



## South Dakota Board of Massage Therapy

P.O. Box 340, 1351 N. Harrison Avenue, Pierre, SD 57501-0340

Ph: 605-224-1721

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### **SOUTH DAKOTA STATE BOARD OF MASSAGE THERAPY**

#### **Regular Meeting**

**Conference Room #3, Kneip Building**

**700 Governors Drive, Pierre, SD**

**Monday, October 17, 2016 - 10:30 AM CDT**

#### **Proposed Agenda**

- 1) Call to Order
- 2) Open Forum: *15 minutes for the public to address the Board*
- 3) Approval of Agenda
- 4) Executive Session (Pursuant to SDCL 1-25-2 (3) for consideration of proposed contested cases or contractual matters)
- 5) Approval of Minutes: March 14, 2016
- 6) Financial Report: As of October 1, 2016
- 7) Office Update
  - a. Updated Statutes
  - b. Letter to Law Enforcement/States Attorneys
  - c. 2016 Renewal Update
  - d. New Licensee List
- 8) Old Business
  - a. Unlicensed Complaint Dismissal and Referral Policy
  - b. Long Term Finance Workgroup Recommendation
  - c. Proposed Revisions to Administrative Rules
- 9) New Business
  - a. Federation of State Massage Therapy Boards Annual Meeting Update
  - b. Continuing Education Hardship Request – Christine Schleske
  - c. Hearing in the Matter of Licensure of Hongyan Aldredge - #2016-001
  - d. Hearing in the Matter of Licensure of Ru Smith - #2016-002
  - e. Hearing in the Matter of Licensure of Hongchun Ma – #2016-003
  - f. Hearing in the Matter of Licensure Rhanda Heller - #2016-005
  - g. 2017 Proposed Meeting Schedule
  - h. Election of Officers
- 10) Announcements
- 11) Adjourn

Please contact the Board at 605-224-1721 or [SDBMT@midwestsolutionssd.com](mailto:SDBMT@midwestsolutionssd.com) by October 14, 2016 at 5:00 pm (CDT) if you wish to join this meeting via teleconference.



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### South Dakota Board of Massage Therapy Regular Meeting Monday, March 14, 2016

President Kappel called the meeting to order at 10:30 am central and determined a quorum.

Present in Person: Board Members Karen Kappel, Linda Zeller, and Christine Ellwein; Executive Secretary Jennifer Stalley; administrative staff Lisa Harsma; legal counsel Jim Carlon; and Assistant Attorney Generals Steve Blair and Grant Flynn. Also present in person: Andrew Wilka. Present via telephone: Board Member Bridget Myers; Rick Albrecht, Gene Heller, and Rhanda Heller. Board member Meg Johnson was absent.

#### **Public Forum**

Kappel asked for public comments. Rick Albrecht and Rhanda Heller addressed the Board.

#### **Approval of the Agenda**

Motion to approve the proposed agenda with item 9 moved to precede item 7 by Zeller. Seconded by Ellwein. Motion carried.

#### **Approval of Minutes**

Motion to approve the Board Minutes of December 14, 2015 by Zeller. Seconded by Ellwein. Motion carried.

#### **Financial Report**

Motion to approve the Financial Report as of February 27, 2016 by Ellwein. Seconded by Zeller. Motion carried.

#### **Office Update**

Stalley presented an office update. Stalley presented the Board with the updated lists of new licensees and temporary permit holders since December 14, 2015.

Stalley briefed the Board on the passage of House Bill 1027. The bill was signed by the Governor and will become law effective July 1<sup>st</sup>. Changes to application forms will be made in preparation for the effective date. Stalley also noted that information will be provided to city

attorneys and state's attorneys about the changes to the law to help educate local law enforcement about changes in the unlicensed practice provisions and requirements for display of licenses.

Myers asked that the Board revisit the policy to dismiss unlicensed practice complaints and refer the complaints to the local state's attorney in light of the passage of House Bill 1027.

Stalley provided the Board with the 2016 license renewal timeline. Licensees will be reminded of the annual renewal on July 1<sup>st</sup>. This year's renewal requires proof of 8 hours of continuing education and proof of \$250,000 in malpractice insurance by the licensee to renew. The online renewal database will open on August 1<sup>st</sup> and renewals must be completed by September 30<sup>th</sup>. The office is working to adapt the database to allow continuing education to be input prior to the opening of renewal period so licensees who wish to submit documentation of continuing education or malpractice insurance can do so before renewal opens.

Stalley noted that electronic communications on reminders and renewal information will be used in all instances possible to encourage electronic communications and reduce Board costs.

### **Executive Session**

Motion to go into executive session for consideration of contested cases and contractual matters at 10:56 am by Zeller. Seconded by Ellwein. Motion carried.

Motion to come out of executive session at 11:50 am by Ellwein. Seconded by Zeller. Motion carried.

### **Adoption of Findings in the Matter of the Licensure of Jun Huguenin #2015-008**

The Board continued the matter of the Licensure of Jun Huguenin for purposes of considering the Findings of Fact and Conclusions of Law proposed by the Board. Steve Blair, Assistant Attorney General, appeared and noted no objections to proposed Findings of Fact and Conclusions of Law. Andrew Wilka, attorney for Jun Huguenin, appeared and noted no objections to the Findings of Fact and Conclusions of Law, but renewed Huguenin's request to have a temporary permit issued to her.

Motion to adopt the Findings of Fact and Conclusions of Law as proposed and sign the order denying the application of Jun Huguenin by Zeller. Seconded by Ellwein. Motion carried.

### **Adoption of Findings in the Matter of the Massage License of Yufang Xie #2015-005**

The Board continued the matter of the complaint against Yufang Xie for purposes of considering the Findings of Fact and Conclusions of Law proposed by the Board. Steve Blair, Assistant Attorney General, appeared and noted no objections to proposed Findings of Fact and Conclusions of Law. Andrew Wilka, attorney for Yufang Xie, appeared and noted no objections to the Findings of Fact and Conclusions of Law.

Motion to adopt the Findings of Fact and Conclusions of Law and sign the order revoking the massage therapy license of Yufang Xie by Ellwein. Seconded by Myers. Motion carried. Zeller abstained.

Wilka informed the Board of Xie's intention to appeal the revocation order to circuit court.

### **Complaints**

Motion to dismiss Complaint 2016-001 with a letter of concern by Ellwein. Seconded by Zeller. Motion carried.

Motion to dismiss Complaint 2016-002 and refer the matter to the Pennington County State's Attorney by Ellwein. Seconded by Zeller. Motion carried.

### **Executive Session**

Motion to go into executive session for consideration of contractual matters at 12:06 pm by Ellwein. Seconded by Zeller. Motion carried.

Motion to come out of executive session at 12:55 pm by Zeller. Seconded by Ellwein. Motion carried.

### **Executive Services Request for Proposal**

Motion by Ellwein to accept the proposal of Midwest Solutions for executive services for June 1, 2016 – May 31, 2017 as presented. Seconded by Ellwein. Motion carried.

### **Legal Services Contract Renewal**

Motion to approve a contract with Carlon Law Office for legal services for the Board at a rate of \$125 per hour for June 1, 2016 through May 31, 2017 by Zeller. Seconded by Ellwein. Motion carried.

### **Long Term Finance Workgroup Report**

Zeller presented an update on the Long Term Finance Workgroup. The Workgroup recommended reducing the scheduled number of Board meetings to two per year, unless imminent business requires additional meetings. The Workgroup further recommended that the Board rely on electronic communications with licensees when practical and that licensees rely on the Board's website for information about the Board and licenses.

The Workgroup recommended noted that fee increases will need to be considered and should be considered as part of any proposed changes to the administrative rules reviewed by the Board.

## **Surplus Property**

Motion to surplus the Olympus camera owned by the Board by Ellwein. Seconded by Zeller. Motion carried.

## **Administrative Rules Proposed Updates Timeline**

Stalley presented the Board with the tentative schedule of the Legislature's Interim Rules Review Committee. The Committee must approve any proposed changes to administrative rules and the Committee's schedule dictates the timing of public hearings on proposed changes.

Stalley recommended the Board review its administrative rules for possible changes over the course of the summer, using a process similar to the process used to solicit input on the practice act revisions. Recommended changes would be presented in October for the Board to consider moving forward to the formal rules revision process.

Kappel appointed Board member Meg Johnson to work with Stalley to bring the Board proposed revisions in October.

Motion to cancel the Board's June 13, 2016 meeting and set the Board's next meeting for October 17, 2016 by Zeller. Seconded by Ellwein. Motion carried. Myers voted no.

## **Announcements**

Kappel reminded the Board that the next scheduled meeting in October 17, 2016 in Pierre.

## **Adjourn**

Motion to adjourn by Ellwein. Second by Zeller. Motion carried.

Respectfully Submitted,

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Christine Ellwein, Secretary

# Remaining Authority by Object/Subobject

Expenditures current through 10/01/2016 01:20:19 PM

HEALTH -- Summary

FY 2017 Version -- AS -- Budgeted and Informational

FY Remaining: 74.8%

09211 Board of Massage Therapy - Info						PCT
Subobject	Operating	Expenditures	Encumbrances	Commitments	Remaining	AVL
<b>EMPLOYEE SALARIES</b>						
5101030 Board & Comm Mbrs Fees	1,138	0	0	0	1,138	100.0
<b>Subtotal</b>	<b>1,138</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,138</b>	<b>100.0</b>
<b>EMPLOYEE BENEFITS</b>						
5102010 Oasi-employer's Share	239	0	0	0	239	100.0
<b>Subtotal</b>	<b>239</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>239</b>	<b>100.0</b>
<b>51 Personal Services</b>						
<b>Subtotal</b>	<b>1,377</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,377</b>	<b>100.0</b>
<b>TRAVEL</b>						
5203030 Auto-priv (in-st.) H/rte	3,000	0	0	0	3,000	100.0
5203100 Lodging/in-state	650	0	0	0	650	100.0
5203120 Incidentals-travel-in St.	100	0	0	0	100	100.0
5203130 Non-employ. Travel-in St.	300	0	0	0	300	100.0
5203140 Meals/taxable/in-state	100	0	0	0	100	100.0
5203150 Non-taxable Meals/in-st	200	0	0	0	200	100.0
5203260 Air-comm-out-of-state	1,000	0	0	0	1,000	100.0
5203300 Lodging/out-state	1,000	0	0	0	1,000	100.0
<b>Subtotal</b>	<b>6,350</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6,350</b>	<b>100.0</b>
<b>CONTRACTUAL SERVICES</b>						
5204020 Dues & Membership Fees	900	0	0	0	900	100.0
5204050 Computer Consultant	5,758	0	0	0	5,758	100.0
5204080 Legal Consultant	8,500	375	0	0	8,125	95.6
5204090 Management Consultant	49,862	11,270	41,730	0	-3,138	0.0
5204130 Other Consulting	5,300	0	0	0	5,300	100.0
5204160 Workshop Registration Fee	500	0	0	0	500	100.0
5204200 Central Services	620	164	0	0	456	73.5
5204204 Central Services	250	31	0	0	219	87.6
5204207 Central Services	650	0	0	0	650	100.0
5204360 Advertising-newspaper	500	0	0	0	500	100.0
5204460 Equipment Rental	50	0	0	0	50	100.0
5204510 Rents-other	500	0	0	0	500	100.0
5204530 Telecommunications Srvc	1,200	0	0	0	1,200	100.0
5204550 Garbage & Sewer	95	4	0	0	91	95.8
5204590 Ins Premiums & Surety Bds	750	0	0	0	750	100.0

# Remaining Authority by Object/Subobject

Expenditures current through 10/01/2016 01:20:19 PM

HEALTH -- Summary

FY 2017 Version -- AS -- Budgeted and Informational

FY Remaining: 74.8%

09211	Board of Massage Therapy - Info					PCT
Subobject	Operating	Expenditures	Encumbrances	Commitments	Remaining	AVL
5204960	Other Contractual Service	750	269	0	0	64.1
<b>Subtotal</b>		<b>76,185</b>	<b>12,113</b>	<b>41,730</b>	<b>0</b>	<b>29.3</b>
<b>SUPPLIES &amp; MATERIALS</b>						
5205020	Office Supplies	150	7	0	0	95.3
5205310	Printing-state	500	88	0	0	82.4
5205320	Printing-commercial	500	366	0	0	26.8
5205350	Postage	2,000	622	0	0	68.9
<b>Subtotal</b>		<b>3,150</b>	<b>1,083</b>	<b>0</b>	<b>0</b>	<b>65.6</b>
<b>52 Operating</b>						
<b>Subtotal</b>		<b>85,685</b>	<b>13,196</b>	<b>41,730</b>	<b>0</b>	<b>35.9</b>
<b>Total</b>		<b>87,062</b>	<b>13,196</b>	<b>41,730</b>	<b>0</b>	<b>36.9</b>

BA1409R1

STATE OF SOUTH DAKOTA  
CASH CENTER BALANCES  
AS OF: 09/30/2016

PAGE 113

AGENCY: 09 HEALTH  
BUDGET UNIT: 09211 BOARD OF MESSAGE THERAPY

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092100061840	1140000	89,198.77	DR	BOARD OF MESSAGE THERAPY
COMPANY/SOURCE TOTAL 6503 618			89,198.77	DR *	
COMP/BUDG UNIT TOTAL 6503 09211			89,198.77	DR **	
BUDGET UNIT TOTAL 09211			89,198.77	DR ***	

## CHAPTER 36-35

### MASSAGE THERAPISTS

- 36-35-1 Definitions.
- 36-35-2 Appointment of board members--Terms--Vacancy.
- 36-35-3 Resignation of board members--Effective date.
- 36-35-4 Selection of officers.
- 36-35-5 Meetings of board.
- 36-35-6 Quorum--Majority vote.
- 36-35-6.1 Powers of board.
- 36-35-7 Compensation of board members.
- 36-35-8 Display of license- Proof of licensure.
- 36-35-9 Use of fees.
- 36-35-10 Practice of massage without license or employment of unlicensed person as misdemeanor.
- 36-35-11 Repealed.
- 36-35-12 Application for license--Qualifications--Appeal of denial.
  - 36-35-12.1 Temporary permit.
  - 36-35-12.2 Repealed.
  - 36-35-12.3 Expiration of license.
- 36-35-13 Unprofessional conduct.
- 36-35-14 Repealed.
- 36-35-15 Applicants licensed in other states.
- 36-35-16 Renewal of license.
- 36-35-17 Application and license fees.
- 36-35-18 Duplicate license.
  - 36-35-18.1 Inactive status.
- 36-35-19 Continuing education requirements.
- 36-35-20 Investigation of complaints--Inspections.
- 36-35-21 Professional liability insurance coverage.
- 36-35-22 Grounds for cancellation, suspension, or revocation of license--Hearing--Appeal.
- 36-35-23 Reapplication for cancelled, suspended, or revoked license.
- 36-35-24 Promulgation of rules.
- 36-35-25 Application of chapter.

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- 36-35-1. Definitions. Terms in this chapter mean:
- (1) "Board," the Board of Massage Therapy;
  - (2) "Licensee," a person who meets the qualifications for licensure pursuant to this chapter and holds a valid license to practice massage therapy;

(3) "Massage," the systematic mobilization of the soft tissues of the body through the application of hands, feet, or devices for the purposes of therapy, relaxation, or education through means which include:

(a) Pressure, friction, stroking, rocking, kneading, percussion, compression, or stretching;

(b) External application of water, heat, cold, lubricants, or other topical agents; or

(c) The use of devices that mimic or enhance the actions of human hands or feet; and

(4) "Practice of massage therapy," the performance of massage for a fee or other compensation or holding oneself out to the public as performing massage.

**Source:** SL 2005, ch 206, § 1; SL 2016, ch 197, § 1.

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36-35-2. Appointment of board members--Terms--Vacancy. The board consists of five members appointed by the Governor. The term of a board member is three years. One member of the board shall be a person not licensed by the board. Four members of the board shall be persons licensed by the board. The Governor shall fill any vacancy by appointment to complete the unexpired portion of the vacancy. No person may serve more than three consecutive full terms on the board. The appointment to an unexpired term is not considered a full term.

The terms of members begin on October thirty-first of the calendar year in which the Governor appoints the member, unless otherwise designated by the Governor. The appointee's term expires on October thirtieth in the third year of appointment.

**Source:** SL 2005, ch 206, § 2; SL 2012, ch 16, § 14; SL 2013, ch 176, § 8; SL 2016, ch 197, § 2.

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36-35-3. Resignation of board members--Effective date. Any member of the board may resign by giving written notice to the board and to the Governor. Resignations are effective when delivered to the Governor and the board.

**Source:** SL 2005, ch 206, § 3.

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36-35-4. Selection of officers. The board shall annually elect from its members a president, vice-president, and secretary.

**Source:** SL 2005, ch 206, § 4; SL 2016, ch 197, § 3.

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36-35-5. Meetings of board. The board shall hold at least two meetings per year at a place and time set by the board. The board may hold additional meetings at a time and place set by the president or a majority of the board.

**Source:** SL 2005, ch 206, § 5; SL 2016, ch 197, § 4.

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36-35-6. Quorum--Majority vote. Three board members present at any meeting constitute a quorum. No board action may occur unless approved by a majority vote of the entire board.

**Source:** SL 2005, ch 206, § 6.

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36-35-6.1. Powers of board. The board may:

- (1) Administer, coordinate, and enforce the provisions of this chapter;
- (2) Evaluate the qualifications of applicants for licensure and permits and issue and renew licenses and permits;
- (3) Maintain the names of persons that meet the qualifications for licensure;
- (4) Conduct all disciplinary proceedings under this chapter;
- (5) Maintain a record of each complaint received by the board;
- (6) Establish standards for the safe and qualified practice of massage therapy;
- (7) Report licensing actions and status to relevant state and federal governing bodies as may be required, or as the board deems appropriate; and
- (8) Employ or contract with personnel and enter into contracts pursuant to law to carry out the board's responsibilities.

**Source:** SL 2016, ch 197, § 19.

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36-35-7. Compensation of board members. Board members shall receive a per diem set pursuant to § 4-7-10.4 and expenses at the same rate as other state employees while actually engaged in official duties.

**Source:** SL 2005, ch 206, § 7.

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36-35-8. Display of license--Proof of licensure. Any person engaged in the practice of massage in this state shall conspicuously display a valid license from the board in the licensee's regular place of business. If the licensee is providing massage therapy outside of the licensee's regular place of business, the licensee shall, upon

request, produce photo identification and proof of licensure. Failure to comply with this section is a petty offense.

**Source:** SL 2005, ch 206, § 8; SL 2013, ch 184, § 1; SL 2016, ch 197, § 5.

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36-35-9. Use of fees. Any fees collected under this chapter shall be used for the operation of the board and the implementation of this chapter.

**Source:** SL 2005, ch 206, § 9; SL 2013, ch 184, § 2.

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36-35-10. Practice of massage without license or employment of unlicensed person as misdemeanor. Any person who engages in the practice of massage or holds himself or herself out to the public as engaged in the practice of massage without a license issued pursuant to this chapter, or owns, operates or manages a business which knowingly employs or contracts with any unlicensed person to offer or provide massage therapy, is guilty of a Class 1 misdemeanor. The board may bring a civil action to enjoin any violation of this chapter.

**Source:** SL 2005, ch 206, § 10; SL 2013, ch 184, § 3; SL 2016, ch 197, § 6.

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36-35-11. Repealed by SL 2013, ch 184, § 4.

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36-35-12. Application for license--Qualifications--Appeal of denial. The board shall issue a license to engage in the practice of massage to any person who submits an application form and the nonrefundable application fee as approved in § 36-35-17 and who demonstrates the following qualifications:

- (1) Eighteen years of age or older;
- (2) Completion of no less than five hundred hours of training or study in the practice of massage with a facility or instructor recognized by the board;
- (3) Absence of unprofessional conduct;
- (4) Professional liability insurance coverage pursuant to § 36-35-21; and
- (5) Passing score on a nationally recognized competency examination approved by the board in rules promulgated pursuant to chapter 1-26.

The board may refuse to grant a license to any person based on failure to demonstrate the requirements of this section. The board may grant a license, subdivision 36-35-13(1) notwithstanding, if the applicant has been convicted of, or pled guilty to a felony, any crime involving or relating to the practice of massage, or any crime involving dishonesty or moral turpitude and the board determines that the plea or conviction is of a nature or is sufficiently remote in time that the applicant

does not constitute a risk to public safety. An applicant may appeal the denial of a license in compliance with chapter 1-26.

**Source:** SL 2005, ch 206, § 12; SL 2007, ch 223, § 1; SL 2013, ch 184, § 5; SL 2015, ch 201, § 1.

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36-35-12.1. Temporary permit. Upon application and payment of an application fee not to exceed seventy-five dollars, the board may issue a temporary permit to practice massage therapy to an applicant who has met the requirements of subdivision 36-35-12(1) to (4), inclusive, pending completion and results of the examination required pursuant to subdivision 36-35-12(5), if the applicant intends to practice massage therapy in the state during the time the permit is valid. A temporary permit may be issued no more than twice and is effective for a term of not more than ninety days. A temporary permit automatically expires on the occurrence of the following:

- (1) Issuance of a regular license;
- (2) Failure to pass the licensing examination; or
- (3) Expiration of the term for which the temporary license was issued.

**Source:** SL 2013, ch 184, § 6; SL 2015, ch 201, § 2; SL 2016, ch 197, § 7.

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36-35-12.2. Repealed by SL 2016, ch 197, § 8.

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36-35-12.3. Expiration of license. A license issued under this chapter is valid until September thirtieth following the date it is issued and automatically expires unless it is renewed.

**Source:** SL 2013, ch 184, § 8; SL 2016, ch 197, § 9.

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36-35-13. Unprofessional conduct. For the purposes of this chapter, any of the following acts constitute unprofessional conduct:

- (1) Conviction of or a plea of guilty to any felony, any crime involving or relating to the practice of massage, or any crime involving dishonesty or moral turpitude;
- (2) Providing the board false or misleading information on any application for a license or renewal of a license;
- (3) Willful misconduct or negligence in the practice of massage;
- (4) Exceeding the scope of practice of massage as defined in § 36-35-1;
- (5) Engaging in any lewd or immoral conduct;
- (6) Making fraudulent charges for services;

- (7) Engaging in conduct which endangers the health or welfare of clients or other persons;
- (8) Failure to comply with any provision of this chapter; or
- (9) Engaging in any act that aids, abets, facilitates, or promotes a violation of this chapter.

**Source:** SL 2005, ch 206, § 13; SL 2013, ch 184, § 9; SL 2015, ch 201, § 3; SL 2016, ch 197, § 10.

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36-35-14. Repealed by SL 2016, ch 197, § 11.

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36-35-15. Applicants licensed in other states. Notwithstanding the provisions of § 36-35-12, the board may issue a license to an applicant licensed to practice massage therapy in another state if the applicant demonstrates the following qualifications:

- (1) Eighteen years of age or older;
- (2) Absence of unprofessional conduct;
- (3) Professional liability insurance pursuant to § 36-35-21;
- (4) Verification from the authority that issued the applicant's license indicating the applicant is in good standing and currently licensed to practice; and
- (5) Experience and competency in massage indicated by education that substantially complies with subdivision 36-35-12(2) or verification of an active massage therapy practice in the state of licensure in the two years immediately preceding the date of application for licensure.

For the purpose of this section, the term, active massage therapy practice, means the applicant has had at least two hundred hours of patient contact in the preceding two-year period.

**Source:** SL 2005, ch 206, § 15; SL 2013, ch 184, § 10; SL 2016, ch 197, § 12.

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36-35-16. Renewal of license. Any licensee holding a valid license under this chapter may renew that license by making application for renewal, paying the required renewal fee, and providing proof of compliance with the continuing education requirements set by the board. If the board has not received a license renewal application by the expiration date, the board shall notify the licensee within five days that the renewal application has not been received and that the licensee may not practice until the license is renewed. Any person who submits a license renewal application and provides proof of compliance with the continuing education requirements set by the board within thirty days after the expiration date may be granted a license renewal.

**Source:** SL 2005, ch 206, § 16; SL 2011, ch 187, § 2; SL 2013, ch 184, § 11; SL 2016, ch 197, § 13.

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36-35-17. Application and license fees. Any applicant for a license under this chapter shall submit a nonrefundable application fee not to exceed one hundred dollars. Any person who has a license issued or renewed by the board shall submit a license fee in an amount not to exceed sixty-five dollars. Fees shall be set by the board by rule promulgated pursuant to chapter 1-26.

**Source:** SL 2005, ch 206, § 17; SL 2007, ch 223, § 3; SL 2008, ch 191, § 76.

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36-35-18. Duplicate license. The board may issue a duplicate license to a licensee upon request.

**Source:** SL 2005, ch 206, § 18; SL 2008, ch 191, § 77; SL 2013, ch 184, § 12.

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36-35-18.1. Inactive status. The board may place a massage therapy license on inactive status upon submission of an application and payment of the application fee.

**Source:** SL 2007, ch 223, § 5; SL 2016, ch 197, § 14.

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36-35-19. Continuing education requirements. Any person licensed under this chapter shall complete eight hours of continuing education relating to competence in the practice of massage on a biennial basis of a type and from a facility or instructor approved by the board. The required continuing education hours may be obtained by electronic means. The board may waive the continuing education requirement upon proof of illness or hardship.

**Source:** SL 2005, ch 206, § 19; SL 2007, ch 223, § 4; SL 2013, ch 184, § 13.

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36-35-20. Investigation of complaints--Inspections. The board may receive and investigate any complaint filed with the board alleging a violation of this chapter. The board may inspect the place of business of the licensee named in a complaint during normal business hours or upon written notice.

**Source:** SL 2005, ch 206, § 20; SL 2013, ch 184, § 14; SL 2016, ch 197, § 15.

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36-35-21. Professional liability insurance coverage. Any person holding a valid license under this chapter and engaged in the practice of massage therapy shall carry malpractice or professional liability insurance coverage with a company with a certificate of authority from the South Dakota Division of Insurance with limits of no less than two hundred fifty thousand dollars per occurrence. A licensee shall notify the board of any change of carrier occurring after a license or renewal is granted.

**Source:** SL 2005, ch 206, § 21; SL 2013, ch 184, § 15.

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36-35-22. Grounds for cancellation, suspension, or revocation of license--Hearing--Appeal. The board may cancel, suspend, or revoke a license following a contested case hearing in compliance with chapter 1-26 upon satisfactory proof of incompetence, unprofessional conduct, or a violation of any provision of this chapter. The board may waive the requirement of prior notice and an informal meeting set forth in § 1-26-29 if the licensee presents an immediate threat to the public or has engaged in willful misconduct. Any licensee may appeal the cancellation, suspension, or revocation of a license in compliance with chapter 1-26.

**Source:** SL 2005, ch 206, § 22; SL 2016, ch 197, § 16.

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36-35-23. Reapplication for cancelled, suspended, or revoked license. Any person whose license has been cancelled, suspended, or revoked by the board may not reapply for a license until one year after it was cancelled, suspended, or revoked unless a different time has been set by the board.

**Source:** SL 2005, ch 206, § 23.

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36-35-24. Promulgation of rules. The board may promulgate rules pursuant to chapter 1-26 to establish:

- (1) The form and information required for any license application;
- (2) A list of recognized facilities or instructors who may provide training or instruction required for licensure or continuing education requirements;
- (3) The amount of license fees;
- (4) The procedures for placing a license on inactive status and the procedures to regain active licensure; and
- (5) Approval of national competency examinations.

**Source:** SL 2005, ch 206, § 24; SL 2007, ch 223, § 6; SL 2013, ch 184, § 16; SL 2016, ch 197, § 17.

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36-35-25. Application of chapter. The provisions of this chapter do not apply to any person performing massage for compensation if the massage is done under one of the following circumstances:

(1) As part of a licensed practice as a physician, physician assistant, chiropractor, nurse, physical therapist, athletic trainer, or other health care profession licensed or certified under title 36;

(2) As part of a licensed practice pursuant to chapter 36-14 or 36-15, if the licensee is performing within the scope of the licensed practice and the licensee does not hold himself or herself out to be a massage therapist or to be engaged in the practice of massage therapy;

(3) In furtherance of duties as an employee of the United States;

(4) As part of a course of study with a facility or instructor recognized and approved by the board to provide training in massage or the provision of such instruction;

(5) As part of providing a course of instruction or continuing education by a licensed massage therapist from another state or provider preapproved by the board, in the practice of massage therapy on a temporary basis not in excess of ten days per calendar year; or

(6) Manipulation of the soft tissues of the human body is restricted to the hands, feet, or ears and the person does not hold himself or herself out to be a massage therapist or to be engaged in the practice of massage therapy.

**Source:** SL 2005, ch 206, § 25; SL 2016, ch 197, § 18.



## South Dakota Board of Massage Therapy

P.O. Box 340, 1351 N. Harrison Ave., Pierre, SD 57501-0340

Ph: 605-224-1721

Fax: 1-888-425-3032

E-mail: [SDBMT@midwestsolutionssd.com](mailto:SDBMT@midwestsolutionssd.com)

[doh.sd.gov/boards/Massage](http://doh.sd.gov/boards/Massage)

October 1, 2016

Name

Address

City, State Zip

Dear Name,

During the 2016 South Dakota Legislative Session, the state legislature made changes to the statutes dealing with massage therapy. The South Dakota Board of Massage Therapy (Board) supported these changes, in part to help law enforcement identify and address the unlicensed practice of massage therapy. These changes are consistent with the Board's mission to protect the public who use massage therapy services and the licensees who have met the requirements to perform these services.

The Board would like to draw your attention to two changes, in particular.

SDCL 36-35-10 prohibits the practice of massage therapy without a license. Changes to the statute make it a Class 1 misdemeanor not only for any person to practice massage therapy without a license, but also for any person who owns, operates or manages a business which knowingly employs or contract with an unlicensed person to provide massage therapy. This change allows a person who facilitates the unlicensed practice of massage therapy to be charged with the unlicensed practice or massage therapy.

SDCL 36-35-8 requires a properly licensed massage therapist to conspicuously display a valid South Dakota license. The statute now provides a penalty for failing to comply. It is a petty offense to not display or be able to produce on demand a valid license. This change will allow law enforcement to issue a citation to a person, on site, if the person cannot present a valid South Dakota license. This should assist law enforcement with any onsite compliance checks.

The Board remains committed to only licensing people who meet the statutory requirements for licensure. Your assistance in helping to identify and pursue those people who practice massage therapy without a license in violation of our state's laws is appreciated.

If you need any assistance from the Board, please feel free to contact the Board's office at 605-224-1721 or [SDBMT@midwestsolutionssd.com](mailto:SDBMT@midwestsolutionssd.com). The Board appreciates your role in addressing the unlicensed practice of massage therapy.

Sincerely,

Jennifer L. Stalley  
Executive Secretary

Licenses Issued 3/4/2016 through 10/1/2016					
License Number	First Name	Last Name	Original License Date	City	State
MT11477	Satara	Atwood	8/19/2016	Sioux Falls	SD
MT11481	Ryan	Baird	9/9/2016	Sioux Falls	SD
MT11467	Rachel	Baldwin	6/30/2016	Sarasota	FL
MT11482	Ashley	Bariteau	9/9/2016	Sioux Falls	SD
MT11483	Nicole	Berklich	9/9/2016	Rock Valley	IA
MT11487	Jacquelyne	Boula	9/23/2016	Springfield	SD
MT11466	Laura	Brien	6/30/2016	Elk Point	SD
MT11465	Chelsea	Butler	6/23/2016	Rock Valley	IA
MT11490	Cathy	Cavigielli	9/22/2016	Howard	SD
MT11475	Kjirsti	Davidson	8/19/2016	Sioux Falls	SD
MT11451	Bradley	DeWit	4/5/2016	Larchwood	IA
MT11488	Lexi	Eckmann	9/23/2016	Huron	SD
MT11469	Carly	Evans	8/1/2016	Antioch	TN
MT11480	Sonya	Fernau	9/9/2016	Fairfax	SD
MT11449	Tammy	Fisher	3/31/2016	Beresford	SD
MT11463	Sophie	Griffith	6/23/2016	Sioux Falls	SD
MT11461	Lydia	Jasso	6/6/2016	Harrisburg	SD
MT11485	Kylee	Martin	9/19/2016	Sioux Falls	SD
MT11476	Chantelle	McKee	8/19/2016	Rapid City	SD
mt10605	Anne	Nelson	8/1/2016	Lamberton	MN
MT11201	Shauna	Nelson	3/17/2016	Mitchell	SD
MT11489	Kayla	Nelson	9/23/2016	Pierre	SD
MT11468	Tracie	Palmer	8/1/2016	Sturgis	SD
MT11472	Diane	Percevich	8/17/2016	Deadwood	SD
MT11478	Loni	Reindl	8/30/2016	Brookings	SD
MT11470	Tracey	Schmidt	8/1/2016	Madison	SD
MT11464	TyAnn	Schuelke	6/23/2016	Opal	SD
MT11454	Jennifer	Stalley	4/25/2016	Pierre	SD
MT11484	Susan	Stansky	9/12/2016	Edgar	MT
MT11473	Sabrina	Truax	8/17/2016	Rapid City	SD
MT11486	Heather	Vetter	9/19/2016	Aberdeen	SD
MT11474	Marie-Claude	Wacker-Gallivan	8/19/2016	Brookings	SD
MT11462	Megan	Whaley	6/10/2016	Brookings	SD
MT11479	Jacob	Zmolek	8/30/2016	Arlington	SD
MT11460	Joy	Zuraff	6/6/2016	Sioux Falls	SD

Temporary Permits Issued 3/4/16 to 10/1/16					
Permit #	First Name	Last Name	Issued Date	City	State
TEMP49	Kristina	Arch	5/25/2016	Sioux Falls	SD
TEMP57	Ashley	Bariteau	9/9/2016	Sioux Falls	SD
TEMP58	Jessica	Cowan	9/19/2016	Pierre	SD
TEMP50	Natascha	Dannen	6/10/2016	Harrisburg	SD
TEMP44	Kjirsti	Davidson	5/20/2016	Sioux Falls	SD
TEMP45	Jennine	Dolphus	5/25/2016	Aberdeen	SD
TEMP54	Kristyn	Fuller	6/23/2016	Belle Fourche	SD
TEMP55	Stacey	Jarvis	7/7/2016	Sioux Falls	SD
TEMP48	Mina	Keppen	6/6/2016	Sioux Falls	SD
TEMP56	Taylor	Mechaley	7/27/2016	Rapid City	SD
TEMP42	Lisa	Mentele	3/15/2016	Mitchell	SD
TEMP46	Emmalee	Peterson	6/30/2016	Sioux Falls	SD
TEMP53	Joy	Pinos	7/7/2016	Sioux Falls	SD
TEMP43	Loni	Reindl	3/15/2016	Brookings	SD
TEMP51	Cassandra	Siders	6/10/2016	Aberdeen	SD
TEMP52	Arden	Yee	6/10/2016	Sioux Falls	SD



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### South Dakota Board of Massage Therapy Board Policies & Positions

Any officer of the Board may sign documents on behalf of the Board. (Board Action March 6, 2006)

The Board shall join the Federation of State Massage Therapy Boards. (Board Action April 18, 2006)

Massage therapy students may perform supervised externships without a license. (Board Position October 14, 2008)

Reiki is not massage therapy. Reiki classes are not continuing education compliant. (Board Position April 16, 2009)

SDCL 36-35-12 allows the Board to recognize compliant continuing education hours to fulfill deficient hours for licensure. (Board Action August 6, 2010)

Online training/education is accepted by the Board as long as there is at least 200 hours of hands-on training and it is from a Board-recognized institution. (Board Action February 4, 2011)

A licensee grandfathered in another state does not meet reciprocity requirements in South Dakota. (Board Action July 25, 2011)

Repeat continuing education courses are acceptable for two compliance periods in a row, but not a third compliance period. (Board Action September 23, 2011)

Schools accredited by the Accrediting Bureau of Health Education Schools are recognized as an acceptable facility for purposes of meeting the recognized facility requirements for licensure. (Board Action September 17, 2012)

A mailing list of massage therapist licensees, including only name and primary mailing address of a licensee, will be available in a PDF format for one-time use for a fee of \$100. (June 17, 2013)

The Board may approve an application from an applicant with training and study in the practice of massage therapy from a combination of two or more facilities or instructors

recognized by the Board. (Declaratory Ruling on SDCL 36-35-12(4) and ARSD 20:76:08, June 17, 2013)

The Board considers the following information collected of licensees by the Board to be public: Original License Category; License Status; Complaint(s); First Name; Middle Name; Last Name; Maiden Name; Primary Address; Primary City; Primary State; Primary Zip Code; Issue Date; Expiration Date; and Inactive Date. All other information collected by the Board is considered confidential. (Board Action June 17, 2013)

For purposes of demonstrating the education required for initial licensure, the Board recognizes facilities that are accredited by an accrediting body recognized by the United States Department of Education. (Board Action March 17, 2014)

The Board pro-rates the hours of continuing education required for renewal of a licensee licensed on or after October 1, 2012 in six month increments, with 8 hours required if licensed within 19-24 months of renewal; 6 hours required if licensed within 13-18 months of renewal; 4 hours if licensed within 7-12 months of renewal; and 2 hours required is licensed within 0-6 months of renewal. (Board Action March 17, 2014)

The Board does not accept education from a school that is no longer operational and was not recognized by a state board or recognized accrediting body while in operation. (Board Action March 17, 2014)

The Board does not accept carryover continuing education credits for multiple renewal periods. (Board Acton March 17, 2014)

The Board may pre-approve education courses if the courses meet the statutory requirements for qualifying continuing education. (Board Action March 17, 2014)

The Board will allow licensees who receive their original license on June 1<sup>st</sup> or later each year to be issued a license that is valid through September 30 of the following year. (Board Action July 21, 2014)

The Board accepts CPR courses only from American Red Cross and American Heart Association certified instructors and such courses count as 4 hours of continuing education per renewal period. (Board Action November 3, 2014)

The Board authorizes the Executive Secretary to refer complaints alleging unlicensed practice to the state's attorney at the time the complaint is filed with the Board and dismiss the complaint due to lack of jurisdiction. (Board Action March 16, 2015)

Costs associated with a student performing a massage may be recovered when the student performs such services within the scope of an approved massage therapy school curriculum under the supervision of a licensed massage therapist. (Board Action September 21, 2015)

~~A mailing list of licensed massage therapists will not be made available for purchase, but a list of licensees will be posted on the Board's website. (Board Action January 19, 2006) (Repealed June 17, 2013)~~

~~The NCBTMB Code of Ethics was adopted by the Board. (May 16, 2011) (Repealed September 21, 2015)~~

*This is a summary of policies and positions adopted by the South Dakota Board of Massage Therapy on specific issues. This summary is not an exhaustive list of all policies and positions of the South Dakota Board of Massage Therapy and should not be relied on as an exhaustive list. These policies and positions are offered as guidance. The South Dakota Board of Massage Therapy reserves the right to modify or repeal a policy or position at any time.*

**ARTICLE 20:76**  
**MASSAGE THERAPY**

Chapter

<u>20:76:01</u>	Applications.
<u>20:76:02</u>	Fees.
<u>20:76:03</u>	Continuing education requirements.
<u>20:76:04</u>	Disciplinary proceedings.
<u>20:76:05</u>	Malpractice or professional liability insurance.
<u>20:76:06</u>	Inactive license.
<u>20:76:07</u>	Examinations.
<u>20:76:08</u>	Licensing.

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**CHAPTER 20:76:01**

**APPLICATIONS**

Section

<u>20:76:01:01</u>	Definitions.
<u>20:76:01:02</u>	Application.
<u>20:76:01:03</u>	Notification.
<u>20:76:01:04</u>	Denial.
<u>20:76:01:05</u>	Repealed.
<u>20:76:01:06</u>	Required training.

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**20:76:01:01. Definitions.** Terms defined in SDCL chapter 36-35 have the same meaning when used in this article. In addition, terms used in this article mean:

- (1) ~~\_\_\_\_\_~~ (1) "Applicant," any person seeking initial licensure or renewal of a license with the board;
- (2) "Completed Application," an application which has all the required documentation necessary to prove an applicant's qualifications for licensure;
- (3) "Continuing education cycle," a two year period that begins on October 1 of an even-numbered year and ends on September 30 of the following even-numbered year.

**Source:** 33 SDR 50, effective September 21, 2006.

**General Authority:** SDCL 36-35-24(1).

**Law Implemented:** SDCL 36-35-24.

**Commented [J1]:** LRC needs to advise on the best place to add the definition of "continuing education cycle." Here or 20:70:03:01.

**20:76:01:02. Application.** ~~The applicant must obtain an application from the board, complete it legibly, and submit the application with the application fee. The executive secretary may return an incomplete application. An application for licensure, temporary permit, or renewal of a license must be made in writing on a form prescribed by the Board. The applicable application fee must be submitted with the application. The application fee is non-refundable. The applicable license fee must also accompany the application. The license fee is refundable if the application is denied or withdrawn.~~

An application is not complete until all required documentation is received by the Board. The executive secretary may return an application for initial licensure or a temporary permit that remains uncomplete one year after the date of initial submission of the application. Materials received by the Board from a third party may not be returned to an applicant. A returned application shall be considered withdrawn.

An applicant shall verify under the penalties of perjury that all the information submitted on an application by the applicant is true and correct. An applicant who submits an application by use of the internet agrees that submission of the application serves as the applicant's signature and verification of the information of the application. An applicant must notify the board if another state has disciplined the applicant with a reprimand, censure, suspension, temporary suspension, probation, revocation, or refusal to renew a license. The applicant may be required to clarify, expand, or provide additional information to fully evaluate all qualifications.

If the applicant does not meet the requirements for licensure, a temporary permit or renewal of a license, the executive secretary shall write a letter of explanation. The applicant may return the application and ask that it be submitted for board action. ~~An applicant shall submit the declarations page issued by the applicant's malpractice carrier with any application for initial licensure and renewal.~~

**Commented [J2]:** This clarifies that an incomplete application is considered withdrawn after 1 year and that the materials provided to the Board by primary verification sources (transcripts, national exam scores and license verification forms) will not be returned to an applicant with a withdrawn application.

**Commented [J3]:** Moved to 20:76:05:01

**Source:** 33 SDR 50, effective September 21, 2006; 37 SDR 29, effective August 30, 2010.

**General Authority:** SDCL 36-35-24(1).

**Law Implemented:** SDCL 36-35-12.

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**20:76:01:03. Notification.** ~~The executive secretary shall notify an applicant of the board's approval or disapproval of the application. If the application is not approved, the applicant shall be given the reasons. The board shall take final action upon any application no later than six months after submission after submission of a completed application to the board. The board shall notify the applicant of its determination in writing. If the application is denied, the board shall notify the applicant of the reason for denial.~~

**Source:** 33 SDR 50, effective September 21, 2006; 37 SDR 29, effective August 30, 2010.

**General Authority:** SDCL 36-35-24(1).

**Law Implemented:** SDCL 36-35-24.

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**20:76:01:04. Denial.** ~~In addition to a failure to meet any qualification in SDCL 36-35-12, the board may deny an application based on grounds stated in SDCL 36-35-13. An application for initial license, temporary permit or renewal of a license may be denied for failure to meet the applicable requirements of such license or based on grounds stated in SDCL 36-35-13. An applicant whose application has been denied is entitled to a hearing pursuant to SDCL chapter 1-26.~~

**Source:** 33 SDR 50, effective September 21, 2006.

**General Authority:** SDCL 36-35-24(1).

**Law Implemented:** SDCL 36-35-12, 36-35-13

**Commented [J4]:** This change subjects all license applications to denial based on failure to meet the applicable requirements for that specific license and unprofessional conduct, if applicable.

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**20:76:01:05. Expiration.** Repealed.

**Source:** 33 SDR 50, effective September 21, 2006; repealed, 37 SDR 29, effective August 30, 2010.

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**20:76:01:06. Required training.** ~~An applicant for licensure as a massage therapist shall provide an education verification form required training on a form prescribed by the board completed by the school the recognized facility where the training was received, and Official transcripts evidencing that the applicant has completed the required classroom training shall be provided by the recognized facility. The board may consider other evidence of training if the ~~school~~ recognized facility has ceased operations.~~

The required training ~~is as follows~~ for licensure shall include:

- (1) One hundred twenty-five hours of training in the body's systems and anatomy, physiology, and kinesiology;
- (2) Two hundred hours of training in massage and bodywork assessment, theory, and application;
- (3) Forty hours of training in pathology;

(4) Ten hours total of training in business and ethics, with a minimum of six hours in ethics; and

(5) One hundred twenty-five hours of additional training in an area or related field that theoretically completes a massage program of study.

Fifty minutes of supervised classroom instruction is equal to one hour of training.

The board may approve an application from an applicant with the required training from a combination of two or more recognized facilities. Online training is acceptable to meet the training requirements for licensure. At least 200 hours of hands-on training must be completed from a recognized facility.

The board may recognize qualifying continuing education to fulfill training for licensure.

**Commented [J5]:** Changes in this section are for clarification and consistent with current Board policies.

**Source:** 34 SDR 332, effective July 9, 2008; 37 SDR 29, effective August 30, 2010.

**General Authority:** SDCL 36-35-12(4), 36-35-24(2).

**Law Implemented:** SDCL 36-35-12.

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## CHAPTER 20:76:02

### FEES

#### Section

20:76:02:01 Remittance of fees.

20:76:02:02 License fee schedule.

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**20:76:02:01. Remittance of fees.** Any fee shall be remitted to the board in the form of a personal check, cashier's check, certified check, or money order made payable to the state of South Dakota. The board may not take any action on any application for licensure, temporary permit, or renewal until the fee is received.

**Source:** 33 SDR 50, effective September 21, 2006; 34 SDR 101, effective October 22, 2007.

**General Authority:** SDCL 36-35-17, 36-35-24.

**Law Implemented:** SDCL 36-35-24.

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**20:76:02:02. License fee schedule.** The license fee schedule is as follows:

**Commented [J6]:** The fees are subject to recommendation by the Long Term Finance Workgroup.

- (1) Temporary permit fee, \$50;
- (2) Annual license renewal fee, \$45;
- (3) Inactive license fee, \$25;

- (4) ~~License Application fee, \$75;~~  
(5) ~~Temporary permit application fee, \$75~~

**Source:** 33 SDR 50, effective September 21, 2006; 34 SDR 101, effective October 22, 2007; 38 SDR 105, effective December 8, 2011; SL 2013, ch 184, § 17, effective July 1, 2013.

**General Authority:** SDCL 36-35-17, 36-35-18.1, 36-35-24(3).

**Law Implemented:** SDCL 36-35-17, 36-35-18.1, 36-35-24(3).

**Commented [J7]:** A temporary permit application is automatically converted to a license application once the applicant provides proof of passing a national examination. The temporary permit application needs an application fee, or an applicant for a temporary permit effectively evades paying the application fee a license applicant pays. Board policy has required the temporary permit applicant to pay an application fee and this change will clarify that obligation in rule.

## CHAPTER 20:76:03

### CONTINUING EDUCATION REQUIREMENTS

#### Section

- 20:76:03:01 Definitions.
- 20:76:03:02 Repealed.
- 20:76:03:03 Verification.
- 20:76:03:04 Qualifying activities.
- 20:76:03:05 Record keeping.
- 20:76:03:06 Repealed.
- 20:76:03:07 Continuing education compliance.
- 20:76:03:08 Prior approval of qualifying activities.

**20:76:03:01. Definitions.** Terms used in this chapter mean:

- (1) ~~(1)~~ "Contact hour," a minimum of 50 minutes of presentation or participation;
- (2) ~~"Continuing education cycle," a two year period that begins on October 1 of an even-numbered year and ends on September 30 of the next even-numbered year; and~~
- (2) "Electronic means," educational activities obtained via the internet, such as self-study courses and audio/video tapes, with formal testing and passing scores recorded.

**Commented [J8]:** LRC needs to advise on the best place to add the definition of "continuing education cycle" – here or 20:76:01:01

**Source:** 33 SDR 50, effective September 21, 2006; 37 SDR 29, effective August 30, 2010.

**General Authority:** SDCL 36-35-24(2).

**Law Implemented:** SDCL 36-35-19.

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**20:76:03:02. Requirements.** Repealed.

**Source:** 33 SDR 50, effective September 21, 2006; repealed, 34 SDR 101, effective October 22, 2007.

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**20:76:03:03. Verification.** ~~A licensee shall complete eight hours of qualifying continuing education in each continuing education cycle. Continuing education required for renewal of a license shall be prorated for a licensee granted an initial license during a continuing education cycle in six month increments. Upon application for license renewal, a licensee shall verify under the penalties of perjury that all contact hour continuing education information provided with the application, which shall be submitted in the form of copies of the certificates of completion, is true and correct.~~

~~A licensee who submits a renewal form by use of the internet shall also agree that submission of the renewal form serves as the licensee's signature and verification of the information on the renewal form. The licensee must supply sufficient detail to permit audit verification if notified by the board of an audit.~~

**Source:** 33 SDR 50, effective September 21, 2006; 34 SDR 101, effective October 22, 2007.

**General Authority:** SDCL 36-35-24(2).

**Law Implemented:** SDCL 36-35-19.

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**20:76:03:04. Qualifying activities.** ~~A qualifying continuing education activity is any course with a clear purpose and objective which maintains, improves, or expands the skills and knowledge relevant to massage therapy of the human body. Qualifying continuing education activities must meet the definition of massage therapy pursuant to § 36-35-1(2), or be education presented by an approved provider of the National Certification Board for Therapeutic Massage and Bodywork or American Medical Massage Association, or both.~~

~~College courses used to meet continuing education requirements must not replicate the courses submitted by the licensee to meet the required licensing coursework. An academic semester credit equals 15 continuing education contact hours and a quarter credit equals 10 continuing education contact hours.~~

~~Cardiopulmonary resuscitation (CPR) certification from the American Heart Association of the American Red Cross is qualifying continuing education for up to four hours in each continuing education cycle. a national credentialing organization is accepted. No other qualifying continuing education may be repeated in consecutive continuing education cycles.~~

**Source:** 33 SDR 50, effective September 21, 2006; 37 SDR 29, effective August 30, 2010; 38 SDR 105, effective December 8, 2011.

**General Authority:** SDCL 36-35-24(2).

**Law Implemented:** SDCL 36-35-19.

**Commented [J9]:** Removal of the submission of continuing education certificates allows the Board to move to an audit system of renewals in 2018.

**Commented [J10]:** Removed because duplicative of provision in 20:76:01:02 for applications for renewal of a license.

**Commented [J11]:** This provision requires continuing education to meet the definition of massage therapy. If there is an either/or with the definition of massage therapy or an NCBTMB or AMMA provider, there is the possibility that the continuing education is on a topic that does not meet the definition of massage therapy.

**Commented [J12]:** This change would modify the Board's policy of allowing a licensee to take the same continuing education class two years in a row. Currently, allowing 4 hours of CPR each year and a class to be repeated twice, a licensee may go 4 years with only 4 hours of massage related continuing education. The proposal would require at least 4 hours of massage related continuing education every continuing education cycle.

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**20:76:03:05. Record keeping.** The licensee shall maintain records to support continuing education credits hours claimed to renew a license. These records must be maintained for ~~two~~ five years after the date of renewal of the license. A licensee shall keep the following records:

(1) A brochure or flyer showing the type of activity, sponsoring organization, location, duration, instructor's or speaker's name, and ~~contact hours~~ continuing education hours earned; and

(2) Attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

**Source:** 33 SDR 50, effective September 21, 2006; 34 SDR 101, effective October 22, 2007.

**General Authority:** SDCL 36-35-24(2).

**Law Implemented:** SDCL 36-35-19.

**Commented [J13]:** The extension of the recordkeeping time ensures the licensee will have the records necessary to meet audit requirements beginning in 2017.

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**20:76:03:06. Audits.** Repealed.

**Source:** 33 SDR 50, effective September 21, 2006; repealed, 34 SDR 101, effective October 22, 2007.

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**20:76:03:07. Continuing education compliance.** ~~Upon failure to comply with continuing education requirements, the licensee has 90 calendar days after receipt of written notice of noncompliance to further reinforce the claim of contact hours or to acquire sufficient contact hours to meet the requirements. The board may take into consideration hardship or extenuating circumstances in allowing a licensee to correction of deficiencies in continuing education. The board may extend the deadline for a licensee to meet continuing education requirements, but the deadline may not be extended more than one year. Requests for an extension to correct deficiencies in continuing education must be made to the board, in writing, before the end of the current continuing education cycle.~~

**Source:** 33 SDR 50, effective September 21, 2006; 34 SDR 101, effective October 22, 2007.

**General Authority:** SDCL 36-35-24(2).

**Law Implemented:** SDCL 36-35-19.

**Commented [J14]:** This language allows for an extension to meet continuing education requirements, but does not automatically provide for 90 days to make the correction. The current language allows 90 days (plus 30 days after that to allow for the statutorily allowed reinstatement of a license). A licensee essentially has 4 additional months to get continuing education under the current rule without any board input. The proposed language will require the licensee to apply for an extension and the board to determine if the extension is appropriate.

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**20:76:03:08. Prior approval of qualifying activities.** The board will accept continuing education that meets the definition of massage, if presented by:

- (1) An approved provider of the National Certification Board for Therapeutic Massage and Bodywork;
- (2) An approved provider of the American Medical Massage Association; or
- (3) A facility recognized by the Board pursuant to 20:76:08-01 or 20:76:08-03.

An organization or presenter other than those listed above may apply for preapproval of a continuing education program. Such application must be made on a form prescribed by the board. If the proposed program meets requirements of 20:76:03:04, the board may issue the organization or presenter an approval number which shall be

included on any certificates of completion issues by the organization or presenter. An approved organization or presenter shall provide the board with a list of attendees of an approved program within 30 days of the approved program.

**Commented [J15]:** Allows a process for preapproving continuing education from providers or facilities other than those specified with the condition that the provider furnish a list of attendees and use an assigned approval course to allow for ease of an audit of continuing education. The organizations specifically listed are the organizations we currently accept continuing education from and will continue to accept going forward, if the continuing education meets the definition of massage therapy.

## CHAPTER 20:76:04

### DISCIPLINARY PROCEEDINGS

#### Section

- 20:76:04:01 Complaints.
- 20:76:04:02 Complaint procedure.
- 20:76:04:03 Informal proceedings.
- 20:76:04:04 Formal proceedings.
- 20:76:04:05 Contents of a formal board complaint.
- 20:76:04:06 Repealed.
- 20:76:04:07 Disqualification.
- 20:76:04:08 Procedure for formal hearing.
- 20:76:04:09 Final action by board.
- 20:76:04:10 Petition for hearing by an aggrieved person.

**20:76:04:01. ~~Complaints.~~ Repealed.** Any person, including a board member or the executive secretary, claiming that a holder of a license, or an applicant for licensure under SDCL chapter 36-35, has engaged in or is engaged in conduct constituting grounds for disciplinary action as enumerated in SDCL chapter 36-35 may file a written complaint with the board. The board may require the complaining party to file a complaint verified on oath stating the name of the applicant or licensee against whom the complaint is made and setting out full details of the conduct which is alleged to be a violation. Failure to file a written complaint, verified under oath, in the form satisfactory to the board, is a basis to dismiss the complaint. On receipt of a complaint deemed to be in proper form by the board or the executive secretary, the complaint shall be served by mail upon the applicant or licensee complained against and upon any other affected parties, together with a copy of SDCL chapters 36-35 and 1-26.

**Commented [J16]:** This entire section is repealed. SDCL 36-35-6.1 provides the Board with the authority to conduct disciplinary proceedings. SDCL chapter 1-26 provides the statutory requirements for conducting administrative hearings. The specifics of this section are not needed and redundant of internal operating procedures and/or statutory requirements.

~~— The applicant or licensee complained against shall respond to the complaint within 20 calendar days after service of the complaint on the applicant or licensee. The response of the applicant or licensee shall be sent to the executive secretary of the board at the board's office. Upon receipt of the response of the applicant or licensee, or upon expiration of the time for the applicant or licensee complained against to respond, the president of the board, considering only the complaint and any response, shall appoint one member of the board who, along with the executive secretary and such other individuals as may be appointed by the president of the board, to act as an investigative committee to determine if the complaint has merit and constitutes grounds for disciplinary action, or is frivolous and should be dismissed. Licensees must notify the board within 30 days if another state has disciplined them with a reprimand, censure, suspension, temporary suspension, probation, revocation, or refusal to renew a license.~~

~~— Source: 33 SDR 50, effective September 21, 2006.~~

~~— General Authority: SDCL 36-35-24(4).~~

~~— Law Implemented: SDCL 36-35-22.~~

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~~**20:76:04:02. Complaint procedure. Repealed.** Upon completion of the investigation, the investigating committee shall recommend to the board whether the charges should be dismissed for lack of merit or whether based upon the investigation of the committee there is sufficient basis to proceed with either a formal or an informal hearing or other disposition. The failure of a licensee to comply with the investigation request administered by the board may result in disciplinary action. The board may also petition the court of the county in which the individual licensee resides, and the court may enter an order compelling the compliance or imposing such terms and conditions as the court may deem necessary.~~

~~— Source: 33 SDR 50, effective September 21, 2006.~~

~~— General Authority: SDCL 36-35-24(4).~~

~~— Law Implemented: SDCL 36-35-22.~~

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~~**20:76:04:03. Informal proceedings. Repealed.** If the board considers an alleged violation to have merit constituting grounds for disciplinary action, the board, at its sole discretion, with the consent of the licensee, may proceed with informal proceedings and stay formal proceedings pending the outcome of the informal proceedings. The board may conduct informal proceedings with the affected parties to resolve the matter without a formal hearing.~~

~~— Informal proceedings do not preclude the board from reinstating formal proceedings. An applicant or licensee, prior to accepting a final disposition through an informal proceeding, can reject or decline informal proceedings and elect to proceed with a formal hearing. An applicant or licensee consenting to an informal proceeding waives all rights to disqualify a board member from participating in a subsequent formal hearing by reason of the board member's participation in the informal proceeding consented to by the applicant or licensee.~~

~~— The board may accept an assurance of voluntary compliance or a consent order regarding a violation of SDCL chapter 36-35. The assurance or consent order shall be in writing and is subject~~

to the approval of the board. The assurance or consent order may include a statement that the applicant or licensee will not engage in such act or practice in the future and one of the following:

— (1) Stipulation for voluntary payment of any fine or cost, or both, of the investigation; and

— (2) Stipulation for the voluntary payment necessary to restore to any person money or property which may have been acquired by the alleged violator.

— The assurance of voluntary compliance may not be considered an admission to a violation for any purpose. The consent of the licensee to a consent order in informal proceedings constitutes an admission of a violation for any purpose. Proof of the failure to comply with an assurance of voluntary compliance or a consent order entitles the board to institute or reinstitute formal proceedings.

— The board shall notify in writing any complaining party, the applicant or licensee complained against, and any other affected parties of the results of the informal proceedings and the action taken, if any. The final disposition of an informal proceeding is a public record.

— **Source:** 33 SDR 50, effective September 21, 2006.

— **General Authority:** SDCL 36-35-24(4).

— **Law Implemented:** SDCL 36-35-22.

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**20:76:04:04. Formal proceedings.** Repealed. If an alleged violation has merit constituting grounds for disciplinary action, the board may commence formal proceedings. Formal proceedings shall be instituted by a formal board complaint and service of a notice of hearing by mail upon the applicant or licensee complained against.

— **Source:** 33 SDR 50, effective September 21, 2006.

— **General Authority:** SDCL 36-35-24(4).

— **Law Implemented:** SDCL 36-35-22.

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**20:76:04:05. Contents of a formal board complaint.** Repealed. The formal board complaint shall include the name of the applicant or licensee complained against, and a statement setting forth the nature of the violations being charged that constitute grounds for disciplinary action.

— **Source:** 33 SDR 50, effective September 21, 2006.

— **General Authority:** SDCL 36-35-24(4).

— **Law Implemented:** SDCL 36-35-22.

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**20:76:04:06. Answer to formal board complaint.** Repealed.

**Source:** 33 SDR 50, effective September 21, 2006; repealed, 38 SDR 177, effective April 26, 2012.

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**20:76:04:07. Disqualification.** Repealed. If an alleged violation against a licensee is filed by a board member, or if a board member participates in the investigation of a violation by the licensee, that board member is disqualified from sitting at the hearing as a board member and from participating in the decision rendered by the board.

— **Source:** 33 SDR 50, effective September 21, 2006.

— **General Authority:** SDCL 36-35-24(4).

— **Law Implemented:** SDCL 36-35-22.

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**20:76:04:08. Procedure for formal hearing.** Repealed. The following procedure shall be used by the board in conducting formal hearings:

— (1) The board shall provide written notice to the applicant or licensee by mail stating the time, place, and date of the formal hearing. The notice shall require the attendance of the applicant or licensee at the hearing. The notice shall be given at least ten days prior to the formal hearing;

— (2) A transcript shall be kept of all formal hearings and proceedings;

— (3) The board president may conduct the formal proceeding or the board may have a hearing examiner conduct the proceedings in part or in full;

— (4) The applicant or licensee appearing before the board at a formal hearing shall appear in person, unless otherwise waived by the board. The applicant or licensee, and legal counsel, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses, may prevent evidence in support of the party's interest, and may have subpoenas issued to compel attendance of witnesses and production of evidence on the party's behalf.

— **Source:** 33 SDR 50, effective September 21, 2006.

— **General Authority:** SDCL 36-35-24(4).

— **Law Implemented:** SDCL 36-35-22.

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**20:76:04:09. Final action by board.** Repealed. After a formal hearing, the board may decide to dismiss the formal complaint, revoke the registration license of the licensee, suspend the registration license of the licensee, place the licensee on probation, or issue a letter of reprimand to be placed in the file of the applicant or licensee. The board's decision shall be made and entered with notice of the decision given in accordance with the provisions of SDCL 1-26-23 to 1-26-25, inclusive.

— **Source:** 33 SDR 50, effective September 21, 2006.

— ~~General Authority: SDCL 36-35-24(4).~~

— ~~Law Implemented: SDCL 36-35-22.~~

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**20:76:04:10. Petition for hearing by an aggrieved person.** ~~Repealed. In a contested case, as it is defined in SDCL 1-26-1(2), including disciplinary proceedings, a person aggrieved by an action of the board taken without a hearing may, within 30 days following the date of the board action, petition the board for a hearing. The hearing shall be held not later than 60 days following receipt of the petition. Twenty (20) days before the date set by the board for hearing, the board shall serve by mail upon the petitioner and other interested or affected parties a copy of the notice of hearing and a copy of the aggrieved person's petition.~~

— ~~Source: 33 SDR 50, effective September 21, 2006.~~

— ~~General Authority: SDCL 36-35-24(4).~~

— ~~Law Implemented: SDCL 36-35-22.~~

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## CHAPTER 20:76:05

### MALPRACTICE OR PROFESSIONAL LIABILITY INSURANCE

#### Section

20:76:05:01 Minimum limits.

20:76:05:02 Recordkeeping

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**20:76:05:01. Minimum limits.** A licensee shall carry malpractice or professional liability insurance, with a company with a certificate of authority from the South Dakota Division of Insurance, with limits of no less than \$250,000 per occurrence. A licensee shall notify the board of any change of carrier occurring after a license or renewal is granted.

An applicant shall submit the declarations page issued by the applicant's malpractice carrier with any application for initial license and renewal.

**Source:** 33 SDR 50, effective September 21, 2006.

**General Authority:** SDCL 36-35-24(5).

**Law Implemented:** SDCL 36-35-12, 36-35-21.

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20:76:05:02. Recordkeeping. A licensee shall maintain records to verify compliance with malpractice insurance requirements. These records must provide the minimum coverage was in

**Commented [J17]:** Moved from 20:70:01:02 to have all malpractice insurance requirements in one section.

place during the period a licensee held a license. These records must be maintained for at least five years after the date of the issuance of an initial license or renewal of license.

**Commented [J18]:** Addition of this section allows for audits of malpractice insurance compliance beginning with the 2017 renewal cycle.

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## CHAPTER 20:76:06

### INACTIVE LICENSE

#### Section

20:76:06:01 Inactive license.

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**20:76:06:01. Inactive license.** An active license may be placed on inactive status upon submission of an application and payment of the required fee. An inactive license has no expiration date and can be activated by paying the current license fee and providing proof of at least eight hours of compliant continuing education acceptable to the board in the two-year period immediately preceding the activation request.

**Source:** 34 SDR 101, effective October 22, 2007; 37 SDR 29, effective August 30, 2010; 38 SDR 105, effective December 8, 2011.

**General Authority:** SDCL 36-35-18.1, 36-35-24(3).

**Law Implemented:** SDCL 36-35-18.1, 36-35-24(3).

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## CHAPTER 20:76:07

### EXAMINATIONS

#### Section

20:76:07:01 Examination.

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**20:76:07:01. Examination.** An applicant for licensure shall provide official evidence of passing an examination provided by one of the following organizations:

- (1) National Certification Board for Therapeutic Massage and Bodywork;
- (2) American Medical Massage Association; or
- (3) Federation of State Massage Therapy Boards.

**Source:** 37 SDR 29, effective August 30, 2010.

**General Authority:** SDCL 36-35-12(7).

**Law Implemented:** SDCL 36-35-12(7).

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CHAPTER 20:76:08

LICENSING

Section

20:76:08:01 Recognized facilities.

20:76:08:02 Facilities that may be recognized by the board.

20:76:08:03 Foreign trained applicants. Repealed.

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**20:76:08:01. Recognized facilities.** The board may license an applicant who has completed the training required by § 20:76:01:06 from the following South Dakota facilities:

- (1) Black Hills Health & Education Center;
- (2) Headlines Academy;
- (3) National American University;
- (4) Pam's Massage School;
- (5) SD School of Massage Therapy;
- (6) Sioux Falls Therapeutic Massage & Education Center; and
- (7) Springs Bath House School of Massage.

**Source:** 38 SDR 177, effective April 26, 2012; SL 2013, ch 184, § 18, effective July 1, 2013.

**General Authority:** SDCL 36-35-12, 36-35-24(2).

**Law Implemented:** SDCL 36-35-12(3), 36-35-24(2).

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**20:76:08:02. Facilities that may be recognized by the board.** The board may accept an applicant's training required by § 20:76:01:06 from a facility not recognized pursuant to § 20:76:08:01 if the facility provides official evidence it meets at least one of the following criteria:

(1) The facility is licensed or approved by the state board of massage therapy where that training facility is located; or

(2) The facility is accredited by an accrediting body recognized by the United States Department of Education, one of the following:

- (a) Commission on Massage Therapy Accreditation (COMTA);
- (b) Accrediting Council for Independent Colleges and Schools (ACICS);
- (c) National Accrediting Commission of Career Arts & Sciences (NACCAS);

**Commented [J19]:** This language is consistent with the Board's policy on recognized facilities.

- ~~\_\_\_\_\_ (d) Accrediting Council for Continuing Education and Training (AC CET);~~
- ~~\_\_\_\_\_ (e) Accrediting Commission of Career Schools and Colleges (ACC SCT);~~
- ~~\_\_\_\_\_ (f) Accrediting Commission of the Distance Education and Training Council (DETC);~~
- or
- ~~\_\_\_\_\_ (g) Higher Learning Commission (HLC);~~

~~\_\_\_\_\_ The board may recognize a facility that holds other accreditations. However, tThe training that allows an applicant to take a national examination does not require the board to recognize the facility, as nationally accredited.~~

**Source:** 38 SDR 177, effective April 26, 2012.

**General Authority:** SDCL ~~36-35-12, 36-35-24.~~

**Law Implemented:** SDCL ~~36-35-12(3), 36-35-24(2).~~

~~\_\_\_\_\_ **20:76:08:03. Foreign-trained applicants.** ~~Repealed.~~ An applicant trained in a foreign country shall have graduated with training required by § 20:76:01:06 and shall bear the expense to provide an equivalency evaluation of their educational credentials from the International Educational Research Foundations, Inc—Credentials Evaluation Service.~~

~~\_\_\_\_\_ **Source:** 38 SDR 177, effective April 26, 2012.~~

~~\_\_\_\_\_ **General Authority:** SDCL ~~36-35-12, 36-35-24.~~~~

~~\_\_\_\_\_ **Law Implemented:** SDCL ~~36-35-12, 36-35-24.~~~~

~~\_\_\_\_\_ **Reference:** International Educational Research Foundations, Inc—Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, (310) 258-9451, [www.ierf.org](http://www.ierf.org).~~

**Commented [J20]:** Repealed because this section is unnecessary after clarification to 20:76:08:02.

To whom it may concern:

I, Christine Schelske, am requesting an extension to complete my continuing education. When my husband and I started our family we decided it would be best if I stay at home with our girls and practice massage from home. It has been a very good sacrifice; I had made some poor financial choices as a youth, so staying home made it very tight income-wise for our family. God has been so gracious and provided for our needs. I am so very thankful to be able to practice massage at home. At the same time it has been a challenge to learn the difference between needs and wants. Again God has been gracious through my learning process. Because of the limited amount of resources I want to be a good steward of what God provides. I could absolutely take online classes but being a good steward to me also means holding out good for best. God has made me aware that a large portion of my clientele have myofascial restrictions; therefore, I have an interest in the John Barnes Myofascial Release class. For my learning style it is helpful to have hands on instruction as well as theory and the history behind a modality. The closest class offered was Denver prior to September. I had planned to attend the Myofascial Release training in September but that was reliant upon the sale of a TIG welder my husband still has. This puts me in my current situation. To hit the September renewal deadline I have looked at online classes. I have tried to find a training I think worthwhile of my time and resources. There are some good things out there, but I want what will be best for my clientele and the limited resources we have. I take full responsibility for the poor choices in my past. I am learning and moving forward to do what is best for my family. I appreciate your tender consideration and will be appreciative of whatever decision you come to. Thank you so much for your time.

If granted an extension of time to complete my continuing education my plan is to attend the Myofascial Release seminar in Omaha April 21-23, 2017.

Deepest regards,

A handwritten signature in black ink that reads "Christine Schelske". The signature is written in a cursive, flowing style.

Christine Schelske



## South Dakota Board of Massage Therapy

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### **Proposed 2017 Board Meeting Dates**

Monday, March 13, 2017\*

Monday, July 17, 2017

Monday, November 6, 2017

\*This meeting would also serve as the Public Hearing on any proposed changes to the administrative rules.