chair Edwards-Smith asks for a motion to go into Executive Session.

445
446 **In a motion duly made by Jill Motz, seconded by Traci Gilmour, it was RESOLVED to**
447 **ENTER into Executive Session in accordance with AS 44.62.310(c), and Alaska**
448 **Constitutional Right to Privacy Provisions, for the purpose of discussing “matters which by**
449 **law, municipal charter, or ordinance are required to be confidential”. OLE Dulebohn to**
450 **remain during Executive Session.**

451
452 *Off the record for Executive Session at 1:24 p.m.*
453 *Back from Executive Session at 1:51 p.m. Mr. Hraby rejoined the meeting telephonically at 1:53p.m.*

454
455 L.O.

456
457 After extensive discussion in Executive Session, Chair Edwards-Smith asks for a motion on this
458 application.

459
460 **In a motion duly made by Jill Motz, seconded by Traci Gilmour, and passed unanimously**
461 **with a roll call vote, it was RESOLVED to DENY the application for licensure for LaDraper**
462 **Ollison citing AS 08.61.040(9)(A) “The board shall issue a license to practice massage**
463 **therapy to a person who is currently licensed to practice massage therapy in another state or**
464 **country that has licensing requirements that are substantially equal to or greater than the**
465 **requirements of this state” and AS 08.61.030 (3)(A) & (8) “The board shall issue a license to**
466 **practice massage therapy to a person who furnishes evidence satisfactory to the board that**
467 **the person has completed a course of study of at least 500 hours of in-class supervised**
468 **instruction and clinical work from an approved massage school and has successfully**
469 **completed a nationally recognized competency examination approved by the board.”**

470
471 Y.M.

472
473 After extensive discussion in Executive Session, Chair Edwards-Smith asks for a motion on this
474 application. He also asks that there be a record of the board’s efforts to contact Ms. McCabe to
475 allow her to participate in a fitness to practice interview.

476
477 OLE Dulebohn states that on September 10-11, 2018 the board made a decision to deny licensure
478 for Yun Song McCabe. On October 12, 2018 the board held an emergency teleconference in which
479 they rescinded the denial for Ms. McCabe to allow her the opportunity to present more information
480 and participate in a fitness to practice interview. Ms. McCabe was given two opportunities to
481 participate in a fitness to practice interview; one on December 6-7, 2018 and the second on February
482 28, 2019 meeting. Ms. McCabe was notified in certified letters and e-mails that, as a prerequisite to
483 the interview, she was required to submit additional documents by a deadline prior to the interview.
484 After failing to submit the additional information both times, her interview was cancelled, she was
485 notified by e-mail, and the board was asked to make a final decision on Ms. McCabe’s application
486 for licensure.

487
488 **In a motion duly made by Jill Motz, seconded by Traci Gilmour, and passed unanimously**
489 **with a roll call vote, it was RESOLVED to DENY the application for licensure for Yun Song**
490 **McCabe referencing the September 10-11, 2018 minutes.**

491
492 Excerpt from the September 10-11, 2018 Minutes

493
494 “The board reviewed the application for Y.M. Y.M.’s criminal history was the deciding factor in the
495 board’s decision. They took into account statutes and regulation 12 AAC 79.910(9), referenced their
496 disciplinary matrix regarding crimes that are barriers to licensure, and reviewed Y.M.’s letter of
497 explanation. Y.M. was given the opportunity in the requested letter of explanation to tell her side of the
498 story and chose not to give any details.

499
500 **In a motion duly made by Traci Gilmour, seconded by Jill Motz, and passed unanimously with a**
501 **roll call vote, it was RESOLVED to DENY the application for licensure for Yun McCabe #2018-**
502 **000165 citing AS 08.61.030(9) “The Board shall issue a license to practice massage therapy to a**
503 **person who has not been convicted of, or pled guilty or no contest to, a crime involving moral**
504 **turpitude, or who has been convicted of, or pled guilty or no contest to, a crime involving moral**
505 **turpitude if the board finds that the conviction does not affect the person’s ability to practice**
506 **competently and safely.”**

507
508 Agenda Item 5(continued) Old Business

509
510 Rescind Motion to Extend Continuing Education Period

511
512 In the December 6-7, 2018 board meeting, the board made a motion to extend the period that
513 licensees could complete their continuing education for the 2019 license renewal to July 1, 2017-
514 September 30, 2019. After the meeting concluded, OLE Dulebohn consulted the Regulations
515 Specialists who explained that since the timeframe for continuing education is in regulation 12 AAC
516 79.210(a)(2) the board cannot change it without amending the regulation. The Chair asks the
517 motion from the December 2018 meeting be rescinded.

518
519 **In a motion duly made by Traci Gilmour, seconded by Ron Gibbs, and passed unanimously**
520 **with a roll call vote, it was RESOLVED to RESCIND the motion to extend the continuing**
521 **education period from July 1, 2017 to September 30, 2019 as passed in the December 6-7,**
522 **2018 meeting.**

523
524 The board asks OLE Dulebohn if this information is available in the FAQ's located on the board's
525 website. OLE Dulebohn affirms that this information and the information that states that
526 continuing education that was used to satisfy remedial courses required by an audit cannot be used
527 to for the licensing renewals.

528
529 Alaska Human Trafficking Work Group:

530
531 The board was presented with the meeting notes from the August 15, 2018 Alaska Human
532 Trafficking Work Group (AHTWG). OLE Dulebohn states that she has been in contact with the
533 AHTWG for the November 2018 meeting but was told they are not currently available. When they
534 become available she will post them in the next board packet.

535
536 Review/Update FAQ's from Website:

537
538 Ms. Motz suggests that the board review the FAQ's after the 1st day of the meeting concludes and
539 come back with any changes or additions on day 2. Chair Edward-Smith agrees that would be the
540 best option and asks the board to announce any suggested changes to the FAQ's on March 1, 2019.

541
542 Disciplinary Matrix Revision

543
544 *Investigator Jacobs joined the meeting at 2:04 p.m.*

545
546 OLE Dulebohn was asked to present the draft version of the updated Disciplinary Matrix and Fine
547 Schedule for board review and amendments. Chair Edwards-Smith surmises that there are 4 aspects
548 to the disciplinary process: Applications, Unlicensed Practice, Code of Ethics, Moral Turpitude.
549 The Chair wants to ensure there are not any repetitive items on the matrix and that it is formulated
550 to be consistent for the sake of applicants, licensees, and to reduce investigative costs.

551
552 Investigator Jacobs was consulted on various topics including Civil Fines, Falsification of
553 Application, and other board's matrices. He goes to say that not all boards have the ability to issue a
554 civil fine without consent agreement like the massage board can. Mr. Jacobs continues by informing

555 the board that the statute that allows for disciplinary action for falsification of application (AS
556 11.56.210) is different than the statute used for fraud in obtaining a license (AS 08.61.060).
557 Historically, AS 11.56.210 hasn't been used for disciplinary action but it is possible to utilize it.
558 After completing research from the board's September 2018 meeting minutes, Mr. Jacobs relays to
559 the board that civil fines cannot be used for patient/client care, diagnosis, treatment, unfit to
560 practice, unlicensed practice, crimes of moral turpitude and cannot exceed \$5,000.

561
562 The board addressed Code of Ethics, Standards of Practice, Falsification of Application, Engaged in
563 Deceit, Fraud, or Intentional Misrepresentation in the Course of Providing Massage Services, False
564 or Misleading Massage Advertisement, and Convicted of a Felony or Crime that Affects Ability to
565 Practice Competently and Safely and then opted to review the rest later in the meeting.

566
567 **Agenda Item 15** **Adoption of Proposed Regulations (ended 2/18/2019)**

568
569 *Regulation Specialist Zinn joined the meeting at 2:55 p.m.*

570
571 The board reviewed the proposed regulations changes that were sent out for public comment on
572 January 18, 2019. Regulation Specialist Sher Zinn submitted the comments that were received by
573 the public for board review. Some comments that were received were that internet is not readily
574 available in all parts of Alaska to which board members replied that all distance education can be
575 received either online or by mail correspondence and that internet is also available in public libraries
576 located in cities and villages. Chair Edwards-Smith responded to a comment that regulations being
577 proposed are not fair to Native Americans by stating that there is an exception to chapter for
578 traditional Native American healers. After the board read and considered these comments, no
579 changes were recommended for the existing regulations document.

580
581 **In a motion duly made by Jill Motz, seconded by Traci Gilmour, and passed unanimously**
582 **with a roll call vote, it was RESOLVED to ADOPT the regulations that closed public**
583 **comment on February 19, 2019 (DOL File #2019-200071).**

584
585 **TASK: OLE Dulebohn will submit Board Certifying Order and Examiner Affidavit to**
586 **Ms. Zinn on Monday when she returns to Juneau.**

587
588 Ms. Motz took this time to ask Regulations Specialist Zinn about the status of the previously
589 adopted regulations projects from December 2018 and when they would be going to the Lt.
590 Governor for signature. Ms. Zinn replied that, to the best of her knowledge, it was almost done
591 with its Department of Law review and should be sent to the Lt. Governor very soon. Ms. Zinn
592 stated that she had no intention of sending the one adopted in today's meeting to the Lt. Governor's
593 office until the one from December has been filed but she would be sending it out for the LAW
594 review.

595
596 *Ms. Zinn left the meeting at 3:10 p.m.*

597
598 **Agenda Item 5(continued)** **Old Business**

599
600

601 FSMTB State Requirement Breakdown (2019)

602
603 The board reviewed the updated version of the State Massage Licensure & Renewal Requirements
604 and Summary of Initial Education Curriculum Requirements for State Massage Therapy Licensure
605 that was provided by the Federation of State Massage Therapy Boards (FSMTB). The FSMTB was
606 gracious enough to include Alaska's upcoming rules/statute changes with effective dates and
607 corrected the incorrect information regarding the NCBTMB and AMTA.

608
609 Implementation of Renewal Fingerprints

610
611 With the passage of HB110 in 2018, the submission of renewal fingerprints has been reduced from
612 every renewal period to "at least once every six (6) years." OLE Dulebohn asks the board to decide
613 when they would like to implement the fingerprint renewals: 2019 or 2021? Division suggests
614 starting renewal fingerprints in 2021 to allow for a financial break to licensees and allow for a
615 smoother renewal period since the board will also be implementing establishment regulations this
616 year. The board discusses the merits of starting renewal fingerprints in different years, the intent of
617 the board when they lobbied for the change from the Legislature, and why fingerprints would not be
618 based on an individual's license date. Despite a motion from Jill Motz to implement renewal
619 fingerprint in 2021, there was no second and the Chair decided to continue this conversation later in
620 the meeting.

621
622 Agenda Item 16 Break

623
624 *Chair Edwards-Smith called for a short break at 3:16 p.m.*
625 *Back on the record at 3:33 p.m.*

626
627 Agenda Item 17 Fitness to Practice Interview

628
629 The board welcomes Bayinna Ballard for a Fitness to Practice interview stemming from Ms.
630 Ballard's previous criminal convictions. Ms. Ballard was given the option to conduct her interview
631 in Executive Session, explained to what that would entail, and she declined and opted to have it on
632 the record which would make it a matter of public record.

633
634 Ms. Ballard asked permission to read the following statement to the board prior to the beginning of
635 the interview:

636 "I wanted to take this opportunity to thank you for allowing me to share my history as well as my
637 hopes to have my massage therapy license reinstated. I have lived a very exciting life. I have
638 travelled the world. As well as success in pursuing the dreams that I have: from getting my massage
639 therapy license, to attaining my CNA license, to directing international film shorts, and running my
640 own business. I believe in the pursuit of happiness, even when there is a flaw in that pursuit. I am
641 not proud of some of my choices but I can say that I am glad that they happened. Yes, I was
642 arrested for prostitution early on in my life. The people and the things that I was apart of and was
643 doing and the lack of parental guidance gave me an unfortunate chance to grow up fast and see the
644 more seedier things in life. When I was arrested, I was trying to help a friend buy food and diapers
645 for her child. She too was a former sex worker and at the time it seemed like the best thing I could

646 do was be a provider for her and the child. My lack of experience and untouchable, youthful
647 mindset, I didn't realize that the police were ready to pounce. The next thing I knew, I was in jail in
648 San Diego for solicitation of prostitution.

649
650 By no means am I denying my decision in this matter. I do take full responsibility but the other part
651 of this story that I haven't mentioned is that, at that time and up until 2013, I was a drug addict and
652 alcoholic. This was a lifestyle choice that has clouded my life. Now, more than ever, the one thing I
653 am proud of is when I was practicing, I did not use and I did not drink as much. But when I
654 switched to my entertainment mode, I admit, I was using way too much. To be giving a tranquil
655 touch (which was the name of my business) massage. I knew that my drug use, at times, was out of
656 control. As a courtesy to the field and my license, I believed it would be inappropriate for me to
657 give a massage. I was humbled and grateful to have a license and I was good! I knew that while
658 practicing massage I could not have these kinds of issues. So, when I was in the throws of my active
659 addiction, I did not take into consideration that keeping a license would be necessary. I did not keep
660 my status current. I had no time for continuing education. I was travelling and drinking and
661 drugging. I was wrong on so many levels. I never should have allowed this behavior to continue
662 but things look so shiny when you are in that lifestyle. Then you realize it was gold plated and not
663 24 carats. This is my confession.

664
665 I am not proud of my choices but I am proud that I have been patient with this process. I am
666 proud to have the awesome privileged to share the gift of massage. Even though I cannot practice
667 legally at this moment in time, I am truly grateful for this opportunity to share my truth with you. I
668 am a better person, I am focused, and I am hopeful that you will honor me once again with the title
669 of LMT. If not, I can still be proud and keep on practicing my sobriety and being a CNA. I can
670 find some peace with my past and my present in order to live my best life in the future. Thank
671 you.”

672
673 With the conclusion of Ms. Ballard's statement, the board started the interview with the standard
674 Professional Fitness Interview questions. Ms. Ballard's responses and the additional documentation
675 she provided prior to the interview were satisfactory to the board. With the interview concluded,
676 the board thanked Ms. Ballard for her time and asked her to step out of the room so that they could
677 deliberate in Executive Session. Ms. Ballard was informed that she was welcome to come back to
678 hear the board's decision on her case.

679
680 **In a motion duly made by Traci Gilmour, seconded by Jill Motz, it was RESOLVED to**
681 **ENTER into Executive Session in accordance with AS 44.62.310(c), and Alaska**
682 **Constitutional Right to Privacy Provisions, for the purpose of discussing “matters which by**
683 **law, municipal charter, or ordinance are required to be confidential”. OLE Dulebohn to**
684 **remain during Executive Session.**

685
686 *Off the record for Executive Session at 3:51 p.m.*
687 *Back on the record from Executive Session at 3:59 p.m.*

688
689 **In a motion duly made by Jill Motz, seconded by Rob Gibbs and passed unanimously with a**
690 **roll call vote, it was RESOLVED to APPROVE the application for licensure for Bayinna**
691 **Ballard PENDING the acceptance of a consent agreement that includes four (4) years of**
692 **probation and an ethics course of at least 3 hours.**

693

694 The board informs Ms. Ballard that today’s board book includes suggested ethics courses that she
695 could take and that they are available online. OLE Dulebohn takes Ms. Ballard through the steps
696 that will follow this meeting including the time it will take Investigations to draft her consent
697 agreement. If she agrees to the terms in the agreement, steps will be taken to issue her massage
698 therapist license. Included in the stipulations of the consent agreement will be a probationary period
699 of 4 years. If Ms. Ballard adheres to the statutes and regulations of the board and doesn’t break any
700 local, state, or federal laws, her probation will end and she will have an unrestricted license.

701
702 **TASK: OLE Dulebohn will send Ms. Ballard a follow-up e-mail after she completed**
703 **the record of the meeting (minutes).**
704

705 Ms. Ballard thanks the board and OLE Dulebohn for her time and helpfulness.

706
707 **Agenda Item 5(continued) Old Business**

708
709 Ms. Gilmour requests that the board continue their discussion on the Implementation of Renewal
710 Fingerprints. The board discusses the timeframe for tomorrow’s discussion. Chair Edwards-Smith
711 states that since they have from 9:00 a.m. to 12:00 p.m. tomorrow for discussion of Establishment
712 Regulations, he does not believe all that time will be needed and the board can go over the agenda
713 items from today that were not touched on.

714
715 **Implementation of Renewal Fingerprints (continued)**

716
717 Ms. Gilmour gives a historical statement on the board’s lobby for fingerprint renewal reduction. She
718 states that the board’s intent was reduce the fingerprint requirement to 3 renewal cycles and that the
719 “at least” was added in to be able to address licensees who had committed a crime so the board
720 could require a background report on those individuals. She believes the fingerprint renewal
721 requirements would go into effect once the bill had passed in 2018 and for the next 6 years so she
722 believes the next renewal fingerprints should be in 2023.

723
724 Since the board could not come to a consensus on the implementation date, OLE Dulebohn
725 presented a compromise statement that the board would agree to not require renewal fingerprints in
726 2019. This would allow the board time for further discussion and possible consult with Director
727 Sara Chambers and foster good will among the licensees.

728
729 **TASK: OLE Dulebohn will invite Director Sara Chambers to consult the board on**
730 **renewal fingerprint implementation.**

731
732 The board discussed this matter further and decided that they all could agree with the proposed
733 compromise. Mr. Gibbs expressed frustration at the State of Alaska for its inconsistencies in
734 guidance to the board. Ms. Gilmour followed up that the board’s intent with this legislation was to
735 reduce the burden on licensees for the next six years. Ms. Motz continues that the board’s next
736 meeting is in June, early renewals begin in July, and all the State is seeking today is clarity on renewal
737 requirements for 2019. She suggests a consult with Ms. Chambers on why Division believes that the
738 board should implement fingerprints in 2021 but her preference would be 2023.

739
740 **In a motion duly made by Jill Motz, seconded by Rob Gibbs and passed unanimously with a**
741 **roll call vote, it was RESOLVED that renewal fingerprints will not begin in 2019.**

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Agenda Item 21 **Draft Massage Establishment Regulations**

The board touched the massage establishment regulation conversation. Mr. Gibbs presented the idea that the board invite the cities of Anchorage and Fairbanks to join in the discussion of regulaitn and licensure since the board was informed in the December 2018 meeting that the board was only given the statutory authority to regulate and not license. Ms. Motz reminds the board that AAG Milks stated that the board could charge a registration fee. Mr. Gibbs continues that if a registration fee is being imposed, then the board’s original intent to not burden licensed massage therapists would need to be upheld by granting them an exemption to registration. He is afraid that the board will be told, once again, that although the intent was there, the board does not have the authority to uphold its rules because there might be an argument for discrimination. Chair Edwards-Smith states that given its recent issues with the State, the board will now be “checking, double checking, and triple checking” everything before it is put out for regulation, legislative consideration, or policy consideration.

OLE Dulebohn reminds the board of the Chair’s decision to have board members review the FAQ’s for possible changes and examine the fee analysis presented by Division tonight and prepare themselves for tomorrow’s vote.

Agenda Item 18 **Adjourn or Recess**

Chair Edwards-Smith has recessed for the day and will reconvene the meeting at 9:00 a.m.

Off the record 4:50 p.m.

Friday, March 1, 2019

Agenda Item 19 **Call to Order/Roll Call**

On the record at 9:01 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
- Julie Endle, Public Board Member

Division Staff present:

- Dawn Dulebohn, Occupational Licensing Examiner
- Carl Jacobs, Investigator III
- Sonia Lipker, Senior Investigator III
- Sher Zinn, Regulations Specialist
- Greg Francois, Chief Investigator

789 Sara Chambers, Director of the Division of Corporations, Business, and Professional
790 Licensing
791 Joan Wilson, Assistant Attorney General
792

793 Joining In Person:

794
795 Volker Hruby, American Massage Therapy Association Chapter President
796

797 Agenda Item 13 Administrative Business

798
799 Correspondence

800
801 • Wallis
802 The board reviewed the correspondence sent in by Gordon Wallis concerning insurance
803 coverage for massage therapists. The board recognized that Mr. Wallis has brought this
804 issue to the board's attention in the past but unfortunately, the board does not have
805 jurisdiction over insurance companies. They recognize that a statutory change may be in
806 order but it is not in the board's purview to lobby for that change.
807

808 Mr. Gibbs asks if there is anything that the board can do to help facilitate the conversation
809 between Mr. Wallis and the correct people to help him with his issue. Ms. Motz replies that
810 there are many licensees that are billing and being paid by insurance companies successfully.
811 Her suspicion is that Mr. Wallis is having billing issues and should resolve those with his
812 accounting department. Chair Edwards-Smith re-states that their responsibilities are entry-
813 level access for licensure, due process, and public protection but not an individual's billing
814 problems. Ms. Motz states that the board has, on more than one occasion, given Mr. Wallis
815 advice on possibilities for his situation. Ms. Gilmour interjects that billing issues are not the
816 board's role despite a misconception given the perceived authority that the board has in
817 many areas.
818

819 *Investigator Jacobs joined the meeting at 9:10 a.m.*
820

821 • Lea
822 The board reviewed the course offering submitted by Tarika Lea.
823

824 The board realized that although 12 AAC 79.210(d)(1) gives the option that "continuing
825 education must be completed through a board approved massage therapy or bodywork
826 therapy school or training program", there are no guidelines in place for the board to
827 evaluate a course or instructor. Ms. Motz questions whether course approval isn't the realm
828 of Alaska Commission on Post-Secondary Education (ACPE) and whether the intent of this
829 statute was ever for the board to evaluate course content and instructor qualifications. Chair
830 Edwards-Smith states that the board has addressed this issue previously and the board
831 decided it would like to rely on the professionals to vet continuing education (CE). Ms.
832 Gilmour interjects that she believed it was the board's responsibility to approve courses and
833 that would include content. OLE Dulebohn recalls that the board approved a course for
834 Ortho-Bionomy last year but was reminded by Chair Edwards-Smith that the course was
835 vetting by NCBTMB. Ms. Motz worries that if the board starts approving CE courses on a

836 case-by-case basis, it could put the board at risk for legal recourse if the CE course and/or
837 instructor did not deliver safe and reliable information.

838
839 OLE Dulebohn recaps 12 AAC 79.210 for the board and states that if the board does not
840 want to approve CE courses then a regulations change may be needed. Chair Edwards-
841 Smith asks the board what the criteria should be for approving a CE course, if the instructor
842 should be credentialed, and whether this topic should be researched and be added to the
843 next meeting.

844
845 **TASK:** The Chair will research what the board criteria should be in evaluating and
846 approving a continuing education course. It would include:

- 847 1. How to determine the class merit without a practical application
848 of the course
849 2. Qualifications as instructor
850 3. Amount of experience or expertise on subject
851 4. Does it relate to the practice of massage therapy or bodywork?

852 Look to what other credentialing agencies do and their criteria.

853
854 **TASK:** OLE Dulebohn will ask Regulations Specialist if 12 AAC 79.210(d)(1) need
855 defining or removal from Regulations? Is it still valid?

856
857 Mr. Gibbs interjects, as the only educator on the board, that Ms. Lea has done a great job at
858 outlining her classes, is very detailed in explaining the different components, has been
859 accredited as an instructor in the past so the only left to do is evaluate her course.

860
861 **TASK:** OLE Dulebohn to contact ACPE on what “exempt status” for continuing
862 education is.

863
864 **TASK:** OLE Dulebohn will contact Ms. Lea to obtain additional information on
865 whether Ms. Lea is a continuing education provider anywhere currently or
866 previously, her NCBTMB certificate, her current instructor credentials, and
867 her ACPE Exemption Letter.

- 868
869 • McMullen
870 The board reviewed the correspondence sent in by Cynthia McMullen from Alaska Institute
871 of Oriental Medicine, Acupuncture, and Massage Therapy.

872
873 Ms. McMullen asks:
874 1. If they have students that are enrolled prior to when the Curriculum Breakdown goes
875 into effect, will the breakdown be applied to them?
876 *The board consults with OLE Dulebohn and they agree that as long as the currently enrolled students*
877 *have their applications submitted before that regulations are adopted (30 days after it is signed by the Lt.*
878 *Governor) they will not need to supplement their hours in order to qualify for licensure.*
879 2. Can the board explain what “no more than 50 hours in techniques that are exempt from
880 license requirements” as written in the new Curriculum Breakdown for Massage Theory
881 and Practical Application? What techniques are exempt or where can we find a list?

882 *The board replies that the Exempt List comes from AS 08.61.080. Examples would be Reiki,*
883 *Structural Integration, ect. cannot be more than 50 hours of your massage program.*

884 3. Can you give an example of what the statement “practical application may not exceed 20
885 percent of total hours of the massage program” means?

886 The board states that “practical application” means hands on hours. For example, if you
887 have a 500-hour program, 20% (100 hours) of the program would be the maximum
888 amount allowed for hands on (clinic) time. In the board’s research for this breakdown,
889 there were programs that were 100 hours of in-class training and 300 hours of student
890 massage. This breakdown criteria is to guard against this lopsided education. Ms. Motz
891 believes the board got the 20% number from both COMTA and ELAP standards.

892
893 **TASK: OLE Dulebohn will forward the board’s answers to Ms. McMullen’s**
894 **questions regarding the Curriculum Breakdown.**

- 895
896 • Dougherty
897 The board reviewed correspondence from Ann Dougherty on whether a Reiki course will be
898 acceptable continuing education if it is certified for CEU’s by NCBTMB?

899
900 The board replies that Ms. Dougherty can certainly take 16 hours of Reiki to satisfy her
901 continuing education requirement as long as it meets all the criteria outlined in statutes and
902 regulations (see the FAQ for breakdown).

903
904 **TASK: OLE Dulebohn will forward the board’s answers to Ms. Dougherty question**
905 **involving Reiki as a continuing education.**

906
907 Agenda Item 5(continued) Old Business

908
909 Disciplinary Matrix Revision (continued)

910
911 The board continues their revision of the Disciplinary Matrix and Fine Schedule.

912
913 *Regulations Specialist joined the meeting telephonically at 9:40 a.m.*

914
915 The board recapped their work from earlier in the meeting. The board continued with their
916 discussion on Convicted of a Felony or Crime that Affects Ability to Practice Competently and
917 Safely. Ms. Gilmour asks the board if they want to specify the amount the suspension can be based
918 on the new information presented by Investigator Jacobs. The board discussed whether the
919 Reviewing Board Member (RBM) or the entire board would/could decide on a term of suspension.
920 Investigator Jacobs informs the board that Investigations would look to the RBM for a
921 recommendation of disciplinary action based on the Disciplinary Matrix to allow them to draw up
922 the agreement for the Respondent to review and accept. Then, per usual, the entire accepted
923 agreement will go to the entire board for their acceptance and the Chair’s signature (or modifications
924 if needed). He goes on to state that the RBM can opt to have a second board member collaborate
925 on the case but that would be one less person who could potentially vote on the matter when it
926 came to the entire board.

927

928 Investigator Jacobs continues that Non-Disciplinary Letters of Advisement are not reviewed by the
929 entire board and are only decided upon by the RBM. The issuance of that letter would effectively
930 close the case. Investigative Jacobs and OLE Dulebohn stress that the Disciplinary Matrix is
931 important to make sure that the board is in agreement on disciplinary action so that RBM's can
932 make decisions such as Non-Disciplinary Letters of Advisement without the entire board having to
933 review every case as the board is currently interested in reducing their costs. OLE Dulebohn chimes
934 in that she agrees with the stance Board member Jill Motz is taking by making disciplinary actions on
935 the matrix more specific as to reduce the margin of error when it comes to individual RBM
936 decisions. Having a large range for fines or suspensions increases the likelihood of applications
937 being delayed for changes once the entire board reviews them.

938
939 Chair Edwards-Smith decides that, in order to respect the time of the Investigator and Regulations
940 Specialist, the board will continue with the agenda item regarding establishment regulation.

941
942 **Agenda Item 21** **Draft Massage Establishment Regulations**

943
944 The board begins this meeting's discussion on Massage Establishment Regulations (MER).

945
946 Chair Edwards-Smith begins the discussion with a recap from the last meeting. HB 110 was passed
947 in 2018 allowing the board to regulate massage establishments. This omission of licensure is a
948 deviation from what the board lobbied for and the intent of both the board and the legislators. The
949 board was made aware of this error in the December 6-7, 2019 meeting by Sara Chambers and
950 Harriet Milks.

951
952 The board is now attempting to revamp now that they understand they have regulatory power but
953 not licensing power. The board created a "wish list" for regulations that included operations,
954 inspections, registry, massage workers in establishment, whether regulation exclude licensed massage
955 therapists, fee setting abilities for investigations, and if there could be a registration fee asked OLE
956 Dulebohn to send it to Sara Chambers and Harriet Milks to create guidance for the board as they
957 move forward with their responsibilities.

958
959 Several board members expressed lack of faith in the administration from Division. Most board
960 members continue to oppose including licensed massage therapists in the regulations for massage
961 establishments as it was the intent when they lobbied legislature for massage establishment licensing.
962 Mr. Gibbs references a point made by OLE Dulebohn that purveyors of human trafficking are
963 getting a massage license to circumvent these types of regulations in the lower 48 but for now the
964 board should err on the side of protecting the LMT's from undue regulation. The entire board (with
965 the exception of Ms. Endle) expressed frustration with state administration over the lack of guidance
966 concerning the disciplinary matrix and the massage establishment regulations enacted with the
967 passage of HB 110

968
969 *Volker Hruby joined the meeting in person at 10:17 a.m.*

970
971 OLE Dulebohn lets the board know that they have been advised not to exempt massage therapists
972 from MER but it is their choice. When asked by the board why Division is discouraging LMT's be
973 exempt, OLE Dulebohn states that MER will address standards that are not included in LMT's
974 statutes and regulations like locking doors, dress code, and sanitation standards.

975 By excluding LMT's from MER, the board will not be holding LMT's to the same standard and that
976 may be seen as discriminatory. The board feels that everything that would be required in MER are
977 covered for LMT's by the Standards of Practice. The board feels that LMT's should be exempt
978 because they already know about sanitation, dress code, etc. and the board has authority over them
979 through their license.

980
981
982 After consulting Regulations Specialist Zinn, who advised the board that there will be no way to
983 punish establishment owners for wrong doing and that the only ones who could possibly be
984 disciplined for wrong doing in an establishment are the licensed massage therapists employed there,
985 the board stated that they might be better off only duplicating the standards of practice found for
986 LMT's in establishment regulations. OLE Dulebohn interjects with a conversation that she had
987 with AAG Milks who advised that the board could charge a registration fee and that the board may
988 find a good solution is to add a line to the LMT application asking for disclosure of the LMT's
989 intended work place. This would allow for revenue for establishment regulation and investigation
990 and take care of registering establishments.

991
992 The board expresses that the reason for them to lobby for establishment licensure was to provide a
993 tool for investigations and law enforcement in the fight against human trafficking. Now that they
994 do not have this tool, all the board can do is regulate massage therapists and outline how they must
995 operate (which was not the intention of the bill). Chair Edwards-Smith would like the experts that
996 the board relies upon for guidance to tell the board how they can meet this goal with the tool they
997 have now in regulation.

998
999 Mr. Gibbs directs the board that they are bound write these regulations and believes that to meet
1000 their letter of responsibility the board should impose no fee, create criteria for massage
1001 establishments, and ensure that those regulations are mirrored in the LMT's Standards of Practice to
1002 ensure continuity. Chair Edwards-Smith agrees with Mr. Gibbs and thinks that to be able to move
1003 forward, the board needs to define massage establishment and define compensation.

1004
1005 The board asks Regulation Specialist Zinn what their minimum obligation is for massage
1006 establishment regulations and she replied that they need to define what a massage establishment is
1007 and facility standards. The board decided this would apply to every massage therapist in Alaska but
1008 it would not be a burden as there would be no fee or additional license. Most board members feel
1009 that these items pertain to standards that every legitimate therapist should already be practicing
1010 whether you are operating out of your home or a large corporation.

1011
1012 *Jill Motz out at 10:23 a.m. Back at 10:26 a.m.*

1013 *Carl Jacobs out at 10:24 a.m.*

1014
1015 The board began to work on MER as a new project as everything that they had written before
1016 pertained to licensing of establishments.

1017
1018 Massage Establishment Regulations

1019
1020 Compensation is defined as anything of value in exchange for services.

1021
1022

- 1023 Establishment is defined as:
- 1024 a. a place of business of two or more individuals of a partnership, firm, or association,
 - 1025 corporation, or business entity.
 - 1026 b. Any other combination of individuals that uses the word “massage in any solicitation or
 - 1027 advertisement”.
 - 1028 c. Engages in, conducts, or carries on or permits massage therapy to be conducted or
 - 1029 carried on for money or other compensation.
 - 1030 d. Anyone who houses a massage therapist whether spaces are loaned, leased, or rented.
 - 1031 e. A fixed or permanent location or mobile facility that is open and accessible to the public
 - 1032 for compensated massage services.
 - 1033

1034 The board has continued discussion about the definition of massage establishment. The subject on
1035 whether the board could retain an attorney that was not employed by the State to advise was asked
1036 and answered with a negative by Ms. Zinn.

1037
1038 **TASK: OLE Dulebohn will send the board’s establishment “wish list” and the reply**
1039 **by Ms. Chambers to Regulations Specialist Zinn.**

1040
1041 Chair Edwards-Smith states that it is becoming increasingly difficult for the board to draft
1042 regulations without having their “wish list” items defined. Since the board feels that it has not
1043 received all the answers to its questions, it does not feel like it has the tools to proceed. The Chair
1044 wants to know if a definitive answer to whether or not the board has the authority to require
1045 establishment inspections, define operation requirements, require fees, register establishments, and
1046 have exemptions for establishments.

1047
1048 *Greg Francois joins the meeting at 10:41 a.m.*

1049
1050 Chair Edwards-Smith has reviewed the outline that Director Sara Chambers has crafted for the
1051 board but feels that it would dissolve the mission statement that the board has developed with all of
1052 their goals and objectives of lobbying for this bill in the first place. The Chair would like the “wish
1053 list” sent back to LAW and AAG Milks for more applicable definitions.

1054
1055 **TASK: Send board “wish list” from December 6-7, 2018 meeting back to LAW and**
1056 **AAG Milks for further definition.**

1057
1058 The draft establishment regulation outline created by Director Chambers was as follows:

1059
1060 **REGULATION OF MASSAGE THERAPY ESTABLISHMENTS**

- 1061
1062 **12 AAC 79.XXX. REGISTRATION OF MASSAGE THERAPY ESTABLISHMENTS.** (a) A person
1063 who practices massage therapy as defined in AS 08.61.100 who is not exempt under AS 08.61.080 must register
1064 with the board. Registration required under this section must be received prior to transacting massage business.
1065 (b) The owner or operator of a massage therapy establishment shall register on a form provided by the
1066 department. A completed application must include:
- 1067 1. Payment of registration fee
 - 1068 2. Name of the owner(s)
 - 1069 3. Name of the operator(s), if not the owner

- 1070 4. Business name of the massage therapy establishment
1071 5. Business license number of the massage therapy establishment
1072 6. Corporate entity number if the owner is not a natural person
1073 7. Mailing and street address of the massage therapy establishment
1074 8. Name and license number of each licensed massage therapist who is employed in the establishment
1075 9. Listing of all other massage therapy establishments the applicant operates, including the businesses
1076 name, mailing address, and street address of each establishment
1077 10. An affidavit stating whether the operator has ever been found in violation of a provision of AS
1078 08.61.060 in any jurisdiction
1079 11. A complete self-inspection of the premises on a form provided by department
1080

1081 **12 AAC 79.xxx CODE OF ETHICS AND STANDARDS OF PRACTICE.** The *Alaska Board of Massage*
1082 *Therapists Code of Ethics and Standards of Practice*, dated June 2015, is adopted by reference as the code of ethics
1083 for massage therapists in the state. In order to maintain a high standard of integrity in the profession and to
1084 safeguard the health and welfare of the public, the operator of a massage therapy establishment shall ensure
1085 that all massage therapists delivering services in the establishment adhere to the code of ethics.
1086

1087 **Editor's note:** A copy of the *Alaska Board of Massage Therapists Code of Ethics and Standards of Practice*, adopted
1088 by reference in 12 AAC 79.900, may be obtained from the Department of Commerce, Community, and
1089 Economic Development, Division of Corporations, Business and Professional Licensing, Board of Massage
1090 Therapists, State Office Building, 9th Floor, 333 Willoughby Avenue, Juneau, Alaska 99801; phone (907) 465-
1091 3811; website at
1092 <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/BoardofMassageTherapists.aspx>.
1093

1094 **12 AAC 79.XXX INSPECTIONS.** a) The department may conduct an inspection of each massage therapy
1095 establishment to ensure that the shop meets the department's operational standards established in 12 AAC
1096 79.XXX. If the department determines that the establishment is not in compliance with a regulation of the
1097 department, the department shall report the violation to the board and take appropriate action under its own
1098 regulations.

- 1099 (b) The division may make periodic inspections of all massage establishments, either licensed or unlicensed.
1100 1. An agent of the division may enter and inspect during business hours, without prior notice, and
1101 massage establishment. Such inspections may include, but need not be limited to, confirmation that
1102 the site is being utilized for massage therapy and determination of whether the establishment is in
1103 compliance with the laws and rules governing the establishment's operation, facilities, personnel,
1104 safety, and sanitary requirements.
1105 2. The department may adopt a reasonable inspection fee under AS 08.01.065(a).

1106 (c) On a form provided by the department, the operator of the establishment shall inspect and attest
1107 compliance with the standards set in 12 AAC 79.XXX upon registration, annually, and as may be required in
1108 regulations.
1109

1110 **12 AAC 79.XXX MESSAGE THERAPY ESTABLISHMENT OPERATIONS.**

- 1111 (a) Standards of Practice and Code of Ethics for Massage Therapists is displayed in a location available
1112 to the public.
1113 (b) All employed massage therapists license in full view of the public
1114 (c) There is a written and/or digital system of maintaining client records for at least five years
1115 (d) Maintain general liability insurance for location and premise and provide proof upon request.
1116 (e) Maintain all equipment pertaining to the practice of massage therapy used to perform massage
1117 therapy services on the premises in a safe and sanitary condition.
1118 (f) Maintain compliance with all applicable state and local building and fire codes
1119 (g) Provide for the removal of garbage and refuse in a sanitary manner.
1120 (h) Provide for safe storage and/or removal of soiled linens as per universal and Standard Precaution
1121 practices.

- 1122 (i) Any room or cubicle that massage or massage therapy practices are performed in are not equipped
1123 with an externally locking door.
- 1124 (j) Rest room facilities shall include at least one sink with hot and cold running water and shall be
1125 equipped with a soap dispenser with soap or other hand cleaning materials, clean towels or other
1126 hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle.
- 1127 (k) Each massage facility and temporary massage facility shall have a toilet and a hand-washing sink with
1128 hot and cold water accessible to patrons provided with soap and single-use towels.
- 1129 (l) Establishment owners shall provide for safe and unobstructed human passage in the public areas of
1130 the premises
- 1131 (m) The operator of a massage therapy establishment will only employ or permit to practice on the
1132 premises only licensed or officially enrolled student massage therapists to perform massage therapy
1133 as defined in statute and regulations
- 1134 (n) Student enrollment documentation must be current, on premises, and presented for inspection upon
1135 request.
- 1136 (o) No massage establishment shall operate or be open for business between the hours of 12:00 a.m. and
1137 5:00 a.m.
- 1138 (p) No massage establishment shall operate in a building where a primary business is alcohol beverage
1139 sales, photography studio, model studio, art studio, telephone answering service, motion picture
1140 theatre, or adult-oriented business
- 1141 (q) Establishment shall ensure that no inappropriate employee dress is permitted. Inappropriate dress
1142 includes clothing which exposes the breasts, buttock, genitalia or attire that shows the practitioners
1143 undergarments. No swim attire is permitted unless treatment provided is a water modality.
- 1144 (r) Every massage establishment shall be equipped with a workable land line telephone for emergency
1145 calls. Rural exemptions may be made on population.
- 1146 (s) No person shall perform massage or massage therapy cubicle, room, or area equipped with an
1147 externally locking door.
- 1148 (t) No massage establishment shall be used as a shelter or living quarters for any person.
- 1149 1. No owner or manager shall allow a licensed massage establishment to be used for housing,
1150 sheltering, or harboring any person(s), or as living or sleeping quarters for a person(s).
- 1151 2. If a massage establishment is located within, but is ancillary to, a business such as a hotel or
1152 motel, this prohibition shall apply only to the areas designed, designated, or used as a
1153 massage establishment.
- 1154 3. A sole proprietor who is also a licensed massage therapist is exempt from this subsection if
1155 the establishment is also the person's primary residence and the person is named on the deed
1156 or lease.
- 1157 (u) A massage establishment may dispatch a licensed massage therapist to perform outcall massage, but
1158 only if the therapy is to take place at the client's transient lodging, temporary or permanent residence,
1159 or at the client's place of business.
- 1160 (v) No owner, operator, massage therapist, or employee shall administer services to any person under
1161 the age of eighteen (18) years without a parent or legal guardian present or written consent of parent
1162 or legal guardian.
- 1163 (w) No owner, operator, massage therapist, or employee shall promote, solicit, initiate, engage in, permit,
1164 or allow any act that violates AS 08.61 or regulations of the Alaska Board of Massage Therapists, or
1165 the Code of Ethics or Standards of Practice set forth by the board. No owner, manager, massage
1166 therapist, or employee shall initiate or engage in unprofessional conduct in any massage
1167 establishment, including but not limited to the following:
- 1168 1. Engaging in sexually suggestive advertising related to massage services
- 1169 2. Engaging in any form of sexual activity on the premise of a massage establishment where
1170 massage is provided for compensation.
- 1171 (x) No owner, operator, massage therapist, or employee shall keep, or allow to be kept, within any
1172 massage establishment any item known as or commonly used as a marital or sexual aid, including, but
1173 not limited to, any contraceptive item or device, vaginal or anal lubricant, or any sex toy.

- 1174 (y) No owner, operator, or employee shall allow television, video or recording equipment in any room
1175 where massage services are being provided, but a security surveillance monitor that can only receive
1176 images of the inside of the common areas of the establishment may be located in these rooms at any
1177 time. With written client consent, a massage therapist may use video and photography equipment for
1178 therapeutic purposes.
- 1179 (z) Any mirrors and windows in the massage establishment will be positioned or covered in a manner to
1180 maintain the privacy of the person receiving the massage at all times during the massage and while
1181 the client is dressing and undressing.
- 1182 (aa) All licensed massage therapists must have legal identification available upon inspection.
- 1183 (bb) No controlled substances as defined in AS XXX shall be allowed in the massage establishment
- 1184 (cc) The distribution or consumption of alcohol is not permitted in the massage establishment.
- 1185 1. The appropriate event permits must be obtained from the Alcohol and Marijuana Control
1186 Office.
 - 1187 2. The Board of Massage Therapists, through the department, must be notified in writing prior
1188 to any special event that will include alcohol in the massage establishment.
1189

1190 12 AAC 79.XXX The board may issue a cease and deist order and impose a civil fine not to exceed \$5,000
1191 for each individual violation of this section by a massage therapy establishment. (AS 08.01.075)
1192

1193 12 AAC 79.990(a)(3) “operator” means a person having managerial control of a massage therapy
1194 establishment.
1195

1196 *Carl Jacobs back at 10:44 a.m.*
1197

1198 The board continued their conversation on massage establishment definition, fees, and that their
1199 intent in this bill was always to exempt a sole proprietor based on employed therapists and not
1200 employees. The board reviews their current language work with Chief Francois. Chief Francois
1201 cautions the board to not make their regulations so specific that they “box themselves” in. Misters
1202 Francois and Jacobs give suggestions to how the board can re-vamp their definition for massage
1203 establishments for better coverage.
1204

1205 *Sara Chambers joins the meeting telephonically at 10:55 a.m.*
1206

1207 Chair Edwards-Smith reviews the work done by the board prior to Director Chambers joining the
1208 meeting and asks that Division and LAW provide clarity on their “wish list” taking into
1209 consideration the board’s stated goals and objectives for these regulations. Director Chambers
1210 addresses the board and states that she was trying to assist the board by going “above and beyond”
1211 the questions by outlining the draft regulations for their review and not just answering their
1212 questions. Chair Edwards-Smith acknowledges the work that Ms. Chambers put in but feels like
1213 that that document still left a lot of open questions regarding the board’s mission statement for
1214 establishments. Mr. Edwards-Smith asks Ms. Chambers if the board can continue with their plan to
1215 hold massage establishment owners responsible for standards or any type of censure if they are not
1216 massage therapists and Ms. Chambers replied that they could. Ms. Chambers directs the board to
1217 the outline she created for them to use as a starting point. The board immediately questioned Ms.
1218 Chambers on their ability to exempt licensed massage therapists. Ms. Chambers replied that they
1219 could, but would it be fair and would the board be setting themselves up for lawsuit if they chose to
1220 do so since they would be implementing different standards for LMT’s and establishments. Ms.
1221 Chambers goes on to question how the board would ensure that massage therapists are also
1222 adhering to the higher standards set for establishments without creating a loophole? Ms. Chambers

1223 continues by reminding the board that their proposed standards for establishments from previous
1224 meetings are not located anywhere in the statutes, regulations, standards of practice, or code of
1225 ethics for LMT's.

1226
1227 *Traci Gilmour out at 11:05 a.m. Back at 11:08 a.m.*

1228
1229 When the topic of inspections by Investigation came up, the board was divided on whether that was
1230 something they wanted to implement since, at this time, fees are not being proposed for registration
1231 and the cost for inspections would come from the fees gathered by LMT applications and licensing
1232 renewals. Chief Francois recommends to the board that AAG Milks be present when the board
1233 wants to discuss inspections and what access investigations may have to an establishment to avoid
1234 any 4th Amendment issues. Ms. Chambers interjects that the inspection issue has been addressed in
1235 the draft regulations she created for the board.

1236
1237 Ms. Chambers reminds the board that licensure is a barrier to practice; a gateway. It would be a
1238 process that someone would have to successfully pass through in order to practice. Regulation
1239 would be what happens after licensure, or in the case of massage therapy, there is no gateway to go
1240 through. But even without having to go through the process of licensure, rules applied by the
1241 governing body would still be applicable to everyone participating. Just because there is no license
1242 to take away, establishment owners would still have to abide by regulation because it is state law.
1243 The board needs to come up with the rules in which a massage establishment to operate because
1244 they have been given that authority by the passage of HB 110. Being able to set standards and
1245 practices, inspect, and issue fines is still a very powerful thing. Anything the board drafts is just a
1246 jumping off point as it will still go to LAW and through a public comment process. Ms. Chambers
1247 ask that the board amend her basic outline by injecting their expertise and specifics and let it go
1248 through the process of being sent to the Regulations Specialists, LAW, and the public.

1249
1250 Ms. Motz brings up in the meeting in order to err on the side of caution, she would like to see the
1251 board only implement the current Standards of Practice and Code of Ethics that LMT's are already
1252 obligated to uphold, as the regulations for massage establishments. She feels that anything beyond
1253 that would place a burden on LMT's.

1254
1255 Ms. Chambers concurs with Mr. Gibbs earlier contribution to the conversation in which someone
1256 applying as an LMT could be register themselves and their establishment by Division adding an
1257 additional item on their initial application. The second item for the board to consider is whether the
1258 board wants to exempt LMT's from having to adhere to the same standards as non-massage
1259 therapists when it comes to their establishment because there will be a lot more rules in
1260 establishment regulation that what are currently in the Standards of Practice that the board is
1261 requiring LMT's to follow.

1262
1263 Chair Edwards-Smith reminds the board that this conversation can only continue for 5 more
1264 minutes in the interest of timeliness. Mr. Gibbs suggests that the board adopt a skeleton regulation
1265 outline to allow it to move forward. He feels that if the board picks items that are earmarks for
1266 human trafficking activity, it should not negatively impact any legitimate therapist whether someone
1267 has a large business or a sole proprietor working out of their home.

1268
1269 Chair Edwards-Smith concludes this conversation by saying that he agrees with Director Chambers
1270 that everyone should be held to the same standards but the board agrees that they do not want an

1271 undue burden on massage therapists. He thinks the board should design their rules in such a way
1272 that they are basic expectations that the board would expect to see from any massage establishment.
1273 Ms. Gilmour interjects quickly that she would like to know if Division can add to LMT applications
1274 that they disclose if they will be working for a non-LMT owned establishment. Chair Edwards-
1275 Smith asks that they remember these closing comments and address them at a later time.

1276

1277 *Chair Edwards-Smith calls for a 5-minute break at 11:27 a.m.*

1278

1279 **Agenda Item 7(continued)** **Investigative Case Review and Probation**

1280

1281 *Back on the record at 11:35 a.m. Joining are all board members and Misters Francois, Jacobs, and Hruby*

1282

1283 **Unlicensed Practice (continued)**

1284

1285 Chief Greg Francois asked to present his position on unlicensed practice cases as a Misdemeanor B.
1286 to follow up on the e-mail he sent to the board on the subject on February 26, 2019, he states that
1287 there is a lack of resources at this time but what it would take to file a criminal case based on statutes
1288 and regulations is a “preponderance of the evidence” (51% and can prove the case). Going in to a
1289 criminal case, Investigations would have to meet the higher standard of “beyond a reasonable
1290 doubt” or clear and convincing evidence. Chief Francois goes on to state that the way
1291 Investigations can prove a case is “beyond a reasonable doubt” is to have documented proof
1292 (conduct surveillance to confirm suspicion that the complaint may be true) and that may lead to an
1293 undercover operation to confirm that massage services are being offered for compensation. After
1294 that proof is obtained, Investigations will go to a Prosecutor, who will then take it to court.. He
1295 goes on to state that this amount of investigation will take many man hours and those will be
1296 charged to the board. Chief Francois hopes that in the future, Investigations will work in
1297 conjunction with Anchorage Police Department which will allow his team to save man hours and
1298 the board to save on costs. OLE Dulebohn asks Chief Francois if, instead of all the surveillance
1299 man hours, things like posted schedule and prices, outgoing voicemails advertising massage services,
1300 website information, and a complaint might also count as evidence. Chief Francois responds that in
1301 order to bypass the costly process he outlined, there would have to be many independent complaints
1302 to corroborate the evidence.

1303

1304 Board member Jill Motz disclosed that she was responsible for this presentation as she had a conflict
1305 with Investigations over a case review where she states she was told that the board didn’t have
1306 authority over Unlicensed Practice (ULP) complaints. She just wanted the board to be aware that
1307 there is a process for dealing with the ULP complaints in the form of a Temporary Cease and Desist
1308 Order, which after investigation could go to the board to decide if it would become a Cease and
1309 Desist.

1310

1311 **Agenda Item 5(continued)** **Old Business**

1312

1313 **Disciplinary Matrix(continued)**

1314

1315 The board continued their amendment of the new Disciplinary Matrix. The board discussed
1316 Intentionally or Negligently Engaged (or allow another under your supervision to engage) in Client
1317 Care that Did Not Meet Minimum SOP (regardless of injury to client), Failure to comply with a
1318 Provision of this Chapter, Regulation, or Order of the Board, Continued to Practice After Becoming

1319 Unfit (professional/addiction), Engaged in Un-Ethical or Sexual Misconduct in Connection with the
1320 Delivery of Massage to a Client, and Homicide.

1321

1322 *Board Chair Edwards-Smith called for lunch at 12:07 p.m. until 1:00 p.m.*

1323

1324 **Agenda Item 22** **Lunch**

1325

1326 **Agenda Item 23** **Consultation with LAW on CBD Oil Use**

1327

1328 *Back on the record at 1:02 p.m. In attendance is the entire board, Investigator Lipker, and AAG Joan Wilson*

1329

1330 The meeting opens with Mr. Gibbs jumping in to state the board would like some clarification on
1331 their role when it comes to CBD Oil as they, as a rule, do not regulate topical ointments. He goes
1332 on to ask if there is a potential liability to the, board down the line, for taking this stance. He states
1333 that normally this would not be an issue but the board is getting quite a few questions from licensee
1334 and the public because it is readily available and people are using it.

1335

1336 AAG Wilson is informed by the board that they did send two letters out (January 4 and January 31,
1337 2019) to licensees informing them of the law concerning CBD after speaking with Rob Carter from
1338 the Department of Natural Resources and Erika McConnell from the Alcohol and Marijuana
1339 Control Office. The board's position is that of education and that the board will take no action on
1340 person's using CBD oil in their business unless a complaint is filed with Division since the board is
1341 required by law to enforce the Standards of Practice.

1342

1343 *Investigator Jacobs joined the meeting at 1:09 p.m.*

1344 *Volker Hruby joined the meeting at 1:10 p.m.*

1345

1346 Ms. Wilson states that she is in attendance to speak with the board in two capacities: public
1347 statement on the record and law council off the record (available under the open meetings act to
1348 receive council about something that could become a subject of concern for the board). Laws
1349 regarding CBD Oil that comes from Industrial Hemp is currently in flux. She references Mr.
1350 Carter's conversation with the board in the December 6-7, 2018 meeting and that what he conveyed
1351 to the board was factual. Ms. Wilson informs the board that, according to the proposed state
1352 budget, the Department of Natural Resources and the Division of Agriculture are in for a significant
1353 cut. She suggests a consult with Division of Corporations, Business, and Professional Licensing as
1354 to where they stand with the topic of CBD Oil and professional licensing. Regardless, there are still
1355 no regulations created to address the topic of CBD Oil and absent those regulations, the State of
1356 Alaska does not have pilot program for Industrial Hemp and CBD to allow persons to register.
1357 People who are required to register are persons or entities that produce Industrial Hemp.
1358 "Produce" includes growing, processing, selling, and buying of Industrial Hemp or Hemp products.

1359

1360 Eventually businesses will be asked to register in a specific category and that may include massage
1361 therapists that would be offering it in their business. Even if therapists will not be required to
1362 register, they will be given assurances that the product they are offering to their clients is tested and
1363 verified here in Alaska or comes from another state that has an Industrial Hemp Pilot Program.
1364 Those other states would also be required to comply with the Farm Bill of 2014. What the Farm Bill
1365 verifies is that CBD Oil would be a product with less than 3% THC. Having concluded her
1366 statement, Ms. Wilson invites questions.

1367
1368 Chair Edwards-Smith asks that if a massage therapist is offering services that exclusively include
1369 CBD, if they will be required to register as a purveyor of CBD since they would essentially be selling
1370 that CBD to a client in conjunction with a massage for an additional fee. Ms. Wilson answers that
1371 she does not know the answer to that question since there is a distinction between an individual that
1372 purchases CBD directly to use on themselves and a professional that purchases CBD to use on
1373 clients or who would offer the CBD for sale. Person's that are directly purchasing for themselves
1374 will not be asked to register the product. Professionals that would be purchasing CBD to use on
1375 their clients or to sell in their businesses, may need to register.

1376
1377 Mr. Gibbs asks if Ms. Wilson has a list of states that have instituted an Industrial Hemp Pilot
1378 Program. She replies that when SB 6 was passed, there were approximately 26 states were in the
1379 process of implementing it. Off the top of her head, she remembers Kentucky, Oregon, Colorado,
1380 New Hampshire, and Vermont. Mr. Gibbs follows up asking if an Alaskan therapist purchases
1381 CBD from one of those states, would it be acceptable to use it in Alaska? Ms. Wilson states that the
1382 problem is that Alaska still needs a lawful Pilot Program. Ms. Wilson states that as an FYI, the most
1383 a person would endure for disciplinary action for "producing" CBD when there is still not a Pilot
1384 Program in Alaska is a Cease and Desist Order which, if they still don't comply, would result in a
1385 court date.

1386
1387 Ms. Wilson goes on to inform the board that under the Farm Bill of 2018, CBD (unlike marijuana) is
1388 removed from Schedule 1. The biggest problem going forward is determining whether the CBD Oil
1389 that is being sold and used is from Industrial Hemp or Marijuana. If CBD runs the risk of being
1390 made from marijuana and not industrial hemp, then it wouldn't be included in the Industrial Hemp
1391 Pilot Program. She warns that without a testing program in Alaska, consumers should exercise
1392 caution.

1393
1394 Chair Edwards-Smith asks Ms. Wilson to evaluate their current position statement to see if it leaves
1395 the board vulnerable to legal action. He goes on to say that there is an expectation that LMT's will
1396 obey their Standards of Practice, among which is that LMT's will obey all local, state, and federal
1397 laws. If a complaint arises, the board is responsible to give due process to determine if the
1398 complaint is valid. Ms. Wilson advises that the board, through OLE Dulebohn and Director
1399 Chambers, request an Attorney General opinion on the legality of CBD, the board's legal
1400 responsibility, and what authority would disciplinary action be based on as this will not only benefit
1401 the Board of Massage Therapists, but other professional boards. If someone used CBD from
1402 marijuana and a client had an unintended reaction, she believes that the complaint would go through
1403 investigations as it always has.

1404
1405 **TASK: OLE Dulebohn will forward a request to Ms. Chambers to request Attorney**
1406 **General opinion on whether:**
1407 **1. CBD is "not officially legal"**
1408 **2. Board's Legal Responsibility**
1409 **3. Should a complaint go to Investigations, what authority would the board**
1410 **enforce disciplinary action based on (AS 08.61.060) or Standards of Practice**
1411 **Regulation?**

1412
1413 AAG Wilson cautions that a lot of the CBD Oil that is being sold on the internet comes from other
1414 countries like China who have different standards than the United States. She hopes that in a year,

1415 the board will have a very clear guideline from the Department of Natural Resources regulations
 1416 regarding the Industrial Hemp Pilot Program. Ms. Wilson states that she is glad the board is being
 1417 proactive and informing their licensees about CBD with the Consumer Protection Warning,
 1418 information from Mr. Carter, and their obligation regarding the Standards of Practice.

1419
 1420 *AAG Wilson, Senior Investigator Lipker, and Investigator Jacobs left the meeting at 1:29 p.m.*

1421 **Agenda Item 5(continued)** **Old Business**

1422
 1423 Disciplinary Matrix(continued)

1424
 1425 Chair Edwards-Smith entertained a motion on the board amended Disciplinary Matrix.

1426
 1427 **In a motion duly made by Jill Motz, seconded by Ron Gibbs, and passed unanimously with**
 1428 **a roll call vote, the Board of Massage Therapists ADOPTED the amended Disciplinary**
 1429 **Matrix after a review by the Department of Law and the Department of Investigations.**

1430
 1431 The board amended matrix is as follows:

1432
 1433 **MAS Disciplinary Matrix/Fine Schedule**

1434 Updated February 28-March 1, 2019 board meeting

<u>Statute/ Regulation</u>	<u>Violation</u>	<u>Time Frame</u>	<u>Disciplinary Action</u>	<u>Fine</u>
AS 08.61.070	Unlicensed Practice *	< 90 days	Fine	\$500
		91 days-1 year	Fine	\$1000
		> 1 year	Fine	\$2500
12 AAC 79.900	Code of Ethics Violation	1 st Offense	Letter of Advisement	n/a
		2 or more Offenses	Fine	\$250 per offense
AS 08.61.060	Fraud in Obtaining License *	n/a	Denial or Revocation, 4 years wait until reapplication, fine at board discretion	\$2500
AS 08.61.060	Fraud in Retaining License *	n/a	Denial or Revocation, 4 years wait until reapplication, fine at board discretion	\$2500
12 AAC 79.900	Standard of Practice Violation (refer to SOP)	1 st Offense	Letter of Advisement	n/a
		2 or more Offenses	Fine	\$250 per offense
AS 11.56.210	Falsification of Application	1 st Offense	Civil Fine	\$250 Civil Fine
		2 or more Offenses	Consent Agreement w/ fine,	\$250 per item

AS 08.61.060	Engaged in Deceit, Fraud, or Intentional Misrepresentation in the Course of Providing Massage Services	1 st Offense	Letter of Advisement, Fine	\$250-\$2500
		2 or more Offenses	Consent Agreement, Fine, Ethics Course, Suspension, Revocation	\$1000-\$2500
AS 08.61.060	False or Misleading Massage Advertisement	1 st Offense	Letter of Advisement	n/a
		2 or more Offenses	Consent Agreement, Fine, Ethics Course, Suspension, Revocation	\$250-\$1000
AS 08.61.060	Convicted of Felony or Crime that Affects Ability to Practice Competently and Safely	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		2 or more Offenses	Consent Agreement with 4 years of Suspension or Revocation	n/a
AS 08.61.060	Intentionally or Negligently Engaged (or allowed another under your supervision to engage) in Client Care that Did Not Meet Minimum SOP (injury or not)	1 st Offense	Consent Agreement, Probation, Ethics Course	n/a
		2 or more Offenses	Consent Agreement, Fine, Suspension, Revocation	\$100-\$2500
AS 08.61.060	Failure to Comply with a Provision of this Chapter, Regulation, or Order of the Board	1 st Offense	Letter of Advisement OR Consent Agreement w/ Probation	n/a
		2 or more Offenses	Consent Agreement, Fine, Suspension, Probation	\$100-\$2500
AS 08.61.060	Continued to Practice After Becoming Unfit (professional/addiction)	n/a	Consent Agreement w/ 5-year probation, mandatory treatment	n/a
AS 08.61.060	Engaged in Un-Ethical or Sexual Misconduct in Connection with the Delivery of Massage to a Client	n/a	Fine, Ethics Course, Probation, Suspension, Revocation	\$500-\$5000
CRIMES OF MORAL TURPITUDE				
AS 08.61.030, 12 AAC 79.910	Homicide	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Manslaughter	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a

		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Assault	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Stalking	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Kidnapping	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Sexual Assault	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Sexual Abuse of a Minor	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a

		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Unlawful Exploitation of a Minor (including possession or distribution of child pornography)	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Indecent Exposure	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Prostitution	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Sex Trafficking	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Criminal Sexual Conduct	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a

		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Incest	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Robbery	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Extortion	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Forgery	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Theft	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a

		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Endangering the Welfare of a Child	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Endangering the Welfare of a Vulnerable Adult	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500
AS 08.61.030, 12 AAC 79.910	Reckless Endangerment	Initial Application	F.T.P. Interview → Denial or Consent Agreement, Ethics Course, Probation	n/a
		Renewal Application	F.T.P. Interview → Consent Agreement w/ Ethics Course & Probation, Fine, OR Suspension, OR Revocation, 4 years wait until reapplication	\$500-\$2500

1435

1436 **Agenda Item 9 (continued) Review Tabled Applications**

1437

1438 K.K.

1439

1440 **In a motion duly made by Jill Motz, seconded by Ron Gibbs, and passed unanimously with**
 1441 **a roll call vote, it was RESOLVED to APPROVE the application for licensure for Kristen**
 1442 **Keyes PENDING the payment of a \$250.00 civil fine for Falsification of Application.**

1443

1444 **Agenda Item 24 Break for Town Hall Preparation**

1445

1446 *Chair Edwards-Smith called for a break to attend the Town Hall Meeting at 1:35 p.m.*

1447

1448 **Agenda Item 25** **Town Hall Meeting**

1449

1450 Complete audio of the Town Hall meeting can be found at:
1451 ProfessionalLicense.Alaska.Gov/BoardOfMassageTherapists

1452

1453 **Agenda Item 13 (continued)** **Administrative Business**

1454

1455 *Back from the Town Hall Meeting at 4:19 p.m. with all board members and Mr. Hruby in attendance*

1456

1457 Statistics

1458

1459 Chair Edwards-Smith asks OLE Dulebohn to present the administrative statistics. OLE Dulebohn
1460 states that since the last meeting held on December 6-7, 2019 the Board of Massage Therapists has
1461 addressed the following:

1462

ITEM	AMOUNT	COST
Applications Received	35	
Applications Reviewed by the board	35	
Licenses Issued	17	
Applications Denied	2	
Applications in Process	81	
Phone Calls Received	206	
E-mails Sent	849 + 2 mass e-mails	
Returned Letters	69	69 x .55 = \$37.95

1463

1464 OLE Dulebohn addresses the last item of “Returned Letters”. The importance of this is that this is
1465 only the cost of wasted postage. It is not including the time to create the letters and the materials
1466 like paper, ink, and envelopes. She goes on to state that these are a result of licensees not keeping
1467 their addresses updated as required by law.

1468

1469 Chair Edwards-Smith asks if the reporting of these administrative statistics will be a regular
1470 presentation and OLE Dulebohn replies that it is. She continues that this information is important
1471 because it shows the public what goes on behind the scenes and, in the current climate of
1472 deregulation, justifies part of what the board is doing and why they are needed.

1473

1474 **Agenda Item 14** **Applicant Requested Background Review**

1475

1476 The board reviews a request from a potential applicant and Jennifer Deitz from Alaska Career
1477 College asking the board to review potential applicant’s criminal background convictions on request
1478 to determine whether those crimes will prevent licensure. The reason for this request is that before
1479 a student spends time and money going to school, both schools and students would benefit from
1480 knowing if the board will deny their application based on past criminal convictions. Additionally,
1481 some school (like ACC) may not even allow a student to enroll if they have reason to believe that
1482 the student’s application for licensure will be denied.

1483

1484 OLE Dulebohn informs the board that when she attended FARB in January, that she learned that
1485 the State of Louisiana has just implemented a procedure that would allow the board to review
1486 applicant submitted criminal convictions and make a motion that would carry forward to when their
1487 application is submitted. The potential applicants would submit a type of form similar to the
1488 Professional Fitness Questions on the application, their fingerprints, and pay the processing fee.
1489 When the background reports are ready, both the form and the report would go to the board for
1490 review and decision on whether that information would keep the applicant's application from being
1491 approved. This decision would not have any bearing on additional information that is disclosed to
1492 the board at a later date.

1493
1494 The board thinks this is a process worth looking into in a future meeting. Chair Edwards-Smith
1495 would like some questions answered and research conducted prior to the next meeting. Is this a
1496 regulation project or policy?

1497
1498 **TASK: OLE Dulebohn will check with Division on whether implementing this**
1499 **process would be a regulation or policy change.**

1500
1501 **TASK: Traci Gilmour will research Louisiana's criminal background report review**
1502 **policy.**

1503

1504 **Agenda Item 13 (continued) Administrative Business**

1505

1506 AMTA Annual Meeting

1507

1508 Chair Edwards-Smith would like he board to allow him to address the AMTA Annual meeting on
1509 April 26, 2019 to present information that is publicly available on the board's behalf as an effort of
1510 community outreach.

1511

1512 **In a motion duly made by Traci Gilmour, seconded by Ron Gibbs, and passed unanimously**
1513 **with a roll call vote, it was RESOLVED to ELECT Chair David Edwards-Smith to be the**
1514 **board representative at the AMTA local meeting on April 26, 2019 in order to present**
1515 **publicly available information.**

1516

1517 **Agenda Item 12 Use of Curriculum Breakdown**

1518

1519 OLE Dulebohn asks the board how they will apply the drafted Curriculum Breakdown if/when the
1520 Lt. Governor signs it into regulation. Will the board use it to determine whether every transcript is
1521 acceptable, will it just be used on transcripts where the accreditation is in question as the case of the
1522 Rolf Institute of Structural Integration, or some other way?

1523

1524 The board answers that the only way to apply the Breakdown fairly is to look at every transcript. If,
1525 for example, the Breakdown requires a certain number of hours be dedicated to a particular subject
1526 and the applicant does not meet that, the board will require qualifying education remedial hours be
1527 completed before approval of application. Continuing education would not be allowed as a
1528 substitute as qualifying education would have to be in line with AS 08.61.030(3)(A). This
1529 Breakdown can only be applied to new applications submitted after the regulation goes into effect.
1530 OLE Dulebohn stresses the importance of enlisting local Alaska schools to commit to providing
1531 remedial qualifying education is the key to really making the Breakdown work.

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Board member Jill Motz asks OLE Dulebohn about the specific hours on the Curriculum Breakdown.

TASK: OLE Dulebohn will verify that the correct version of the Curriculum Breakdown went to the Regulations Specialist.

Agenda Item 6 (continued) Division/Financial Update

Fee Analysis(continued)

Chair Edwards-Smith asked if all the board members had time to review the documents on the Division’s Fee Analysis that included a proposed fee increase. He then asked if there were any motions on the subject. A motion was made and seconded with discussion following.

Ms. Gilmour begins discussion by saying that she reviewed what Ms. Wales presented to the board. Her review of Ms. Wales projection reveals that the board will not go into deficit until 2023-2024. She goes on to say that 2019, 2020, 2021 the board will have a smaller surplus (which was recommended they institute in previous meetings) but the board does not go into debt. Ms. Gilmour goes on to support her motion by stating that the board has revamped regulations, amended their Disciplinary Matrix, have instituted Fitness to Practice Interviews, and adopted the ability to impose civil fines all in the hopes that those measures will decrease attorney, hearing, and investigative costs drastically. She thinks that these cost saving measures support her motion to not increase fees at this time.

Chair Edwards-Smith and Ms. Motz worry about the repercussion of the possibility of operating in the negative and would not like to see a more drastic fee increase be needed in the future as opposed to a moderate increase now, should that be what Division decides. Chair Edwards-Smith states that the board will be their trust in the experts at Division to make this decision as none of the board members are accountants and it the final decision lies with the State.

Ms. Endle contributes to the conversation by asking if the fees must be increased, can they be in a specific section that would not impact renewing licensees.

TASK: OLE Dulebohn will inquire if fee increases be applied to Initial Applications or the Non-Refundable Application Fee only?

Ms. Gilmour would like to reiterate that the Department sets the fees for programs. The board can only make recommendations but ultimately, Division will do what they think is in the best interest of the board. Ms. Motz is also hopeful that Division will not raise fees. She believes that unusual circumstances such as a large lawsuit in 2018 contributed to the board expenditures. Ms. Gilmour feels that licensees will feel the pain of this potential increase the most as the board has recently decided there would be no renewal fingerprints for 2019 in order to decrease their renewal burden by \$60.00. To raise their licensing fee by \$60.00 will undermine part of what the board had hoped to accomplish by lobbying the legislature to reduce the renewal fingerprint requirements.

1578 In a motion made by Traci Gilmour, seconded by Ron Gibbs, and passed unanimously with
 1579 a roll call vote, it was the board RECOMMENDS that the licensing fee REMAIN at \$290.00
 1580 for the 2019-2020 licensing period and will be re-evaluated for the 2021 licensing period.

1581
 1582 Agenda Item 13 (continued) Administrative Business

1583
 1584 New Task List:

TASK LIST
 February 28-March 1, 2019

#	Task	Who to complete?	When is the deadline?	Distribute to the Board?	Completed
1	Obtain contact information for course sponsors in 12 AAC79.210(d)(3) in regard to continuing education reporting.	Dulebohn	Before June Meeting	Yes, via OnBoard	
2	Follow-up with Jennifer Deitz on the Letter of Intent for board recommended remedial hours that includes ACC's requirements for acceptance.	Dulebohn	May 15, 2019	Yes, via OnBoard	
3	Revamp the 1 st informational page to include check boxes, statement on disclosure and professional fitness questions (PFQ), and applicant signature to Supervisor Hannasch. Also bold the statement on the PFQ for disclosing all criminal convictions to avoid investigation process	Dulebohn	May 15, 2019	Yes, via OnBoard	
4	Find out how many people applied for licensure in the non- renewal years to ascertain how much revenue was generated	Dulebohn	Before June Meeting	Yes, via OnBoard	
5	Confirm suspension of fines in consent agreements and what language needs to be implemented in a consent agreement designate when suspended fines will be re-instituted	Jacobs	ASAP	Yes, via OnBoard	
6	Provide the board with an outline of how and when to implement a civil fine	Jacobs	ASAP	Yes, via OnBoard	
7	Ask Chief Francois about the details of the Cease and Desist and how the information is reported to the authorities (if there is an entity willing to handle the prosecution).	Jacobs	ASAP	Yes, via OnBoard	

8	Complete the Regulation Questionnaire for amendment to 12 AAC 79.110(2)(B) and send it in to OLE Dulebohn	Edwards-Smith	May 15, 2019	No.
9	Board Certifying Order and Examiner Affidavit to Ms. Zinn on Monday when she returns to Juneau	Dulebohn	ASAP	No.
10	Send Ms. Ballard a follow-up e-mail after she completed the record of the meeting (minutes).	Dulebohn	ASAP	No.
11	Invite Director Sara Chambers to consult the board on renewal fingerprint implementation.	Dulebohn	Before June Meeting	No.
12	<p>Research what the board criteria should be in evaluating and approving a continuing education course. It would include:</p> <ol style="list-style-type: none"> 1. How to determine the class merit without a practical application of the course 2. Qualifications as instructor 3. Amount of experience or expertise on subject 4. Does it relate to the practice of massage therapy or bodywork? <p>Look to what other credentialing agencies do and their criteria.</p>	Edwards-Smith	May 15, 2019	Yes, via OnBoard
13	Ask Regulations Specialist if 12 AAC 79.210(d)(1) need defining or removal from Regulations? Is it still valid?	Dulebohn	Before June Meeting	Yes, via OnBoard

14	Contact ACPE on what “exempt status” for continuing education is	Dulebohn	May 15, 2019	Yes, via OnBoard
15	Contact Ms. Lea to obtain additional information on whether Ms. Lea is a continuing education provider anywhere currently or previously, her NCBTMB certificate, her current instructor credentials, and her ACPE Exemption Letter	Dulebohn	ASAP	Yes, via OnBoard
16	Forward the board’s answers to Ms. McMullen’s questions regarding the Curriculum Breakdown	Dulebohn	ASAP	No.
17	Forward the board’s answers to Ms. Dougherty question involving Reiki as a continuing education	Dulebohn	ASAP	No.
18	Send the board’s establishment “wish list” and the reply by Ms. Chambers to Regulations Specialist Zinn	Dulebohn	ASAP	No.
19	Request Attorney General opinion on whether: <ol style="list-style-type: none"> 1. CBD is “not officially legal” 2. Board’s Legal Responsibility 3. Should a complaint go to Investigations, what authority would the board enforce disciplinary action based on (AS 08.61.060) or Standards of Practice Regulation? 	Dulebohn/Chambers	May 15, 2019	Yes, via OnBoard
20	Send new Disciplinary Matrix to LAW and Investigations	Dulebohn	ASAP	Any changes, yes, via OnBoard
21	Check with Division on whether implementing Criminal Review process would be a regulation or policy change.	Dulebohn	Before June Meeting	Yes, via OnBoard
22.	Research Louisiana’s criminal background report review policy	Gilmour	May 15, 2019	Yes, via OnBoard
23	Verify that the correct version of the Curriculum Breakdown went to the Regulations Specialist	Dulebohn	ASAP	Yes, via OnBoard

24	Inquire if fee increases be applied to Initial Applications or the Non-Refundable Application Fee only?	Dulebohn	ASAP	Yes, via OnBoard
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1585

1586 At this time, the board concluded all scheduled Board Business.

1587

1588 **Agenda Item 26 Adjourn**

1589

1590 **In a motion made by Julie Endle, seconded by Jill Motz, and passed unanimously, it was**
 1591 **RESOLVED to ADJOURN.**

1592

1593 Hearing nothing further, Chair David Edwards-Smith adjourned the meeting and the record ended
 1594 at 4:55 p.m.

1595

1596 **Respectfully Submitted,**

1597

1598

1599

1600

1601 _____ **Dawn Dulebohn, Licensing Examiner** _____ **Date**

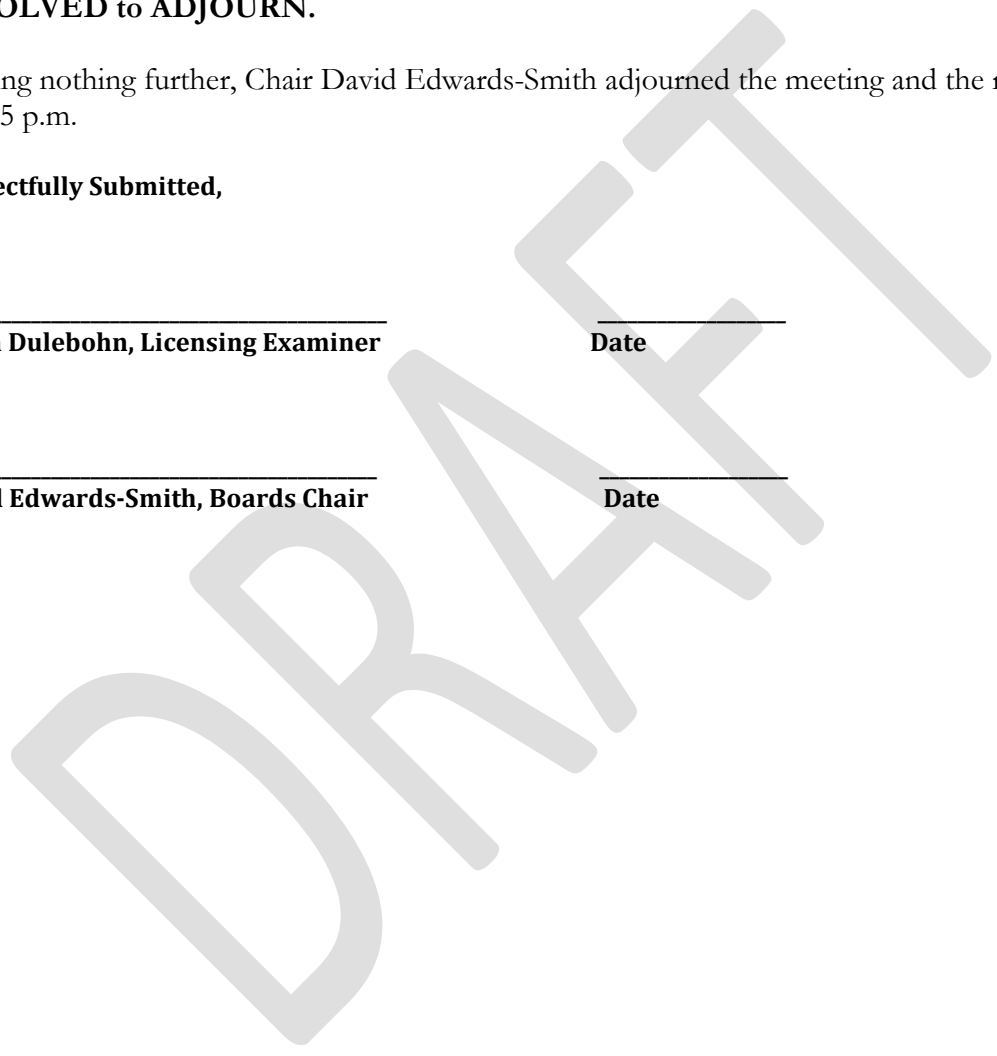
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1606 _____ **David Edwards-Smith, Boards Chair** _____ **Date**



April 9, 2019
Minutes

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 MINUTES OF THE MEETING

7 April 9, 2019

8 *These are **DRAFT** minutes prepared by the staff of the*
9 *Division of Corporations, Business, and Professional Licensing.*

10 *These minutes have not been reviewed or approved by the Board.*

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

14
15
16
17
18
19
20 By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a
21 scheduled meeting of the Board of Massage Therapists was held via teleconference on
22 April 9, 2019.

23
24 **Agenda Item 1** **Call to Order/Roll Call:**

25
26 *On the record at 8:30 a.m.*

27
28 **Board Members present, constituting a quorum:**

29
30 David Edwards-Smith- Board Chair, Licensed Massage Therapist
31 Traci Gilmour, Licensed Massage Therapist
32 Ron Gibbs, Licenses Massage Therapist
33 Julie Endle, Public Board Member
34

35 **Division Staff present:**

36
37 Dawn Dulebohn, Occupational Licensing Examiner
38 Carl Jacobs, Investigator III
39 Sonia Lipker, Senior Investigator III
40 Greg Francois, Chief Investigator
41

42 **Agenda Item 2** **Ethics Reporting:**

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

46
47 **Agenda Item 3** **Investigative Case Review**

49 Surrender of License

50

51 In a motion duly made by Traci Gilmour, seconded by Ron Gibbs, and passed unanimously
52 with a roll call vote, it was **RESOLVED** to **ACCEPT** the **SURRENDER** of License by
53 **Travis Hermansen #2018-00075 and #2018-000786.**

54

55 Consent Agreement

56

57 In a motion duly made by Traci Gilmour, seconded by Ron Gibbs, and passed unanimously
58 with a roll call vote, it was **RESOLVED** to **ACCEPT** the Consent Agreement as written for
59 **Bayinna Ballard #2018-000259.**

60

61 Temporary Cease and Desist Order

62

63 Investigator Jacobs presented Temporary Cease and Desist Order # 2018-001381, 2018-001277, and
64 2018-001293 to the board. Board member Traci Gilmour verified that these were temporary orders
65 and that the person receiving the order would have the opportunity to appeal this order. Inv. Jacobs
66 confirmed that the individuals receiving the order would have 15 days to file an appeal before this
67 order becomes final.

68

69 Hearing no objections to any of the orders, Investigator Jacobs states that he will proceed with
70 issuing the Temporary Cease and Desist Orders.

71

72 Agenda Item 4 Adjourn

73

74 In a motion made by Ron Gibbs, seconded by Julie Endle, and passed unanimously, it was
75 **RESOLVED** to **ADJOURN.**

76

77 Hearing nothing further, Chair David Edwards-Smith adjourned the meeting and the record ended
78 at 8:39 a.m.

79

80 **Respectfully Submitted,**

81

82

83

84

85 _____
86 **Dawn Dulebohn, Licensing Examiner**

_____ **Date**

86

87

88

89

90 _____
David Edwards-Smith, Boards Chair

_____ **Date**

Old Business

Task List from February 28- March 1
Investigative Tasks #5-7

	Also bold the statement on the PFQ for disclosing all criminal convictions to avoid investigation process	Dulebohn	May 15, 2019	Yes, via OnBoard	
4	Find out how many people applied for licensure in the non- renewal years to ascertain how much revenue was generated	Dulebohn	Before June Meeting	Yes, via OnBoard	
5	Confirm suspension of fines in consent agreements and what language needs to be implemented in a consent agreement designate when suspended fines will be re-instituted	Jacobs	ASAP	Yes, via OnBoard	
6	Provide the board with an outline of how and when to implement a civil fine	Jacobs	ASAP	Yes, via OnBoard	
7	Ask Chief Francois about the details of the Cease and Desist and how the information is reported to the authorities (if there is an entity willing to handle the prosecution).	Jacobs	ASAP	Yes, via OnBoard	

From: [Jacobs, Carl A \(CED\)](#)
To: [Dulebohn, Dawn L \(CED\)](#)
Cc: [Lipker, Sonia L \(CED\)](#)
Subject: Follow-Up on Suspension of Civil Fines
Date: Thursday, February 28, 2019 1:32:49 PM

Dawn,

As per the Board's request – here is some follow-up on the suspension on a partial amount of a civil fine:

The Board may choose to suspend a portion of a civil fine, issued with or without a consent agreement. If the Board wishes to have the suspended portion of a civil fine be eligible for reinstatement at a later date for any reason (non-compliance with the consent agreement, future violations, etc.), a consent agreement with specific language spelling out the Board's intention to reinstate the fine is required, outlining the conditions which would trigger that action. Without those steps specifically put in place, a suspended portion of a fine is best considered a "reduced" fine, based assumedly on mitigating circumstances of a case.

I'd be glad to provide further clarification to the board in person if that would be helpful.

Thank you.

Carl Jacobs
Investigator
Department of Commerce, Community, and Economic Development
Division of Corporations, Business, and Professional Licensing
550 West 7th Ave, Suite 1500
Anchorage, AK 99501
P. 907-269-0056
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924 b. In the event the licensed establishment is sold, subleased, or legal possession
925 of the establishment is changed, the new owner, lessee, or legal possessor of
926 the establishment shall be required to submit a completed massage
927 establishment application within thirty (30) days of the change of ownership,
928 lessee, or legal possess.

929
930 Chair Edwards-Smith makes the decision to break for lunch early and when the board comes back
931 from lunch to hear from Investigator Roark by moving Agenda Item 22 up in the schedule.

932
933 *Chair Edwards-Smith calls for a lunch break at 12:28 pm with meeting to resume at 1:30 p.m.*

934
935 **Agenda Item 21** **Lunch**

936
937 **Agenda Item 22** **Proposed Adoption of Civil Fines**

938 *Back on the record at 1:33 p.m.*

939
940 The entire board, OLE Dulebohn, and Investigator Roark return to the meeting after lunch.

941
942 Investigator Roark presents a proposal to the board to adopt imposition of civil fines under AS
943 08.61.060 and AS 08.01.075. Civil fines are imposed without censure or reprimand. They would
944 allow for another level of enforcement between fine, reprimand, or consent agreement and would
945 pertain to technical offenses that relate to the application process. Civil fines are not applicable for
946 patient/client care, diagnosis, treatment, unfit to practice, unlicensed practice, or moral turpitude
947 cases. Civil fines will be implemented in conjunction with an attestation of wrong doing that will be
948 signed by the licensee.

949
950 The positive outcome of possible adoption of implementing civil fines would be cost saving
951 measures for the board and licensees with possible decrease in attorney's fees, litigation, and hearing
952 expenses. Civil fines would not be a reportable license action to the National Practitioner Data
953 Bank (NPDB) but will be a matter of public record and posted on the board's website.

954
955 **In a motion duly made by Jill Motz, seconded by Traci Gilmour, and passed unanimously**
956 **with a roll call vote, it was RESOLVED to ADOPT an Imposition of Civil Fine, without**
957 **censure or reprimand, this action is not retroactive, and only applies in cases not related to**
958 **the delivery of patient care, unlicensed practice, or crimes of moral turpitude.**

959
960 *Investigator Roark left the meeting*

961
962 **Agenda Item 13 (continued)** **Board Business**

963
964 The board discusses the tabled application for E.N. The board references their earlier conversation
965 in which it was decided that anyone licensed after July 2016 in California would need to have their
966 school verified as accredited/approved by the California Massage Therapy Council (CAMTC).
967 Board member Jill Motz went to CAMTC's website during the meeting to verify that E.N.'s school
968 was not on CAMTC's approved school list

969
970 **In a motion duly made by Jill Motz, seconded by Tracy Gilmour, and passed unanimously**
971 **with a roll call vote, it was RESOLVED to APPROVE the application for Elissa Nian**

Disciplinary Matrix Notes from
LAW and INV

Disciplinary Matrix

INV Notes

From: [Jacobs, Carl A \(CED\)](#)
To: [Dulebohn, Dawn L \(CED\)](#)
Cc: [Hannasch, Dawn K \(CED\)](#); [Lipker, Sonia L \(CED\)](#); [Francois, Greg A \(CED\)](#)
Subject: MAS Disciplinary Matrix
Date: Friday, May 10, 2019 12:20:30 PM
Attachments: [MAS Disciplinary Matrix- 02.28.2019 \(2\).pdf](#)

Dawn,

Here is Investigation's feedback on the proposed disciplinary matrix. We are assuming you will be passing this on to Department of Law staff currently reviewing the matrix as well. If that is not the case, please let me know.

1. The fines for unlicensed practice seem steep (in the same approximate range as Board of Nursing fines), given the Board's interest in keeping fees affordable for licensees. The Board might wish to consider that one ideal outcome for an unlicensed practice case would be appropriate license, which would add additional financial burden onto a potential licensee on top of whatever fine they were assessed.
2. AS 11.56.210 – Unsworn Falsification in the Second Degree. Chief Investigation Francois, Senior Investigator Lipker and myself are all of the same mind that the Board does not have jurisdiction to independently determine that an applicant or licensee is guilty of this Statute, and any case with this alleged violation would have to be referred to Department of Law for prosecution. This would add significant investigative and legal costs to any case for which these proceedings were required – and application matters (failure to disclose criminal history) comprise a majority of the Board of Massage Therapists caseload.
3. Based on point #2 above, the disciplinary actions for AS 08.61.060 would need to be adjusted to consider appropriate consequences for application matters. In addition, as I have brought up in past Massage Therapists Board meetings, the language of this Statute explicitly states that it only applies to individuals who have “obtained” a license, which would seem to preclude the Board imposing disciplinary actions on applicants based on a violation. The Statute also adds the qualifier “after a hearing”. We would be very interested on Department of Law's thoughts as to if a hearing is absolutely required as well, or if there is wiggle room in the interpretation.
4. We are unsure why AS 08.61.060 is split between “Fraud in Obtaining a License” and “Fraud in Retaining a License”.

Please advise if I can provide any further clarification.

Thank you.

Carl Jacobs
Investigator
Department of Commerce, Community, and Economic Development
Division of Corporations, Business, and Professional Licensing
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F. 907-269-8195

carl.jacobs@alaska.gov

From: [Dinegar, Harriet C \(LAW\)](#)
To: [Dulebohn, Dawn L \(CED\)](#)
Cc: [Hannasch, Dawn K \(CED\)](#); [Walsh, Sharon J \(CED\)](#); [Chambers, Sara C \(CED\)](#)
Subject: RE: MAS Disciplinary Matrix
Date: Wednesday, May 22, 2019 5:03:21 PM

Dawn, I have completed my review of this proposed disciplinary matrix. On the whole, it is a good solid, and potentially very helpful tool that the board, licensees, and aspiring licensees can use and be guided by. You obviously put a lot of thought into this; I appreciate your, and the board's hard work. Here are my comments:

- I share the observations and concerns of INV.
- It would be helpful if you added the subsection or paragraph designations after the statute – as in, AS 08.61.060(1). That would clear up some of my (and Investigations' concerns).
- The "4 years wait" provisions are likely unenforceable. They are not in statute and I don't see any other authority that allows the MAS to impose such a pause. Compare, for example, AS 08.88.071(a)(11). Also, there are a lot of reasons why someone might misrepresent something on the application, and in my experience, ALJs are quite forgiving of such mistakes.
- The section about unsworn falsification under AS 11.56.210 should be deleted. That might someday make its way into AS 08.61 but I agree with INV that it is not the MAS board's problem now.
- Aren't the standard of practice violations the same as the fraud in retaining a license violations? INV flagged this as well.
- On the SOP violations section I would cite to AS 08.61.060(5) as well as the regulation, which really just adopts by reference a national standard.
- Aren't the "engaged in deceit, fraud, or intentional . . ." violations also the same as "fraud in retaining license?"
- Consider adding to the title block a reference to AS 08.61.060 and its adoption of 08.01.075(a)(8), since that is where the authority to fine comes from.
- What is an F.T.P. interview? Fitness to practice? Why not call it simply fitness or professional fitness interview?
- The felony conviction sections should reference the subsection as noted above – 08.61.060(4).
- Why are the violations referenced under "Intentionally or negligently engaged or allowed another under your supervision . . ." not the same as the SOP violations? It seems like some of these are the same category of violation and can be combined.
- As for the crimes of moral turpitude, consider adding AS 08.61.040 to the statutory citation throughout.
- Same as above, I recommend deleting the 4-year pause provision since it is not in statute and is a kind of due process issue that could attract costly litigation. And as a practical matter, anybody who commits a murder while licensed is going to have a lot of explaining to do before the board will feel like they are safe to practice – and that may take a while. That said, this board actually did have a case of an initial applicant who was convicted of homicide many years before submitting his application. The board denied, in part at least because he killed the person by strangling them – it was his wife actually – with his bare hands. (BAD

indication of suitability for a massage therapist!!!) He did completely rehabilitate himself, tho, and we were looking toward a consent agreement when he decided to follow a different career path.

- All of the moral turpitude boxes look the same. Why not combine them?
- Finally, this is a purely policy call for the board – why no difference in the treatment of convictions for prostitution, which some say is a continuing problem in this profession?

Thank you, everyone, for your patience in waiting for me to get to this. I would be happy to discuss further if you think it would be helpful.

Harriet

From: Dulebohn, Dawn L (CED) <dawn.dulebohn@alaska.gov>
Sent: Friday, May 10, 2019 2:58 PM
To: Dinegar, Harriet C (LAW) <harriet.dinegar@alaska.gov>
Cc: Hannasch, Dawn K (CED) <dawn.hannasch@alaska.gov>
Subject: FW: MAS Disciplinary Matrix

Hello Harriet,

Here is what INV has contributed to the MAS board's proposed Disciplinary Matrix revision. Thought you might like to see it.

Best Regards,

Dawn Dulebohn

Licensing Examiner
Board of Massage Therapists
Corporations, Business, and Professional Licensing
P.O. Box 110806
Juneau, AK 99811-0806
PH: 907-465-3811
Fax: 907-465-2974
[Board of Massage Therapists Webpage](#)
Dawn.Dulebohn@alaska.gov

From: Jacobs, Carl A (CED)
Sent: Friday, May 10, 2019 12:20 PM
To: Dulebohn, Dawn L (CED) <dawn.dulebohn@alaska.gov>
Cc: Hannasch, Dawn K (CED) <dawn.hannasch@alaska.gov>; Lipker, Sonia L (CED)

Disciplinary Matrix

LAW Notes

<sonia.lipker@alaska.gov>; Francois, Greg A (CED) <greg.francois@alaska.gov>

Subject: MAS Disciplinary Matrix

Dawn,

Here is Investigation's feedback on the proposed disciplinary matrix. We are assuming you will be passing this on to Department of Law staff currently reviewing the matrix as well. If that is not the case, please let me know.

1. The fines for unlicensed practice seem steep (in the same approximate range as Board of Nursing fines), given the Board's interest in keeping fees affordable for licensees. The Board might wish to consider that one ideal outcome for an unlicensed practice case would be appropriate license, which would add additional financial burden onto a potential licensee on top of whatever fine they were assessed.
2. AS 11.56.210 – Unsworn Falsification in the Second Degree. Chief Investigation Francois, Senior Investigator Lipker and myself are all of the same mind that the Board does not have jurisdiction to independently determine that an applicant or licensee is guilty of this Statute, and any case with this alleged violation would have to be referred to Department of Law for prosecution. This would add significant investigative and legal costs to any case for which these proceedings were required – and application matters (failure to disclose criminal history) comprise a majority of the Board of Massage Therapists caseload.
3. Based on point #2 above, the disciplinary actions for AS 08.61.060 would need to be adjusted to consider appropriate consequences for application matters. In addition, as I have brought up in past Massage Therapists Board meetings, the language of this Statute explicitly states that it only applies to individuals who have “obtained” a license, which would seem to preclude the Board imposing disciplinary actions on applicants based on a violation. The Statute also adds the qualifier “after a hearing”. We would be very interested on Department of Law's thoughts as to if a hearing is absolutely required as well, or if there is wiggle room in the interpretation.
4. We are unsure why AS 08.61.060 is split between “Fraud in Obtaining a License” and “Fraud in Retaining a License”.

Please advise if I can provide any further clarification.

Thank you.

Carl Jacobs
Investigator
Department of Commerce, Community, and Economic Development
Division of Corporations, Business, and Professional Licensing
550 West 7th Ave, Suite 1500
Anchorage, AK 99501
P. 907-269-0056
F. 907-269-8195
carl.jacobs@alaska.gov

Disciplinary Matrix

Revision/Motion to Adopt

Disciplinary Matrix

Upholding as a Reviewing Board Member

Division/Financial Update

Department of Commerce Community, and Economic Development
Corporations, Business and Professional Licensing

Board of Massage Therapists
Schedule of Revenues and Expenditures

	FY 12	FY 13	FY 14	FY 15	FY16	FY17	FY18	FY19 1st - 3rd Qtr
Licensing Revenue	\$ -	\$ -	\$ -	\$ 660	\$ 586,230	\$ 228,015	\$ 346,505	\$ 60,875
Allowable Third Party Reimbursement	-	-	-	-	-	-	\$ 1,161	\$ 1,791
Total Revenue	-	-	-	660	586,230	228,015	347,666	62,666
Direct Expenditures								
Personal Services	-	-	-	34,676	116,046	76,106	151,114	104,056
Travel	-	-	-	6,585	17,726	10,216	9,646	9,809
Contractual	-	-	-	12,627	52,528	67,008	114,466	28,404
Supplies	-	-	-	274	13	155	70	13
Equipment	-	-	-	-	-	-	-	-
Total Direct Expenditures	-	-	-	54,162	186,313	153,485	275,296	142,282
Indirect Expenditures*	-	-	-	16,424	68,579	70,815	105,954	79,466
Total Expenses	-	-	-	70,586	254,892	224,300	381,250	221,748
Annual Surplus (Deficit)	-	-	-	(69,926)	331,338	3,715	(33,584)	(159,082)
Beginning Cumulative Surplus (Deficit)	-	-	-	-	(69,926)	261,412	265,127	231,543
Ending Cumulative Surplus (Deficit)	\$ -	\$ -	\$ -	\$ (69,926)	\$ 261,412	\$ 265,127	\$ 231,543	\$ 72,461

** For the first three quarters, indirect costs are based on the prior fiscal year's total indirect amount on a percent of year completed basis.

The 4th quarter board reports reflect the current year's actual indirect expenses allocated to the boards.

Biennium July 1, 2017 — September 30, 2019

Appropriation	(All)
AL Sub Unit	(All)
PL Task Code	MAS1

Sum of Expenditures Object Code	Object Name	Object Type Code				Grand Total
		1000	2000	3000	4000	
1011	Regular Compensation	54,657.47				54,657.47
1014	Overtime	526.99				526.99
1023	Leave Taken	9,290.26				9,290.26
1028	Alaska Supplemental Benefit	3,960.04				3,960.04
1029	Public Employee's Retirement System Defined Benefits	1,257.41				1,257.41
1030	Public Employee's Retirement System Defined Contribution	3,090.85				3,090.85
1034	Public Employee's Retirement System Defined Cont Health Reim	2,257.55				2,257.55
1035	Public Employee's Retirement Sys Defined Cont Retiree Medical	552.60				552.60
1037	Public Employee's Retirement Sys Defined Benefit Unfnd Liab	7,026.52				7,026.52
1039	Unemployment Insurance	160.07				160.07
1040	Group Health Insurance	17,160.96				17,160.96
1041	Basic Life and Travel	25.85				25.85
1042	Worker's Compensation Insurance	658.87				658.87
1047	Leave Cash In Employer Charge	1,476.81				1,476.81
1048	Terminal Leave Employer Charge	825.25				825.25
1053	Medicare Tax	892.57				892.57
1062	GGU Business Leave Bank Contributions	15.41				15.41
1063	GGU Business Leave Bank Usage	-				-
1069	SU Business Leave Bank Contributions	2.35				2.35
1077	ASEA Legal Trust	103.37				103.37
1079	ASEA Injury Leave Usage	7.84				7.84
1080	SU Legal Trst	11.38				11.38
1970	Personal Services Transfer	96.07				96.07
2000	In-State Employee Airfare		970.88			970.88
2001	In-State Employee Surface Transportation		75.96			75.96
2002	In-State Employee Lodging		449.99			449.99
2003	In-State Employee Meals and Incidentals		304.00			304.00
2005	In-State Non-Employee Airfare		1,022.63			1,022.63
2007	In-State Non-Employee Lodging		2,271.00			2,271.00
2008	In-State Non-Employee Meals and Incidentals		1,020.00			1,020.00
2009	In-State Non-Employee Taxable Per Diem		96.00			96.00
2010	In-State Non-Employee Non-Taxable Reimbursement		256.33			256.33
2012	Out-State Employee Airfare		872.94			872.94
2013	Out-State Employee Surface Transportation		68.03			68.03
2015	Out-State Employee Meals and Incidentals		315.75			315.75
2020	Out-State Non-Employee Meals and Incidentals		196.00			196.00
2022	Out-State Non-Employee Non-Taxable Reimbursement		84.50			84.50
2036	Cash Advance Fee		9.32			9.32
2970	Travel Cost Transfer		-			-
3000	Training/Conferences			1,175.00		1,175.00
3002	Memberships			849.20		849.20
3035	Long Distance			65.58		65.58
3036	Local/Equipment Charges			261.01		261.01
3045	Postage			268.10		268.10
3046	Advertising			1,261.55		1,261.55
3069	Commission Sales			79.00		79.00
3088	Inter-Agency Legal			7,853.94		7,853.94
3100	Inter-Agency Safety			1,269.00		1,269.00
4002	Business Supplies				13.00	13.00
2014	Out-State Employee Lodging		1,085.47			1,085.47
2017	Out-State Non-Employee Airfare		709.78			709.78
3094	Inter-Agency Hearing/Mediation			15,321.90		15,321.90
Grand Total		104,056.49	9,808.58	28,404.28	13.00	142,282.35

Investigative Case Review
&
Probation Report

Probation Report



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

**Department of Commerce, Community,
and Economic Development**

DIVISION OF CORPORATIONS, BUSINESS, AND
PROFESSIONAL LICENSING
Anchorage Office

550 West Seventh Avenue, Suite 1500
Anchorage, AK 99501-3567
Main: 907.269.8160
Toll free fax: 907.269.8156

PROBATION REPORT

DATE: May 24, 2019
TO: Board of Massage Therapists
THROUGH: Sonia Lipker, Senior Investigator *SL*
FROM: Billy Homestead, Investigator
SUBJECT: Probation Report for the June 10, 2019 – June 11, 2019 meeting.

The following is a complete list of individuals on probation for this Board. All individuals are in compliance with their agreements.

<u>NAME</u>	<u>START DATE</u>	<u>END DATE</u>	
Jerry Blueford	08/21/2017	08/21/2022	
Bayinna Ballard	04/09/2019	04/09/2023	
Tammy Joe	01/31/2017	04/10/2022	
Uros Knezevic	12/20/2017	12/20/2021	
Jannea Knight	12/20/2017	12/20/2021	
Vicki Marrs	01/31/2017	01/31/2022	
Anna Martin	12/20/2017	12/20/2021	
Arturo Ramirez	12/05/2016	HOLD	License Lapsed 09/30/2017
Amy Thompson	03/09/2018	03/09/2022	

NOTES:

N/A

REQUESTS to Board:

N/A

END OF REPORT

Investigative Report



MEMORANDUM

DATE: May 24, 2019
 TO: Alaska Board of Massage Therapists
 THRU: Sonia Lipker, Senior Investigator *SL*
 FROM: Carl Jacobs, Investigator *CJ*
 RE: Investigative Report for the June 10-11, 2019, Meeting

The following information was compiled as an investigative report to the Board for the period of February 22, 2019 through May 24, 2019. This report includes all investigations, complaints, and intake matters handled since the last report. The Division **opened nine (9) matters** and **closed eleven (11) matters**. **Sixteen (16) matters** remain on going and/or under active investigation. Matters pending litigation are indicated by *italics*.

Matters opened by the Paralegal in Juneau, regarding continuing education audits and license action resulting from those matters are not covered in this report.

<u>CASE #</u>	<u>OPENED</u>	<u>VIOLATION TYPE</u>
2018-000166	02/08/18	<i>License Application Problem</i>
2018-000882**	08/09/18	Unlicensed Practice
2018-001048**	09/14/2018	Sexual Misconduct
2018-001276**	10/24/2018	Unlicensed Practice
2018-001277	10/26/2018	Unlicensed Practice
2018-001293	11/01/2018	Unlicensed Practice
2018-001381	12/13/2018	Unlicensed Practice
2019-000074	01/18/2019	<i>License Denial</i>
2019-000183	02/19/2019	License Application Problem
2019-000271	03/11/2019	License Application Problem
2019-000321	03/19/2019	License Application Problem
2019-000388	04/10/2019	License Application Problem

2019-000407	04/19/2019	Criminal Action – Conviction
2019-000437	05/03/2019	Unlicensed Practice or Activity
2019-000498	05/23/2019	License Application Problem
2019-000499	05/23/2019	License Application Problem

**Indicates a matter with license action before the Board for consideration at this meeting.

OPEN: TOTAL = 16

<u>CASE #</u>	<u>VIOLATION TYPE</u>	<u>CLOSED</u>	<u>CLOSURE</u>
2018-001184	Falsified Application	02/26/2019	Advisement Letter
2018-001035	Unlicensed Practice or Activity	03/13/2019	License Action
2018-000898	License Application Problem	03/19/2019	No Action – No violation
2019-000256	License Application Problem	04/03/2019	Referred to Other Agency
2019-000270	Falsified Application	04/04/2019	Advisement Letter
2018-001330	Falsified Application	04/05/2019	Advisement Letter
2019-000153	Sexual Misconduct	04/09/2019	No Action – No Violation
2018-000259	Criminal Action - Conviction	04/17/2019	License Action
2018-000775	Sexual Misconduct	04/19/2019	License Action
2018-000786	Unlicensed Practice or Activity	04/19/2019	License Action
2018-001038	License Application Problem	04/24/2019	Application Withdrawn

CLOSED: TOTAL = 11

END OF REPORT

EXECUTIVE SESSION MOTION

I, _____, move that the Alaska State Board of Massage Therapists enter into executive session in accordance with AS 44.62.310(c), and Alaska Constitutional Right to Privacy Provisions, for the purpose of discussing _____

Board staff to remain during the session.

Off record: _____

On record: _____

Authority: AS 44.62.310(c), Government meetings public

The following subjects may be considered in executive session:

- **matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;**
- **subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;**
- **matters which by law, municipal charter, or ordinance are required to be confidential;**
- **matters involving consideration of government records that by law are not subject to public disclosure.**

J.J.

S.S.

Y.Z.

Role in Record Keeping

From: [TK Gilmour](#)
To: [Jacobs, Carl A \(CED\)](#); [David Edwards-Smith](#); [Dulebohn, Dawn L \(CED\)](#)
Subject: Records keeping, daily logs of clients
Date: Wednesday, April 3, 2019 8:17:57 AM

Hi Carl,

I am listening to the information on the complainant.

I believe the information given to this gentleman about the keeping of records is misunderstood.

We do not take/keep chart notes out of the office in which we work. We DO chart notes, but cannot take those files or notes out of that worksite. We are to log information on clients, dates, times, payment and keep chart notes, if applicable, onsite in our own studios/private businesses. We under no circumstances keep logs/notes at home on who we work on outside of a private studio.

I believe this gentleman was given/understood incorrect information.

I would like the board to speak more to this at the next board meeting and help all to understand our role in recordkeeping.

--

Traci K Gilmour, LMT
TLC Massage Therapy
AK License #102012
(907) 7902337

Old Business (continued)

Previous Task List

February 28- March 1, 2019

TASK LIST

February 28- March 1, 2019

#	Task	Who to Complete?	When is the Deadline?	Distribute to the Board?	Complete
1	Obtain contact information for course sponsors in 12 AAC79.210(d)(3) in regard to continuing education reporting.	Dulebohn	Before June Meeting	Yes, via OnBoard	
2	Follow-up with Jennifer Deitz on the Letter of Intent for board recommended remedial hours that includes ACC's requirements for acceptance.	Dulebohn	May 15, 2019	Yes, via OnBoard	Rec'd 5/10/2019 by e-mail
3	Revamp the 1st informational page to include check boxes, statement on disclosure and professional fitness questions (PFQ), and applicant signature to Supervisor Hannasch. Also bold the statement on the PFQ for disclosing all criminal convictions to avoid investigation process	Dulebohn	May 15, 2019	Yes, via OnBoard	Added PFQ attestation bolded and underlined statement. Pending Supervisor approval- 4/30/2019
4	Find out how many people applied for licensure in the non- renewal years to ascertain how much revenue was generated	Dulebohn	Before June Meeting	Yes, via OnBoard	10/1/2017- 6/1/2019- 251 ppl 251x550= \$138, 050 (\$15,060 fp)
5	Confirm suspension of fines in consent agreements and what language needs to be implemented in a consent agreement designate when suspended fines will be re-instituted	Jacobs	ASAP	Yes, via OnBoard	Completed- during Feb meeting
6	Provide the board with an outline of how and when to implement a civil fine	Jacobs	ASAP	Yes, via OnBoard	Completed- In September 2018 meeting minutes

7	Ask Chief Francois about the details of the Cease and Desist and how the information is reported to the authorities (if there is an entity willing to handle the prosecution).	Jacobs	ASAP	Yes, via OnBoard	Completed-during Feb meeting
8	Complete the Regulation Questionnaire for amendment to 12 AAC 79.110(2)(B) and send it in to OLE Dulebohn	Edwards-Smith	May 15, 2019	No.	
9	Board Certifying Order and Examiner Affidavit to Ms. Zinn on Monday when she returns to Juneau	Dulebohn	ASAP	No.	Completed-March 11, 2019
10	Send Ms. Ballard a follow-up e-mail after she completed the record of the meeting (minutes).	Dulebohn	ASAP	No.	Completed March 11, 2019
11	Invite Director Sara Chambers to consult the board on renewal fingerprint implementation.	Dulebohn	Before June Meeting	No.	
12	Research what the board criteria should be in evaluating and approving a continuing education course. It would include: <ol style="list-style-type: none"> 1. How to determine the class merit without a practical application of the course 2. Qualifications as instructor 3. Amount of experience or expertise on subject 4. Does it relate to the 	Edwards-Smith	May 15, 2019	Yes, via OnBoard	Completed-May 29, 2019

	<p>practice of massage therapy or bodywork?</p> <p>Look to what other credentialing agencies do and their criteria.</p>				
13	<p>Ask Regulations Specialist if 12 AAC 79.210(d)(1) need defining or removal from Regulations? Is it still valid?</p>	Dulebohn	Before June Meeting	Yes, via OnBoard	
14	<p>Contact ACPE on what “exempt status” for continuing education is</p>	Dulebohn	May 15, 2019	Yes, via OnBoard	Request sent 6/3/2019
15	<p>Contact Ms. Lea to obtain additional information on whether Ms. Lea is a continuing education provider anywhere currently or previously, her NCBTMB certificate, her current instructor credentials, and her ACPE Exemption Letter</p>	Dulebohn	ASAP	Yes, via OnBoard	Called 3/1/2019 & 3/26/2019-no answer. Talked to 5/30/2019
16	<p>Forward the board’s answers to Ms. McMullen’s questions regarding the Curriculum Breakdown</p>	Dulebohn	ASAP	No.	Complete- 3/14/2019
17	<p>Forward the board’s answers to Ms. Dougherty question involving Reiki as a continuing education</p>	Dulebohn	ASAP	No.	Complete- 3/14/2019
18	<p>Send the board’s establishment “wish list” and the reply by Ms. Chambers to Regulations Specialist Zinn</p>	Dulebohn	ASAP	No.	Complete- uploaded minutes to website 3/14/2019
19	<p>Request Attorney General opinion on whether:</p> <ol style="list-style-type: none"> 1. CBD is “not officially legal” 2. Board’s Legal Responsibility 	Dulebohn/Chambers	May 15, 2019	Yes, via OnBoard	

	3. Should a complaint go to Investigations, what authority would the board enforce disciplinary action based on (AS 08.61.060) or Standards of Practice Regulation?				
20	Send new Disciplinary Matrix to LAW and Investigations	Dulebohn	ASAP	Any changes, yes, via OnBoard	Complete- 3/14/2019
21	Check with Division on whether implementing Criminal Review process would be a regulation or policy change.	Dulebohn	Before June Meeting	Yes, via OnBoard	Req. Sent 5/22/2019. 2 nd req. sent 6/3/2019.
22.	Research Louisiana's criminal background report review policy	Gilmour	May 15, 2019	Yes, via OnBoard	Complete. 5/22/2019
23	Verify that the correct version of the Curriculum Breakdown went to the Regulations Specialist	Dulebohn	ASAP	Yes, via OnBoard	Complete. 3/14/2019
24	Inquire if fee increases be applied to Initial Applications or the Non-Refundable Application Fee only?	Dulebohn	ASAP	Yes, via OnBoard	Complete. Yes, fee increase can be added only to the non-refundable application fee only.

Sponsor Contact Information for Continuing Education

Letter of Intent from
Alaska Career College

From: [Jennifer Deitz](#)
To: [Dulebohn, Dawn L \(CED\)](#)
Subject: Emailing: ACC AK message board Hours
Date: Thursday, May 9, 2019 5:25:57 P |

[REDACTED]

Please also accept this email as a response to the board's letter of intent for Alaska Career College to be considered as a provider of remedial hours of education for those individuals seeking Alaska Licensure but need additional hours to meet Alaska requirements. Alaska Career College would like to be considered for this task and will work with the board as needs arise.

Jennifer A. Deitz
President & Founder
Alaska Career College
1415 E. Tudor Road
Anchorage, Ak 99507-1033
907-563-7575 (v)
800-770-7575 (AK only)
907-563-8330 (F)

https://urldefense.proofpoint.com/v2/url?u=http-3A__www.AlaskaCareerCollege.edu&d=DwIFAg&c=teXCf5DW4bHgLDM-H5_GmQ&r=jT_qgxFFHJTGFu3wKBhYn3qgbODD3lpeWT6e_SDgX00&m=3u6GzuMRaBIZpZjxEDWU59--gKHNUgtK8JQujFsCoo4&s=OLOtyIQShQxaweusSDYrw2f0_FiduaSa3yB9F4nScSU&e=

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled

Exempt Status from ACPE

Louisiana's Potential Applicant Criminal History Pre-Review

<https://massagetherapylicense.org/state/louisiana-massage-license.html#background>

Background Check Requirements

Louisiana requires prospective massage therapists to undergo criminal record checks (<https://www.labmt.org/site414.php>). An individual who has lived in Louisiana continually for the prior five years can have the criminal record check carried out by the Louisiana Bureau of Criminal Identification and Information. An individual who has lived in states other than Louisiana will need to have the check carried out by the FBI; the other option would be to have multiple checks, one from each state of residence.

In order to be accepted, a background check must bear a date that is within six months of application.

The Bureau of Criminal Identification and Information can be reached at 225-925-6006. The FBI can be reached at 304-625-2000.

The Application Process

Louisiana massage therapists have a two-step process. They apply for licensure and, once approved, register their licenses. The necessary forms can be downloaded from the Board website (<https://www.labmt.org/site432.php>).

The licensing agency requires official transcripts. If the transcript does not provide information about clock hours or “in-class” hours, the applicant will need to secure additional information from the school.

Applicants who answer “yes” to questions about adverse legal or professional history will need to provide explanations. Those who have been convicted of felonies or sexually related misdemeanors will need to provide court documents.

An applicant will need to attach a two by two passport-style photograph. The application form requires notarization.

Application packages are to include a \$75 fee; the licensing agency can accept money orders or cashier’s checks but not personal checks.

A newly approved massage therapist can fill out a short form to register his or her license. An additional fee will be required at this stage. The first-year license fee is pro-rated; the amount due depends on the season.

Some services can now be carried out online.

Additional Information

The Louisiana Board of Massage Therapy (<https://www.labmt.org/site1.php>) can be reached by telephone at 225-756-3488 or by email at ‘admin at labmt.org’.

The Louisiana Chapter of the American Massage Therapy Association is the state’s professional organization (<http://amtala.org/wp/>). AMTA-Louisiana is not involved with the licensing process but serves as an additional professional resource.

<https://www.labmt.org/site414.php>

2018 Regular Session

HOUSE BILL NO. 748 (Substitute for House Bill No. 562 by Representative Emerson)

BY REPRESENTATIVE EMERSON

LICENSING: Establishes the Occupational Licensing Review Act

1 AN ACT

2 To enact Chapter 1-D of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 37:41 through 46, relative to creating the Occupational Licensing Review
4 Act; to provide with respect to occupational regulations; to establish state policy for
5 the regulation of occupations; to provide for definitions; to specify certain criteria
6 for government regulations; to establish the office of supervision of occupational
7 boards; to create a process to review criminal history to reduce an offender's
8 disqualification from state recognition; to provide for a fee; to provide an effective
9 date; and to provide for related matters

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 1-D of Title 37 of the Louisiana Revised Statutes of 1950,
12 comprised of R.S. 37:41 through 46, is hereby enacted to read as follows:

13 CHAPTER 1-D. OCCUPATIONAL LICENSING REVIEW ACT

14 §41. Legislative policy

15 For occupational regulations and their boards, each of the following shall
16 apply as policy of this state:

17 (1) The right of an individual to pursue a lawful occupation is a fundamental
18 right.

1 (2) Where the state finds it necessary to displace competition, it shall use the
2 least restrictive regulation to protect consumers from present, significant, and
3 empirically substantiated harms threatening public health and safety.

4 §42. Definitions

5 For the purposes of this Chapter, the following words have the meaning
6 herein ascribed to them, unless the context clearly otherwise indicates:

7 (1) "Certification" means a voluntary program in which a private
8 organization or the state government grants nontransferable recognition to an
9 individual who meets personal qualifications established by the private organization
10 or the legislature. Upon approval, the individual may use "certified" as a designated
11 title. A noncertified individual may also perform the lawful occupation for
12 compensation but may not use the title "certified".

13 (2) "Lawful occupation" means a course of conduct, pursuit, or profession
14 that includes the sale of goods or services that are not themselves illegal to sell
15 irrespective of whether the individual selling them is subject to an occupational
16 regulation.

17 (3) "Least restrictive regulation" means, from least to most restrictive, all of
18 the following:

19 (a) Market competition.

20 (b) Third-party or consumer-created ratings and reviews.

21 (c) Private certification.

22 (d) Voluntary bonding or insurance.

23 (e) Specific private civil cause of action to remedy consumer harm.

24 (f) Applications of Unfair Trade Practices and Consumer Protection Law,
25 R.S. 51:1401 et seq.

26 (g) Mandatory disclosure of attributes of the specific good or service.

27 (h) Regulation of the process of providing the specific good or service.

28 (i) Inspection.

29 (j) Bonding.

1 (k) Insurance.

2 (l) Registration.

3 (m) Government certification.

4 (n) Specialty occupational license for medical reimbursement.

5 (o) Occupational license.

6 (4) "Occupational license" is a nontransferable authorization for an
7 individual to exclusively perform a lawful occupation for compensation based on
8 meeting personal qualifications established by the legislature. In an occupation for
9 which a license is required, it is illegal for an individual who does not possess a valid
10 occupational license to perform the occupation for compensation.

11 (5) "Occupational regulation" means a statute, rule, practice, policy, or other
12 state law allowing an individual to use an occupational title or work in a lawful
13 occupation, including but not limited to registrations, certifications, and occupational
14 licenses. "Occupational regulation" excludes a business license, facility license,
15 building permit, or zoning and land use regulation except to the extent those related
16 state laws regulate an individual's personal qualifications to perform a lawful
17 occupation.

18 (6) "Office" means the office of supervision of occupational boards.

19 (7) "Personal qualifications" means criteria related to an individual's
20 personal background and characteristics, including but not limited to completion of
21 an approved educational program, satisfactory performance on an examination, work
22 experience, other evidence of attainment of requisite skills or knowledge, moral
23 standing, criminal history, and completion of continuing education.

24 (8) "Registration" means a requirement to give notice to the state that may
25 include the individual's name and address, the individual's agent for service of
26 process, the location of the activity to be performed, and a description of the service
27 the individual provides. "Registration" does not include personal qualifications but
28 may require a bond or insurance. Upon the state's receipt of notice, the individual
29 may use "registered" as a designated title. A nonregistered individual may not

1 perform the occupation for compensation or use "registered" as a designated title.

2 "Registration" is not transferable.

3 (9)(a) "Specialty occupational license for medical reimbursement" means a
4 nontransferable authorization for an individual to qualify for payment or
5 reimbursement from a state agency for the nonexclusive provision of medical
6 services based on meeting personal qualifications established by the legislature. A
7 private company may recognize this credential.

8 (b) Notwithstanding the specialty license described in Subparagraph (a) of
9 this Paragraph, it is legal for a person regulated by another occupational regulation
10 to provide similar services as defined in the specialty license for compensation and
11 medical reimbursement. It is also legal for an individual who does not possess the
12 specialty license to provide the identified medical services of the specialty license
13 for compensation, but the unlicensed individual does not qualify for payment or
14 reimbursement from a state agency.

15 §43. Office of supervision of occupational boards

16 The office of supervision of occupational boards is hereby created within the
17 office of the governor.

18 §44. Sunrise and sunset reviews of occupational regulations

19 A.(1) **Sunrise reviews.** The office is responsible for reviewing proposed
20 legislation to enact or modify an occupational regulation to ensure compliance with
21 the policies set forth in R.S. 37:41.

22 (2) The office shall do both of the following:

23 (a) Require proponents to submit evidence of present, significant, and
24 empirically substantiated harms to consumers in the state which may require the
25 office to gather information from others knowledgeable of the occupation, labor-
26 market economics, or other factors.

27 (b) Determine if the proposed regulation meets the state's policy in R.S.
28 37:41(2) of using the least restrictive regulation necessary to protect consumers from
29 present, significant, and empirically substantiated harms.

1 (3)(a) In its analysis used to make the determination described in
2 Subparagraph (2)(b) of this Paragraph, the office shall employ a rebuttable
3 presumption that market competition and private remedies are sufficient to protect
4 consumers.

5 (b) The presumption described in Subparagraph (a) of this Paragraph may
6 be rebutted if the office finds credible empirical evidence of a systematic problem
7 warranting enactment of a state regulation to protect consumers. If such a problem
8 is present, the office shall recommend the least restrictive government regulation to
9 address the problem using the following list of guidelines to form its
10 recommendation:

11 (i) If the need is to provide consumers with a means to address contractual
12 disputes, including pricing disputes, the office's presumptive recommendation shall
13 be to enact a specific cause of action in a small claims division proceeding or in the
14 district court of the parish in which the violations occurred to remedy consumer
15 harm. This cause of action may provide for reimbursement of attorney fees or court
16 costs if the consumer's claim is successful.

17 (ii) If the need is to protect consumers against fraud, the office's presumptive
18 recommendation shall be to strengthen powers under the state's Unfair Trade
19 Practices and Consumer Protection Law, R.S. 51:1401 et seq., or require disclosures
20 intended to reduce misleading attributes of the specific good or service.

21 (iii) If the need is to protect consumers against unclean facilities or to
22 promote general health and safety, the office's presumptive recommendation shall
23 be to require periodic inspections of the provider's facility.

24 (iv) If the need is to protect consumers against potential damages from a
25 provider's failure to complete a contract fully or to standards, the office's
26 presumptive recommendation shall be to require the provider is bonded.

27 (v) If the need is to protect a person who is not a party to a contract between
28 the provider and consumer, the office's presumptive recommendation shall be to
29 require the provider have insurance.

1 (vi) If the need is to protect consumers against potential damages by a
2 transient provider not domiciled in this state, the office's presumptive
3 recommendation shall be to require the provider to register the provider's business
4 with the secretary of state.

5 (vii) If the need is to protect consumers against a shortfall or imbalance of
6 knowledge about the good or service relative to the seller's knowledge, the office's
7 presumptive recommendation shall be to enact voluntary private or state
8 certification.

9 (viii) If the need is to qualify providers of new or highly specialized medical
10 services for reimbursement by the state, the office's presumptive recommendation
11 shall be to enact a specialty license for medical reimbursement.

12 (ix) If the need is to address a systematic information shortfall in which a
13 reasonable consumer of the service is permanently unable to distinguish between the
14 quality of providers, or there is an absence of institutions providing guidance to
15 consumers, and the consumer's inability to distinguish and the lack of guidance will
16 allow significant and substantiated harms, the office's presumptive recommendation
17 shall be to enact an occupational license.

18 (4) The office's analysis of the need for regulation as described in
19 Subparagraph (3)(b) of this Paragraph shall include, nonexclusively, the effects of
20 the proposed legislation including the scope of practice, opportunities for workers,
21 consumer choices and costs, general unemployment, market competition,
22 governmental costs, and whether and how other states regulate the occupation.

23 (5) The office shall report its findings to every legislative committee that will
24 hear the proposed legislation for occupational regulation prior to the hearing and
25 subsequent vote on the proposed legislation.

26 **B. Sunset reviews.** Beginning July 1, 2018, the office shall use the criteria
27 in Paragraphs (A)(2) through (4) of this Section to annually review approximately
28 twenty percent of the state's current occupational regulations. The office shall review

1 all occupational regulations within the subsequent five years and shall repeat such
2 review process in each five-year period thereafter.

3 C.(1) **Sunset reports.** Beginning January 1, 2019, the office shall annually
4 report the findings of its reviews to the speaker of the House of Representatives, the
5 president of the Senate, the governor, and the attorney general. In its report, the
6 office shall recommend the legislature enact legislation that may do any of the
7 following:

8 (a) Repeal occupational regulations.

9 (b) Convert the occupational regulations to less restrictive regulations as
10 defined in R.S. 37:42.

11 (c) Instruct the relevant licensing board or agency to promulgate revised
12 regulations reflecting the legislature's decision to use a less restrictive regulation.

13 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, the
14 office may recommend no legislation be enacted.

15 §45. Petition for review of a criminal record

16 A. The right of an individual to pursue a lawful occupation is a fundamental
17 right that includes both of the following:

18 (1) The right of an individual with a criminal record to petition the state to
19 obtain a certification, occupational license, specialty occupational license for medical
20 reimbursement, or other state recognition, hereinafter referred to in this Section as
21 "state recognition", with respect to the individual's personal qualifications.

22 (2) The state not using a criminal record as an automatic or mandatory
23 permanent bar to an individual's receiving state recognition.

24 B. An individual with a criminal record may petition a licensing board,
25 agency, department, or other state or local issuer of occupational licenses, hereinafter
26 referred to in this Section as "board", at any time, including before obtaining any
27 required education or training, for a determination of whether the individual's
28 criminal record will disqualify the individual from obtaining state recognition.

1 C. The individual shall include in the petition his criminal record or
2 authorize the board to obtain his criminal record.

3 D. The individual may include additional information about his current
4 circumstances, including the time since the offense, completion of the criminal
5 sentence, other evidence of rehabilitation, testimonials, employment history, and
6 employment aspirations.

7 E. The board is authorized to determine whether the individual's criminal
8 record disqualifies him from obtaining state recognition.

9 F. Notwithstanding any other provision of law to the contrary, the board may
10 find the individual's criminal record disqualifies him from obtaining state recognition
11 if either of the following applies:

12 (1) The individual's criminal record includes a conviction for a felony or
13 violent misdemeanor.

14 (2) The board concludes the state has an important interest in protecting
15 public safety that is superior to the individual's right. The board may make this
16 conclusion only if it determines by clear and convincing evidence at the time of the
17 petition that all of the following apply:

18 (a) The specific offense for which the individual was convicted is
19 substantially related to the state's interest.

20 (b) The individual, based on the nature of the specific offense for which the
21 individual was convicted and the individual's current circumstances, is more likely
22 to reoffend by virtue of having the license than if he did not have the license.

23 (c) A reoffense will cause greater harm than it would if the individual did not
24 have the license.

25 G.(1) The board shall issue its determination to the individual within ninety
26 days from the date the board receives the petition. The determination shall be in
27 writing and include the criminal record, findings of fact, and conclusions of law.

28 (2) If the board determines the state's interest is superior to the individual's
29 right, the board may advise the individual of actions he may take to remedy the

1 disqualification. The individual may submit a revised petition reflecting the
2 completion of the remedies at any time within ninety days from the date of the
3 board's determination.

4 (3) The individual may appeal the board's determination in accordance with
5 the Administrative Procedure Act and may submit a new petition to the board at any
6 time within two years from the date of the board's final determination.

7 H. The board may rescind its determination at any time if the individual is
8 convicted of an additional offense that the board determines meets the provisions of
9 Subsection F of this Section.

10 I. The board is authorized to charge and collect from the individual a fee to
11 recoup its costs for each petition. The fee shall not exceed one hundred dollars.

12 J.(1) The Louisiana Workforce Commission, hereinafter referred to in this
13 Section as "commission", shall designate internal personnel to establish an annual
14 reporting requirement for the commission's collection of data with respect to all of
15 the following:

16 (a) The number of applicants petitioning each board.

17 (b) The number of petitions approved and denied by each board.

18 (c) The type of offenses for which each board approved or denied the
19 petitions.

20 (d) Other data as determined by the commission.

21 (2) The commission shall compile and annually provide a report of the data
22 collected in Paragraph (1) of this Subsection to the House Committee on Commerce
23 and the Senate Committee on Commerce, Consumer Protection, and International
24 Affairs, and shall make the report available on the official website of the commission
25 on or before February first of each calendar year.

26 §46. Interpretation of statutes and rules

27 In construing any occupational regulation, including an occupational
28 licensing statute, rule, policy, or practice, the following canons of interpretation are
29 to govern, unless the regulation is unambiguous:

1 (1) Occupational regulations shall be construed and applied to increase
2 economic opportunities, promote competition, and encourage innovation.

3 (2) Any ambiguities in occupational regulations shall be construed in favor
4 of working licensees, aspiring licensees, and persons aspiring work related to
5 regulated occupations.

6 (3) The scope of practice in occupational regulations is to be construed
7 narrowly so as to avoid its application to individuals who would be burdened by
8 regulatory requirements that are only partially related to the goods and services they
9 provide.

10 Section 2. The provisions of this Act shall become effective July 1, 2018.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 748 Original

2018 Regular Session

Emerson

Abstract: Creates the Occupational Licensing Review Act.

Proposed law provides for the following legislative policies:

- (1) The rights of an individual to pursue a lawful occupation is a fundamental right.
- (2) When the state finds it necessary to displace competition, it shall use the least restrictive regulation to protect consumers from present, significant, and empirically substantiated harms threatening public health and safety.

Proposed law defines "certification", "lawful occupation", "least restrictive regulation", "occupational license", "occupational regulation", "office", "personal qualifications", "registration", and "specialty occupational license for medical reimbursement".

Proposed law creates the office of supervision of occupational boards ("office") with the office of the governor.

Proposed law provides for responsibilities and duties of the office.

Proposed law requires the office, beginning July 1, 2018, annually review approximately 20% of the state's current occupational regulations using certain criteria.

Proposed law requires the office, beginning on January 1, 2019, annually report the findings of its reviews to the speaker of the House of Representatives, the president of the Senate, the governor, and the attorney general.

Proposed law requires that in the office's report, it shall recommend the legislature enact legislation that may do any of the following:

- (1) Repeal occupational regulations.
- (2) Convert the occupational regulations to less restrictive regulations.
- (3) Instruct the relevant licensing board or agency to promulgate revised regulations reflecting the legislature's decision to use a less restrictive regulation.

Proposed law provides that the right of an individual to pursue a lawful occupation is a fundamental right that includes both of the following:

- (1) The right of an individual with a criminal record to petition the state to obtain a certification, occupational license, specialty occupational license for medical reimbursement, or other state recognition with respect to the individual's personal qualifications.
- (2) The state not using a criminal record as an automatic or mandatory permanent bar to an individual's receiving state recognition.

Proposed law provides that an individual with a criminal record may petition a licensing entity at any time, including before obtaining any required education or training, for a determination of whether the individual's criminal record will disqualify the individual from obtaining state recognition.

Proposed law requires the individual to provide his criminal record or an authorization for the licensing entity to obtain his criminal record.

Proposed law provides that an individual may include additional information about the his current circumstances, including the time since the offense, completion of the criminal sentence, other evidence of rehabilitation, testimonials, employment history, and employment aspirations.

Proposed law authorizes the board to determine whether the individual's criminal record disqualifies him from obtaining state recognition.

Proposed law requires the board to issue its determination to the individual within 90 days from the date the board receives the petition.

Proposed law provides that if the board determines the state's interest is superior to the individual's right, the board may advise the individual of actions he may take to remedy the disqualification and provides for the resubmission of a revised petition.

Proposed law provides for the appeal process of the board's determination and allows the individual to submit new petition to the board at any time within two years from the date of the board's final determination.

Proposed law provides that the board may rescind its determination at any time if the individual is convicted of certain offenses.

Proposed law authorizes the board to charge and collect a fee to recoup its costs for each petition, and such fee shall not exceed \$100.

Proposed law provides that the La. Workforce Commission ("commission") shall designate internal personnel to establish an annual reporting requirement for the commission's collection of data with respect to all of the following:

- (1) The number of applicants petitioning each board.
- (2) The number of petitions approved and denied by each board.

- (3) The type of offenses for which each board approved or denied the petitions.
- (4) Other data as determined by the commission.

Proposed law provides that the commission shall compile and annually provide a report of the data collected to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs, and shall make the report available on the official website of the commission on or before February first of each calendar year.

Proposed law provides for interpretation of statutes and rules as follows:

- (1) Occupational regulations shall be construed and applied to increase economic opportunities, promote competition, and encourage innovation.
- (2) Any ambiguities in occupational regulations shall be construed in favor of working licensees, aspiring licensees, and persons aspiring work related to regulated occupations.
- (3) The scope of practice in occupational regulations is to be construed narrowly so as to avoid its application to individuals who would be burdened by regulatory requirements that are only partially related to the goods and services they provide.

Effective July 1, 2018.

(Adds R.S. 37:41-46)

Regulations

Regulation Changes Questionnaire

Division/Board: _____ Meeting Date: _____

Regulation change being proposed: 12 AAC _____

General top of the regulation: _____

This worksheet is designed to help the board think through an anticipated regulations project. Staff will provide this worksheet to the board at the time a regulations project is being approved for public notice. This information will be used to develop a FAQ to be posted on the board's web page to help the public understand the project. Staff will submit the completed worksheet with the draft board minutes to the Regulations Specialist within 10 days of the meeting and provide a copy to the supervisor. Appropriate staff will be assigned to complete this worksheet if a division regulation. **NOTE: Use a separate worksheet for each section being proposed.**

1. Is the new regulation needed to comply with new legislation or federal law? If yes, effective date of new statute/federal law: _____ <i>(If appropriate, ensure the new regulation is in line with federal requirements prior to initiating a regulation project.)</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>
2. Does the change add a new license type? If yes: Does it affect current licensees? Do current licensees/non-licensees already perform the service for which the new license type is required? Is there a grace period or date explicitly included in the regulation to allow for a transition period?	Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
3. Does it change the qualifications or requirements of an existing license? If yes, does it affect current licensees?	Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
4. Does it affect continuing education/competency requirements? If yes: Does it add additional requirements or hours? Does it clarify existing regulations? Is there an effective date in the future to give licensees time to comply?	Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
5. Is it a fee change or does it create a new fee? If yes: Does it move fees in the centralized regulations to a new number, therefore affecting other program regulations?	Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
6. Does it make changes to the requirements of licensees? If yes: All licensees Certain licensees (List: _____) Initial licensees	Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
7. In addition to interested parties, who should receive the public notice? (All licensees or certain license types?)	

8. In addition to the 30-day minimum written notice, does the board request a public hearing? If yes, when and where.
9. What will the regulation do?
10. What is the demonstrated public need or purpose of this regulation?
11. What is the known or estimated cost of the new regulation to a private person, another agency, or a municipality (see Step 3 of the <i>Steps in the Regulation Process...</i>)?
12. What <u>positive</u> consequences may this regulation have on public or private people, businesses, or organizations?
13. What <u>negative</u> consequences may this regulation have on public or private people, business, or organizations?
14. If any <u>negative</u> consequences, please address the reasons why the public need for this change outweighs the negative impact.
15. List any additional questions or comments that may arise from the public during the comment period. Include a response to the questions.
16. What type of notification outlining the changes will be required once the regulation is adopted? Check appropriate boxes. FAQ on website <input type="checkbox"/> Email to licensees <input type="checkbox"/> Letter to licensees <input type="checkbox"/>

Staff submitting this worksheet: _____ Date submitted to Regulations Specialist: _____

MAS- Statutes & Regulations

May 2019

Statutes and Regulations **Massage Therapists**

May 2019



DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT

***DIVISION OF CORPORATIONS, BUSINESS
AND PROFESSIONAL LICENSING***

NOTE: The official version of the statutes in this document is printed in the Alaska Statutes, copyrighted by the State of Alaska. The official version of the regulations in this document is published in the Alaska Administrative Code, copyrighted by the State of Alaska. If any discrepancies are found between this document and the official versions, the official versions will apply.

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**CHAPTER 61.
MASSAGE THERAPISTS.**

Section

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- 20. Duties and powers of board**
- 30. Qualifications for license**
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- 60. Grounds for imposition of disciplinary sanctions**
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Sec. 08.61.010. Board established. The Board of Massage Therapists is established in the department. The board consists of five members appointed by the governor as follows:

- (1) four licensed massage therapists who have been engaged in the practice of massage therapy in the state for the three years immediately preceding appointment and who shall remain actively engaged in the practice of massage therapy while serving on the board; not more than one member appointed under this paragraph may have an ownership or partnership interest in a massage school; and
- (2) one public member; the governor may not appoint as a public member
 - (A) a licensed health care provider;
 - (B) an employee of the state; or
 - (C) a current or former member of another occupational licensing board established under AS 08.

Sec. 08.61.020. Duties and powers of board. In addition to the duties specified in AS 08.01, the board shall

- (1) provide for the examination of applicants by the board or through a nationally recognized competency examination approved by the board and issue licenses to applicants the board finds qualified;
- (2) adopt regulations governing
 - (A) licensing of massage therapists; and
 - (B) the practice of massage therapy;
- (3) establish standards of professional competence and ethical conduct for massage therapists;
- (4) establish standards for continuing education for massage therapists; standards adopted by the board under this paragraph must allow for approval of Internet-based continuing education courses;
- (5) make available to the public a list of massage therapists licensed under this chapter;
- (6) determine which states have educational and licensing requirements equivalent to the requirements of this state;
- (7) enforce the provisions of this chapter and adopt and enforce regulations necessary to implement this chapter; and
- (8) approve one or more nationally recognized competency examinations and publish and periodically update the list of approved examinations.

Sec. 08.61.030. Qualifications for license. The board shall issue a license to practice massage therapy to a person who

- (1) applies on a form provided by the department;
- (2) pays the fees established under AS 08.61.090;
- (3) furnishes evidence satisfactory to the board that the person has completed a
 - (A) course of study of at least 500 hours of in-class supervised instruction and clinical work from an approved massage school; or
 - (B) board-approved apprenticeship program;
- (4) is 18 years of age or older;
- (5) has been fingerprinted and has provided the fees required by the Department of Public Safety under AS 12.62.16 for criminal justice information and a national criminal history record check; the fingerprints and fees shall be forwarded to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400;
- (6) has a current cardiopulmonary resuscitation certification;
- (7) has received at least four hours of safety education covering bloodborne pathogens and universal precautions in the two years preceding the application for the license; in this paragraph, "bloodborne pathogens" has the meaning given in AS 18.15.450;
- (8) has successfully completed a nationally recognized competency examination approved by the board; and
- (9) has not been convicted of, or pled guilty or no contest to, a crime involving moral turpitude, or who has been convicted of, or pled guilty or no contest to, a crime involving moral turpitude if the board finds that the conviction does not affect the person's ability to practice competently and safely.

Sec. 08.61.040. Licensure by credentials. The board shall issue a license to practice massage therapy to a person who

- (1) is 18 years of age or older;
- (2) applies on a form provided by the department;
- (3) pays the fees established under AS 08.61.090;
- (4) has submitted the person's fingerprints and the fees required by the Department of Public Safety under AS 12.62.160 for criminal justice information and a national criminal history record check; the fingerprints and fees shall be forwarded to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400;
- (5) is not the subject of an unresolved complaint or disciplinary action before a regulatory authority in this state or another jurisdiction;
- (6) has not had a certificate or license to practice massage therapy revoked, suspended, or voluntarily surrendered in this state or another jurisdiction;
- (7) has not been convicted of, or pled guilty or no contest to, a crime involving moral turpitude, or has been convicted of, or pled guilty or no contest to, a crime involving moral turpitude if the board finds that the conviction does not affect the person's ability to practice competently and safely;
- (8) has a current cardiopulmonary resuscitation certification; and
- (9) is currently
 - (A) licensed to practice massage therapy in another state or country that has licensing requirements that are substantially equal to or greater than the requirements of this state; or
 - (B) certified by a certification entity approved by the board.

Sec. 08.61.050. Standards for license renewal. The board shall renew a license issued under this chapter to a licensee who

- (1) pays the required fee;
- (2) meets the continuing education requirements established by the board;
- (3) has not been convicted of, or pled guilty or no contest to, a crime involving moral turpitude, or has been convicted of, or pled guilty to or no contest to, a crime involving moral turpitude if the board finds that the conviction does not affect the person's ability to practice competently and safely;
- (4) has a current cardiopulmonary resuscitation certification; and
- (5) has been fingerprinted and has provided the fees required by the Department of Public Safety under AS 12.62.160 for criminal justice information and a national criminal history record check at least once every six years; the fingerprints and fees shall be forwarded to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400.

Sec. 08.61.060. Grounds for imposition of disciplinary sanctions. After a hearing, the board may impose a disciplinary sanction under AS 08.01.075 on a person licensed under this chapter if the board finds that the person

- (1) secured a license through deceit, fraud, or intentional misrepresentation;
- (2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing massage therapy services or engaging in massage therapy;
- (3) advertised massage therapy services in a false or misleading manner;
- (4) has been convicted of a felony or another crime that affects the licensee's ability to continue to practice competently and safely;
- (5) intentionally or negligently engaged in, or permitted a person under the licensed massage therapist's supervision to engage in, client care that did not conform to minimum professional standards, whether or not actual injury to the client occurred;
- (6) failed to comply with a provision of this chapter, a regulation adopted under this chapter, or an order of the board;
- (7) continued to practice after becoming unfit because of
 - (A) professional incompetence; or
 - (B) addiction or severe dependency on alcohol or another drug that impairs the ability to practice safely; or
- (8) engaged in unethical conduct or sexual misconduct in connection with the delivery of massage therapy services to a client.

Sec. 08.61.070. Practice of massage therapy without license prohibited. (a) A person may not practice massage therapy or represent that the person is a massage therapist unless the person holds a valid license under this chapter. In this subsection, a person represents that the person is a massage therapist when the person adopts or uses a title or description of services that incorporates one or more of the following terms or designations: massage, massage practitioner, massage therapist, massage therapy, therapeutic massage, massage technician, massage technology, massagist, masseur, masseuse, myotherapist, myotherapy, or another term describing a traditional European or contemporary western massage method, or a derivation of a term that implies a massage technique or method.

(b) A person who knowingly violates (a) of this section is guilty of a class B misdemeanor.

Sec. 08.61.080. Exceptions to application of chapter. This chapter does not apply to a

- (1) person licensed in the state under a statute outside this chapter who performs massage therapy within the scope of practice for which the person's license was issued;
- (2) person who, while acting in an official capacity as an employee of the United States government, performs massage therapy;
- (3) person who is licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country while the person is temporarily
 - (A) practicing massage therapy in this state in connection with teaching a course related to massage therapy;
 or
 - (B) consulting with a person licensed under this chapter;
- (4) student enrolled in an approved massage school or course of study who is completing a clinical requirement for graduation under the general supervision of a person licensed under this chapter if the student is clearly identified as a student while performing massage therapy services on members of the public and is not compensated for the massage therapy services;
- (5) person only performing massage therapy on members of the person's family;
- (6) person only performing techniques that do not involve contact with the body of another person;
- (7) person only performing techniques that involve resting the hands on the surface of the body of another person without delivering pressure to or manipulating the person's soft tissues;
- (8) person only performing services such as herbal body wraps, skin exfoliation treatments, or the topical application of products to the skin for beautification purposes when the services do not involve direct manipulation of the soft tissues of the body;
- (9) person only performing massage therapy for the athletic department of an institution maintained by public funds of the state or a political subdivision of the state or only practicing massage therapy for the athletic department of a school or college approved by the board using recognized national professional standards;
- (10) person engaged only in the practice of structural integration for restoring postural balance and functional ease by integrating the body in gravity using a system of fascial manipulation and awareness who has graduated from a program or is a current member of an organization recognized by the International Association of Structural Integrators, including the Rolf Institute of Structural Integration;
- (11) person using only light touch, words, and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement or to affect the energy systems;
- (12) person performing only the traditional practices of Native American traditional healers;
- (13) person practicing only the manipulation of the soft tissues of the hands, feet, or ears and not holding out to be a massage therapist.

Sec. 08.61.090. Fees. The department shall set fees under AS 08.01.065 for application, license issuance, license renewal, and investigation under this chapter.

Sec. 08.61.100. Definitions. In this chapter,

- (1) "approved massage school" means a massage therapy school or program that
 - (A) has an authorization to operate from the Alaska Commission on Postsecondary Education or a similar entity in another state; or
 - (B) is accredited by a nationally recognized accrediting agency;
- (2) "board" means the Board of Massage Therapists;
- (3) "department" means the Department of Commerce, Community, and Economic Development;
- (4) "massage therapist" means a person licensed under this chapter;
- (5) "practice of massage therapy" means the provision, for compensation, of a service involving the systematic manipulation and treatment of the soft tissues, including the muscular and connective tissues of the human body, to enhance the functions of those tissues and promote relaxation and well-being; in this paragraph, "manipulation and treatment"
 - (A) includes manual techniques applied with the intent to physically affect local soft tissues, such as pressure, friction, stroking, percussion, kneading, vibration, muscular assessment by palpation, range of motion for purposes of demonstrating muscle exertion for muscle flexibility, nonspecific stretching, and application of superficial heat, cold, water, lubricants, or salts;
 - (B) does not include diagnosis, the prescription of drugs or medicines, the practice of physical therapy, attempts to manipulate any articulation of the body or spine, or mobilization of these articulations by use of a thrusting force.

**CHAPTER 79.
MESSAGE THERAPISTS.**

Article

- 1. Licensing (12 AAC 79.100 – 12 AAC 79.140)**
- 2. License Renewal and Continuing Education (12 AAC 79.200 – 12 AAC 79.220)**
- 3. General Provisions (12 AAC 79.900 – 12 AAC 79.990)**

**ARTICLE 1.
LICENSING.**

Section

- 100. Application for licensure by examination**
- 110. Application for licensure by credentials**
- 120. Application for transitional license**
- 130. Criminal justice information**
- 140. Massage school education requirements**

12 AAC 79.100. APPLICATION FOR LICENSURE BY EXAMINATION. (a) The board will issue a license by examination to practice massage therapy to an applicant who meets the requirements of AS 08.61.030 and this section.

(b) An applicant for licensure by examination under this section must submit

- (1) a completed application, on a form provided by the department; the completed application must include
 - (A) the personal identification information requested on the form;
 - (B) information related to the grounds of disciplinary sanctions under AS 08.61.060;
 - (C) the applicant's fingerprint information described in 12 AAC 79.130; and
 - (D) the application fee, fingerprint processing fee, and license fee specified in 12 AAC 02.396;
- (2) verification of massage therapy education, sent directly from the school or program to the division office;

verification must consist of

(A) on or before June 30, 2019, an official school transcript evidencing completion of a course of study of at least 500 hours of in-class supervised instruction and clinical work from a massage therapy school or program that

(i) has authorization to operate from the Alaska Commission on Postsecondary Education under AS 14.48 or from a similar agency of another state; or

(ii) is accredited by a nationally recognized accrediting agency;

(B) on or after July 1, 2019, an official school transcript evidencing completion of a course of study of at least 625 hours of in-class supervised instruction and clinical work from a massage therapy school or program that

(i) has authorization to operate from the Alaska Commission on Postsecondary Education under AS 14.48 or from a similar agency of another state; or

(ii) is accredited by a nationally recognized accrediting agency; or

(C) evidence satisfactory to the board of completion of an apprenticeship program that meets the requirements and standards of the Commission on Massage Therapy Accreditation (COMTA) and the requirements and standards of the Coalition of National Massage Therapy Organizations, Entry Level Analysis Project (ELAP) *Work Group, The Core: Entry-Level Massage Education Blueprint*, dated December 2013, and adopted by reference;

(3) verification, sent directly from the appropriate agency to the division office, of having passed

(A) the Massage and Bodywork Licensing Examination (MBLEx) administered by the Federation of State Massage Therapy Boards; or

(B) the National Certification Examination for Therapeutic Massage or the National Certification Examination for Therapeutic Massage and Bodywork, each administered by the National Certification Board for Therapeutic Massage and Bodywork, if the applicant took the examination before February 1, 2015;

(4) a current certification in cardiopulmonary resuscitation from the American Red Cross, American Heart Association, American Safety and Health Institute, or an equivalent organization; and

(5) the following:

(A) on or before June 30, 2019, verification of having completed at least four hours of safety education in bloodborne pathogens and universal precautions in the two years preceding the application; or

(B) on or after July 1, 2019, verification of having completed at least two hours of safety education in bloodborne pathogens and universal precautions in the two years preceding the application.

Authority: AS 08.61.020 AS 08.61.030 AS 08.61.090

Editor's note: A copy of *The Core: Entry-Level Massage Education Blueprint*, published by the Coalition of National Massage Therapy Organizations, adopted by reference in 12 AAC 79.100, may be obtained from the ELAP website: http://www.elapmassage.org/_files/ELAP_Blueprint.pdf.

12 AAC 79.110. APPLICATION FOR LICENSURE BY CREDENTIALS. (a) The board will issue a license by credentials to practice massage therapy to an applicant who meets the requirements of AS 08.61.040 and this section.

- (b) An applicant for licensure by credentials under this section must submit
- (1) a completed application, on a form provided by the department; the completed application must include
 - (A) the personal identification information requested on the form;
 - (B) information related to the grounds of disciplinary sanctions under AS 08.61.060;
 - (C) the applicant's fingerprint information described in 12 AAC 79.130; and
 - (D) the application fee, fingerprint processing fee, and license fee specified in 12 AAC 02.396;
 - (2) verification, sent directly from the appropriate agency to the division office, that the applicant
 - (A) holds a current license to practice massage therapy in another state, jurisdiction, or country where licensing requirements are substantially equal to or greater than the requirements of this state; or
 - (B) is certified by the American Massage Therapy Association, the National Certification Board for Therapeutic Massage and Bodywork, or other board-approved credentialing entity; and
 - (3) current certification in cardiopulmonary resuscitation through the American Red Cross, American Heart Association, American Safety and Health Institute, or an equivalent organization.

Authority: AS 08.61.020 AS 08.61.040 AS 08.61.090
AS 08.61.030

12 AAC 79.120. APPLICATION FOR TRANSITIONAL LICENSE. (a) The board will issue a license under this section to an applicant who applies for licensure before July 1, 2017, and who meets the requirements of AS 08.61.030(1), (2), (4) – (6), and (9) and this section.

- (b) An applicant for licensure under this section must submit
- (1) a completed application, on a form provided by the department; the completed application must include
 - (A) the personal identification information requested on the form;
 - (B) information related to the grounds of disciplinary sanctions under AS 08.61.060;
 - (C) the applicant's fingerprint information described in 12 AAC 79.130; and
 - (D) the application fee, fingerprint processing fee, and license fee specified in 12 AAC 02.396;
 - (2) a current certification in cardiopulmonary resuscitation through the American Red Cross, American Heart Association, American Safety and Health Institute, or an equivalent organization; and
 - (3) verification that the applicant owned, operated, or worked for a massage therapy business and performed the practice of massage therapy before July 1, 2015, by submitting
 - (A) a copy of the applicant's signed federal tax income tax returns for one of the five years immediately preceding July 1, 2015, listing the person's occupation as massage therapist in this state;
 - (B) copies of the applicant's signed schedule C federal income tax returns for one of the five years immediately preceding July 1, 2015, demonstrating that the person has reported income from the practice of massage therapy in this state;
 - (C) a sworn statement from the applicant's employer in this state attesting that the applicant has practiced massage therapy within the five years immediately preceding July 1, 2015, a copy of the business license of the applicant's employer, and a copy of the applicant's Form W-2 or Form 1099-MISC from the same employer;
 - (D) a copy of the municipal occupational license that was current on the day before July 1, 2015, from a municipality in this state, stating the applicant's occupation as a massage therapist;
 - (E) documentation that the person has, for at least one year immediately preceding July 1, 2015, been an active member, as a massage therapist, in a national professional massage therapy association that was established before January 1, 2000, offers professional liability insurance as a benefit of membership, and has an established code of professional ethics; or
 - (F) other documentation satisfactory to the board.

Authority: AS 08.61.020 AS 08.61.090 Sec. 10, ch. 114, SLA 2014
AS 08.61.030

12 AAC 79.130. CRIMINAL JUSTICE INFORMATION. (a) An applicant for licensure under 12 AAC 79.100, 12 AAC 79.110, or 12 AAC 79.120 must submit with the application the applicant's fingerprints and other information required by the Department of Public Safety to obtain state and national criminal justice information under AS 12.62 and AS 12.64.

- (b) The board will submit the fingerprints received under this section to the Department of Public Safety and request the Department of Public Safety to
- (1) submit the fingerprints to the Federal Bureau of Investigation for a report on national criminal justice information;
 - (2) perform a check for state criminal justice information; and
 - (3) report to the board the results of the criminal justice information checks under (1) and (2) of this subsection.
- (c) The request under (b) of this section for a criminal justice information report does not delay administrative

processing of the applicant's license application. An application will not be considered complete until the criminal justice information required in (a) of this section is received by the board. If criminal justice information that raises questions about an applicant's qualifications for licensure is received after a license has been issued to the applicant, the department and the board will take action under AS 08.61 and AS 44.62 as appropriate.

Authority: AS 08.61.020 AS 08.61.030 AS 08.61.040

12 AAC 79.140. MASSAGE SCHOOL EDUCATION REQUIREMENTS. (a) For applications submitted on or before June 30, 2019, applicants must show successful completion of at least 500 hours of education or instruction in massage therapy that includes the following subjects for the minimum number of hours specified:

- (1) anatomy, physiology, pathology, and kinesiology: 130 hours, including instruction in
 - (A) at least 40 hours in pathology, including indications and contraindications;
 - (B) the muscular system;
 - (C) the nervous system;
 - (D) osteology;
 - (E) the circulatory system; and
 - (F) kinesiology;
- (2) massage theory and practical application: 220 hours, including instruction in
 - (A) basic massage therapy techniques dedicated to the study of massage therapy and various clinically related modalities; and
 - (B) assessment;
- (3) clinical practice: 110 hours, including instruction in
 - (A) universal and standard precautions;
 - (B) self-care;
 - (C) body mechanics;
 - (D) draping;
 - (E) record keeping;
 - (F) business practice and professional development; and
 - (G) medical terminology;
- (4) ethics and laws: 40 hours, including instruction in
 - (A) professional boundaries;
 - (B) therapeutic relationships; and
 - (C) local and state laws;
- (5) not more than 50 hours in techniques that are exempt from license requirements;
- (6) practical application, not to exceed 20 percent of the total hours of the massage program.

(b) For applications submitted on or after July 1, 2019, applicants must show successful completion of at least 625 hours of education or instruction in massage therapy that includes the following subjects for the minimum number of hours specified:

- (1) anatomy, physiology, pathology, and kinesiology: 162 hours, including instruction in
 - (A) at least 40 hours in pathology, including indications and contraindications;
 - (B) the muscular system;
 - (C) the nervous system;
 - (D) osteology;
 - (E) the circulatory system; and
 - (F) kinesiology;
- (2) massage theory and practical application: 275 hours, including instruction in
 - (A) basic massage therapy techniques dedicated to the study of massage therapy and various clinically related modalities; and
 - (B) assessment;
- (3) clinical practice: 138 hours, including instruction in
 - (A) universal and standard precautions;
 - (B) self-care;
 - (C) body mechanics;
 - (D) draping;
 - (E) record keeping;
 - (F) business practice and professional development; and
 - (G) medical terminology;
- (4) ethics and laws: 50 hours, including instruction in
 - (A) professional boundaries;
 - (B) therapeutic relationships; and
 - (C) local and state laws;
- (5) not more than 50 hours in techniques that are exempt from license requirements;
- (6) practical application, not to exceed 20 percent of the total hours of the massage program.

Authority: AS 08.61.020 AS 08.61.100

ARTICLE 2. LICENSE RENEWAL AND CONTINUING EDUCATION.

Section

200. License renewal

210. Continuing education requirements

220. Audit and documentation

12 AAC 79.200. LICENSE RENEWAL. (a) A massage therapy license must be renewed biennially on or before September 30 of odd-numbered years. A renewal reminder document will be mailed to each currently licensed massage therapist at least 30 days before the renewal date. Failure to receive a renewal notice does not relieve a licensee from the responsibility of renewing a license on time.

(b) An applicant for renewal of a massage therapy license must meet the requirements of AS 08.61.050 and this section. A massage therapist applying for license renewal must submit

- (1) a completed renewal application on a form provided by the department;
- (2) beginning October 1, 2017, and at least once every six years thereafter, the applicant's fingerprint information described in 12 AAC 79.130 and the fingerprint processing fee specified in 12 AAC 02.396;
- (3) the license renewal fee specified in 12 AAC 02.396;
- (4) a current certification in cardiopulmonary resuscitation through the American Red Cross, American Heart Association, American Safety and Health Institute, or an equivalent organization; and
- (5) documentation that the massage therapist satisfied the continuing education requirements in 12 AAC 79.210.

Authority: AS 08.61.020 AS 08.61.050

12 AAC 79.210. CONTINUING EDUCATION REQUIREMENTS. (a) An applicant for renewal of a massage therapy license,

(1) for a biennial licensing period that begins on or after July 1, 2015, must document at least six continuing education credits, all of which may be met through Internet-based continuing education courses;

(2) for a biennial licensing period that begins on or after July 1, 2017, must document at least 16 continuing education credits, all of which may be met through Internet-based continuing education courses.

(b) An applicant for renewal under (a)(2) of this section may receive two hours of continuing education credit for completion of hands-on cardiopulmonary resuscitation through the American Red Cross, American Heart Association, American Safety and Health Institute, or an equivalent organization.

(c) On or before June 30, 2019, an applicant for renewal under (a)(2) of this section may receive four hours of continuing education credit for completion of a bloodborne pathogens and universal and standard precautions course once every six years.

(d) On or after July 1, 2019, an applicant for renewal under (a)(2) of this section may receive two hours of continuing education credit for completion of a bloodborne pathogens and universal and standard precautions course once every six years.

(e) Continuing education must be completed through a

- (1) board-approved massage therapy or bodywork therapy school or training program;
- (2) regionally or nationally accredited institution of higher education; a course, seminar, workshop, or other program through that institution must be approved by the board as directly related to the skills and knowledge required for the practice of massage therapy, and includes a bloodborne pathogens and universal and standard precautions course under (c) or (d) of this section; or
- (3) local, state, or national professional organization that serves the massage therapy profession, including
 - (A) Associated Bodywork and Massage Professionals;
 - (B) the American Massage Therapy Association;
 - (C) the Federation of State Massage Therapy Boards; and
 - (D) the National Certification Board for Therapeutic Massage and Bodywork.

(f) For the purposes of this section,

- (1) one continuing education credit equals one hour of classroom instruction between instructor and participant;
- (2) one academic semester credit equals 15 contact hours; and
- (3) one academic quarter credit equals 10 contact hours.

(g) An applicant for renewal is responsible for maintaining adequate and detailed records of all continuing education hours claimed and shall make the records available to the board upon request under 12 AAC 79.220. Records must be retained for four years from the date the contact hours were obtained.

(h) An applicant for renewal under (a) of this section may receive one continuing education credit for attending at least 80 percent of a regularly scheduled board meeting once every biennial licensing period.

(i) An applicant for renewal under (a) of this section who has been licensed more than 90 days but less than 12 months of the concluding biennial license period is not required to submit proof of completion of continuing education.

Authority: AS 08.61.020 AS 08.61.030 AS 08.61.050

12 AAC 79.220. AUDIT AND DOCUMENTATION. A licensee shall comply with all applicable requirements of 12 AAC 02.960 and 12 AAC 02.965. If selected for an audit of continuing education activities, the licensee shall cooperate with the department and shall submit all requested verifications of continuing education activities claimed by the licensee.

Authority: AS 08.61.020 AS 08.61.050

ARTICLE 3. GENERAL PROVISIONS.

Section

- 900. Code of ethics and standards of practice
- 910. "Moral turpitude" defined
- 920. Application form and verifications for licensure
- 990. Definitions

12 AAC 79.900. CODE OF ETHICS AND STANDARDS OF PRACTICE. The *Alaska Board of Massage Therapists Code of Ethics and Standards of Practice*, dated December 2018, is adopted by reference as the code of ethics for massage therapists in the state. In order to maintain a high standard of integrity in the profession and to safeguard the health and welfare of the public, massage therapists licensed in this state shall adhere to the code of ethics.

Authority: AS 08.61.020

Editor's note: A copy of the *Alaska Board of Massage Therapists Code of Ethics and Standards of Practice*, adopted by reference in 12 AAC 79.900, may be obtained from the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Board of Massage Therapists, State Office Building, 9th Floor, 333 Willoughby Avenue, Juneau, Alaska 99801; phone (907) 465-3811; website at <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/BoardofMassageTherapists.aspx>.

12 AAC 79.910. "MORAL TURPITUDE" DEFINED. Under AS 08.61.030, a crime involving moral turpitude includes

- (1) homicide;
- (2) manslaughter;
- (3) assault;
- (4) stalking;
- (5) kidnapping;
- (6) sexual assault;
- (7) sexual abuse of a minor;
- (8) unlawful exploitation of a minor, including possession or distribution of child pornography;
- (9) indecent exposure;
- (10) unlawful distribution or possession for distribution of a controlled substance;
- (11) prostitution;
- (12) sex trafficking;
- (13) murder;
- (14) human trafficking;
- (15) criminal sexual conduct;
- (16) incest;
- (17) robbery;
- (18) extortion;
- (19) forgery;
- (20) theft;
- (21) endangering the welfare of a child;
- (22) endangering the welfare of a vulnerable adult;
- (23) reckless endangerment.

Authority: AS 08.61.020 AS 08.61.030

12 AAC 79.920. APPLICATION FORM AND VERIFICATIONS FOR LICENSURE. (a) If, upon receipt by the division of the last document required to complete an application file, the file contains an application form or

verification that has a postmark date that is more than six months old, the document will be considered to be stale and the applicant must resubmit the document or cause the document to be resubmitted as appropriate before the application will be considered by the board or the board's designee.

(b) Verifications from massage schools and programs will not be considered stale under (a) of this section.

(c) An applicant whose license application has been approved pending receipt of the license fee must submit the license fee to the department within six months after being notified that the license application was approved. An applicant who does not submit the license fee to the department within six months after being notified that the license application was approved must reapply for licensure.

(d) In this section, "application form or verification" means

- (1) an application for a license or permit;
- (2) a verification of licensure from an appropriate licensing authority in a state, territory, province, or other country; or
- (3) fingerprint information described in 12 AAC 79.130.

Authority: AS 08.61.020

12 AAC 79.990. DEFINITIONS. (a) In AS 08.61 and this chapter,

(1) "criminal justice information" has the meaning given in AS 12.62.900;

(2) "universal and standard precautions" means the infectious control precautions that are recommended by the United States Department of Health and Human Services, Centers for Disease Control and Prevention, to be used to prevent the transmission of bloodborne germs such as human immunodeficiency virus and hepatitis B virus.

(b) In this chapter, unless the context requires otherwise,

- (1) "board" means the Board of Massage Therapists;
- (2) "department" means the Department of Commerce, Community, and Economic Development;
- (3) "licensee" means a massage therapist licensed under AS 08.61;
- (4) "division" means the division of corporations, business, and professional licensing in the department.

Authority: AS 08.61.020

Alaska Board of Massage Therapists

Code of Ethics and Standards of Practice

December 2018



DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT

***DIVISION OF CORPORATIONS, BUSINESS
AND PROFESSIONAL LICENSING***

**ALASKA BOARD OF MASSAGE THERAPISTS CODE OF ETHICS
AND STANDARDS OF PRACTICE
DECEMBER 2018**

In order to maintain a high standard of integrity in the profession and to safeguard the health and welfare of the public, massage therapists licensed in this state must adhere to the Alaska Board of Massage Therapists Code of Ethics and Standards of Practice:

CODE OF ETHICS

- 1) I will represent my qualifications honestly including education, certifications and professional affiliations and accurately inform clients, health care professionals and the public of the scope and limitations of my discipline. I will provide only those services I am qualified to perform.
- 2) I will provide treatment only where there is a reasonable expectation that it will be advantageous to the client and will acknowledge the limitations of and contraindications for massage therapy and refer clients to appropriate health care professionals when indicated.
- 3) I will not discriminate against clients and/or healthcare professionals.
- 4) I will abide by the Federal guidelines of the Health Insurance Privacy and Portability Act (HIPPA).
- 5) I will respect the client's right to refuse, modify or terminate treatment at will regardless of prior consent given.
- 6) I will exercise my right to refuse to treat any person or part of the body for just and reasonable cause.
- 7) I will respect the client's autonomy by providing draping and treatment in a way that ensures the safety, comfort and privacy of the client.
- 8) I will not, in any circumstance, initiate or engage in sexual conduct, activities, advertising, or sexualizing behavior involving a client, even if the client attempts to sexualize the relationship.
- 9) I will refuse any gifts or benefits that are intended to influence a referral, decision or treatment or those that are purely for personal gain and I will avoid any interest, activity or influence which may conflict with my obligation as a massage therapist to act in the best interest of my client or the profession.
- 10) I will refrain from practicing under the influence of alcohol, drugs or any illegal substances, with the exception of a prescribed dosage of prescription medication which does not impair my ability to practice safely.
- 11) I will report in accordance to AS 47.17.020(a)(1) any suspected child abuse or neglect.

STANDARDS OF PRACTICE

- 1) Obey all applicable local, state and federal laws when pertaining to massage therapy.
- 2) Maintain a record of daily clientele including name and date of service and adequate progress notes when applicable.
- 3) Provide a setting that is safe and meets all applicable legal requirements for health, safety, sanitation, hygiene, universal and standard precautions, in accordance with local, state and federal regulatory bodies including guidelines set by the Centers for Disease Control and Prevention (CDC), the National Institute of Health (NIH), and the Occupational Safety and Health Administration (OSHA).
- 4) Therapists shall prominently display the State of Alaska massage license in his or her place of business. Therapists will make available proof of licensure while practicing off site.
- 5) Therapists shall display or discuss a schedule of fees in advance of the session that is clearly understood by the client.

500 hours vs. 625 hours
Criteria for Applicants

From: [Chambers, Sara C \(CED\)](#)
To: [Dulebohn, Dawn L \(CED\)](#); [Hannasch, Dawn K \(CED\)](#)
Cc: [Dinegar, Harriet C \(LAW\)](#); [Ward, Charles W \(CED\)](#); [Kautz, Colleen K \(CED\)](#)
Subject: RE: Request for advice on massage therapist regulations following HB110
Date: Thursday, November 29, 2018 8:32:00 AM

Team Dawn:

Below is the response from Law concerning your questions. Please let Charles or me know if you have any additional questions or concerns.

Many thanks, Harriet.

Sara Chambers
Acting Director

Alaska Division of Corporations, Business and Professional Licensing

P.O. Box 110806, Juneau, AK 99811-0806

commerce.alaska.gov/web/cbpl

Phone: (907) 465-2144

FAX: (907) 465-2974

From: Dinegar, Harriet C (LAW)
Sent: Wednesday, November 28, 2018 6:40 PM
To: Chambers, Sara C (CED) <sara.chambers@alaska.gov>
Cc: Cain, Rebecca (LAW) <rebecca.cain@alaska.gov>
Subject: Request for advice on massage therapist regulations following HB110

This is in response to Sara's request for advice, dated November 27, 2018:

- 1. On July 1, 2019, the education hours required for a massage therapist license increase from 500 to 625.** We have typically interpreted this to mean that to receive a license with 500 hours, the complete application packet must be filed with our office prior to that date per 12 AAC 02.920. *Is there any legal reason why we should interpret differently? No. This is OK because applications are routinely granted as soon as practicable after receipt of a completed application. So the applicant does not have to actually have the license in hand. Requiring that is not supported by the statute that simply requires x hours for licensure.*
- 2. "12 AAC 79.920. Application form and verifications for licensure" is a proposed regulation that would set an incomplete application staleness date of six months from postmark date.** My interpretation is that once this regulation is in effect, it will apply to all licenses meeting the criteria for staleness, therefore causing the applicants to resubmit stale documentation. This concept is supported by a recent legislative audit of another program and is modeled off a regulation of the Medical Board. *Is there any legal reason why we should interpret differently? No. The concern here is that applying this to applications that have been in the*

pipeline for a while will cause some wishful applicants to have to start over, whereas they may have begun the process thinking they had an unlimited amount of time to complete their application, and that would result in some detriment, retroactively. That is likely going to be the case for some (hopefully not too many) but the offense of retroactive (ex post facto) application of rules is not really an issue with rules that are regulatory. It's a dealbreaker where the subject is punishment – but that is not the case here.

3.

Have I answered your questions sufficiently? Call if you would like to explore further.

Harriet Dinegar Milks

Senior Assistant Attorney General
Commercial, Fair Business, and Child Support
Dimond Courthouse, Juneau, Alaska
Main telephone number: 907-465-3600
Direct line: 907-465-2123

Requirements for Applications Applying with Less Than 625 hours*

*requirements based on e-mail from Harriet Dinegar on 11/28/2018 and 5/8/2019

Anyone who would like their Application by Examination (500 hours) reviewed by the board after July 1, 2019 must:

- Be currently (actively) enrolled in a massage school or program in accordance with AS 08.61.030
- Submit the “Application by Examination” application. Completed application must be received on or before June 30, 2019.
- Submit any documentation that is not required to be submitted by a 3rd party (everything but transcripts, exam scores, and background reports). Valid documentation must be received on or before June 30, 2019.
- All application and fingerprint fees must be paid on or before June 30, 2019.
- Complete all facets of the application process prior to application becoming “stale” (no later than December 30, 2019 depending on submission date).

Potential Regulations Projects

Continuing Education Ethics Requirements

ARTICLE 2. LICENSE RENEWAL AND CONTINUING EDUCATION.

Section

200. License renewal

210. Continuing education requirements

220. Audit and documentation

12 AAC 79.200. LICENSE RENEWAL. (a) A massage therapy license must be renewed biennially on or before September 30 of odd-numbered years. A renewal reminder document will be mailed to each currently licensed massage therapist at least 30 days before the renewal date. Failure to receive a renewal notice does not relieve a licensee from the responsibility of renewing a license on time.

(b) An applicant for renewal of a massage therapy license must meet the requirements of AS 08.61.050 and this section. A massage therapist applying for license renewal must submit

- (1) a completed renewal application on a form provided by the department;
- (2) beginning October 1, 2017, and at least once every six years thereafter, the applicant's fingerprint information described in 12 AAC 79.130 and the fingerprint processing fee specified in 12 AAC 02.396;
- (3) the license renewal fee specified in 12 AAC 02.396;
- (4) a current certification in cardiopulmonary resuscitation through the American Red Cross, American Heart Association, American Safety and Health Institute, or an equivalent organization; and
- (5) documentation that the massage therapist satisfied the continuing education requirements in 12 AAC 79.210.

Authority: AS 08.61.020 AS 08.61.050

12 AAC 79.210. CONTINUING EDUCATION REQUIREMENTS. (a) An applicant for renewal of a massage therapy license,

(1) for a biennial licensing period that begins on or after July 1, 2015, must document at least six continuing education credits, all of which may be met through Internet-based continuing education courses;

(2) for a biennial licensing period that begins on or after July 1, 2017, must document at least 16 continuing education credits, all of which may be met through Internet-based continuing education courses.

(b) An applicant for renewal under (a)(2) of this section may receive two hours of continuing education credit for completion of hands-on cardiopulmonary resuscitation through the American Red Cross, American Heart Association, American Safety and Health Institute, or an equivalent organization.

(c) On or before June 30, 2019, an applicant for renewal under (a)(2) of this section may receive four hours of continuing education credit for completion of a bloodborne pathogens and universal and standard precautions course once every six years.

(d) On or after July 1, 2019, an applicant for renewal under (a)(2) of this section may receive two hours of continuing education credit for completion of a bloodborne pathogens and universal and standard precautions course once every six years.

(e) Continuing education must be completed through a

- (1) board-approved massage therapy or bodywork therapy school or training program;
- (2) regionally or nationally accredited institution of higher education; a course, seminar, workshop, or other program through that institution must be approved by the board as directly related to the skills and knowledge required for the practice of massage therapy, and includes a bloodborne pathogens and universal and standard precautions course under (c) or (d) of this section; or
- (3) local, state, or national professional organization that serves the massage therapy profession, including
 - (A) Associated Bodywork and Massage Professionals;
 - (B) the American Massage Therapy Association;
 - (C) the Federation of State Massage Therapy Boards; and
 - (D) the National Certification Board for Therapeutic Massage and Bodywork.

(f) For the purposes of this section,

- (1) one continuing education credit equals one hour of classroom instruction between instructor and participant;
- (2) one academic semester credit equals 15 contact hours; and
- (3) one academic quarter credit equals 10 contact hours.

(g) An applicant for renewal is responsible for maintaining adequate and detailed records of all continuing education hours claimed and shall make the records available to the board upon request under 12 AAC 79.220. Records must be retained for four years from the date the contact hours were obtained.

(h) An applicant for renewal under (a) of this section may receive one continuing education credit for attending at least 80 percent of a regularly scheduled board meeting once every biennial licensing period.

(i) An applicant for renewal under (a) of this section who has been licensed more than 90 days but less than 12 months of the concluding biennial license period is not required to submit proof of completion of continuing education.

12 AAC 79.900
"Current" License

STANDARDS OF PRACTICE

- 1) Obey all applicable local, state and federal laws when pertaining to massage therapy.
- 2) Maintain a record of daily clientele including name and date of service and adequate progress notes when applicable.
- 3) Provide a setting that is safe and meets all applicable legal requirements for health, safety, sanitation, hygiene, universal and standard precautions, in accordance with local, state and federal regulatory bodies including guidelines set by the Centers for Disease Control and Prevention (CDC), the National Institute of Health (NIH), and the Occupational Safety and Health Administration (OSHA).
- 4) Therapists shall prominently display the State of Alaska massage license in his or her place of business. Therapists will make available proof of licensure while practicing off site.
- 5) Therapists shall display or discuss a schedule of fees in advance of the session that is clearly understood by the client.

12 AAC 79.100(2)(A) & (B)

In-Class Supervised vs. Online Education

922 licensed under this chapter if the board finds that the person advertised massage therapy services in
923 a false or misleading manner”.

924

925 **In a motion duly made by Jill Motz, seconded by Traci Gilmour, and passed unanimously**
926 **with a roll call vote, it was RESOLVED to AMEND the Code of Ethics #8 to read: “I will**
927 **not, in any circumstance, initiate or engage in sexual conduct, activities, advertising, or**
928 **sexualizing behavior involving a client, even if the client attempts to sexualize the**
929 **relationship”.**

930

931 The board notes for the record that they would like to review all instances violating this change to
932 Code of Ethics on a case by case basis beginning with Investigations.

933

934 Qualifying Education via Distance Education

935

936 On the June 11th, the board discussed the idea of combined education to allow for applicants to take
937 part of their education online and the clinical and final exam in person. The board discusses AS
938 08.61.030 (3) (A) “the board shall issue a license to practice massage therapy to a person who
939 furnishes evidence satisfactory to the board that the person has completed a course of study of at
940 least 500 hours of in-class supervised instruction and clinical work from an approved massage
941 school” in regards to their interpretation of what “in-class supervised instruction and clinical work”
942 means and whether a distance education program would fit that criteria.

943

944 Ms. Motz, Chair Edwards-Smith, and OLE Dulebohn contributed documents to be used as research
945 in this matter. It was discussed that the distance education program be accredited by an agency that
946 specializes in distance education such as the Distance Education Accrediting Commission. The
947 board discussed taking information from all of the available sources and forming language to present
948 to the board that would end in a motion for a regulations project. Ms. Gilmour interjects that using
949 an online glossary of terms as a tool in writing the draft language would be beneficial.

950

951 **TASK: Jill Motz will gather information and draft language for distance education for to**
952 **further define “in-class” to present to the board in the September 10 and 11 meeting (or next**
953 **teleconference).**

954

New Task List

TASK LIST

June 12, 2018

Task	Who to complete?	When is the deadline?	Distribute to the Board?	Completed
Send David approved minutes, wall certificates, ce consent agreements to sign and return to Division	Dawn	07/15/2018	No	
Massage Licensing Establishment Language from board assigned tasks to send to Dawn	Board Members	08/16/2018	Yes	
Send Board List of Unacceptable Continuing Education Guideline to Dawn	David	06/12/2018	No	

1017 8. Business or corporation owned and operated by massage therapist(s) licensed in the
1018 state of Alaska and in which the majority owner(s) or shareholder(s) must be licensed
1019 massage therapist(s).
1020

1021 The board mentioned many times their mission statement and that they did not want to burden
1022 legitimate business in their mission to prevent illicit establishments from operating.
1023

1024 **Agenda Item 5 (continued)** **Old Business**

1025
1026 CBD Oils

1027
1028 The board resumes their earlier discussion on CBD oils used by massage therapists during
1029 treatment.
1030

1031 The board would like to state, for the record, that they do not regulate the application of any topical
1032 product, oils or lotions a therapist uses with their clients. Those are issues of informed consent
1033 between the client and therapist which is covered in the Code of Ethics.
1034

1035 The board asks that OLE Dulebohn draft an FAQ on the subject of CBD oils but that it go to them
1036 for review before it is posted on the website.
1037

1038 *Chair Edwards-Smith calls a short break at 2:15 p.m.*

1039 *Back on the record at 2:18 p.m.*
1040

1041 **Agenda Item 20 (continued)** **Drafting Language for Potential Regulations Projects**

1042
1043 Chair Edwards- Smith directs the board to go back to potential regulations project concerning
1044 classroom hours via distance education and a definition addition that would allow for the theoretical
1045 portion of massage education to be taken online.
1046

1047 Board member Jill Motz presents her findings on the subject as assigned in the June 2018 meeting.
1048

1049 Classroom Hours via Distance Education

1050
1051 Ms. Motz states that because Alaska is so geographically diverse the board has already put into
1052 regulation that all continuing education can be completed online. The line “in class supervised”
1053 currently is defined as being physically present in the classroom. In the course of her research, Ms.
1054 Motz reached out to of institutions in Sitka, Fairbanks, and Anchorage including University of
1055 Alaska Anchorage (UAA) which the largest educator in the state. UAA already has 4 and 2 year
1056 college degree programs which all of their theoretical content is delivered online via distance
1057 education. For programs that require a “hands on” portion, those clinicals and labs are set up in
1058 Alaska.
1059

1060 Ms. Motz went on to state that she had spoken with the Director of Nursing at UAA and her
1061 interpretation of “in class supervised” means a student is enrolled in an approved class and they are
1062 supervised by either a teacher or a system that ensures that the student makes progress. Ms. Motz
1063 believes that education is moving away from expensive “brick and mortar” schools in favor of
1064 distance education which can be more meaningful because a student has to spend more time doing

1065 research, can complete tasks at their own pace, go back and review assignments, and communicate
1066 with instructors as the need arises. Ms. Motz states that United States Department of Education did
1067 a META analysis on online learning found that many people have better educational outcomes with
1068 distance education learning.

1069
1070 Ms. Motz proposes that board exercise oversight of accepted programs in terms that the distance
1071 education programs be Commission on Massage Therapy Accreditation (COMTA) accredited and
1072 has approval from a distance education certifying body such as the Distance Education Accrediting
1073 Commission (DEAC). A distance education certifying body would ensure quality in content and
1074 protect students and the public from fraud. She goes on to point out that there are only 3 approved
1075 schools in Alaska and none are accessible to the vast majority of Alaskans. The programs available
1076 in Anchorage are exponentially longer and more expensive than the distance education programs
1077 she has found through her research. Ms. Motz recalled the last legislative session in which the board
1078 was asked if they were creating barriers to persons wanting to enter the field of massage therapy
1079 when the board wanted to raise the education requirement to 625 hours and feels that allowing a
1080 distance education option would solve some barriers to licensure.

1081
1082 Board member Traci Gilmour weighs in that a distance education option would allow applicants to
1083 continuing working their job and live in their own home while they complete the theoretical portion
1084 of their massage therapy education. She thinks this is the only way a person can complete their
1085 education from their home town, besides the possibility of an apprentice which is not currently
1086 available in Alaska and would be very complicated for the instructor and student. This would give a
1087 real option for people to remain in their state and complete their education with a non- traditional
1088 option that is working well in many, many aspects.

1089
1090 When asked where the “hands on” portion of training would occur, Ms. Motz answered that it was
1091 dependent on the program for the student to either come to the school where the program
1092 originated or could arrange to go elsewhere to complete the (normally) 200 hours of clinical work
1093 and labs. She continues by saying that she is aware of 3 people who have done a distance education
1094 program out of Colorado that is COMTA accredited and they applied and were given licensure by
1095 this board.

1096
1097 Board member Ron Gibbs joins the conversation by asking if there could be an overlap between the
1098 theoretical content being taken online and then the student be allowed to go to a massage
1099 practitioner in their geographical area for their clinical portion. Ms. Motz responded that that was
1100 her suggestion to the Department of Labor when they were working on the possible apprenticeship
1101 program but does not know of any in existence right now.

1102
1103 Ms. Motz goes on to state that she knows of people who have called Division to inquire if they
1104 could take a distance education course to fulfill their qualifying education, but because of the current
1105 interpretation of “in class supervised” (meaning you need to be physically present in a classroom),
1106 were discouraged from that pathway. She feels it is important for the board to address what their
1107 interpretation of “in class supervised” means.

1108
1109 When asked by the board, OLE Dulebohn clarifies that the board cannot change their statutes but it
1110 is her understanding that they can add a definition for “in class supervised” to regulations under 12
1111 AAC 79.990 that would allow for online qualifying education if it met specific criteria to be set by
1112 the board.

1113 The board completed the Regulations Changes Questionnaire during the meeting.

1114
1115 **In a motion duly made by Jill Motz, seconded by Ron Gibbs, and passed unanimously with**
1116 **a roll call vote, it was RESOLVED to ADD a definition to 12 AAC 79.990 for “in-class**
1117 **supervised” to that would allow for online qualifying education if it includes 1) A course**
1118 **delivery mechanism such as a commission or certifying body for distance education**
1119 **approved by the board and 2) Authorization to operate from Alaska Commission on**
1120 **Postsecondary Education or similar agency in another state or accredited by a nationally**
1121 **recognized accreditation agency approved by the board.**

1122
1123 Code of Ethics

1124
1125 In the June 2018 board meeting, the board made a motion to amend Code of Ethics #8 to add
1126 “advertising”. After the meeting it was discovered that a Code of Ethics change should actually be a
1127 regulations project and needed a motion to reflect that change. The board agrees that continued
1128 linkage of massage therapy to sexual services represents a continued risk to therapists and the public.

1129
1130 The board completed the Regulations Changes Questionnaire during the meeting.

1131
1132 **In a motion duly made by Jill Motz, seconded by Traci Gilmour, and passed unanimously**
1133 **with a roll call vote, it was RESOLVED to AMEND 12 AAC 79.900, Code of Ethics #8 to**
1134 **read, “I will not in any circumstances initiate or engage in sexual conduct, activities,**
1135 **advertising, or sexual behavior involving a client, even if the client attempts to sexualize the**
1136 **relationship.”**

1137
1138
1139 Agenda Item 15 (continued) Administrative Business

1140
1141 Meeting Calendar

1142
1143 The board discusses the need to change their upcoming meeting to an in-person because it is
1144 cumbersome to handle such a large regulations project via teleconference. The board would also
1145 like to add a teleconference in for a half day in November to better prepare for the regulations
1146 project in person meeting in December 2018. Ms. Gilmour states that if the December board
1147 meeting is changed from a Monday-Tuesday to a Thursday-Friday the state will not have to incur the
1148 cost of her airfare as it will be paid for by another party that she has an engagement with in
1149 Anchorage that weekend.

1150
1151 **In a motion duly made by Ron Gibbs, seconded by Traci Gilmour, and passed**
1152 **unanimously, it was RESOLVED to AMEND the scheduled meeting on December 3-4,**
1153 **2018 from a video conference to an in-person meeting in Anchorage on December 6-7, 2018**
1154 **to better work on the regulations project stemming from HB 110.**

1155
1156 **In a motion duly made by Ron Gibbs, seconded by Jill Motz, and passed unanimously, it**
1157 **was RESOLVED to SCHEDULE a video conference on November 15, 2018 for a half day to**
1158 **work on the regulations project stemming from HB 110.**

1159
1160 At this time, the board concluded all scheduled Board Business.

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)

From: [Zinn, Sher K \(CED\)](#)
To: [Dulebohn, Dawn L \(CED\)](#)
Cc: [Hannasch, Dawn K \(CED\)](#)
Subject: MAS regulation
Date: Wednesday, March 27, 2019 9:12:29 AM

Dawn,

After a couple of more conversations with Steve Weaver, they have determined that 12 AAC 79.100 should be withdrawn for further work. Please put this on your agenda for the next MAS meeting.

They should define whether this just means theory, and does not include clinical, and/or maximum number of hours. Basically the parameters they want.

Let me know if you have any questions.

Sher Zinn
Regulations Specialist
State of Alaska
Dept. of Commerce
Corp., Business & Professional Licensing
Phone- 907-465-1049
fax- 907-465-2974
sher.zinn@alaska.gov

From: [Zinn, Sher K \(CED\)](#)
To: [Dulebohn, Dawn L \(CED\)](#)
Subject: FW: Title 12 - Board of Massage Therapists regulations re: requests for criminal justice information and update to code of ethics and standards of practice
Date: Tuesday, April 2, 2019 7:43:01 AM
Attachments: [2019200071.pdf](#)

Dawn,

You may notify your board chair the regulations have been filed by the Lt. governor and will take effect 5/1/19. As noted previously, the board will need to work on the part that was withdrawn at their next meeting. I'll have Hannah post the 2018 version of the code of ethics sometime today.

Let me know if you have any questions.

Thanks,

Sher Zinn
Regulations Specialist
State of Alaska
Dept. of Commerce
Corp., Business & Professional Licensing
Phone- 907-465-1049
fax- 907-465-2974
sher.zinn@alaska.gov

From: Simpson, April L (GOV) <april.simpson@alaska.gov>
Sent: Monday, April 01, 2019 4:10 PM
To: Morgan, Deborah M (CED) <deborah.morgan@alaska.gov>
Cc: Zinn, Sher K (CED) <sher.zinn@alaska.gov>
Subject: Title 12 - Board of Massage Therapists regulations re: requests for criminal justice information and update to code of ethics and standards of practice

Filing notification attached.
Title 12 - Board of Massage Therapists regulations re: requests for criminal justice information and update to code of ethics and standards of practice
Department of Law file number: [2019200071](#)
12 AAC 79.130(c); 12 AAC 79.900
Filed: 4/1/2019
Effective: 5/1/2019
Published in Register: 230, July 2019

Thank you!

April

April Simpson | Alaska Administrative Code & Initiative Coordinator
Office of Lieutenant Governor Kevin Meyer | Juneau | ☎: (907) 465-4081

Kevin Meyer
Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Debbie Morgan
Department of Commerce, Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor *AS*
465.4081

DATE: April 1, 2019

RE: Filed Permanent Regulations: Board of Massage Therapists

Board of Massage Therapists regulations re: requests for criminal justice information and update to code of ethics and standards of practice (12 AAC 79.130(c); 12 AAC 79.900)

Attorney General File:	2019200071
Regulation Filed:	4/1/2019
Effective Date:	5/1/2019
Print:	230, July 2019

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis
Sher Zinn, Regulations Specialist

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE BOARD OF MASSAGE THERAPY

The attached two pages of regulations, dealing with educational requirements, criminal justice information, and the Code of Ethics and Standards of Practice, is certified to be a correct copy of the regulation changes that the Board of Massage Therapy adopted at its February 28, 2019 meeting, under the authority of AS 08.61.020, AS 08.61.030, AS 08.61.040, AS 08.61.090, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

It is estimated that this action will not require an increased appropriation.

On the record, in considering public comments, the Board of Massage Therapy paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 3-1-19



David Edwards-Smith, Chair

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on April 1st, 2019 at 11:12 Am., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.



Kevin Meyer, Lieutenant Governor

Effective: May 1, 2019

Register: 230. July 2019

Chapter ~~28~~ ⁷⁹ ~~Board of Massage Therapy~~ ^{Therapists.}

~~12 AAC 79.100 is amended by adding a new subsection to read:~~

~~(c) In this section, "in-class supervised instruction" means education received either in a physical classroom or through online distance education. Online courses must meet the requirements of (b)(2)(A) or (B) of this section. (Eff. 1/17/2016, Register 217; am~~

~~___ / ___ / ___, Register ___)~~

~~Authority: AS 08.61.020 AS 08.61.030 AS 08.61.090~~

*With drawn
3/28/2019*

XCR

12 AAC 79.130(c) is amended to read:

(c) The request under (b) of this section for a criminal justice information report does not delay administrative processing [CONSIDERATION] of the applicant's license application.

An application will not be considered complete until the criminal justice information required in (a) of this section is received by the board. If criminal justice information that

raises questions about an applicant's qualifications for licensure is received after a license has been issued to the applicant, the department and the board will take action under AS 08.61 and AS 44.62 as appropriate. (Eff. 1/17/2016, Register 217; am 5 / 1 / 2019, Register 230)

Authority: AS 08.61.020 AS 08.61.030 AS 08.61.040

12 AAC 79.900 is amended to read:

the title)))

the title)))

12 AAC 79.900. Code of ethics and standards of practice. The Alaska Board of Massage Therapists Code of Ethics and Standards of Practice, dated December 2018 [JUNE

2015], is adopted by reference as the code of ethics for massage therapists in the state. In order to maintain a high standard of integrity in the profession and to safeguard the health and welfare of

Register 230, July 2019 PROFESSIONAL REGULATIONS

the public, massage therapists licensed in this state shall adhere to the code of ethics. (Eff.

1/17/2016, Register 217; am 5 / 1 / 2019, Register 230)

Authority: AS 08.61.020

12 AAC 79.200
Review & Amend
Renewal & Reinstatement Regulations

From: [Zinn, Sher K \(CED\)](#)
To: [Dulebohn, Dawn L \(CED\)](#)
Cc: [Hannasch, Dawn K \(CED\)](#)
Subject: Additional MAS renewal updates
Date: Tuesday, May 7, 2019 3:57:06 PM

Dawn,

In light of our conversation this morning, I noticed that the current CE requirements for MAS do not state anything regarding completing the CE's during the "concluding license period". As long as the board would be considering updating the renewal/reinstatement requirements, perhaps they would also consider adding the wording below. This would assist the board in requiring the CEs are done during the renewal period in the event it was challenged through a hearing. Most programs have that verbiage in their CE regulations.

These are for your consideration-

12 AAC 79.200. LICENSE RENEWAL. (a) A massage therapy license must be renewed biennially on or before September 30 of odd-numbered years. A renewal reminder document will be mailed to each currently licensed massage therapist at least 30 days before the renewal date. Failure to receive a renewal notice does not relieve a licensee from the responsibility of renewing a license on time.

(b) An applicant for renewal of a massage therapy license must meet the requirements of AS 08.61.050 and this section. A massage therapist applying for license renewal must submit

- (1) a completed renewal application on a form provided by the department;
- (2) beginning October 1, 2017, and at least once every six years thereafter, the applicant's fingerprint information described in 12 AAC 79.130 and the fingerprint processing fee specified in 12 AAC 02.396;
- (3) the license renewal fee specified in 12 AAC 02.396;
- (4) **documentation of a** current certification in cardiopulmonary resuscitation through the American Red Cross, American Heart Association, American Safety and Health Institute, or an equivalent organization; and
- (5) documentation that the massage therapist satisfied the continuing education requirements in 12 AAC 79.210, **completed during the concluding license period.**

If they are going to make a reinstatement regulation, they would need to add the same verbiage if they want to require them to complete the CE during the appropriate renewal period.

-OR-

12 AAC 79.210. CONTINUING EDUCATION REQUIREMENTS. (a) An applicant for renewal of a massage therapy license,

- (1) for a biennial licensing period that begins on or after July 1, 2015, must document at least six continuing education credits, all of which may be met through Internet-based continuing education courses;
- (2) for a biennial licensing period that begins on or after July 1, 2017, must document at least 16 continuing education credits **completed during the concluding license period,** all of which may be met through Internet-based continuing education courses.

I didn't add it to (1) because basically, no one would be renewing now under that paragraph anyway. The whole point is to not leave it so ambiguous as to allow for a challenge in a hearing.

Thank you,

Sher Zinn

Regulations Specialist

Division of Corporations, Business

And Professional Licensing

907-465-1049

Sher.zinn@alaska.gov

CPR Documentation

ARTICLE 2. LICENSE RENEWAL AND CONTINUING EDUCATION.

Section

200. License renewal

210. Continuing education requirements

220. Audit and documentation

12 AAC 79.200. LICENSE RENEWAL. (a) A massage therapy license must be renewed biennially on or before September 30 of odd-numbered years. A renewal reminder document will be mailed to each currently licensed massage therapist at least 30 days before the renewal date. Failure to receive a renewal notice does not relieve a licensee from the responsibility of renewing a license on time.

(b) An applicant for renewal of a massage therapy license must meet the requirements of AS 08.61.050 and this section. A massage therapist applying for license renewal must submit

- (1) a completed renewal application on a form provided by the department;
- (2) beginning October 1, 2017, and at least once every six years thereafter, the applicant's fingerprint information described in 12 AAC 79.130 and the fingerprint processing fee specified in 12 AAC 02.396;
- (3) the license renewal fee specified in 12 AAC 02.396;
- (4) a current certification in cardiopulmonary resuscitation through the American Red Cross, American Heart Association, American Safety and Health Institute, or an equivalent organization; and
- (5) documentation that the massage therapist satisfied the continuing education requirements in 12 AAC 79.210.

Authority: AS 08.61.020 AS 08.61.050

12 AAC 79.210. CONTINUING EDUCATION REQUIREMENTS. (a) An applicant for renewal of a massage therapy license,

(1) for a biennial licensing period that begins on or after July 1, 2015, must document at least six continuing education credits, all of which may be met through Internet-based continuing education courses;

(2) for a biennial licensing period that begins on or after July 1, 2017, must document at least 16 continuing education credits, all of which may be met through Internet-based continuing education courses.

(b) An applicant for renewal under (a)(2) of this section may receive two hours of continuing education credit for completion of hands-on cardiopulmonary resuscitation through the American Red Cross, American Heart Association, American Safety and Health Institute, or an equivalent organization.

(c) On or before June 30, 2019, an applicant for renewal under (a)(2) of this section may receive four hours of continuing education credit for completion of a bloodborne pathogens and universal and standard precautions course once every six years.

(d) On or after July 1, 2019, an applicant for renewal under (a)(2) of this section may receive two hours of continuing education credit for completion of a bloodborne pathogens and universal and standard precautions course once every six years.

(e) Continuing education must be completed through a

(1) board-approved massage therapy or bodywork therapy school or training program;

(2) regionally or nationally accredited institution of higher education; a course, seminar, workshop, or other program through that institution must be approved by the board as directly related to the skills and knowledge required for the practice of massage therapy, and includes a bloodborne pathogens and universal and standard precautions course under (c) or (d) of this section; or

(3) local, state, or national professional organization that serves the massage therapy profession, including

(A) Associated Bodywork and Massage Professionals;

(B) the American Massage Therapy Association;

(C) the Federation of State Massage Therapy Boards; and

(D) the National Certification Board for Therapeutic Massage and Bodywork.

(f) For the purposes of this section,

(1) one continuing education credit equals one hour of classroom instruction between instructor and participant;

(2) one academic semester credit equals 15 contact hours; and

(3) one academic quarter credit equals 10 contact hours.

(g) An applicant for renewal is responsible for maintaining adequate and detailed records of all continuing education hours claimed and shall make the records available to the board upon request under 12 AAC 79.220. Records must be retained for four years from the date the contact hours were obtained.

(h) An applicant for renewal under (a) of this section may receive one continuing education credit for attending at least 80 percent of a regularly scheduled board meeting once every biennial licensing period.

(i) An applicant for renewal under (a) of this section who has been licensed more than 90 days but less than 12 months of the concluding biennial license period is not required to submit proof of completion of continuing education.

Reinstatements

12 AAC 09.900. EXAMINERS. (a) For the purpose of conducting practical sections of the examinations, the department may approve a person who has been licensed in the state as a barber, hairdresser, or esthetician for at least two years to assist the board as an examiner.

- (b) A person approved as an examiner under (a) of this section may not be
- (1) a licensed practitioner of a shop sponsoring an apprentice taking the examination;
 - (2) the owner of a barber, hairdressing or esthetics school located in the state; or
 - (3) a licensed instructor in a barber, hairdressing or esthetics school located in the state.

Authority: AS 08.13.030 AS 08.13.090

12 AAC 09.905. LOCATION OF SHOPS IN PRIVATE RESIDENCE. (a) No shop may be opened and maintained in a private residence unless the shop is located in a separate room apart from living quarters.

(b) Application for a shop license must be made according to the provisions of 12 AAC 09.110(a) and is subject to the provisions of 12 AAC 09.110(b) and (c).

Authority: AS 08.13.030 AS 08.13.120 AS 08.13.210

12 AAC 09.910. DUTIES OF INSTRUCTORS AND STUDENT-INSTRUCTORS. (a) An instructor or student-instructor may not, in connection with duties instructing at a licensed school, practice barbering, hairdressing, manicuring, or esthetics on members of the public, except if the work pertains directly to the instruction of students.

(b) A student-instructor may not be permitted to instruct without a licensed instructor on the school premises.

Authority: AS 08.13.030 AS 08.13.070

12 AAC 09.920. PRACTICE OUTSIDE A LICENSED SHOP OR SCHOOL. (a) A licensee who provides services outside of a licensed shop or school for a purpose listed in AS 08.13.160(e)(1) - (4) shall display his or her current license at the location where the services are provided.

(b) Barbering, hairdressing, manicuring, or esthetics services that are provided at charitable events under AS 08.13.160(e) are limited to those for which adequate health and sanitary conditions can be provided.

(c) A licensee who participates in a workshop or demonstration of techniques or products outside a licensed shop or school may not teach barbering, hairdressing, manicuring, or esthetics to persons who are not licensed or do not hold a permit in this state or another jurisdiction.

Authority: AS 08.13.030 AS 08.13.082 AS 08.13.160

12 AAC 09.930. REINSTATEMENT OF A LAPSED LICENSE. (a) A license issued under AS 08.13 and this chapter that has not been lapsed for more than three years will be reinstated if the applicant

- (1) submits a completed application; and
- (2) pays the applicable fees required under AS 08.13.140 and 12 AAC 02.140.

(b) The board will reinstate a license issued under AS 08.13 and this chapter that has been lapsed for more than three years if the applicant

(1) submits a completed application and supporting documents to show that the applicant was previously licensed in this state;

- (2) pays the applicable fees required under AS 08.13.140 and 12 AAC 02.140; and
- (3) successfully passes the written and practical examinations for the license sought.

(c) In addition to the requirements of (a) and (b) of this section, an applicant for reinstatement of a license to practice body piercing, tattooing, or permanent cosmetic coloring must submit verification that the applicant has successfully completed training equivalent to that required for completion of courses certified by the American Red Cross, the American Heart Association, or a similar organization approved by the board, and has been issued a current card, in

- (1) cardiopulmonary resuscitation (CPR); and
- (2) blood-borne pathogens.

Authority: AS 08.13.030 AS 08.13.140

12 AAC 09.940. EDUCATION INFORMATION AND AFTERCARE INSTRUCTIONS FOR BODY PIERCING AND TATTOOING AND PERMANENT COSMETIC COLORING; NOTIFICATION REQUIREMENTS. (a) The *Educational Information and Aftercare Instructions for Tattoos*, Including Eyebrows section of the Educational Information and Aftercare Instructions (March 2003), prepared by the board, are adopted by reference as the minimum standards of aftercare instruction and educational information to be given to a client by a licensed practitioner of tattooing.

(b) The *Educational Information and Aftercare Instructions for Permanent Cosmetic Coloring* section of the Educational Information and Aftercare Instructions (March 2003), prepared by the board, are adopted by reference as the minimum standards of aftercare instruction and educational information to be given to a client by a licensed practitioner of permanent cosmetic coloring.

Medical/Military Service Exception Continuing Education

Board of Veterinary Examiners Statutes and Regulations
January 2018

12 AAC 68.047. RENEWAL AND REINSTATEMENT OF LICENSE. (a) An applicant for renewal of a veterinary license, or to reinstate a veterinary license that has been lapsed for 60 days or less, must submit

- (1) an application for renewal or reinstatement on a form provided by the department;
- (2) the license renewal fee established in 12 AAC 02.350; and
- (3) documentation that the applicable continuing education requirements of 12 AAC 68.220 – 12 AAC 68.240 have been met.

(b) An applicant for reinstatement of a veterinary license that has been lapsed for more than 60 days but less than two years must submit, in addition to the items required in (a) of this section, the delayed renewal penalty fee established in 12 AAC 03.350.

(c) An applicant for reinstatement of a veterinary license that has been lapsed for two years or more, but less than five years must submit

- (1) an application for reinstatement on a form provided by the department;
- (2) the applicable license renewal and delayed renewal penalty fees established in 12 AAC 02.350; and
- (3) documentation of completion of all continuing education requirements in 12 AAC 68.220 – 12 AAC 68.240 that the applicant would have been required to meet to maintain a current license for the entire period that the license has been lapsed.

(d) A veterinary license that has been lapsed for five years or more may not be reinstated. The former licensee may apply for a new license under AS 08.98 and this chapter.

(e) A licensee or former licensee who was unable to obtain the required continuing education hours for renewal or reinstatement of a veterinary license due to reasonable cause or excusable neglect, may request an exemption from those requirements. The applicant must submit to the board a written request for an exemption that explains the reasonable cause or excusable neglect. If the board decides to grant the exemption, the board may require an alternative method of compliance with the continuing education requirements to ensure the applicant's continued competency.

(f) In this section, "reasonable cause or excusable neglect" includes

- (1) chronic illness;
- (2) retirement;
- (3) personal or family hardship; or
- (4) other similar circumstances as determined by the board.

Authority: AS 08.01.065AS 08.98.050AS 08.98.200AS 08.01.100AS 08.98.190

Amend Credentialing Entity
12 AAC 79.110(2)(B)

364 OLE Dulebohn informs the board that another form of disciplinary action for unlicensed practice
365 could come from when the accused applies for a massage license since the board does have
366 jurisdiction over applicants and licensees. This was confirmed by Investigators Jacobs.

367

368 *Investigator Jacobs left the meeting at 11:33 a.m.*

369

370 **Agenda Item 8** **Review/Revision of 12 AAC 79.110(2)(B)**

371

372 Chair Edwards-Smith directs the board to the next order of business concerning 12 AAC
373 79.110(2)(B). OLE Dulebohn is asked to present and she directs the board to the regulation 12
374 AAC 79.110 which has some incorrect information. It currently states: “The board will issue a
375 license by credentials to practice massage therapy to an applicant who meets the requirements of AS
376 08.61.040 and this section. An applicant for licensure by credentials under this section must submit
377 verification that the applicant holds a current license to practice massage therapy in another state,
378 jurisdiction, or country where licensing requirements are substantially equal to or greater than the
379 requirements of this state; or certified by the American Massage Therapy Association, the National
380 Certification Board for Therapeutic Massage and Bodywork, or other board approved credentialing
381 entity...” Both AMTA and the NCBTMB do not issue licenses or credentials by their own
382 admission and are not recognized by the board as credentialing agencies. OLE Dulebohn
383 recommends that the board remove the two listed agencies and keep “board approved credentialing
384 entity”.

385

386 After discussion in which Mr. Gibbs asked for clarification that this regulation would be for a
387 massage therapy credentialing agency, the Chair asked for a motion.

388

389 **In a motion duly made by Jill Motz, seconded by Traci Gilmour, and passed unanimously**
390 **with a roll call vote, it was RESOLVED to AMEND 12 AAC 79.110(2)(B) by removing**
391 **“certified by the American Massage Therapy Association, the National Certification Board**
392 **for Therapeutic Massage and Bodywork” and have it only read “certified by a board-**
393 **approved credentialing entity”.**

394

395 **TASK: Chair Edwards-Smith will complete the Regulation Questionnaire for this**
396 **amendment and send it in to OLE Dulebohn.**

397

398 Ms. Gilmour expands this topic asking what are the accepted credentialing agencies by state and
399 OLE Dulebohn responds by stating that the only agency the board has recognized is the California
400 Massage Therapy Council but that is a project that board is required to complete in the future.
401 Chair Edwards-Smith states that researching all board accepted credentialing agencies will be a
402 priority in the boards’ future.

403

404 **Agenda Item 9** **Review Tabled Applications**

405

406 The board reviewed 3 tabled applications. Chair Edwards-Smith reminds the board of the reasons
407 to go into Executive Session and asks if the board needs to partake of that option. Ms. Motz asks to
408 be reminded if the Reviewing Board Member on a case should engage in discussion and voting on a
409 case. OLE Dulebohn reiterates that Reviewing Board Members should abstain from discussion and
410 voting if they feel like they were given any information in their role that the rest of the board was

Lunch

Public Comment

The board chair shall open public comment. The time allotted for comment will be divided between all individuals signed in to give comment. The group will be told how much time each person will have to speak; the licensing examiner will keep track of the time and notify the individual when they have 1 minute left.

This is not the time for the board to respond to the comments. The board can choose to respond to any comments at the end of the comment period; they can choose to send a letter with their responses to the individual; or they can choose to not respond.

Administrative Business

Administrative Statistics

Administrative Business

Meeting Calendar

STATE OF ALASKA

2019

HOLIDAY CALENDAR

State Holidays

Date	Holiday
01/01	New Year's Day
01/21	MLK Jr.'s Birthday
02/18	Presidents' Day
03/25	Seward's Day
05/27	Memorial Day
07/04	Independence Day
09/02	Labor Day
10/18	Alaska Day
11/11	Veterans' Day
11/28	Thanksgiving Day
12/25	Christmas Day

Biweekly employees please refer to appropriate collective bargaining unit agreement for more information regarding holidays.

 Holiday

NEARLY UNAVAILABLE Unavailable

MAS MEETING



State calendar maintained by the
Division of Finance,
Department of Administration
<http://doa.alaska.gov/calendars.html>
Revised 04/16/2018

JANUARY

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28th-Furlough

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Meeting Dates in 2020

From: [Hoskinson, Glenn A \(CED\)](#)
To: [Jones, Alysia D \(CED\)](#); [Hannasch, Dawn K \(CED\)](#); [Bay, Thomas L \(CED\)](#); [Wiard, Tracy L \(CED\)](#); [Ward, Charles W \(CED\)](#); [Osborn, Lauren T \(CED\)](#); [Dulebohn, Dawn L \(CED\)](#); [Stovern, Debora J \(CED\)](#); [Bartlett, Lacey E \(CED\)](#); [Green, Joan E \(CED\)](#); [Farnstrom, Beth \(CED\)](#); [Maroney, Lisa K \(CED\)](#); [Treston, Amber M \(CED\)](#); [Mesch, Emily \(CED\)](#); [Carrillo, Laura N \(CED\)](#); [Petz, Connie J \(CED\)](#); [Khmelev, Andy A \(CED\)](#); [Hoffard, Renee \(CED\)](#); [Hondolero, Corissa A \(CED\)](#); [Walsh, Sharon J \(CED\)](#); [Harris, Nancy A \(CED\)](#); [Alcancia, Allan A \(CED\)](#); [Bonnell, Joseph K \(CED\)](#)
Cc: [Kautz, Colleen K \(CED\)](#); [Chambers, Sara C \(CED\)](#); [Dumas, Melissa L \(CED\)](#)
Subject: Annual Reports - Board Meeting (Travel)
Date: Wednesday, April 3, 2019 4:01:23 PM

Hey all,

As most of you have heard by now, the new travel restrictions have noted that boards and commissions will only be approved for **one** in-person meeting per fiscal year (in-person meaning requires travel). All other meetings will need to take place via video/teleconference. If a board feels they need more than one in-person meeting per year, they will have to request a waiver from the Director of Boards & Commissions. While our director/commissioner cannot grant the waiver themselves, any waiver requests should be routed through Director Chambers.

With all that being said, **I wanted to mention that it would be beneficial to note which board meeting the board would like to travel for, on the annual reports.** There isn't a spot to note that on the template, as we weren't aware of this restriction when the template was created. However, you can just make a note in the narrative for the board meetings/travel, as to which one the board wants to in-person (if you know).

Thanks!

Glenn Hoskinson

Director's Administrative Assistant III
State of Alaska
Department of Commerce, Community and Economic Development
Division Corporations, Business and Professional Licensing
(907) 465-2538
glenn.hoskinson@alaska.gov

STATE OF ALASKA

2020

State Holidays

Date	Holiday
01/01	New Year's Day
01/20	MLK Jr.'s Birthday
02/17	Presidents' Day
03/30	Seward's Day
05/25	Memorial Day
07/04	Independence Day (observed 7/3)
09/07	Labor Day
10/18	Alaska Day
11/11	Veterans' Day
11/26	Thanksgiving Day
12/25	Christmas Day

Biweekly employees please refer to appropriate collective bargaining unit agreement for more information regarding holidays.

 Holiday

 Nearly Unavailable

 Unavailable

 MAS Meeting



State calendar maintained by the
Division of Finance,
Department of Administration
<http://doa.alaska.gov/calendars.html>
Revised 04/16/2018

HOLIDAY CALENDAR

JANUARY

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FSMTB Annual Meeting

Annual Meeting

[MBLEx Support](#)

[Annual Meeting](#)

[Government Relations](#)

[Communication and Outreach](#)



2019 Annual Meeting • Atlanta, Georgia **Grand Hyatt Atlanta in Buckhead** **October 3-5, 2019**

The Delegate Assembly of Member Boards provides direction and policy for the Federation. The FSMTB will accept resolutions and bylaw amendments at any time in accordance with FSMTB Bylaws and Policies.

[Resolution Form](#)
[Resolution Policy](#)
[FSMTB Bylaws](#)

**While the FSMTB Annual Meeting is geared toward the regulatory community, professional educators and the community at large who support FSMTB activities are welcome to attend. Please note that FSMTB Member Boards receive priority registration. The FSMTB reserves the right to limit attendance to interested parties in order to accommodate FSMTB members.*

Document Signing

Signature Page

February-March Minutes

24	Inquire if fee increases be applied to Initial Applications or the Non-Refundable Application Fee only?	Dulebohn	ASAP	Yes, via OnBoard
----	--	----------	------	------------------

1580

1581 At this time, the board concluded all scheduled Board Business.

1582

1583 **Agenda Item 26 Adjourn**

1584

1585 **In a motion made by Julie Endle, seconded by Jill Motz, and passed unanimously, it was**
 1586 **RESOLVED to ADJOURN.**

1587

1588 Hearing nothing further, Chair David Edwards-Smith adjourned the meeting and the record ended
 1589 at 4:55 p.m.

1590

1591 **Respectfully Submitted,**

1592

1593

1594

1595

1596 _____
Dawn Dulebohn, Licensing Examiner

_____ **Date**

1597

1598

1599

1600

1601 _____
David Edwards-Smith, Boards Chair

_____ **Date**

Signature Page

April Minutes

Signature Page

S.S.

Signature Page

J.J.

Signature Page

Y.Z.

Election of Vice-Chair

Review/Update
"No Investigations Needed List
November 2015

The Board of Massage Therapists has determined, at its November 5-6, 2015 meeting, that the disclosure of one (or more) of the following convictions on an application or in a criminal background check will not result in a referral to investigations unless the division in its discretion reasonably believes that an attempt to secure a license through fraud, deceit or misrepresentation has occurred.

Traffic Violations (minor), including but not limited to:

- Reckless driving
- Driving without a license/suspended license
- Speeding tickets, other minor moving violation
- Driving without Insurance
- Jaywalking

Fish and Game Violations

Animal offenses (excluding animal cruelty or abuse) – conviction older than 10 years from application

Petty crimes (misdemeanors) conviction older than 5 years from application, including but not limited to:

- Shoplifting
- Bounced/bad checks
- Minor theft charges
- Littering

Theft – conviction older than 5 years from date of application

Burglery conviction more than 10 years from date of application

Underage drinking

Possession or Use of Marijuana – single offense

Driving Under the Influence/Driving While Intoxicated convictions – no more than 2 in a 10-year period

Disorderly Conduct

Public Inebriation – single offense

Harrassment – conviction more than 5 years ago from date of application

Assault – conviction more than than 5 years from date of application

Relationship with Law Enforcement
Human Trafficking- FBI

Special Agent Jolene Goeden

Administrative Business (continued)

Review FY2019 Annual Report

FARB

Member Board Invitation

From: connect.farb.org
To: [Board of Massage Therapists \(CED sponsored\)](#); [Board of AELS \(CED sponsored\)](#); [General, Attorney \(LAW sponsored\)](#); [Hondolero, Corissa A \(CED\)](#); [Boards and Commissions \(GOV sponsored\)](#); [Jones, Alysia D \(CED\)](#); [Wojtusik, Genevieve R \(DOR\)](#); [Binder, John R \(DOT\)](#); [Hannasch, Dawn K \(CED\)](#)
Subject: FARB Member Board Invitation
Date: Wednesday, March 20, 2019 7:02:45 AM
Attachments: [ATT00001.png](#)
[Regulatory Board Application. 2019 \(Fillable\).pdf](#)



We invite you to join FARB as a Member Board!

The Federation of Associations of Regulatory Boards (FARB) mission is to advance excellence in regulation of the professions in the interest of public protection. FARB provides interaction among individuals and agencies involved in regulatory law and the licensing of professional with the goal of protecting the public. Member associations, individuals, and other organizations that seek to strengthen and uphold the standard of licensed professionals are invited to become members.

Consider some of the many **benefits** of membership:

- * Discounted registration to FARB Conferences
- * Free access to FARB Model Documents
- * Discounted subscription to FARB's Top Regulatory Cases
- * Access to the FARB community for information exchange

(see full list of benefits at www.FARB.org)

Dues are \$175 **for a Regulatory Board Membership**. Membership benefits extend to all board members, attorneys and staff for one year from the date of renewal. For your convenience, please find an application form attached. Feel free to download and submit with a check for payment, or submit by email to membersupport@farb.org.

Thank you for your support of FARB and we hope to see you at a conference soon!

Community Engagement Team

1466 Techny Road, Northbrook, IL 60062

Ph: 847-559-FARB (3272)

Email: CONNECT@FARB.org

Web: www.FARB.org

#commonsenseregulation

Mark Your Calendars:

FARB's 27th Annual Regulatory Law Seminar (RLS) will be October 3-6, 2019 in St. Louis, Missouri

FARB's 44th Annual Forum will be Jan 23-26, 2020 in Colorado Springs, Colorado

Try it today: FARB's www.lookupalicense.org -THE professional licensure verification service!

CONFIDENTIALITY NOTE: *This email is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this email message is not the intended recipient, or the employee or agent responsible for delivery of the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this email in error, please notify us immediately by telephone at (847) 559-3272. Thank you.*



FARB Regulatory Board Membership Application

_____ hereby requests a **FARB Regulatory Board Membership**.

Regulatory Board Members of FARB shall be governmental regulatory boards involved in the regulation of a licensed profession or occupation. Regulatory Board member benefits extend to all regulatory member board staff, current serving board members, and representative board attorney(s). Annual rate: \$175.00

FARB Regulatory Board Membership \$175.00 (see payment information below)

Please complete information below. ALL fields are required (see also page 2):

Full Name of Organization: _____

Main Contact Person: _____

General Phone#: _____

Direct Phone#: _____

Street Address/PO Box: _____

Suite/Dept./Other: _____

City/State/Zip/Country: _____

Website: _____

Email: _____

Please complete PAYMENT information below.

Check enclosed (# _____) **OR** Pay by credit card (please call FARB to process)

Please return this form along with your payment to:

Federation of Associations of Regulatory Boards

1466 Techny Road

Northbrook, IL 60062

Ph: 847-559-FARB (3272)

Fax: 847-714-9796

MEMBERSUPPORT@FARB.org

SIGNATURE _____

(Individual or Agency/Organization Representative)



FARB Regulatory Board Membership Application (cont.)

Please indicate any individuals in your organization that may have access to the membership benefits (i.e., Staff, Attorneys, Current Board Members, etc.):

Name	Title	Email

Correspondence

Betz

From: [Dulebohn, Dawn L \(CED\)](#)
To: [Joelyn Betz](#)
Cc: [Hannasch, Dawn K \(CED\)](#)
Subject: RE: Alaska Massage License Renewal Information- 2019-2021
Date: Thursday, May 9, 2019 4:37:00 PM

Hello Ms. Betz,

Thank you for your correspondence.

I checked with my supervisor about your situation. Unfortunately there is no stipulation to allow for an exception in our Statutes and Regulations regarding renewing licenses and ce's.

You can wait until after October 1, 2019 to renew (called reinstatement) as your license won't expire for 5 years. When you do reinstate, under the current Statutes & Regulations, you will be asked to submit CE's from the 2017-2019 licensing period. If you do not have them, you will be subject to possible fines, remedial continuing education, and a consent agreement. The CPR needs to be current as long as you are a practicing massage therapist and you will need to show proof of a current CPR when you apply for reinstatement.

I will be bringing this up at the board's next meeting on June 10-11, 2019. If the board decides to write a regulation that makes an exception for medical cases, it may help you in the future. I just want you to know that normal regulation changes can take upward of 6 months.

The board's decision will be in their meeting minutes that are posted on the board's website about 10 business days after the meeting concludes.

I wish you luck with your recovery and thank you for bringing this to the board's attention.

Best Regards,

Dawn Dulebohn

Licensing Examiner
Board of Massage Therapists
Corporations, Business, and Professional Licensing
P.O. Box 110806
Juneau, AK 99811-0806
PH: 907-465-3811
Fax: 907-465-2974
[Board of Massage Therapists Webpage](#)
Dawn.Dulebohn@alaska.gov

From: Joelyn Betz [mailto:joelynbetz@gmail.com]

Sent: Wednesday, May 1, 2019 11:38 AM

To: Dulebohn, Dawn L (CED) <dawn.dulebohn@alaska.gov>

Subject: Re: Alaska Massage License Renewal Information- 2019-2021

Dawn,

I have a question about renewing my license. Since January 1 of this year I have been dealing with debilitating vertigo, which has created a type of brain injury that renders me unable to do many things. I'm working with physicians and physical therapists, but they all tell me that this could take up to a year to resolve itself.

I have not been able to work since January 1 and am unable to read much or spend any significant time on a computer. Would it be possible for me to defer renewal of my license until I am able to do my continuing education and first aid class? I can provide documentation from my doctor about my current abilities and inabilities.

There's just no possible way for me to take classes right now.

Thank you for your consideration and I look forward to hearing from you.

Sincerely,
Joelyn Betz

On May 1, 2019, at 11:49 AM, Dulebohn, Dawn L (CED) <dawn.dulebohn@alaska.gov> wrote:

Greetings,

It's almost renewal time! All massage therapist licenses will expire on September 30, 2019.

Renewal applications will be available on the board's [website](#) on July 2, 2019 under "Applications & Forms".

A mailed notice outlining all renewal requirements will go to licensees in June 2019. Please ensure that your mailing address is current. If you need to update your mailing address you can do so by visiting the board's [website](#) and completing the "Name/Address Change" form under CBPL Quick Links or replying to this e-mail.

The following is a summary of the renewal requirements for 2019-2021 licensing period:

- Completed Renewal Application (available July 2, 2019 on the board's [website](#))
- \$290 Renewal Fee
- 16 Hours of Continuing Education (please see the "Unacceptable Continuing Education List" & "FAQ's" #14 that is available on

- the board's [website](#) for more information)
- Current CPR Certification
 - Fingerprints are NOT Required for this Renewal Period

If you would like the ability to renew your license online, please sign up for MyLicense. The instructions are attached. Please call 907-465-2550 to request an authorization code. If you know of anyone that has not “opted-in” for paperless communication (and would like to) please share this information with them.

If you have any other questions, please don't hesitate to contact me.

Best Regards,

Dawn Dulebohn

Licensing Examiner
Board of Massage Therapists
Regulation of Athletic Trainers
Corporations, Business, and Professional Licensing
P.O. Box 110806
Juneau, AK 99811-0806
PH: 907-465-3811
Fax: 907-465-2974
[Board of Massage Therapists Webpage](#)
[Regulation of Athletic Trainers](#)
Dawn.Dulebohn@alaska.gov

<MyLicense Instructions 7.25.2018.pdf>

Brown

May 5, 2019

Dawn Dulebohn, Examiner
Board of Massage Therapists
PO Box 110806
Juneau, AK 99811-0806

RE: Application by Credential - Katherine A. Brown

Dear Ms. Dulebohn:

We spoke last Friday, May 3, as I was leaving my doctor's office here in Juneau. At that time, you told me that my massage application was complete except for receipt of a credential from NCBTMB. I was rendered somewhat speechless by that information since it was the first time I had heard of any such requirement. I have since reviewed the application materials and materials from your website and confirmed that there is no reference to such a credential being required for licensing by the State of Alaska!

I submitted my completed application package via US Postal Service, on January 31, 2019. I sent it certified, return receipt requested and the green card I received back shows it was received by the State of Alaska mailroom on February 1, 2019.

- On February 20, 2019, I received a group email to "applicants and licensees" which, informed of a town meeting in Anchorage and included instructions for licensees to access their "my License Registration." Since I am not yet a licensee, I didn't take it as an invitation to access this "portal." (However, it did indicate that my email address was correctly on file somewhere within the State of Alaska Licensing database.)
- On March 19, 2019, I called the Board Offices in Juneau to inquire about the status of my application and was told that my application had been received and would be reviewed at the next Board meeting early in April. I was advised that an email had been sent on February 13, which I did not receive. I searched my spam file to ensure it had not landed there. It had not.
- On March 20th, 2019, I called to leave a voicemail to this effect and followed it with an email. I could not remember your last name so called your office to get the last name. The woman I spoke with told me the last name was "Hannasch." I sent an email to Ms. Hannasch and of course, never received a response. I received an auto-response that Ms. Hannasch was out of the office.

I responded to the auto-replay asking that she, "please advise of the current status of my application and any problems or outstanding pieces of information that may be needed." I included my mailing address and my phone number but Ms. Hannasch never responded and apparently never forwarded the email to the correct person either.

- April 11 – 25, 2019. I was out of town on a scheduled absence from the state for about three weeks and again contacted your office shortly after my return to find out what happened to my application. At that time, you were able to respond to my question and told me for the very first time that the State would require an additional credential (which was not mentioned anywhere in your application materials).

I have since done more careful research of your website and your application package for licensing by credential, and **nowhere is it clearly stated that a credential from NCTMB would be required for massage licensing by the State of Alaska!** My credentialing entity would ultimately be the State of Hawaii.

As part of my review, I also read the “May 2019 Statutes and Regulations” for “Massage Therapists,” as well as the Chapter 79 Professional Regulations, Effective April 17, 2019. I see nothing in those laws which would impact on the above interpretation. Further, I believe standard legal practice would be to hold my application to standards in effect at the time of postmark or at least those in effect at the time my application package was received by the State.

I spent a lot of time and money assembling a formal application package for the State of Alaska to review. I feel that a complete and formal response within a reasonable amount of time, is a fair expectation. And while email may be acceptable for casual communications, a formal application deserves a formal, hard-copy response. Would you kindly send me a hard copy determination concerning my application for massage licensing? I hope whatever deficiencies you’ve identified will also be made crystal clear, in accordance with the laws and policy determinations of the State of Alaska.

Thank you for your assistance and your patience with me!

Sincerely,

Katherine A Brown
PO Box 33492
Juneau, AK 99803

907-723-2027

Juneaumaids@yahoo.com

May 16, 2019

REC'D ED
JUNEAU

MAY 17 2019

Dawn Dulebohn, Licensing Examiner
Members of the Board of Massage Therapists
PO Box 110806
Juneau, AK 99811

CBP

RE: State Massage Application by Credential

Dear Ms. Dulebohn and Board Members:

Thank you for your May 6, 2019 formal response to my January 31 application for licensure by credential.

Communication Issues: Your letter helped me figure out that most of our miscommunication is the result of an incorrect rendering of my email address. You sent the February 13 and also the March 6, 2019 status update to JuneauMaid@yahoo.com instead of to my correct email address, which is juneaumaid@yahoo.com. **Neither of these status updates were received by me.**

Approval/Denial communications are extremely important to applicants for licensure. Formal responses via hardcopy to the mailing address of record seem the safest and most appropriate option. There are so many ways an email address can be transcribed incorrectly (as in the present case), and of course the clock starts running for various deadlines on the date of receipt. It's difficult to respond timely to application deficiencies when you don't even know yet what they are. After communication has been established and the email address has been tested and found to be correct, then it seems more appropriate to use informal email communication. At least that's what I had in mind when I check the box indicating a general preference for email communication.

Our May 3 telephone conversation made clear for the first time that I would additionally be required to submit proof that I have passed a national test; either NTBTMB or MBLEX. You also told me that NCBTMB was "out of it" and that MBLEX was now the only one. Thank you for telling me this. I probably would have wasted a lot of time trying to figure this out on my own.

Additional Bloodborne Pathogen Training: Your May 6 letter also mentioned within the "stale documents" section, that there is now a requirement for a "Bloodborne Pathogen Certification." This information is not in the section directly above which enumerates the items still needed. I didn't find it mentioned anywhere else in your application materials so I am unclear whether it applies to me or not. If it does apply to me, would you please tell me who provides this training locally that would be acceptable to the Board? I think I read somewhere that it consists of a 4-hour class.

MAY 17 2019

CBPL

The Suggestion that I was Untruthful: The application form itself is the operating document for any licensure applicant. The cover page of this application requires completion of the application form itself, payment of fees, completion of a fingerprint card, verification of current CPR Certification, and Authorization for release of records. These have all been submitted and I have not been advised if any of them were found unacceptable.

Item 4 is where the misunderstanding arises:

- Item 4 requires “verification of a current massage Therapy license or certification. “. . . Verification must indicate that you have met or exceeded the current Alaska standards of massage program education hours and successful completion of a nationally recognized competency examination approved by the board.
- In my mind, the licensing exam I took which was delivered by the State of Hawaii, was a nationally recognized competency exam. Up until very recently I had never heard of a state requiring this additional, level of testing for licensure. It had always been considered something “nice to have.” I saw no explanation to the contrary in the application materials.

Enabling Legislation/Regulations: Since our May 3 telephone conversation, I’ve scanned through the enabling legislation on your webpage.

- The July 2019, revision of 12 AAC 79.110 (b)(2)(a) and (b), require current licensure from another state where licensing “requirements” are “substantially equal to or greater than licensing requirements for this state. OR” ... certification by the AMTA, the NCBTMB or other ... credentialing agency. I believed I satisfied the first option where “requirements” is defined in terms of education hours.
- The Alaska Statutes at AS 08.61.040(9) (a) and (b) read substantially the same; licensure from another state where “requirements” are substantially equal to or greater, OR certification from a “certification entity” approved by the Board. (“Certification entity” is not defined.)

In both statutes and regulations “requirements” appears to be an open-ended term however, “national certification entities” are addressed in separate sections, which suggests to me that “requirements” does not subsume national testing; that it was envisioned as only one possible pathway to licensure.

I do not question the Board’s authority to define requirements for Licensing applicants however, I do assert that those requirements need to be clearly stated in the application materials. I hope this helps you understand how someone might arrive at the conclusions that I did. It’s not untruthfulness on my part, but an incomprehension of what you are actually asking for.

Grandfathering: I was born and raised in Alaska and have worked as a massage therapist for a Juneau chiropractor and also for Chez Sante’, at that time collocated within the Alaska Club. (Traci Gilmour might remember me from that period of time.) I returned home to Juneau in June of 2016 but was struggling at that time with a life-threatening illness which commanded all of my attention for approximately two and a half years. I was therefore unaware of the July 2017 grandfathering deadline and in any case, had no time, energy or money leftover with which to deal with it.

RECEIVED
Juneau

MAY 17 2019

Page 3

CBP¹

I hereby ask the Board to waive the cutoff date for Grandfathering, on the basis of my lifelong residency, my prior work for Alaska employers, and the fact of my illness. I have invested much in my massage career, in terms of the actual training, the CEU's and a Medical Massage credential. I love the work and was looking forward to committing to a new direction in Lymphatic Drainage. Lymphatic Drainage helped me on my own healing journey and I was looking forward to helping others in the same way.

Yes, I did miss the Grandfathering window, however the fight for my life demanded total commitment. I don't think it's fair that an illness should require the sacrifice of a career I love.

Please advise of my status at your earliest convenience. This would include:

- Board determination of my request for waiver and extension of the Grandfathering window;
- Whether the MBLEX test will be required and the deadline attached to this requirement;
- Whether the Bloodborne Pathogens training will be required and who provides it locally (It did not appear so from your letter but I'm not entirely sure);
- How long do I have to finalize any outstanding requirements? (What is my timeframe?)

I apologize for the extreme length of this letter, but I'm trying to be absolutely clear in light of my earlier misinterpretations. Thank you for your consideration and patience.

Sincerely,



Katherine A Brown
PO Box 33492
Juneau, AK 99803
907-8723-2027

juneamaid@yahoo.com

Adjourn

Roll Call

Day 2

Review of Agenda



**Alaska Board of Massage Therapists
State Office Building
333 Willoughby Ave, Conference Rm. B
Juneau, AK 99801
Conference Line Call In: 1-800-315-6338
Access Code: 14875**

June 10-11, 2019

9:00 a.m.

Zoom Call In: 408-638-0968 or 646-876-9923

Access Code: **Day 1:** 472 395 133 / **Day 2:** 263 705 436

Meeting Agenda (Draft)

Day 1
Time

Subject

Lead

- | | | |
|---------------|---|--|
| 1. 9:00 a.m. | Call to Order/Roll Call | Chair |
| 2. 9:05 a.m. | Ethics Report | Chair |
| 3. 9:10 a.m. | Review/Approve Agenda | Chair |
| 4. 9:15 a.m. | Review/Approve Past Meeting Minutes <ul style="list-style-type: none">• February 28- March 1, 2019• April 9, 2019 | Chair |
| 5. 9:20 a.m. | Old Business <ul style="list-style-type: none">• Task List from February 28-March 1, 2019- INV Tasks #5-7• Disciplinary Matrix Revision | Chair |
| 6. 10:00 a.m. | Division/Financial Update | TBD |
| 7. 10:20 a.m. | Investigative Case Review, Probation Reports,
Memos & Consent Agreements
(Executive Session, if needed) <ul style="list-style-type: none">• J.J.• S.S.• Y.Z.• Role in Record Keeping | Investigators Jacobs &
Homestead

Gilmour |
| 8. 10:40 a.m. | Old Business (continued) <ul style="list-style-type: none">• Task List from February 28- March 1, 2019 (continued)<ul style="list-style-type: none">a. Sponsor Contact Information for Continuing Educationb. Letter of Intent from Alaska Career Collegec. Exempt Status from Alaska Commission of Post-Secondary Educationd. Louisiana's Potential Applicant Criminal Pre-Review | Chair

Gilmour |



Alaska Board of Massage Therapists
State Office Building
333 Willoughby Ave, Conference Rm. B
Juneau, AK 99801
Conference Line Call In: 1-800-315-6338
Access Code: 14875

June 10-11, 2019

9:00 a.m.

Zoom Call In: 408-638-0968 or 646-876-9923
Access Code: **Day 1:** 472 395 133 / **Day 2:** 263 705 436

Meeting Agenda (Draft)

Day 1 (continued)

<u>Time</u>	<u>Subject</u>	<u>Lead</u>
9. 11:00 a.m.	Regulations (with Regulations Questionnaire, if needed) <ul style="list-style-type: none">• New Statutes & Regulations- May 2019• 500 hours vs. 625 hours Criteria for Applicants• Potential Regulations Projects<ul style="list-style-type: none">a. Continuing Education- Ethics Requirement- 12 AAC 79.210b. Amend SOP #4- Current License- 12 AAC 79.900c. Amend Rejected Regulation Change- In-class, supervised- 12 AAC 79.100(2)(A)(B)d. Review & Amend Renewal & Reinstatement Regulation-12 AAC 79.200e. Medical/Military Service Exception for Continuing Educationf. Amend Credentialing Entity- 12 AAC 79.110(2)(B)	Zinn
10. 12:00 p.m.	Lunch	
11. 1:15 p.m.	Public Comment	Chair
12. 1:30 p.m.	Administrative Business <ul style="list-style-type: none">• Administrative Statistics• Meeting Calendar<ul style="list-style-type: none">a. Meeting Dates for 2020• FSMTB Annual Meeting and Board Delegates• Document Signing• Election of Vice- Chair• Review/ Update "No Investigations Needed" List- November 2015	Chair
13. 2:30 p.m.	Relationship with Law Enforcement/ Human Trafficking- FBI	TBD
14. 3:15 p.m.	Administrative Business (continued) <ul style="list-style-type: none">• Review FY 2019 Annual Report• FARB Member Board Invitation• Correspondence<ul style="list-style-type: none">1. Betz2. Brown	Chair
15. 4:30 p.m.	Adjourn or Recess until 9:00 a.m. June 11, 2019	Chair

New Business

Order of Remand X.L.

EXECUTIVE SESSION MOTION

I, _____, move that the Alaska State Board of Massage Therapists enter into executive session in accordance with AS 44.62.310(c), and Alaska Constitutional Right to Privacy Provisions, for the purpose of discussing _____

Board staff to remain during the session.

Off record: _____

On record: _____

Authority: AS 44.62.310(c), Government meetings public

The following subjects may be considered in executive session:

- **matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;**
- **subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;**
- **matters which by law, municipal charter, or ordinance are required to be confidential;**
- **matters involving consideration of government records that by law are not subject to public disclosure.**

Rescind Denials

Fitness to Practice Interview Participants

Intent to Participate

Han Mee Kim

MAS

RECEIVED
Anchorage

APR 15 2019

107551

CBPL

Intent to Participate

I would like the Board of Massage Therapists to reconsider my application for licensure which has been previously denied due to my criminal history.

I understand that this will require my full participation and cooperation. Some things that will be required from me are:

- Participation in a 30-minute interview in the board's September 19-20, 2019 board meeting either in person or by telephone. Should a translator be needed, it will be your responsibility to make the arrangements.
- Submission of additional documentation including, but not limited to, a detailed letter of explanation for my criminal conviction(s), letters of recommendation, complete work history from the time of convictions to the present, fingerprint card that will be used to generate both state and federal background reports.
- Payment of any applicable fees.

If I have any question, I should contact Occupational Licensing Examiner Dawn Dulebohn at 907-465-3811 or dawn.dulebohn@alaska.gov.

This form must be received by division **no later than May 1, 2019** in order to be considered for a Fitness to Practice Interview.

HAN MEZ KIM

Printed Name

[Handwritten Signature]

Signature

4/15/19

Date

Intent to Participate

Chan Springer

Intent to Participate

I would like the Board of Massage Therapists to reconsider my application for licensure which has been previously denied due to my criminal history.

I understand that this will require my full participation and cooperation. Some things that will be required from me are:

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- Payment of any applicable fees.

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This form must be received by division **no later than May 1, 2019** in order to be considered for a Fitness to Practice Interview.

CHAN THOU SPRINGER

Printed Name

Chanthou

Signature

04/18/2019

Date

Intent to Participate

Yong Ki Yi

Intent to Participate

I would like the Board of Massage Therapists to reconsider my application for licensure which has been previously denied due to my criminal history.

I understand that this will require my full participation and cooperation. Some things that will be required from me are:

- Participation in a 30-minute interview in the board's September 19-20, 2019 board meeting either in person or by telephone. Should a translator be needed, it will be your responsibility to make the arrangements.
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- Payment of any applicable fees.

If I have any question, I should contact Occupational Licensing Examiner Dawn Dulebohn at 907-465-3811 or dawn.dulebohn@alaska.gov.

This form must be received by division **no later than May 1, 2019** in order to be considered for a Fitness to Practice Interview.

YONG KI YI (TURNER) - changed

Printed Name

Yong Ki Yi
Signature

Date

4/16/2019

Review Tabled Applications

EXECUTIVE SESSION MOTION

I, _____, move that the Alaska State Board of Massage Therapists enter into executive session in accordance with AS 44.62.310(c), and Alaska Constitutional Right to Privacy Provisions, for the purpose of discussing _____

Board staff to remain during the session.

Off record: _____

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- **matters which by law, municipal charter, or ordinance are required to be confidential;**
- **matters involving consideration of government records that by law are not subject to public disclosure.**

J.E.

E.P.

M.W.

Board Approved Credentialing Agencies by State

**CHAPTER 61.
MASSAGE THERAPISTS.**

Section

- 10. Board established**
- 20. Duties and powers of board**
- 30. Qualifications for license**
- 40. Licensure by credentials**
- 50. Standards for license renewal**
- 60. Grounds for imposition of disciplinary sanctions**
- 70. Practice of massage therapy without license prohibited**
- 80. Exceptions to application of chapter**
- 90. Fees**
- 100. Definitions**

Sec. 08.61.010. Board established. The Board of Massage Therapists is established in the department. The board consists of five members appointed by the governor as follows:

- (1) four licensed massage therapists who have been engaged in the practice of massage therapy in the state for the three years immediately preceding appointment and who shall remain actively engaged in the practice of massage therapy while serving on the board; not more than one member appointed under this paragraph may have an ownership or partnership interest in a massage school; and
- (2) one public member; the governor may not appoint as a public member
 - (A) a licensed health care provider;
 - (B) an employee of the state; or
 - (C) a current or former member of another occupational licensing board established under AS 08.

Sec. 08.61.020. Duties and powers of board. In addition to the duties specified in AS 08.01, the board shall

- (1) provide for the examination of applicants by the board or through a nationally recognized competency examination approved by the board and issue licenses to applicants the board finds qualified;
- (2) adopt regulations governing
 - (A) licensing of massage therapists; and
 - (B) the practice of massage therapy;
- (3) establish standards of professional competence and ethical conduct for massage therapists;
- (4) establish standards for continuing education for massage therapists; standards adopted by the board under this paragraph must allow for approval of Internet-based continuing education courses;
- (5) make available to the public a list of massage therapists licensed under this chapter;
- (6) determine which states have educational and licensing requirements equivalent to the requirements of this state;
- (7) enforce the provisions of this chapter and adopt and enforce regulations necessary to implement this chapter; and
- (8) approve one or more nationally recognized competency examinations and publish and periodically update the list of approved examinations.

Sec. 08.61.030. Qualifications for license. The board shall issue a license to practice massage therapy to a person who

- (1) applies on a form provided by the department;
- (2) pays the fees established under AS 08.61.090;
- (3) furnishes evidence satisfactory to the board that the person has completed a
 - (A) course of study of at least 500 hours of in-class supervised instruction and clinical work from an approved massage school; or
 - (B) board-approved apprenticeship program;
- (4) is 18 years of age or older;
- (5) has been fingerprinted and has provided the fees required by the Department of Public Safety under AS 12.62.16 for criminal justice information and a national criminal history record check; the fingerprints and fees shall be forwarded to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400;
- (6) has a current cardiopulmonary resuscitation certification;
- (7) has received at least four hours of safety education covering bloodborne pathogens and universal precautions in the two years preceding the application for the license; in this paragraph, "bloodborne pathogens" has the meaning given in AS 18.15.450;
- (8) has successfully completed a nationally recognized competency examination approved by the board; and
- (9) has not been convicted of, or pled guilty or no contest to, a crime involving moral turpitude, or who has been convicted of, or pled guilty or no contest to, a crime involving moral turpitude if the board finds that the conviction does not affect the person's ability to practice competently and safely.

Board Approved
National Accreditation Agencies for
Schools

Accrediting Commission of Career
Schools and Colleges
(ACCSC)



Accrediting Commission of Career Schools and Colleges (ACCSC)

Established in 1965, the Accrediting Commission of Career Schools and Colleges (ACCSC) evaluates and accredits post-secondary education institutions. A privately owned, non-profit organization, ACCSC is recognized by the U.S. Department of Education (DOE) and the Council for Higher Education Accreditation (CHEA) and is based in Arlington, Virginia.

ACCSC typically accredits vocational and technical schools, which provide students with technical and occupational training. The ACCSC's accrediting authority is restricted to schools which provide non-degree training programs, or degree programs with a specific vocational focus.

Roughly 800 schools, collectively serving more than 250,000 students, are accredited by ACCSC.

Transfer of Credits

ACCSC is a national accrediting agency, which differ from regional accrediting agencies in several important ways. The majority of traditional 4-year universities and colleges are regionally accredited. Regionally accredited institutions do not always accept transfer credits from nationally accredited institutions. If you are a student of an ACCSC accredited institution planning to transfer to a regionally accredited institution, it is important to verify whether or not the receiving institution will accept your transfer credits beforehand.

Credit transfers are often determined by other factors, such as residency requirements, state policies, appropriateness of course content, and academic level.

Standards of Accreditation

The ACCSC has established a framework of accountability by which to evaluate institutions. This framework is designed to optimize the quality of education offered by member institutions, and to provide students with the best possible training for their chosen career path.

The ACCSC evaluates an institution's management and administration, its requirements for distance education programs, and its faculty's qualifications. It also evaluates the institution's student recruiting and advertising, its policies and practices regarding admissions, and its students services and achievements.

Accredited Schools and Colleges

A full list of the institutions accredited by ACCSC (roughly 800 in number) can be found at <http://accsc.org/Directory/index.aspx>. This list also details which date the institution was accredited, and when their accreditation is due to be renewed.

See also:

- [Accreditation in Higher Education](#)

Regional Accreditors:

- [Middle States Commission on Higher Education \(MSCHE\)](#)
- [New England Association of Schools and Colleges Commission on Institutions of Higher Education \(NEASC-CIHE\)](#)
- [North Central Association of Colleges and Schools The Higher Learning Commission \(NCA-HLC\)](#)
- [Northwest Commission on Colleges & Universities \(NWCCU\)](#)
- [Western Association of Schools and Colleges \(WASC\)](#)
- [Southern Association of Colleges and Schools \(SACS\) Commission on Colleges](#)

National Accreditors

- [Distance Education and Training Council \(DETC\)](#)
- [Accrediting Council for Independent Colleges and Schools \(ACICS\)](#)
- [Accrediting Commission of Career Schools and Colleges \(ACCSC\)](#)
- [Accrediting Council for Continuing Education and Training \(ACCET\)](#)

Board Approved
State Authorizing Entities for Schools

Insurance Billing Statute

Motz

From: [Jill Motz](#)
To: [Dulebohn, Dawn L \(CED\)](#)
Subject: Alaska Statute question
Date: Saturday, April 6, 2019 9:37:33 AM

Dawn,

Recently I was trying to resolve a billing issue for my private practice and ended up calling the Division of Insurance. I learned several things during that conversation, one of which is that the state bases its "anti-discrimination" decisions on AS 21.36.090. The statute (as I could find it) reads as follows:

(d) Except to the extent necessary to comply with AS 21.42.365 and AS 21.56, a person may not practice or permit unfair discrimination against a person who provides a service covered under a group health insurance policy that extends coverage on an expense incurred basis, or under a group service or indemnity type contract issued by a health maintenance organization or a nonprofit corporation, if the service is within the scope of the provider's occupational license. In this subsection, "provider" means a state licensed physician, physician assistant, dentist, osteopath, optometrist, chiropractor, advanced practice registered nurse, naturopath, physical therapist, occupational therapist, marital and family therapist, psychologist, psychological associate, licensed clinical social worker, licensed professional counselor, or certified direct-entry midwife.

This does not list Massage Therapist as a provider. (The 2 statutes mentioned speak to coverage for alcoholism and small businesses) It also does not list a few other state licensed professions as "providers". It was created in 1993. (I think!)

For historical purposes, when licensing was being pursued, the coalition was told (and held meetings with the DoI Director) who informed us that once a state board was formed, we would fall under AS 21.36.090.

My question is, is this a housekeeping issue? I know many regulations can be adopted by reference, and as the references change, the regulation can just be updated. I am not sure if it works the same way with statute, but if it does, it appears that this statute needs to be updated not just for us, but for perhaps a few other professions as well.

If it is not as simple as an update, where do we go from there? A legislative project is likely WAY too late in the year for this session and it may not even be an issue this board needs (or wants) to take up. Is something the Division as a whole should do as an upkeep issue?

I'm now full of questions and half-regretful I wandered down this rabbit hole...but my other, overly curious half, now needs answers!

Jill

From: [Jill Motz](#)
To: [Dulebohn, Dawn L \(CED\)](#)
Subject: Fwd: RE: Your Inquiry with the Alaska Division of Insurance RE: Provider Complaints
Date: Monday, April 8, 2019 11:40:57 AM

----- Original message -----

From: "Stewart, Elizabeth M (CED)" <elizabeth.stewart@alaska.gov>
Date: 4/8/19 11:12 AM (GMT-09:00)
To: Jill Motz <lifetouchalaska@gmail.com>
Subject: RE: Your Inquiry with the Alaska Division of Insurance RE: Provider Complaints

Hello Ms. Motz:

That is the most recent version.

While 21.36.090 Does not reference massage therapists, the Affordable Care Act (ACA) applies to all classes of providers and prohibits provider discrimination. This provision of the ACA prevents insurers from routinely discriminating against entire classes of health care providers if the health care providers are willing to abide by the terms and conditions for participation and are acting within their scope of practice and in compliance with their state licensure requirements.

To further answer your question, to have massage therapists added to the statute, this would need to go through the legislature.

Thank you,

Elizabeth Stewart, CISR
Consumer Services Specialist
Alaska Division of Insurance

From: Jill Motz [<mailto:lifetouchalaska@gmail.com>]
Sent: Friday, April 5, 2019 12:27 PM
To: Stewart, Elizabeth M (CED) <elizabeth.stewart@alaska.gov>
Subject: Re: Your Inquiry with the Alaska Division of Insurance RE: Provider Complaints

Elizabeth,

Thank you so much for your help earlier! I did read AS 21.36.090 and I'm curious to know if perhaps I found an old statute or if maybe this one needs a regulatory update. The licences covered in the statute are:

state licensed physician, physician assistant, dentist, osteopath, optometrist, chiropractor, nurse midwife, advanced nurse practitioner, naturopath, physical therapist, occupational therapist, marital and family therapist, psychologist, psychological associate, licensed clinical social worker, licensed professional counselor, or certified direct-entry midwife.

Is there perhaps a newer, updated version that includes massage therapists? We have a state appointed board who, like all these listed occupations, ensures public safety, minimum education levels and ongoing oversight of the profession.

Or, more complicated, is this the kind of statute that must go through the legislature in order to change?

Jill Motz

From: [Hannasch, Dawn K \(CED\)](#)
To: [Dulebohn, Dawn L \(CED\)](#)
Subject: RE: RE: Your Inquiry with the Alaska Division of Insurance RE: Provider Complaints
Date: Tuesday, April 9, 2019 3:54:45 PM

Yes, I would say that she should reach out to the Leg.

Thank you,

Dawn K Hannasch

Records and Licensing Supervisor
Big Game Commercial Services Board
Board of Barbers and Hairdressers
Board of Massage Therapists
Athletic Trainers
Euthanasia of Domestic Animals
dawn.hannasch@alaska.gov
Corporations, Business and Professional Licensing
P.O. Box 110806
Juneau AK 99811-0806
(907) 465-6246
(907) 465-2974 fax

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From: Dulebohn, Dawn L (CED) <dawn.dulebohn@alaska.gov>
Sent: Tuesday, April 09, 2019 3:51 PM
To: Hannasch, Dawn K (CED) <dawn.hannasch@alaska.gov>
Subject: FW: RE: Your Inquiry with the Alaska Division of Insurance RE: Provider Complaints

I'm guessing this is the answer: lobby the legislature?

-DD

From: Jill Motz [<mailto:lifetouchalaska@gmail.com>]
Sent: Monday, April 8, 2019 11:41 AM
To: Dulebohn, Dawn L (CED) <dawn.dulebohn@alaska.gov>
Subject: Fwd: RE: Your Inquiry with the Alaska Division of Insurance RE: Provider Complaints

----- Original message -----

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Date: 4/8/19 11:12 AM (GMT-09:00)

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Subject: RE: Your Inquiry with the Alaska Division of Insurance RE: Provider Complaints

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Or, more complicated, is this the kind of statute that must go through the legislature in order to change?

Jill Motz

Application of Curriculum Breakdown

Board Breakdown of Massage Curriculum* (Definition of Massage School)

The board will evaluate every transcript submitted with an Application by Examination to ensure that it meets or exceeds the following breakdown. Remedial courses may be assigned at board's discretion to enable a pathway to licensure for the applicant.

<u>Content</u>	<u>500 Hours**</u>	<u>625 Hours**</u>
Anatomy & Physiology Pathology, Kinesiology: -At least 40 hours in pathology, including indications and contraindications. -Muscular system -Nervous system -Osteology -Circulatory System -Kinesiology	130	162
Massage Theory and Practical Application: -Assessment-Basic massage therapy techniques dedicated to the study of massage therapy and various clinically related modalities. -No more than 50 hours should address techniques that are exempt from license requirements. -Practical application not to exceed more than 20% of total hours of the massage program	220	275
Clinical Practice: -Universal and standard precautions -Self-care -Body mechanics -Draping -Record Keeping -Business Practices and professional development -Medical terminology	110	138
Ethics and Law: -Local and state laws -Therapeutic relationships -Professional boundaries	40	50
* the Board of Massage Therapists reserves the right to adjust these numbers if the total program hours change. ** July 1, 2015- June 30, 2019- 500- hour requirement July 1, 2019- Present- 625-hour requirement		

From September 10-11, 2018 meeting minutes
 Effective April 17, 2019

Board Criteria in
Evaluating and Approving
Continuing Education

From: dave@edwards-smith.com
To: [Dulebohn, Dawn L \(CED\)](#)
Subject: NCBTMB Continued Ed CEU ?s
Date: Wednesday, May 29, 2019 1:06:32 PM

Hello David,

I have enclosed information below to answer each of your questions. Please let me know if I can be of further assistance to you.

The Alaska Board of Massage Therapists is working to better understand the criteria that massage agencies set forth in vetting Continued Education Providers.

- i. How is class merit determined?
- ii. Qualification of Instructor?
- iii. Amount of Experience on Subject?
- iv. How the course relates to the Practice of Massage Therapy or Bodywork?

Provider Review

-

1. NCBTMB Approved Providers must also submit the professional resumes or CV's for each instructor to be reviewed for each course they wish to teach. We are looking to see that the resume or CV demonstrates an expert level of understanding of the subject matter they intend to teach. This criteria can vary greatly depending on the actual subject matter. Basically, we are looking to see that each instructor has had the educational background, and practical experience at a level above what they wish to teach, in their subject matter to support their application.
2. We also require each instructor to have taught their class at least once. If they have not had an opportunity to teach professionally for an organization, then they can perform a pilot course, with five participants. We ask them to obtain feedback from each, and submit that feedback to us with their application.
3. Of course, if the course is a practical, "hands-on" massage course, than they need to be legal allowed to perform massage in their state of residence. We also require for them to maintain, liability insurance to practice.
4. We also review each applicant for sanctions or penalties imposed on them for any inappropriate practices. Official documentation must be provided and reviewed for any circumstances related to these situations.
5. Each course must meet the NCBTMB Acceptable CE Course Guidelines listed below. The NCBTMB course guidelines were established by our Board members, and include feedback from many state massage boards, as well as industry experts. I have also included a link to additional information about the NCBTMB Approved CE Provider program below.
6. Is the class a structured course, with actual learning outcomes. Professional development needs to be constructed professionally, with approximately one learning outcome to be

achieved each hour or two, depending on the level of difficulty.

7. Are appropriate breaks being implemented into the schedule? We do ask for a timeline for the course. Each course should allow for no more than 10 minutes of break time per hour of class. If breaks are not taken hourly, than no more than 20 minutes of break time can be taken together. It is important that breaks are offered to allow for personal needs, and help to keep attention spans fresh of the participants. At the same time, it is important that the time designated for learning is actual learning time. Anything longer than a 20 minute break, qualifies as time off the clock and CEs cannot be awarded.
8. Is the course content continued education? The course content must go beyond the core curriculum. Education subject matter required in the foundational experience cannot qualify for continued education, therefore the content **must expand and enhance the knowledge base**. The core curriculum requirements for our Assigned Schools lists the specifics, we are referencing here. That list is contained below.

500 hour break down for Core Curriculum

- 125 hours of instruction in the body's systems and anatomy, physiology, and kinesiology
- 200 hours of in-class, supervised hands-on instruction in massage and bodywork assessment, theory and application instruction
- 40 hours of pathology
- 10 hours of business and ethics instruction (a minimum of 6 hours in ethics)
- 125 hours of instruction in an area or related field that theoretically completes your massage program of study

9.

What is acceptable Course Criteria?

Acceptable course content includes, but is not limited to:

- Applications of massage and bodywork therapy for specific needs, conditions, or client populations
- Anatomy, physiology and kinesiology
- Research literacy
- Client assessment protocols, skills for client record keeping, strategies for interfacing with other health care providers
- Use of external agents such as water, heat, cold, or topicals
- Body-centered or somatic psychology, psychophysiology, interpersonal skills – which may include communication skills, boundary functions, phenomena of transference, counter-transference and projection
- Standards of practice, professional ethics or state laws
- Strategies for the marketing of massage and bodywork therapy practices
- Theory or practice of ergonomic science as applied to therapist or client
- Hygiene, methods of infectious disease control, organization and management of the

treatment environment

- The use of massage therapy tools and their specific needs (tools may not be sold during class time and the instructor must be able to supply students with the tools during class)
- Working with the muscles within the oral cavity for specific treatments, i.e. working on the masseter muscle in conjunction with TMJ Disorder
- Self-care courses concentrating on nutrition and/or diet only, but only as it enhances the learner's knowledge about the practice of massage therapy
- Perform yoga/yoga teacher training programs (acceptable for therapist's self-care only)*
- *Active strengthening/physical training (acceptable for therapist's self-care only)*
- *Advanced science courses that contain content which goes beyond the massage therapist's scope of practice (as defined by state and/or local legislation), and that is instructive in understanding different systems of the body or human behavior more in depth. Click [here](#) for more information*
- *Energy work that includes "professional therapeutic hands-on applications."*

***NCBTMB only accepts 4 CE's per renewal period in Self-Care. Self-Care is NOT a requirement.**

[What is NCBTMB's stance on advanced courses?](#)

NCBTMB will accept continuing education hours from Approved Providers for advanced science courses that contain content which goes beyond the Massage Therapy Scope of Practice but may be conducive to understanding different systems of the body or human behavior more in depth.

Participation and continuing education hours awarded for completion of the above mentioned course are strictly for the advanced development and understanding in interdisciplinary practices. Massage therapists are only allowed to practice within their professional Scope of Practice, and any skills learned in this course are for further development purposes and should not be practiced professionally.

Massage therapists who wish to take these courses may with the understanding that the information was approved by NCBTMB to strengthen the therapist's knowledge of human science. Massage therapists caught practicing advanced modalities or advising clients in practices that are outside of the massage therapy scope of practice can lose their Board Certification and massage therapy license.

To practice the information learned within advanced science courses, a massage therapist must take additional education and earn a degree in the subject matter.

Approved Providers teaching these courses shall divulge this information to any and all massage therapists taking their courses.

To learn more about NCBTMB and advanced science courses, please [click here](#).

[What is unacceptable Course Criteria?](#)

Unacceptable Course Content includes:

- Diagnoses (allopathic-based) of clinical conditions
- Implementation of allopathic medical/surgical procedures
- Physically invasive modalities, e.g., ear candles, intra-anal, intra-vaginal modalities, etc.
- Incorporation of chiropractic/osteopathic, e.g., ballistic, thrust oriented or other services and procedures which require additional licensure or certification, i.e., Yoga or Pilates Instructor Certification, Physical Therapy, Personal Training, Weight Training

- Prescription of herbs, nutritional supplements, and /or pharmaceuticals
- Performing hypnosis
- Performing an aesthetician facial or exfoliation of cells from the body
- Performing electrical stimulation, using electrical devices on clients or ultrasound of any kind
- Psychological counseling
- Psychic, clairvoyance, telepathic, astrology, religious practices
- Dry needling and acupuncture
- Breaking or removing tissue from the body
- CBD Products*
- Energy work that does not involve “the application of professional therapeutic touch”
- Aura techniques
- Crystal healing
- Qi Gong or Tai Chi
- Fire cupping or any procedure that works with fire
- Breast massage as part of anything other than medical procedures or prescribed by a physician (NCBTMB does accept breast massage when learning about oncology; specifically, breast cancer procedures)
- Moxibustion
- Tongue Reading
- Erroneous, misleading titles of modalities; a description of the course must be added to the title if the modality cannot be easily deciphered by the title

Exceptions: Courses that will be allowed only when the course is designed/outlined and titled as strictly for the therapist’s personal self-care and not to be taught to others or performed on clients, such as:

- Performing active strengthening/physical training to others (acceptable for the therapist’s self-care only).
- Perform yoga/yoga teacher training programs (acceptable for therapist’s self-care only).

Please Note: Basic/fundamental course content represented in the initial massage therapist training, does not qualify for CEs as it is not continued education. Continued education must be of an advanced nature, with more specific approaches.

*How CBD products are derived may mean some products are controlled substances under federal law. There is also scarce research on the efficacy, dosing and contraindications for the consumer or a provider using CBD products.

Additionally, NCBTMB reserves the right to reject any course content that does not adhere to federal laws and regulation, risks participant or instructor safety, and/or is not sufficiently backed up by research.

<https://www.ncbtmb.org/faqs/approved-provider-faqs/>

Cindy Connolly, BCTMB, LMT

Approved Provider Specialist

1333 Burr Ridge Pkwy, Suite 200

Burr Ridge, IL 60527

direct 630-652-0466
fax 866-402-1890
www.ncbtmb.org

Lunch

Massage Establishment Regulations

Massage Establishment

Minutes Excerpts

June 2018

697 **Agenda Item 18** **Drafting Language for Potential Regulations Projects**

698

699 **Massage Establishment Licensing**

700

701 Chair Edwards-Smith identifies that the key topics to be addressed are:

702

- Application requirements

703

- Renewal requirements

704

- Change of ownership

705

- Operations of establishment itself- Not operating between 12am and 5am

706

- Inspection (lead to Investigations if necessary)

707

- Exemptions

708

709 Conversation ensued between the Board, Director Janey McCullough, Regulations Specialist Sher
710 Zinn, and Investigator Autumn Roark.

711

712 Owners and Transfer of Ownership- The application is for the owner of the establishment (not the
713 property). Ms. Zinn brings up that when referring to the person who needs to apply for licensure,
714 business licensing already has a definition for the word “entity” and that the board may want to use
715 the word “owner” and then define it at the end of regulations. It is decided that a license is not
716 transferable, the new owner must apply for new license after they purchase the establishment, and
717 they must have a new, approved license before conducting business. When speaking of change of
718 ownership, Ms. McCullough references Barbers and Hairdressers 12 AAC 09.110(B) as an option for
719 sample language and the board agreed it was applicable.

720

721 Inspection/Investigations- Ms. Roark states that Investigations will not be going in to inspect
722 properties personally. Ms. Motz believes what is needed is just the authority to allow inspectors in
723 the establishments, inspect within their scope, and reporting to appropriate authority. Some of the
724 things the inspector will be looking for are: Licenses displayed, check advertisements, personal
725 property, transactions (including gratuities) not operating between 12 am and 5am, no controlled
726 substances, no onsite living, and doors are not locking from the outside. Ms. McCullough asks the
727 board whether they will be requiring an initial inspection prior to licensure and the board considers
728 the pros and cons.

729

730 Photography- Ms. Gilmour brings up the issue of photography equipment in the establishments and
731 the board discusses having no cameras where patients are being treated except for therapeutic
732 purposes with a signed patient waiver.

733

734 Ms. Motz suggests the board forming a subcommittee to meet and come back with proposed
735 language documents for review. This notion is supported by the other board members.

736

737 Massage Establishment Licensing (MEL) Subcommittee Assignment Breakdown:

738 Traci- Applications and Renewal Requirements

739 Dave- Exemptions and Change of Ownership

740 Ron- Disciplinary Matrix and Fine Schedule

741 Jill- Operations and Inspections

742

743 Ms. Zinn goes over the process and time frame for such extensive regulations in order to have them
744 adopted before the July 1, 2019 deadline. She cautions the board of the busy time for LAW and
745 Regulations Specialists during legislative session. It is discussed that 3-4 month of lead time is
746 needed to clear all the steps for regulation which would mean the board needs to have its 1st
747 language draft done by December 2018 at the latest. It is suggested that the board pull language
748 from other Alaska regulations as to not “re-invent the wheel”. Ms. Zinn suggests helpful regulations
749 may be Barbers and Hairdressers and Pharmacy.

750
751 Mr. Gibbs asks that all of the components compiled by the board members be completed and
752 distributed before the September 2018 meeting to allow everyone time to review the compilation of
753 the research and be ready to assemble it and make a motion in September.

754 Regulation Changes Questionnaire

755
756 Regulations Specialist Sher Zinn presents the revamped Regulation Changes Questionnaire. She
757 explains the form and that, going forward, this form be filled out by the board in its entirety and be
758 submitted with any regulations changes that are being proposed.

759
760 *Ms. McCullough, Ms. Zinn, and Ms. Roark left the meeting at 10:17 a.m.*

761 Continuing Education

762
763 Chair Edwards-Smith reiterates the definition on what the purpose of continuing education (CE) is
764 and what it serves. Continuing education is the *professional development activities that enhance and expand*
765 *the skills and knowledge of massage therapists that enable them to render competent service to clients, the profession,*
766 *and the public in accordance with AS 08.61.100(5).*

767
768 The Board would like it noted for the record that a massage therapist can take any kind of
769 continuing education that they would like to expand their knowledge and business practices. The
770 list the board is formulating is only regulating what continuing education will be accepted for the
771 renewal of a massage therapist license.

772
773 The board reviewed the NCBTMB list of unacceptable continuing education courses (which can be
774 found at ncbtmb.org) as part of their research in formulating their own list. The list does not
775 mention specific brands or techniques but content.

776 Unacceptable Content List for Continuing Education

777 2017-2019 Licensing Period

778 Created June 2018

- 779
780
781
782
783 1. Diagnoses (allopathic-based) of clinical conditions
784 2. Implementation of allopathic medical/surgical procedures
785 3. Physically invasive modalities (e.g., ear candles, intra-anal, intra-vaginal modalities, etc.)

875 written with the AMENDMENTS of 12 AAC 79.100(5) changing the 4 hours of Bloodborne
876 pathogens to 2 hours, 12 AAC 79.140(b) to 500 hours by reducing 1)130 hours and 2) 220
877 hours and including the Massage Curriculum Breakdown to accommodate the approved
878 statutory increase to 625 hours as of July 1, 2019. The 625 Massage Curriculum Breakdown
879 would be: Anatomy & Physiology-162 hours, Clinical Practice- 138 hours, Ethics & Law- 50
880 hours, and Massage Theory and Practical Applications- 275 hours.

881

882 Investigative Email from Christina Bond

883

884 OLE Dulebohn reports on an e-mail she received from Investigator Christina Bond. In yesterday's
885 meeting Ms. Bond was asked to follow up on the probation that was put on hold for Arturo
886 Ramirez. Ms. Bond states that she spoke with Mr. Ramirez on 6/12/2018 and he confirms that he
887 is no longer practicing massage therapy, he is still in Alaska, and he is unsure whether or not he will
888 be returning to the profession. Ms. Bond asked him to keep her updated on his status.

889

890 Massage Establishment Licensing Mission Statement

891

892 OLE Dulebohn brings to the board's attention that there was not a motion in earlier in the meeting
893 for the board to adopt the proposed mission statement for Massage Establishment Licensing and
894 she asked if the board wanted to address that presently. Chair Edwards-Smith affirms that he does
895 want to proceed with that process and asks the board to consider making a motion. The board
896 discusses the statement and language that would like to utilize.

897

898 **In a motion duly made by Jill Motz, seconded by Ron Gibbs, and passed unanimously with**
899 **a roll call vote, it was RESOLVED to ADOPT the following Massage Establishment**
900 **Mission Statement: "Massage establishment regulations will serve the purpose of**
901 **safeguarding legitimate massage establishments, therapists, and the public from illicit**
902 **massage establishments and human trafficking activity."**

903

904 Code of Ethics Change

905

906 Ms. Motz reports on an issue that has come to her attention that there are perhaps some therapists
907 that are using sex to market their massage services via social media. Ms. Motz believes any type of
908 sexualizing behavior as advertising is detrimental because it does harm to the profession and peers
909 by insinuating that massage has a sexual component. She would like to bring this issue to the board
910 for discussion and to include in that discussion a change to the Code of Ethics, #8. She explains
911 that adding this language to the Code of Ethics will give the board authority when a complaint is
912 reported to either call the accused in to explain, issue a letter of advisement, or the complaint can be
913 forwarded to Investigations.

914

915 Ms. Motz continues to say this situation has been brought to the attention of some of the
916 professional organizations and they will be amending their Code of Conduct as well.

917

918 The board discusses what makes advertising sexual, if the advertising in question was a one-time
919 occurrence or a habit, how they do not want to allow therapists to perpetuate the stigma that
920 massage has a sexual component, and if this type of infraction would fall under AS 08.61.060(3) that
921 "after a hearing, the board may impose a disciplinary sanction under AS 08.01.075 on a person

922 licensed under this chapter if the board finds that the person advertised massage therapy services in
923 a false or misleading manner”.

924

925 **In a motion duly made by Jill Motz, seconded by Traci Gilmour, and passed unanimously**
926 **with a roll call vote, it was RESOLVED to AMEND the Code of Ethics #8 to read: “I will**
927 **not, in any circumstance, initiate or engage in sexual conduct, activities, advertising, or**
928 **sexualizing behavior involving a client, even if the client attempts to sexualize the**
929 **relationship”.**

930

931 The board notes for the record that they would like to review all instances violating this change to
932 Code of Ethics on a case by case basis beginning with Investigations.

933

934 Qualifying Education via Distance Education

935

936 On the June 11th, the board discussed the idea of combined education to allow for applicants to take
937 part of their education online and the clinical and final exam in person. The board discusses AS
938 08.61.030 (3) (A) “the board shall issue a license to practice massage therapy to a person who
939 furnishes evidence satisfactory to the board that the person has completed a course of study of at
940 least 500 hours of in-class supervised instruction and clinical work from an approved massage
941 school” in regards to their interpretation of what “in-class supervised instruction and clinical work”
942 means and whether a distance education program would fit that criteria.

943

944 Ms. Motz, Chair Edwards-Smith, and OLE Dulebohn contributed documents to be used as research
945 in this matter. It was discussed that the distance education program be accredited by an agency that
946 specializes in distance education such as the Distance Education Accrediting Commission. The
947 board discussed taking information from all of the available sources and forming language to present
948 to the board that would end in a motion for a regulations project. Ms. Gilmour interjects that using
949 an online glossary of terms as a tool in writing the draft language would be beneficial.

950

951 **TASK: Jill Motz will gather information and draft language for distance education for to**
952 **further define “in-class” to present to the board in the September 10 and 11 meeting (or next**
953 **teleconference).**

954

New Task List

TASK LIST

June 12, 2018

Task	Who to complete?	When is the deadline?	Distribute to the Board?	Completed
Send David approved minutes, wall certificates, ce consent agreements to sign and return to Division	Dawn	07/15/2018	No	
Massage Licensing Establishment Language from board assigned tasks to send to Dawn	Board Members	08/16/2018	Yes	
Send Board List of Unacceptable Continuing Education Guideline to Dawn	David	06/12/2018	No	

Massage Establishment

Minutes Excerpts

September 2018

- 689 infraction occurred from massage statutes and regulations, review case precedent, and
690 recommend any disciplinary action and/or consent agreement to the entire board.
- 691 • Consent agreements are only presented to the board after they have been accepted by the
692 applicant/licensee.
 - 693 • If the applicant/licensee rejects the consent agreement, an accusation must be filed with the
694 Attorney General and the Office of Administrative Hearings on the board’s behalf.
 - 695 • Reviewing board members may or may not be called into court as a witness if case goes to
696 trial.
 - 697 • Board has the right to not accept a ALJ decision or consent agreement.
 - 698 • Ask yourself can I be fair, objective, and reasonable? If a board member has a bias against
699 an applicant or licensee and they do not ask to be recused from deliberation and voting there
700 could be an appearance of impropriety and could cause the case to be taken to court.

701
702 *David Edwards-Smith out at 9:22 a.m.*

703 *Back at 9:26 a.m.*

704
705 *Regulations Specialist Sher Zinn joined the meeting telephonically at 9:25 a.m.*

- 706
707 • If question arise on a case that is being voted on by mail ballot, it is best to table it until the
708 board can deliberate.
- 709 • If questions arise on a case after it has been tabled, the reviewing board member will only
710 have access to their investigative review form (on request from Investigations) with their
711 notes and the Investigative synopsis. The reviewing board member has the option of
712 answering questions from the board on the case.
- 713 • If there is a potential Standard of Practice violation, there must be two reviewing board
714 members.
- 715 • Board members cannot recuse out of a quorum.
- 716 • Reviewing board members are rotated and chosen because they have not done the same
717 cases all the time. Investigations strive to not have any conflicts should the case go to court.

718
719 *Chair Edwards-Smith called for a short break at 9:45 a.m.*

720 *Back on the record at 9:49 a.m.*

721
722 **Agenda Item 20**

722 **Drafting Language for Potential Regulations Projects**

723
724 **Massage Establishment Licensing**

725
726 Chair Edwards-Smith begins by reading the massage establishment mission statement that the board
727 approved at the June 11-12, 2018 meeting: “Massage establishment regulations will serve the
728 purpose of safeguarding legitimate massage establishments, therapists, and the public from illicit
729 massage establishments and human trafficking activity.” He continues by outlining the tasks that
730 were assigned to the board members during the June 2018 meeting:

731 Applications and Renewals- Traci Gilmour

732 Operations and Inspections- Jill Motz

733 Disciplinary Matrix and Fine Schedule- Ron Gibbs

734 Exemptions and Change of Ownership- Dave Edwards-Smith

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Mr. Edwards-Smith commended the board on the degree of research that they put forth for this meeting and hopes that this board will be able to create massage establishment licensing by taking the best other states have to offer and putting it to work in Alaska.

Mr. Edwards-Smith directs the board to sample language he created for the board to consider when writing draft regulations on this subject that he asked OLE Dulebohn to include in the board packet. The board goes over some items in each topic but inevitably decided to table the conversation until a future meeting to allow for more research, a fresh perspective, and sample language to be composed.

Some topics discussed at length were:

- Ownership

1. Anyone who runs a massage establishment who is not a licensed massage therapist must have a massage establishment license.

Ron Gibbs out at 10:16 a.m.

Back at 10:18 a.m

- Application Requirements

1. An applicant for a shop owner license shall submit a completed application on a form provided by the department. A complete application must include:
 - a. Payment of the fees established
 - b. Name of the owner or lessee
 - c. Business name of the establishment
 - d. Mailing and street address
 - e. If the establishment owner is not a licensed practitioner, the name and license number of the licensed massage therapist who is employed as the Lead at the establishment
 - f. Therapists may serve as Lead in only one establishment at a time
 - g. A listing of all other establishments the applicant owns which includes the business name, mailing address, and street address of each
 - h. A completed self-inspection report of the premises (form included in application and will need to include inspection requirements- maintains understanding of requirements, evidence in case of violation, limits physical inspections)
 - i. Will renewals be annual or biennial?
 - j. Each business location must have their own application and license numbers

2. Renewals

- a. Annual or Biennial
- b. Renewal fees
- c. Lead Therapist Application/Form
- d. Statement of employed therapists

3. Qualifications and Responsibilities of a Lead Therapist

- a. Must be a licensed massage therapist

- b. Must only be the Lead at one location at a time
- c. Be educated in massage statutes and regulations
- d. Ensures all therapists employed at the location are legitimate
- e. Keeps establishment in compliance
- f. Would they have any accountability or suffer any consequences if the business sustains any violations?
- g. Must sign a personal attestation statement making sure they are aware of their responsibilities (whatever those are determined to be- maintains understanding of requirements, evidence in case of violation, limits physical inspections. What would be on the list?)
- h. Be a resource to the owner
- i. If position of Lead changes, Division must be notified within a specific timeframe
- j. Must have no license action on their record
- k. Must have been a LMT in Alaska for a specified time frame
- l. Will complete a separate application/form

- Inspections

- 1. The Division may make periodic inspections of all massage establishments
- 2. Inspections may include, but need not be limited to, confirmation that the site is being utilized for massage therapy and a determination of whether the establishment is in compliance with the laws and rules governing the establishment's operation, facilities, personnel, safety and sanitary requirements
- 3. If a violation is found, who receives consequence- Owner, Lead, Therapist? All?
- 4. All therapist licenses must be displayed in a prominent location and in full view of the public.
- 5. SOP displayed in a location available to the public.
- 6. Self-Inspections Requirements- On a form provided by the department the establishment owner inspects and attest compliance with operations:
 - a. Standards of Practice and Code of Ethics is displayed in a location available to the public
 - b. Display in a full public view place the massage establishment business license and all employed massage therapist licenses
 - c. A written and/or digital system of maintaining client records for at least three (3) years which will include safeguarding verbal and written confidential information of the client, unless disclosure is required by law, court order, or authorized by the client
 - d. Shall maintain proof that the massage therapy establishment location or premises has current general liability insurance
 - e. Maintain all equipment used to perform massage therapy services on the premises in a safe and sanitary condition
 - f. Maintain compliance with all applicable state and local building and fire codes
 - g. Provide for the removal of garbage and refuse in a sanitary manner and provide for safe storage or removal of soiled linens
 - h. Rooms or any cubicle for massage or massage therapy practices are not equipped with an externally locking door.

829 7. Notification to Division when a therapist leaves employment within a specific
830 amount of time.

831
832 *Sheri Ryan left the meeting at 10:46 a.m.*

833 *Traci Gilmour out at 10:53 a.m.*

834 *Back at 10:55 a.m.*

835

836 • Fingerprinting- even though the board would like to have the establishment owners
837 fingerprinted with background checks to protect public safety, the board was informed by
838 Regulations Specialist Zinn that the board has no statutory authority to require M.E.L. to be
839 fingerprinted.

840

841 • Operations

842 1. Employment

843 a. Massage Establishments must employ or permit to practice on the premises
844 only licensed or officially enrolled student massage therapists to perform
845 massage therapy as defined in statute and regulations.

846 b. Officially enrolled students must have student enrollment documentation
847 current and on the premises.

848 2. Hours of Operation

849 a. Massage Establishments shall not operate or be open for business between
850 the hours of 12:00 a.m. and 5:00 a.m.

851 3. Restricted Business Activity

852 a. No massage establishment shall operate where a primary business is

853 1. Alcohol beverage sales

854 2. Photography studio

855 3. Model studio

856 4. Art studio

857 5. Telephone answering service

858 6. Motion picture theater

859 7. Adult oriented business

860 b. The establishment shall ensure that no inappropriate employee dress is
861 permitted. Inappropriate dress includes clothing which exposes the breasts,
862 buttock, genitalia, or attire that shows the practitioners undergarments. No
863 swim attire is permitted unless treatment is a water modality.

864 c. Payment in the treatment room? (Tips)

865 4. Alcohol and Controlled Substance Consumption

866 a. No alcohol or controlled substance consumption or sales within the massage
867 establishment

868 b. No owner, manager, massage therapist, or employee shall consume, sell, give,
869 dispense, provide, or keep, or cause or permit to be consumed, sold, given,
870 dispensed, provided, or kept any controlled substance within any massage
871 establishment.

872

873 *Chair Edwards-Smith called a short break at 11:28 a.m.*

874 *Back on the record at 11:36 a.m.*

875

- 876 5. Massage Room Requirements
- 877 a. No person shall perform massage or massage therapy in any cubicle, room,
- 878 or area equipped with an external locking door
- 879 6. Onsite Living Restrictions
- 880 a. No massage establishment shall be used as a shelter or living quarters for
- 881 any person. No owner or manager shall allow a licensed massage
- 882 establishment to be used for housing, sheltering, or harboring any person(s),
- 883 or as living or sleeping quarters for any person(s).
- 884 b. If a massage establishment is located within, but is ancillary to, a business
- 885 such as a hotel or motel, this prohibition shall apply only to the areas
- 886 designed, designated, or used as a massage establishment.
- 887 7. Outcalls
- 888 a. A massage establishment may dispatch a licensed massage therapist to
- 889 perform outcall massage but only if the therapy is to take place at the client's
- 890 transient lodging, temporary or permanent residence, or at the client's place
- 891 of business.
- 892 8. Age Restrictions
- 893 a. No owner, manager, massage therapist, or employee shall administer
- 894 services to any person under the age of eighteen (18) years without a parent
- 895 or legal guardian present or written consent from a parent or legal guardian
- 896 9. Sexual Contact/ Act Prohibition (need definition)
- 897 a. No owner, manager, massage therapist, or employee shall initial or engage in
- 898 any sexual contact or sexual act in any massage establishment.
- 899 b. No owner, manager, massage therapist, or employee shall promote, solicit,
- 900 initiate, engage in, permit, or allow any act that violates AS 08.61 et seq., the
- 901 regulations of the Alaska State Board of Massage Therapists, or the Code of
- 902 Ethics or Standards of Practice set forth by the Alaska Board of Massage
- 903 Therapists
- 904 c. No owner, manager, massage therapist, or employee shall engage in
- 905 unprofessional conduct including but not limited to:
- 906 1. Engaging in sexually suggestive advertising related to massage services
- 907 2. Engaging in any form of sexual activity on the premise of a massage
- 908 establishment where massage is provided for compensation
- 909 10. Sex Device Restriction
- 910 a. No owner, manager, massage therapist, or employee shall keep or allow to
- 911 be kept within any massage establishment any item know as or commonly
- 912 used as a marital or sexual aid including, but not limited to, any contraceptive
- 913 item or device, vaginal or anal lubricant, or any sex toy.
- 914 11. Restriction of Video/Photography
- 915 a. No owner, manager, massage therapist, or employee shall allow television,
- 916 video or recording equipment in any room where massage services are being
- 917 provide. A security surveillance monitor that can only receive images of the
- 918 inside of the common areas of the establishment may be located in these
- 919 rooms at any time.
- 920 b. A massage therapist may use video and photography for therapeutic
- 921 purposes with written client consent.
- 922 12. Transfer of License
- 923 a. Establishment license is not assignable or transferable.

924 b. In the event the licensed establishment is sold, subleased, or legal possession
925 of the establishment is changed, the new owner, lessee, or legal possessor of
926 the establishment shall be required to submit a completed massage
927 establishment application within thirty (30) days of the change of ownership,
928 lessee, or legal possess.

929
930 Chair Edwards-Smith makes the decision to break for lunch early and when the board comes back
931 from lunch to hear from Investigator Roark by moving Agenda Item 22 up in the schedule.

932
933 *Chair Edwards-Smith calls for a lunch break at 12:28 pm with meeting to resume at 1:30 p.m.*

934
935 **Agenda Item 21** **Lunch**

936
937 **Agenda Item 22** **Proposed Adoption of Civil Fines**

938 *Back on the record at 1:33 p.m.*

939
940 The entire board, OLE Dulebohn, and Investigator Roark return to the meeting after lunch.

941
942 Investigator Roark presents a proposal to the board to adopt imposition of civil fines under AS
943 08.61.060 and AS 08.01.075. Civil fines are imposed without censure or reprimand. They would
944 allow for another level of enforcement between fine, reprimand, or consent agreement and would
945 pertain to technical offenses that relate to the application process. Civil fines are not applicable for
946 patient/client care, diagnosis, treatment, unfit to practice, unlicensed practice, or moral turpitude
947 cases. Civil fines will be implemented in conjunction with an attestation of wrong doing that will be
948 signed by the licensee.

949
950 The positive outcome of possible adoption of implementing civil fines would be cost saving
951 measures for the board and licensees with possible decrease in attorney's fees, litigation, and hearing
952 expenses. Civil fines would not be a reportable license action to the National Practitioner Data
953 Bank (NPDB) but will be a matter of public record and posted on the board's website.

954
955 **In a motion duly made by Jill Motz, seconded by Traci Gilmour, and passed unanimously**
956 **with a roll call vote, it was RESOLVED to ADOPT an Imposition of Civil Fine, without**
957 **censure or reprimand, this action is not retroactive, and only applies in cases not related to**
958 **the delivery of patient care, unlicensed practice, or crimes of moral turpitude.**

959
960 *Investigator Roark left the meeting*

961
962 **Agenda Item 13 (continued)** **Board Business**

963
964 The board discusses the tabled application for E.N. The board references their earlier conversation
965 in which it was decided that anyone licensed after July 2016 in California would need to have their
966 school verified as accredited/approved by the California Massage Therapy Council (CAMTC).
967 Board member Jill Motz went to CAMTC's website during the meeting to verify that E.N.'s school
968 was not on CAMTC's approved school list

969
970 **In a motion duly made by Jill Motz, seconded by Tracy Gilmour, and passed unanimously**
971 **with a roll call vote, it was RESOLVED to APPROVE the application for Elissa Nian**

972 **PENDING the approval of accreditation of her schools, American International Vocational**
973 **College and Americana College, by California Massage Therapy Council (CAMTC).**

974
975 The board discusses the application for H.W. The board references their earlier conversation in
976 which it was decided that anyone licensed after July 2016 in California would need to have their
977 school verified as accredited/approved by the California Massage Therapy Council (CAMTC).
978 Board member Jill Motz went to CAMTC's website during the meeting to verify that H.W's school
979 was not on CAMTC's approved school list

980
981 **In a motion duly made by Jill Motz, seconded by Traci Gilmour, and passed unanimously**
982 **with a roll call vote, it was RESOLVED to APPROVE the application for Haihong Wang**
983 **PENDING the approval of accreditation of her school, Lincoln Institute of Body Therapy,**
984 **by California Massage Therapy Council (CAMTC).**

985
986 **Agenda Item 20 (continued)** **Drafting Language for Potential Regulations Projects**

987
988 **Massage Establishment Licensing (continued)**

- 989
- 990 • **Exemptions- The following are exempt from the massage establishment license**
991 **requirement:**
 - 992 1. Hospitals
 - 993 2. Residential care facilities
 - 994 3. Assisted living facilities licensed by the state of Alaska
 - 995 4. Public and private secondary schools or accredited colleges who are approved by the
996 board and when massage is performed in a massage therapy school curriculum.
 - 997 5. Sports venues at which massage may be conducted on members of professional
998 sports franchises by athletic trainers employed by a professional sports or collegiate
999 sports franchise
 - 1000 6. Place of business located on property owned by the federal government such as
1001 military and coast guard bases
 - 1002 7. Place of business operated by the following individuals who are licensed in the state
1003 of Alaska and employs or contracts with a licensed massage therapist to provide
1004 massage therapy as part of the person's practice:
 - 1005 a. Acupuncturist
 - 1006 b. Athletic Trainer
 - 1007 c. Chiropractor
 - 1008 d. Cosmetologist
 - 1009 e. Midwife
 - 1010 f. Nurse
 - 1011 g. Occupational therapist
 - 1012 h. Physical Therapist
 - 1013 i. Physician
 - 1014 j. Physician assistant
 - 1015 k. Podiatrist
 - 1016 l. Respiratory care practitioner

1017 8. Business or corporation owned and operated by massage therapist(s) licensed in the
1018 state of Alaska and in which the majority owner(s) or shareholder(s) must be licensed
1019 massage therapist(s).
1020

1021 The board mentioned many times their mission statement and that they did not want to burden
1022 legitimate business in their mission to prevent illicit establishments from operating.

1023

1024 **Agenda Item 5 (continued)** **Old Business**

1025

1026 CBD Oils

1027

1028 The board resumes their earlier discussion on CBD oils used by massage therapists during
1029 treatment.

1030

1031 The board would like to state, for the record, that they do not regulate the application of any topical
1032 product, oils or lotions a therapist uses with their clients. Those are issues of informed consent
1033 between the client and therapist which is covered in the Code of Ethics.

1034

1035 The board asks that OLE Dulebohn draft an FAQ on the subject of CBD oils but that it go to them
1036 for review before it is posted on the website.

1037

1038 *Chair Edwards-Smith calls a short break at 2:15 p.m.*

1039 *Back on the record at 2:18 p.m.*

1040

1041 **Agenda Item 20 (continued)** **Drafting Language for Potential Regulations Projects**

1042

1043 Chair Edwards- Smith directs the board to go back to potential regulations project concerning
1044 classroom hours via distance education and a definition addition that would allow for the theoretical
1045 portion of massage education to be taken online.

1046

1047 Board member Jill Motz presents her findings on the subject as assigned in the June 2018 meeting.

1048

1049 Classroom Hours via Distance Education

1050

1051 Ms. Motz states that because Alaska is so geographically diverse the board has already put into
1052 regulation that all continuing education can be completed online. The line “in class supervised”
1053 currently is defined as being physically present in the classroom. In the course of her research, Ms.
1054 Motz reached out to of institutions in Sitka, Fairbanks, and Anchorage including University of
1055 Alaska Anchorage (UAA) which the largest educator in the state. UAA already has 4 and 2 year
1056 college degree programs which all of their theoretical content is delivered online via distance
1057 education. For programs that require a “hands on” portion, those clinicals and labs are set up in
1058 Alaska.

1059

1060 Ms. Motz went on to state that she had spoken with the Director of Nursing at UAA and her
1061 interpretation of “in class supervised” means a student is enrolled in an approved class and they are
1062 supervised by either a teacher or a system that ensures that the student makes progress. Ms. Motz
1063 believes that education is moving away from expensive “brick and mortar” schools in favor of
1064 distance education which can be more meaningful because a student has to spend more time doing

Massage Establishment

Minutes Excerpts

November 2018

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

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2. Renewal Application

- a. Bi-annual renewal
- b. Fingerprinting Requirements
- c. Self-Inspection
- d. Licensing Fee
- e. Employee roster

3. Inspections

a. Physical Inspections

- I. The division may make periodic inspections of all massage establishments, either licensed or unlicensed.
- II. An agent of the division may enter and inspect during business hours, without prior notice, and massage establishment. Such inspections may include, but need not be limited to, confirmation that the site is being utilized for massage therapy and determination of whether the establishment is in compliance with the laws and rules governing the establishment's operation, facilities, personnel, safety, and sanitary requirements.

b. Self-Inspection

- I. On a form provided by the division, the establishment owner inspects and attests compliance with operations:
 - A. Standards of Practice and Code of Ethics for Massage Therapists is displayed in a location available to the public.
 - B. Massage Establishment License is full view of the public
 - C. All employed massage therapists license in full view of the public
 - D. There is a written and/or digital system of maintaining client records for at least five years
 - E. Maintain general liability insurance for location and premise and provide proof upon request.
 - F. Maintain all equipment pertaining to the practice of massage therapy used to perform massage therapy services on the premises in a safe and sanitary condition.
 - G. Maintain compliance with all applicable state and local building and fire codes
 - H. Provide for the removal of garbage and refuse in a sanitary manner.
 - I. Provide for safe storage and/or removal of soiled linens as per universal and Standard Precaution practices.
 - J. Any room or cubicle that massage or massage therapy practices are performed in are not equipped with an externally locking door.
 - K. Rest room facilities shall include at least one sink with hot and cold running water and shall be equipped with a soap dispenser with soap or other hand cleaning materials, clean towels or other hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle. Hand cleansing
 - L. Each massage facility and temporary massage facility shall have a toilet and a hand-washing sink with hot and cold water accessible to patrons provided with soap and single-use towels.
 - M. Establishment owners shall provide for safe and unobstructed human 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

Massage Establishment

Minutes Excerpts

December 2018

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 *Sher 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)

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 1st. Without authority and that
998 expectation not being stated in statute, the board does not have to have anything ready on July 1st
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 bias 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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Massage Establishment

Minutes Excerpts

February 2019

737

738 **Agenda Item 21**

Draft Massage Establishment Regulations

739

740 The board touched the massage establishment regulation conversation. Mr. Gibbs presented the
741 idea that the board invite the cities of Anchorage and Fairbanks to join in the discussion of regulaitn
742 and licensure since the board was informed in the December 2018 meeting that the board was only
743 given the statutory authority to regulate and not license. Ms. Motz reminds the board that AAG
744 Milks stated that the board could charge a registration fee. Mr. Gibbs continues that if a registration
745 fee is being imposed, then the board’s original intent to not burden licensed massage therapists
746 would need to be upheld by granting them an exemption to registration. He is afraid that the board
747 will be told, once again, that although the intent was there, the board does not have the authority to
748 uphold its rules because there might be an argument for discrimination. Chair Edwards-Smith states
749 that given its recent issues with the State, the board will now be “checking, double checking, and
750 triple checking” everything before it is put out for regulation, legislative consideration, or policy
751 consideration.

752

753 OLE Dulebohn reminds the board of the Chair’s decision to have board members review the
754 FAQ’s for possible changes and examine the fee analysis presented by Division tonight and prepare
755 themselves for tomorrow’s vote.

756

757 **Agenda Item 18** **Adjourn or Recess**

758

759 Chair Edwards-Smith has recessed for the day and will reconvene the meeting at 9:00 a.m.

760

761 *Off the record 4:50 p.m.*

762

Friday, March 1, 2019

763

764 **Agenda Item 19** **Call to Order/Roll Call**

765

766 *On the record at 9:01 a.m.*

767

768 Board Members present, constituting a quorum:

769

- 770 David Edwards-Smith, Board Chair-Licensed Massage Therapist
- 771 Traci Gilmour, Licensed Massage Therapist
- 772 Ron Gibbs, Licenses Massage Therapist
- 773 Jill Motz, Licensed Massage Therapist
- 774 Julie Endle, Public Board Member

775

776 Division Staff present:

777

- 778 Dawn Dulebohn, Occupational Licensing Examiner
- 779 Carl Jacobs, Investigator III
- 780 Sonia Lipker, Senior Investigator III
- 781 Sher Zinn, Regulations Specialist
- 782 Greg Francois, Chief Investigator

783

923 Investigator Jacobs continues that Non-Disciplinary Letters of Advisement are not reviewed by the
924 entire board and are only decided upon by the RBM. The issuance of that letter would effectively
925 close the case. Investigative Jacobs and OLE Dulebohn stress that the Disciplinary Matrix is
926 important to make sure that the board is in agreement on disciplinary action so that RBM's can
927 make decisions such as Non-Disciplinary Letters of Advisement without the entire board having to
928 review every case as the board is currently interested in reducing their costs. OLE Dulebohn chimes
929 in that she agrees with the stance Board member Jill Motz is taking by making disciplinary actions on
930 the matrix more specific as to reduce the margin of error when it comes to individual RBM
931 decisions. Having a large range for fines or suspensions increases the likelihood of applications
932 being delayed for changes once the entire board reviews them.

933
934 Chair Edwards-Smith decides that, in order to respect the time of the Investigator and Regulations
935 Specialist, the board will continue with the agenda item regarding establishment regulation.

936
937 **Agenda Item 21** **Draft Massage Establishment Regulations**

938
939 The board begins this meeting's discussion on Massage Establishment Regulations (MER).

940
941 Chair Edwards-Smith begins the discussion with a recap from the last meeting. HB 110 was passed
942 in 2018 allowing the board to regulate massage establishments. This omission of licensure is a
943 deviation from what the board lobbied for and the intent of both the board and the legislators. The
944 board was made aware of this error in the December 6-7, 2019 meeting by Sara Chambers and
945 Harriet Milks.

946
947 The board is now attempting to revamp now that they understand they have regulatory power but
948 not licensing power. The board created a "wish list" for regulations that included operations,
949 inspections, registry, massage workers in establishment, whether regulation exclude licensed massage
950 therapists, fee setting abilities for investigations, and if there could be a registration fee asked OLE
951 Dulebohn to send it to Sara Chambers and Harriet Milks to create guidance for the board as they
952 move forward with their responsibilities.

953
954 Several board members expressed lack of faith in the administration from Division. Most board
955 members continue to oppose including licensed massage therapists in the regulations for massage
956 establishments as it was the intent when they lobbied legislature for massage establishment licensing.
957 Mr. Gibbs references a point made by OLE Dulebohn that purveyors of human trafficking are
958 getting a massage license to circumvent these types of regulations in the lower 48 but for now the
959 board should err on the side of protecting the LMT's from undue regulation. The entire board (with
960 the exception of Ms. Endle) expressed frustration with state administration over the lack of guidance
961 concerning the disciplinary matrix and the massage establishment regulations enacted with the
962 passage of HB 110

963
964 *Volker Hruby joined the meeting in person at 10:17 a.m.*

965
966 OLE Dulebohn lets the board know that they have been advised not to exempt massage therapists
967 from MER but it is their choice. When asked by the board why Division is discouraging LMT's be
968 exempt, OLE Dulebohn states that MER will address standards that are not included in LMT's
969 statutes and regulations like locking doors, dress code, and sanitation standards.

970 By excluding LMT's from MER, the board will not be holding LMT's to the same standard and that
971 may be seen as discriminatory. The board feels that everything that would be required in MER are
972 covered for LMT's by the Standards of Practice. The board feels that LMT's should be exempt
973 because they already know about sanitation, dress code, etc. and the board has authority over them
974 through their license.

975
976
977 After consulting Regulations Specialist Zinn, who advised the board that there will be no way to
978 punish establishment owners for wrong doing and that the only ones who could possibly be
979 disciplined for wrong doing in an establishment are the licensed massage therapists employed there,
980 the board stated that they might be better off only duplicating the standards of practice found for
981 LMT's in establishment regulations. OLE Dulebohn interjects with a conversation that she had
982 with AAG Milks who advised that the board could charge a registration fee and that the board may
983 find a good solution is to add a line to the LMT application asking for disclosure of the LMT's
984 intended work place. This would allow for revenue for establishment regulation and investigation
985 and take care of registering establishments.

986
987 The board expresses that the reason for them to lobby for establishment licensure was to provide a
988 tool for investigations and law enforcement in the fight against human trafficking. Now that they
989 do not have this tool, all the board can do is regulate massage therapists and outline how they must
990 operate (which was not the intention of the bill). Chair Edwards-Smith would like the experts that
991 the board relies upon for guidance to tell the board how they can meet this goal with the tool they
992 have now in regulation.

993
994 Mr. Gibbs directs the board that they are bound write these regulations and believes that to meet
995 their letter of responsibility the board should impose no fee, create criteria for massage
996 establishments, and ensure that those regulations are mirrored in the LMT's Standards of Practice to
997 ensure continuity. Chair Edwards-Smith agrees with Mr. Gibbs and thinks that to be able to move
998 forward, the board needs to define massage establishment and define compensation.

999
1000 The board asks Regulation Specialist Zinn what their minimum obligation is for massage
1001 establishment regulations and she replied that they need to define what a massage establishment is
1002 and facility standards. The board decided this would apply to every massage therapist in Alaska but
1003 it would not be a burden as there would be no fee or additional license. Most board members feel
1004 that these items pertain to standards that every legitimate therapist should already be practicing
1005 whether you are operating out of your home or a large corporation.

1006
1007 *Jill Motz out at 10:23 a.m. Back at 10:26 a.m.*

1008 *Carl Jacobs out at 10:24 a.m.*

1009
1010 The board began to work on MER as a new project as everything that they had written before
1011 pertained to licensing of establishments.

1012 1013 Massage Establishment Regulations

1014
1015 Compensation is defined as anything of value in exchange for services.

1016
1017

- 1018 Establishment is defined as:
- 1019 a. a place of business of two or more individuals of a partnership, firm, or association,
 - 1020 corporation, or business entity.
 - 1021 b. Any other combination of individuals that uses the word “massage in any solicitation or
 - 1022 advertisement”.
 - 1023 c. Engages in, conducts, or carries on or permits massage therapy to be conducted or
 - 1024 carried on for money or other compensation.
 - 1025 d. Anyone who houses a massage therapist whether spaces are loaned, leased, or rented.
 - 1026 e. A fixed or permanent location or mobile facility that is open and accessible to the public
 - 1027 for compensated massage services.

1028

1029 The board has continued discussion about the definition of massage establishment. The subject on

1030 whether the board could retain an attorney that was not employed by the State to advise was asked

1031 and answered with a negative by Ms. Zinn.

1032

1033 **TASK: OLE Dulebohn will send the board’s establishment “wish list” and the reply**

1034 **by Ms. Chambers to Regulations Specialist Zinn.**

1035

1036 Chair Edwards-Smith states that it is becoming increasingly difficult for the board to draft

1037 regulations without having their “wish list” items defined. Since the board feels that it has not

1038 received all the answers to its questions, it does not feel like it has the tools to proceed. The Chair

1039 wants to know if a definitive answer to whether or not the board has the authority to require

1040 establishment inspections, define operation requirements, require fees, register establishments, and

1041 have exemptions for establishments.

1042

1043 *Greg Francois joins the meeting at 10:41 a.m.*

1044

1045 Chair Edwards-Smith has reviewed the outline that Director Sara Chambers has crafted for the

1046 board but feels that it would dissolve the mission statement that the board has developed with all of

1047 their goals and objectives of lobbying for this bill in the first place. The Chair would like the “wish

1048 list” sent back to LAW and AAG Milks for more applicable definitions.

1049

1050 **TASK: Send board “wish list” from December 6-7, 2018 meeting back to LAW and**

1051 **AAG Milks for further definition.**

1052

1053 The draft establishment regulation outline created by Director Chambers was as follows:

1054

1055 **REGULATION OF MASSAGE THERAPY ESTABLISHMENTS**

1056

- 1057 **12 AAC 79.XXX. REGISTRATION OF MASSAGE THERAPY ESTABLISHMENTS.** (a) A person
- 1058 who practices massage therapy as defined in AS 08.61.100 who is not exempt under AS 08.61.080 must register
- 1059 with the board. Registration required under this section must be received prior to transacting massage business.
- 1060 (b) The owner or operator of a massage therapy establishment shall register on a form provided by the
- 1061 department. A completed application must include:
- 1062 1. Payment of registration fee
 - 1063 2. Name of the owner(s)
 - 1064 3. Name of the operator(s), if not the owner

- 1065 4. Business name of the massage therapy establishment
- 1066 5. Business license number of the massage therapy establishment
- 1067 6. Corporate entity number if the owner is not a natural person
- 1068 7. Mailing and street address of the massage therapy establishment
- 1069 8. Name and license number of each licensed massage therapist who is employed in the establishment
- 1070 9. Listing of all other massage therapy establishments the applicant operates, including the businesses
- 1071 name, mailing address, and street address of each establishment
- 1072 10. An affidavit stating whether the operator has ever been found in violation of a provision of AS
- 1073 08.61.060 in any jurisdiction
- 1074 11. A complete self-inspection of the premises on a form provided by department
- 1075

1076 **12 AAC 79.xxx CODE OF ETHICS AND STANDARDS OF PRACTICE.** The *Alaska Board of Massage*
1077 *Therapists Code of Ethics and Standards of Practice*, dated June 2015, is adopted by reference as the code of ethics
1078 for massage therapists in the state. In order to maintain a high standard of integrity in the profession and to
1079 safeguard the health and welfare of the public, the operator of a massage therapy establishment shall ensure
1080 that all massage therapists delivering services in the establishment adhere to the code of ethics.

1081
1082 **Editor's note:** A copy of the *Alaska Board of Massage Therapists Code of Ethics and Standards of Practice*, adopted
1083 by reference in 12 AAC 79.900, may be obtained from the Department of Commerce, Community, and
1084 Economic Development, Division of Corporations, Business and Professional Licensing, Board of Massage
1085 Therapists, State Office Building, 9th Floor, 333 Willoughby Avenue, Juneau, Alaska 99801; phone (907) 465-
1086 3811; website at
1087 <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/BoardofMassageTherapists.aspx>.

1088
1089 **12 AAC 79.XXX INSPECTIONS.** a) The department may conduct an inspection of each massage therapy
1090 establishment to ensure that the shop meets the department's operational standards established in 12 AAC
1091 79.XXX. If the department determines that the establishment is not in compliance with a regulation of the
1092 department, the department shall report the violation to the board and take appropriate action under its own
1093 regulations.

- 1094 (b) The division may make periodic inspections of all massage establishments, either licensed or unlicensed.
- 1095 1. An agent of the division may enter and inspect during business hours, without prior notice, and
 - 1096 massage establishment. Such inspections may include, but need not be limited to, confirmation that
 - 1097 the site is being utilized for massage therapy and determination of whether the establishment is in
 - 1098 compliance with the laws and rules governing the establishment's operation, facilities, personnel,
 - 1099 safety, and sanitary requirements.
 - 1100 2. The department may adopt a reasonable inspection fee under AS 08.01.065(a).

1101 (c) On a form provided by the department, the operator of the establishment shall inspect and attest
1102 compliance with the standards set in 12 AAC 79.XXX upon registration, annually, and as may be required in
1103 regulations.

1104
1105 **12 AAC 79.XXX MESSAGE THERAPY ESTABLISHMENT OPERATIONS.**

- 1106 (a) Standards of Practice and Code of Ethics for Massage Therapists is displayed in a location available
- 1107 to the public.
- 1108 (b) All employed massage therapists license in full view of the public
- 1109 (c) There is a written and/or digital system of maintaining client records for at least five years
- 1110 (d) Maintain general liability insurance for location and premise and provide proof upon request.
- 1111 (e) Maintain all equipment pertaining to the practice of massage therapy used to perform massage
- 1112 therapy services on the premises in a safe and sanitary condition.
- 1113 (f) Maintain compliance with all applicable state and local building and fire codes
- 1114 (g) Provide for the removal of garbage and refuse in a sanitary manner.
- 1115 (h) Provide for safe storage and/or removal of soiled linens as per universal and Standard Precaution
- 1116 practices.

- 1117 (i) Any room or cubicle that massage or massage therapy practices are performed in are not equipped
1118 with an externally locking door.
- 1119 (j) Rest room facilities shall include at least one sink with hot and cold running water and shall be
1120 equipped with a soap dispenser with soap or other hand cleaning materials, clean towels or other
1121 hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle.
- 1122 (k) Each massage facility and temporary massage facility shall have a toilet and a hand-washing sink with
1123 hot and cold water accessible to patrons provided with soap and single-use towels.
- 1124 (l) Establishment owners shall provide for safe and unobstructed human passage in the public areas of
1125 the premises
- 1126 (m) The operator of a massage therapy establishment will only employ or permit to practice on the
1127 premises only licensed or officially enrolled student massage therapists to perform massage therapy
1128 as defined in statute and regulations
- 1129 (n) Student enrollment documentation must be current, on premises, and presented for inspection upon
1130 request.
- 1131 (o) No massage establishment shall operate or be open for business between the hours of 12:00 a.m. and
1132 5:00 a.m.
- 1133 (p) No massage establishment shall operate in a building where a primary business is alcohol beverage
1134 sales, photography studio, model studio, art studio, telephone answering service, motion picture
1135 theatre, or adult-oriented business
- 1136 (q) Establishment shall ensure that no inappropriate employee dress is permitted. Inappropriate dress
1137 includes clothing which exposes the breasts, buttock, genitalia or attire that shows the practitioners
1138 undergarments. No swim attire is permitted unless treatment provided is a water modality.
- 1139 (r) Every massage establishment shall be equipped with a workable land line telephone for emergency
1140 calls. Rural exemptions may be made on population.
- 1141 (s) No person shall perform massage or massage therapy cubicle, room, or area equipped with an
1142 externally locking door.
- 1143 (t) No massage establishment shall be used as a shelter or living quarters for any person.
1144 1. No owner or manager shall allow a licensed massage establishment to be used for housing,
1145 sheltering, or harboring any person(s), or as living or sleeping quarters for a person(s).
1146 2. If a massage establishment is located within, but is ancillary to, a business such as a hotel or
1147 motel, this prohibition shall apply only to the areas designed, designated, or used as a
1148 massage establishment.
1149 3. A sole proprietor who is also a licensed massage therapist is exempt from this subsection if
1150 the establishment is also the person's primary residence and the person is named on the deed
1151 or lease.
- 1152 (u) A massage establishment may dispatch a licensed massage therapist to perform outcall massage, but
1153 only if the therapy is to take place at the client's transient lodging, temporary or permanent residence,
1154 or at the client's place of business.
- 1155 (v) No owner, operator, massage therapist, or employee shall administer services to any person under
1156 the age of eighteen (18) years without a parent or legal guardian present or written consent of parent
1157 or legal guardian.
- 1158 (w) No owner, operator, massage therapist, or employee shall promote, solicit, initiate, engage in, permit,
1159 or allow any act that violates AS 08.61 or regulations of the Alaska Board of Massage Therapists, or
1160 the Code of Ethics or Standards of Practice set forth by the board. No owner, manager, massage
1161 therapist, or employee shall initiate or engage in unprofessional conduct in any massage
1162 establishment, including but not limited to the following:
1163 1. Engaging in sexually suggestive advertising related to massage services
1164 2. Engaging in any form of sexual activity on the premise of a massage establishment where
1165 massage is provided for compensation.
- 1166 (x) No owner, operator, massage therapist, or employee shall keep, or allow to be kept, within any
1167 massage establishment any item known as or commonly used as a marital or sexual aid, including, but
1168 not limited to, any contraceptive item or device, vaginal or anal lubricant, or any sex toy.

- 1169 (y) No owner, operator, or employee shall allow television, video or recording equipment in any room
1170 where massage services are being provided, but a security surveillance monitor that can only receive
1171 images of the inside of the common areas of the establishment may be located in these rooms at any
1172 time. With written client consent, a massage therapist may use video and photography equipment for
1173 therapeutic purposes.
- 1174 (z) Any mirrors and windows in the massage establishment will be positioned or covered in a manner to
1175 maintain the privacy of the person receiving the massage at all times during the massage and while
1176 the client is dressing and undressing.
- 1177 (aa) All licensed massage therapists must have legal identification available upon inspection.
- 1178 (bb) No controlled substances as defined in AS XXX shall be allowed in the massage establishment
- 1179 (cc) The distribution or consumption of alcohol is not permitted in the massage establishment.
- 1180 1. The appropriate event permits must be obtained from the Alcohol and Marijuana Control
1181 Office.
- 1182 2. The Board of Massage Therapists, through the department, must be notified in writing prior
1183 to any special event that will include alcohol in the massage establishment.
- 1184

1185 12 AAC 79.XXX The board may issue a cease and deist order and impose a civil fine not to exceed \$5,000
1186 for each individual violation of this section by a massage therapy establishment. (AS 08.01.075)

1187

1188 12 AAC 79.990(a)(3) "operator" means a person having managerial control of a massage therapy
1189 establishment.

1190

1191 *Carl Jacobs back at 10:44 a.m.*

1192

1193 The board continued their conversation on massage establishment definition, fees, and that their
1194 intent in this bill was always to exempt a sole proprietor based on employed therapists and not
1195 employees. The board reviews their current language work with Chief Francois. Chief Francois
1196 cautions the board to not make their regulations so specific that they "box themselves" in. Misters
1197 Francois and Jacobs give suggestions to how the board can re-vamp their definition for massage
1198 establishments for better coverage.

1199

1200 *Sara Chambers joins the meeting telephonically at 10:55 a.m.*

1201

1202 Chair Edwards-Smith reviews the work done by the board prior to Director Chambers joining the
1203 meeting and asks that Division and LAW provide clarity on their "wish list" taking into
1204 consideration the board's stated goals and objectives for these regulations. Director Chambers
1205 addresses the board and states that she was trying to assist the board by going "above and beyond"
1206 the questions by outlining the draft regulations for their review and not just answering their
1207 questions. Chair Edwards-Smith acknowledges the work that Ms. Chambers put in but feels like
1208 that that document still left a lot of open questions regarding the board's mission statement for
1209 establishments. Mr. Edwards-Smith asks Ms. Chambers if the board can continue with their plan to
1210 hold massage establishment owners responsible for standards or any type of censure if they are not
1211 massage therapists and Ms. Chambers replied that they could. Ms. Chambers directs the board to
1212 the outline she created for them to use as a starting point. The board immediately questioned Ms.
1213 Chambers on their ability to exempt licensed massage therapists. Ms. Chambers replied that they
1214 could, but would it be fair and would the board be setting themselves up for lawsuit if they chose to
1215 do so since they would be implementing different standards for LMT's and establishments. Ms.
1216 Chambers goes on to question how the board would ensure that massage therapists are also
1217 adhering to the higher standards set for establishments without creating a loophole? Ms. Chambers

1218 continues by reminding the board that their proposed standards for establishments from previous
1219 meetings are not located anywhere in the statutes, regulations, standards of practice, or code of
1220 ethics for LMT's.

1221
1222 *Traci Gilmour out at 11:05 a.m. Back at 11:08 a.m.*

1223
1224 When the topic of inspections by Investigation came up, the board was divided on whether that was
1225 something they wanted to implement since, at this time, fees are not being proposed for registration
1226 and the cost for inspections would come from the fees gathered by LMT applications and licensing
1227 renewals. Chief Francois recommends to the board that AAG Milks be present when the board
1228 wants to discuss inspections and what access investigations may have to an establishment to avoid
1229 any 4th Amendment issues. Ms. Chambers interjects that the inspection issue has been addressed in
1230 the draft regulations she created for the board.

1231
1232 Ms. Chambers reminds the board that licensure is a barrier to practice; a gateway. It would be a
1233 process that someone would have to successfully pass through in order to practice. Regulation
1234 would be what happens after licensure, or in the case of massage therapy, there is no gateway to go
1235 through. But even without having to go through the process of licensure, rules applied by the
1236 governing body would still be applicable to everyone participating. Just because there is no license
1237 to take away, establishment owners would still have to abide by regulation because it is state law.
1238 The board needs to come up with the rules in which a massage establishment to operate because
1239 they have been given that authority by the passage of HB 110. Being able to set standards and
1240 practices, inspect, and issue fines is still a very powerful thing. Anything the board drafts is just a
1241 jumping off point as it will still go to LAW and through a public comment process. Ms. Chambers
1242 ask that the board amend her basic outline by injecting their expertise and specifics and let it go
1243 through the process of being sent to the Regulations Specialists, LAW, and the public.

1244
1245 Ms. Motz brings up in the meeting in order to err on the side of caution, she would like to see the
1246 board only implement the current Standards of Practice and Code of Ethics that LMT's are already
1247 obligated to uphold, as the regulations for massage establishments. She feels that anything beyond
1248 that would place a burden on LMT's.

1249
1250 Ms. Chambers concurs with Mr. Gibbs earlier contribution to the conversation in which someone
1251 applying as an LMT could be register themselves and their establishment by Division adding an
1252 additional item on their initial application. The second item for the board to consider is whether the
1253 board wants to exempt LMT's from having to adhere to the same standards as non-massage
1254 therapists when it comes to their establishment because there will be a lot more rules in
1255 establishment regulation that what are currently in the Standards of Practice that the board is
1256 requiring LMT's to follow.

1257
1258 Chair Edwards-Smith reminds the board that this conversation can only continue for 5 more
1259 minutes in the interest of timeliness. Mr. Gibbs suggests that the board adopt a skeleton regulation
1260 outline to allow it to move forward. He feels that if the board picks items that are earmarks for
1261 human trafficking activity, it should not negatively impact any legitimate therapist whether someone
1262 has a large business or a sole proprietor working out of their home.

1263
1264 Chair Edwards-Smith concludes this conversation by saying that he agrees with Director Chambers
1265 that everyone should be held to the same standards but the board agrees that they do not want an

1266 undue burden on massage therapists. He thinks the board should design their rules in such a way
1267 that they are basic expectations that the board would expect to see from any massage establishment.
1268 Ms. Gilmour interjects quickly that she would like to know if Division can add to LMT applications
1269 that they disclose if they will be working for a non-LMT owned establishment. Chair Edwards-
1270 Smith asks that they remember these closing comments and address them at a later time.

1271

1272 *Chair Edwards-Smith calls for a 5-minute break at 11:27 a.m.*

1273

1274 **Agenda Item 7(continued)** **Investigative Case Review and Probation**

1275

1276 *Back on the record at 11:35 a.m. Joining are all board members and Misters Francois, Jacobs, and Hruby*

1277

1278 **Unlicensed Practice (continued)**

1279

1280 Chief Greg Francois asked to present his position on unlicensed practice cases as a Misdemeanor B.
1281 to follow up on the e-mail he sent to the board on the subject on February 26, 2019, he states that
1282 there is a lack of resources at this time but what it would take to file a criminal case based on statutes
1283 and regulations is a “preponderance of the evidence” (51% and can prove the case). Going in to a
1284 criminal case, Investigations would have to meet the higher standard of “beyond a reasonable
1285 doubt” or clear and convincing evidence. Chief Francois goes on to state that the way
1286 Investigations can prove a case is “beyond a reasonable doubt” is to have documented proof
1287 (conduct surveillance to confirm suspicion that the complaint may be true) and that may lead to an
1288 undercover operation to confirm that massage services are being offered for compensation. After
1289 that proof is obtained, Investigations will go to a Prosecutor, who will then take it to court.. He
1290 goes on to state that this amount of investigation will take many man hours and those will be
1291 charged to the board. Chief Francois hopes that in the future, Investigations will work in
1292 conjunction with Anchorage Police Department which will allow his team to save man hours and
1293 the board to save on costs. OLE Dulebohn asks Chief Francois if, instead of all the surveillance
1294 man hours, things like posted schedule and prices, outgoing voicemails advertising massage services,
1295 website information, and a complaint might also count as evidence. Chief Francois responds that in
1296 order to bypass the costly process he outlined, there would have to be many independent complaints
1297 to corroborate the evidence.

1298

1299 Board member Jill Motz disclosed that she was responsible for this presentation as she had a conflict
1300 with Investigations over a case review where she states she was told that the board didn’t have
1301 authority over Unlicensed Practice (ULP) complaints. She just wanted the board to be aware that
1302 there is a process for dealing with the ULP complaints in the form of a Temporary Cease and Desist
1303 Order, which after investigation could go to the board to decide if it would become a Cease and
1304 Desist.

1305

1306 **Agenda Item 5(continued)** **Old Business**

1307

1308 **Disciplinary Matrix(continued)**

1309

1310 The board continued their amendment of the new Disciplinary Matrix. The board discussed
1311 Intentionally or Negligently Engaged (or allow another under your supervision to engage) in Client
1312 Care that Did Not Meet Minimum SOP (regardless of injury to client), Failure to comply with a
1313 Provision of this Chapter, Regulation, or Order of the Board, Continued to Practice After Becoming

Adjourn