



# South Dakota Board of Massage Therapy

P.O. Box 340, 1351 N. Harrison Avenue, 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)

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

### **Regular Meeting**

**Conference Room #3, Kneip Building**

**700 Governors Drive, Pierre, SD**

**Monday, December 14, 2015 - 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) Approval of Minutes: September 21, 2015
- 5) Financial Report: As of October 31, 2015
- 6) Office Update
  - a. Renewal Update
  - b. New Licensee List
  - c. Updated Board Policies
  - d. 2016 Legislation Update
- 7) Old Business:
  - a. Adoption of the Minutes and Order in the Matter of the Declaratory Ruling Regarding ARSD 20:76:08:01 SL 2013, ch 184
  - b. Adoption of Findings in the Matter of Application of Yuafang Zhi #2015-007
  - c. Licensee Newsletter (December)
  - d. Long Term Finance Workgroup Report
  - e. Records Retention Policy
  - f. Federation of State Massage Therapy Boards Annual Meeting Report
  - g. Executive Services Request for Proposals
- 8) New Business:
  - a. Election of Board Officers
  - b. Meeting Schedule for 2016
    - a. March 14, 2016
    - b. June 13, 2016
  - c. Hearing in the Matter of Yufang Xie #2015-005
  - d. Hearing in the Matter of Shuxia Guan #2015-006
  - e. Hearing in the Matter of Jun Huguenin #2015-007
- 9) EXECUTIVE SESSION:

Pursuant to SDCL 1-25-2 (3) for consideration of proposed contested cases or contractual matters
- 10) Announcements:
  - a. Upcoming meetings
    - a. March 14, 2016
    - b. June 13, 2016
- 11) Adjourn

Please contact the Board at 605-224-1721 or [SDBMT@midwestsolutionssd.com](mailto:SDBMT@midwestsolutionssd.com) by December 11, 2015 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, September 21, 2015

President Kappel called the meeting to order at 10:06 am central and determined a quorum.

Present in Person: Board Members Karen Kappel, Bridget Myers, Christine Ellwein, and Margaret Johnson; Executive Secretary Jennifer Stalley; administrative staff Lisa Harsma; and legal counsel Jim Carlon and Assistant Attorney Generals Steve Blair and Grant Flynn. Also present: Rebecca Herrmann, Laura Brien, Heather Payden, Deb Calmus, Rhanda Heller, Gene Heller, Valerie Rowen, Yufang Zhi, and Olawa Rae-Bruhjell. Board Member Linda Zeller was absent.

#### **Public Forum**

Kappel asked for public comments. Gene Heller, Heather Payden, Deb Calmus, Rebecca Herman and Rhanda Heller addressed the Board. The comments included concerns about access to the June 15, 2015 board meeting via teleconference, open records from hearings held at the last meeting, unlicensed practice, contact information for board members, temporary permits to practice, and communications with licensees. Gene Heller and Rhanda Heller requested that their written comments be included as part of the meeting minutes. The written information provided by Gene Heller and Rhanda Heller is attached.

#### **Approval of Minutes**

Motion to approve the Board Minutes of June 15, 2015 with noted corrections by Myers. Seconded by Johnson. Motion carried.

#### **Financial Report**

Motion to approve the Financial Report as of August 29, 2015 by Ellwein. Seconded by Johnson. Motion carried.

#### **Office Update**

Stalley presented an update on license renewals. Stalley noted that to date 339 licensees remained to be renewed. All grandfathered licensees were personally called by the Board's office to alert the licensee to the renewal deadlines and the option to inactive the license.

Multiple reminders were sent to licensees via e-mail throughout the renewal period. The number of licensees using the online renewal system is up from last year, with 58% of licensees renewing online to date.

Stalley presented the Board with the updated lists of new licensees and temporary permit holders since June 15, 2015.

Stalley updated the Board on potential revisions to the Board's Records Retention Policy. Updates to the policy will be ready for the Board's consideration at the December meeting.

Blair updated the Board on the assignment of duties for the assistant attorney generals representing the Board. Blair will be transitioning from his duties with the Board of Massage Therapy. Grant Flynn will take on the representation of the Board on behalf of the Attorney General. Blair and Flynn will work together through the pending cases before Flynn assumes full responsibility for representing the Board.

### **Student Internship Costs**

Motion to clarify that 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 by Ellwein. Seconded by Myers. Motion approved.

### **Code of Ethics**

Motion to unadopt the NCBTMB code of ethics previously adopted by the Board on May 16, 2011 by Johnson. Seconded by Ellwein. Motion approved.

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

Kappel appointed Zeller to serve as the Board's liaison to the Department of Health to discuss the Board's options and the process for a request for proposal for executive services. Zeller will bring a timeline and recommendation to the December meeting.

### **Application Hearing of Yufang Zhi (#2015-007)**

The Board noted the time and place for the application hearing of Yufang Zhi. Ms. Zhi appeared before the Board and presented information concerning her application for a temporary permit.

### **Practice Act Workgroup**

The Board took additional comments on the proposed revisions to the practice act as presented by the Practice Act Workgroup.

### **In Re the Matter of Declaratory Ruling Regarding ARSD 20:76:08:01**

The Board held a declaratory ruling hearing to consider whether a South Dakota facility recognized pursuant to ARSD 20:76:08:01 may sell, bargain, transfer or assign its recognition and whether such a facility can relocate or expand and diversify its location. Olawa Rae-Bruhjell testified regarding the matter.

**Adoption of the Findings in the Matter of the Application of Zuojin Zhang (#2015-002)**

Motion by Myers to file an injunction against Zuojin Zhang for unlicensed practice by Myers. Motion failed for lack of a second.

Motion to adopt the Findings of Fact and Enter the Order of Denial in the matter of the application of Zuojin Zhang (#2015-002) by Ellwein. Seconded by Johnson. Motion carried.

**Adoption of the Findings in the Matter of the Application of Feng Wei (#2015-003)**

Motion to adopt the Findings of Fact and Enter the Order of Denial in the matter of the application of Feng Wei (#2015-003) by Johnson. Seconded by Ellwein. Motion carried.

**Executive Session**

Motion to go into Executive Session for consideration of contested cases and contractual matters at 1:45 pm by Ellwein. Seconded by Johnson. Motion carried.

Motion to come out of Executive Session at 3:00 pm by Ellwein. Seconded by Johnson. Motion carried.

Motion to proceed to a hearing with Complaints 2015-02/2015-04 by Ellwein. Seconded by Johnson. Motion carried.

Motion to proceed to a hearing with Complaint 2015-05 by Myers. Seconded by Johnson. Motion carried.

Motion to deny the application for a temporary permit of Yufang Zhi (#2015-007) by Johnson. Seconded by Ellwein. Motion carried.

Motion to refer the questions contained in In Re the Matter of Declaratory Ruling Regarding ARSD 20:76:08:01 to the circuit court for a declaratory judgement by Ellwein. Seconded by Johnson. Motion carried. Myers voted no.

Motion to forward the proposed practice act revisions with Board modifications to the Department of Health for consideration as legislation to be introduced in 2016 by Ellwein. Seconded by Johnson. Motion carried.

**Announcements**

Kappel reminded the Board the remaining meeting for 2015 is scheduled for December 14<sup>th</sup>.

**Adjourn**

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

Respectfully Submitted,

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Christine Ellwein, Secretary

Draft

**Subject:** Comments to Massage Board on Sept 21, 2015

**Date:** Monday, September 21, 2015 at 5:32:33 AM Central Daylight Time

**From:** Eugene Heller

**To:** Eugene Heller

As you consider your votes today, please remember that you are representing all of the approximately 800 licensed therapists in South Dakota. These therapists should have input in how the law is written and enforced. We should have access to all the written comments submitted by other massage therapists. We are all concerned about the public's and our safety. We are concerned about the public's perception of our profession. Unlicensed massage that the board has no jurisdiction over makes that law and the board look ineffective and weak.

I would request that the next agenda have item with a discussion on how the public can communicate directly with a board member. I would like contact information for the board's members to be not the website. I think that there are some issues that the public and massage therapists need to talk to board members about in private conversations so the board members can decide how to move forward on the board's business.

I have been at a lot of board meetings and I have pushed for a lot of changes. I would like to see a more proactive approach by the total board.

I would like to have the board's discussion of items done prior to the board's attorney issuing a recommendation. I think this hinders and influences discussion. The board can ask for his recommendation AFTER they have their discussion. The way it is being done at present is that the board's attorney gives his recommendation on the agenda....does this not hinder open and honest discussion? I would suggest that it does.

Rhanda Heller

*When will the finance committee meet?  
They were seated in November 2014, they  
have not officially met - even though the June meeting  
was supposed to have a report -*

*Please put on the agenda ~~the~~ ~~initial~~  
discussion of taping board meetings.*

*Rhanda Heller -  
331-4893*

**Subject:** FW: Open Meeting Hearing of SD Massage Board on June 15, 2015

**Date:** Sunday, September 20, 2015 at 9:29:18 PM Central Daylight Time

**From:** Eugene Heller

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**Subject:** Open Meeting Hearing of SD Massage Board on June 15, 2015

Dear Jennifer,

On June 15, 2015, I attempted to attend the open Massage Board Meeting by teleconferencing as was offered by the Board in a email. I answered the email on June 11, 2015, advising I wanted to attend the meeting by telephone. The deadline for notifying the Board was June 12, 2015 at 5:00 PM. I did not receive any information from the Board as to what telephone number to call to attend the meeting. On the morning of the Board Meeting I called your office and talked to your staff who took my number and then called me back with the number for the meeting. I called a few minutes before 8:00 AM and was welcomed by you. This was for the Practice Act Workshop meeting. At the end of that meeting I was advised by you to stay on the line for the Board Meeting at 10:00 AM, which I did. Everything went along well until there was a motion to go into Executive Session, by Ellwein at 1:13 PM. At that time I was disconnected from the meeting. I was advised I would be notified when the Board had returned to the Open Meeting. This never happened. After a reasonable time I attempted to re-connect with the Meeting but was unable to do so. The meeting number stated that the monitor, you, had not re-opened the line for the meeting. At one point I received a telephone call from my wife, Rhanda, who was at the meeting. asking what I thought about what was happening with the hearing of Zuojin Zhang and Feng Wei. I told her I had not been contacted by the Board that the open meeting of the Massage Board had resumed. I attempted to reconnect at least six times. I was very frustrated that each time I called in to access my right to the open meeting process I got a recorded message that the monitor had not signed in to reopen the meeting. Rhanda called me back and said she told Lisa Harsma about the problem. Rhanda said that you and Lisa attempted to reconnect the call but that you had the volume of the phone turned up so loudly that you chose not to reopen the call and grant me my legal right to the open meeting process. Bridget Meyers, a board member, not you or your staff, called me after 5:05 PM and by the time I got reconnected to the meeting I got to hear the motion to adjourn.

I was upset with this situation as it violated my ability to attend the Open Board Meeting. Even when this situation was brought to the attention of the you and your staff, it took an inordinate amount of time to get it corrected resulting in me not getting reconnected until the end of the meeting. This is unacceptable in my view.

It is my understanding that Mr. Carlon made audio recording of the hearings of Zuojin Zhang and Feng Wei. I am hereby making a formal open meeting and open record request for a copy of that recording. I request that I receive these recordings within ten (10) days of today, July, 27, 2015.

Thank you for your consideration in this matter.

Gene Heller



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August 7, 2015

Gene Heller

*Via E-mail*

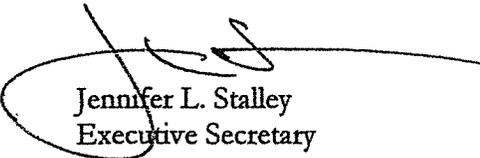
Dear Mr. Heller,

On July 27, 2015, you contacted the South Dakota Board of Massage Therapy (Board) via e-mail and requested a copy of the recordings of two contested application hearings conducted by the Board at its June 15, 2015 meeting. Specifically, you requested recordings of the hearings for Zuojin Zhang and Feng Wei.

Attached are the official minutes of the requested hearings in lieu of a transcript of the contested hearings. The Board and the parties waived a verbatim record of the proceedings. No verbatim record of the hearings was produced by the Board. The recording made at the hearing was done so by the Board's counsel to aid in his accuracy of taking notes for purposes of preparing findings of fact for the hearings. The recordings are considered counsel's work product and are not a public record.

If you have further questions, please contact me at 605-224-1721.

Sincerely,



Jennifer L. Stalley  
Executive Secretary

Enclosure

Cc: Jim Carlon, Board Counsel  
Karen Kappel, Board President

MINUTES OF CONTESTED CASE HEARING:

Name: Zuojin Zhang

Date: June 15, 2015

Time: 2:00pm

Appearances:

State: Steve Blair, AAG

¶/Applicant: Zuojin Zhang (waived attorney)

Witnesses:

State: Jennifer Stalley, Executive Secretary, Board of Massage Therapy

¶/Applicant: self – no others

Exhibits:

State: A B C D (all received without objection)

¶/Applicant: none

Notes:

¶ uses interpreter but, appears to understand English

Board deliberates at end of evidence / application denied / education is deficient and unprofessional conduct/practicing without a license

State/¶ waived verbatim record - ¶ did not respond to notice of hearing

MINUTES OF CONTESTED CASE HEARING:

Name: Wei Feng

Date: June 15, 2015

Time: 2:30pm

Appearances:

State: Steve Blair, AAG

¶/Applicant: Wei Feng (waived attorney)

Witnesses:

State: Jennifer Stalley, Executive Secretary, Board of Massage Therapy

¶/Applicant: self – no others

Exhibits:

State: A B C D E (all received without objection)

¶/Applicant: none

Notes:

¶ uses interpreter but, appears to understand English - ¶ is the husband of Zuojin Zhang

Board deliberates at end of evidence / application denied / unprofessional conduct/practicing without a license – and deficient education

State/¶ waived verbatim record - ¶ did not respond to notice of hearing

**Subject:** FW: Open Meeting Hearing of SD Massage Board on June 15, 2015

**Date:** Friday, August 7, 2015 at 3:18:50 PM Central Daylight Time

**From:** Jennifer Stalley

**To:** genrhah@sio.midco.net

**CC:** touchwellness@goldenwest.net

Gene,

Attached please find information related to the request in your July 27, 2015 e-mail. You did not provide a mailing address so I am providing the Board's response via e-mail. If you would like an original copy of the response, please provide me with your mailing address.

Thank you.

**Jennifer Stalley**

**Executive Secretary**

South Dakota Board of Massage Therapy

P.O. Box 340

1351 N. Harrison Avenue

Pierre, SD 57501

Phone: 605-224-1721

Fax: 888-425-3032

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

**From:** Eugene Heller [<mailto:genrhah@sio.midco.net>]

**Sent:** Monday, July 27, 2015 3:01 PM

**To:** [SDBMT@midwestsolutionsd.com](mailto:SDBMT@midwestsolutionsd.com)

**Cc:** [touchwellness@goldenwest.net](mailto:touchwellness@goldenwest.net)

**Subject:** Open Meeting Hearing of SD Massage Board on June 15, 2015

Dear Jennifer,

On June 15, 2015, I attempted to attend the open Massage Board Meeting by teleconferencing as was offered by the Board in a email. I answered the email on June 11, 2015, advising I wanted to attend the meeting by telephone. The deadline for notifying the Board was June 12, 2015 at 5:00 PM. I did not receive any information from the Board as to what telephone number to call to attend the meeting. On the morning of the Board Meeting I called your office and talked to your staff who took my number and then called me back with the number for the meeting. I called a few minutes before 8:00 AM and was welcomed by you. This was for the Practice Act Workshop meeting. At the end of that meeting I was advised by you to stay on the line for the Board Meeting at 10:00 AM, which I did. Everything

went along well until there was a motion to go into Executive Session, by Ellwein at 1:13 PM. At that time I was disconnected from the meeting. I was advised I would be notified when the Board had returned to the Open Meeting. This never happened. After a reasonable time I attempted to re-connect with the Meeting but was unable to do so. The meeting number stated that the monitor, you, had not re-opened the line for the meeting. At one point I received a telephone call from my wife, Rhanda, who was the meeting. asking what I thought about what was happening with the hearing of Zuojin Zhang and Feng Wei. I told her I had not been contacted by the Board that the open meeting of the Massage Board had resumed. I attempted to reconnect at least six times. I was very frustrated that each time I called in to access my right to the open meeting process I got a recorded message that the monitor had not signed in to reopen the meeting. Rhanda called me back and said she told Lisa Harsma about the problem. Rhanda said that you and Lisa attempted to reconnect the call but that you had the volume of the phone turned up so loudly that you chose not to reopen the call and grant me my legal right to the open meeting process. Bridget Meyers, a board member, not you or your staff, called me after 5:05 PM and by the time I got reconnected to the meeting I got to hear the motion to adjourn.

I was upset with this situation as it violated my ability to attend the Open Board Meeting. Even when this situation was brought to the attention of the you and your staff, it took an inordinate amount of time to get it corrected resulting in me not getting reconnected until the end of the meeting. This is unacceptable in my view.

This method of open meeting access is a great way for Massage Therapists and the interested public around the State to be able to participate and voice their concerns to the Board about what is happening around the State and have input as to any changes in the law and policies of the Board. Offering Continuing Education credits would be a great incentive for people to participate. This is not difficult technology and many boards and companies use this. It is very disappointing that this happened, especially since this is technology that you have used in prior meetings. This is a critical time, in my opinion, for the Massage Therapists and interested public to be able to access the Massage Board meetings, since law changes are in the process of being proposed.

It is my understanding that Mr. Carlon made audio recording of the hearings of Zuojin Zhang and Feng Wei. I am hereby making a formal open meeting and open record request for a copy of that recording. I request that I receive these recordings within ten (10) days of today, July, 27, 2015.

I read the minutes and could get no understanding of the discussion, if any, that lead to the motions of contract renewal of yourself and Mr. Carlon, which I was also very interested in.

Thank you for your consideration in this matter.

Gene Heller

Wednesday, September 2, 2015

Secretary Kim Malsam-Rysdon  
South Dakota Department of Health  
600 E. Capitol Ave.  
Pierre, South Dakota 57501-2536

Dear Secretary Malsam-Rysdon:

My name is Eugene W. Heller and I reside in Sioux Falls, South Dakota. I am a retired Secret Service Agent with 25 years of service. Prior to that I was as a police officer in Philadelphia, PA. I am married to Rhanda Heller, who has been a massage therapist in South Dakota for over 25 years.

I have been to numerous SD Board of Massage meetings and was personally in attendance on April 30, 2012 when your predecessor, Secretary Hollingsworth attended her **first** meeting of the SD Board of Massage. The law was passed in 2005, the board seated in 2006. It took Secretary Hollingsworth 6 years to attend a meeting of a new board under her department. The law had been very controversial and had resulted in an attempted repeal in 2007 by a number of massage therapists. When Secretary Hollingsworth addressed the board she stated that she had received more complaints about this board's conduct than all of the other boards under the Department of Health, combined. These complaints were increasing in frequency and intensity. They were from many individuals, from Legislators and now from the Governor's office. She stated that the board was doing an important job and requested an executive session to discuss contractual matters of the board as well as the performance of the public officers of the board. This does not appear in the

April 30, 2012 minutes nor was it corrected in the Sept. 17, 2012 minutes. The April 12, 2012 minutes were amended in the Nov. 5, 2012 minutes to more accurately reflect Sec. of Health Hollingsworth's statements.

The result of Secretary Hollingsworth's visit was an RFP for the Executive Secretary position and ultimately the board hired Jennifer Staley to fill said position.

The Governor himself called for a full repeal of the SD Massage law in 2013.

I am writing to you today because of my CURRENT concern of the action of the SD Board of Massage.

The Board of Massage Therapy **violated open meeting law** on June 15, 2015 as I attempted to attend the meeting via teleconference as they offered.

Please refer to the attached letter I emailed to the South Dakota Massage Therapy Board on July 27, 2015. I made a request for a copy of the audio recordings of two hearings, which I missed, because I was prevented so by the Board. This was due to the failure of the Board to notify me on their return to the Board's open meeting following an Executive Session of the Board. The time frame was from 2:19 PM when the board came out of Executive Session until 4:39 PM when the board went back into Executive session. This two hour and 20 minute gap denied my open meeting rights. I missed several important items of business (not audio recorded) and the minutes do not reflect any discussion, only the final motions of these business matters. . I also missed two VERY IMPORTANT hearings that WERE AUDIO RECORDED by Mr. Jim Carlon,

the attorney for the board. It was not until the end of the meeting that I was called to reenter the OPEN MEETING. I had by then missed more business items that were not audio recorded and any discussion on said items.

It seems a reasonable request that if parts of the open meeting were audio recorded and I was denied my open meeting rights, through their fault, that the board would be happy to release those as part of the open meeting record.

In answer to my request for a copy of the audio recording of that part of the open meeting I was prevented from hearing, I was told that the recording, made by Mr. James Carlon, attorney for the Board, was considered his work product and as such could not be disclosed. Please see attached letter from Jennifer Stalley. I would agree to this explanation if the recording were made in Executive Session. However, it was recorded during the open meeting were those who were present in the room were able to hear it in person. I was not able to hear it due to not being notified by the Board that they were back in open session. I had been present for the meeting, by telephone conference, since 8 AM. They certainly had my telephone number to contact me, as I had given my number earlier that day to their office.

The SD Board of Massage comes under your Department. I am making the following requests of you.

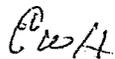
1. That you encourage the board to provide me with the audio recordings of the hearings that I missed due to not being contacted when they were back in open session. Let me be clear, at present, this request is between myself, the Executive Secretary, Jennifer Stalley, Attorney for the Board, Jim Carlon and the

President of the Board, Karen Kappel (she has only my e-mail, not Jim Carlon's response) and now yourself.

I do not wish to take this to the Open Meeting Commission, since the Board has alot on it's plate with the Practice Act being opened for possible legislative revisions. However, the open meeting law states that I should have had access to that meeting. What has happened is NOT acceptable to me, or I hope, to you. I believe in your capacity you can give the Board, the Executive Secretary, Jennifer Stalley, and Attorney, Jim Carlon the guidance they need to prevent my taking this to the Open Meeting Commission.

2. That you attend the next Board meeting being held on September 21, 2015 so you can provide help to this Board to become more effective and functional. Three members of this board are fairly new and they need a steadying influence and support that you can give to help them make this law what it needs to be to be enforceable and to "protect the safety of the public".

Respectively,



Eugene W. Heller  
3612 S. Anita Ave.  
Sioux Falls, South Dakota 57103  
605-331-4893

September 18, 2015

Eugene Heller  
3612 S. Anita Avenue  
Sioux Falls, SD 57103

Dear Mr. Heller:

Thank you for your letter regarding your attempts to get the audio recording of the June 15<sup>th</sup> Board of Massage Therapy meeting as well as your invitation to attend the upcoming board meeting on September 21<sup>st</sup>.

Unfortunately, I am not able to attend the September 21<sup>st</sup> board meeting. It is my understanding the Board has made changes in its upcoming meeting agenda to make it easier for non-Board members to listen to the public parts of the meeting by consolidating all the public sessions and all the executive sessions into separate blocks of time.

In regard to your request for the audio recording of the contested case hearings from the June 15<sup>th</sup> meeting, I have checked with the Board of Massage Therapy and been advised that the Board does not make recordings of its meetings. The recordings in question were made by legal counsel for his purposes to aid in checking the accuracy of his notes when preparing findings of facts for hearing. As these were not official recordings by the Board, they were destroyed upon the completion of his work.

Thank you again for your letter and for your interest in the Board of Massage Therapy.

Sincerely,



Kim Malsam-Rysdon  
Secretary of Health

Notice of Agenda  
Monday, September 21, 2015  
Dated September 15, 2016

Finding of Fact and Conclusions of Law.  
Case number 2015-002  
Name: Zuojin Zhang

Item:

- 7
- 8
- 9
- 14
- 15
- 16

All items are Violations of the Massage Law under State Statue.  
He is at present still Violating these Laws. (play tape)

Case Number 2015-003

Item:

- 8
- 9
- 10
- 17
- 18
- 20

All of the above items are violations of the South Dakota  
Massage Law.  
This includes the additional violation of 9 and 18 under SDCL  
222-3-3

## Closing thoughts:

In the hearings on June 15, 2015 before the Massage Board these applicants, I presume because I was unable to hear the testimony, made statements of their own free will and under oath to committing violations of SDCL. Mr. Carlon, in an Open Meeting on his recorder in order to refresh his memory, presumably recorded these statements. I believe these recording would be considered prima facial evidence in a Court of Law. But, according to the Secretary of Health these recordings have now been destroyed. I believe that the Board's Attorney should have immediately forward this information to the Rapid City Police for their action. This Board needs to have better and timelier communication with local Law Enforcement and State Attorneys offices for the effective enforcement of the law.



10. The Board has personal and subject matter jurisdiction. This matter is properly before the Board for a decision.
11. An applicant for licensure in South Dakota as a massage therapist must complete no less than 500 hours of training or study in the practice of massage therapy with a facility or instructor recognized by the Board. Applicant, Zuojin Zhang does not meet this requirement.
12. The MIR Institute and the California Vocational Cosmetology College are not recognized by the South Dakota Board of Massage Therapy.
13. An applicant for licensure as a massage therapist in South Dakota must prove that she has not engaged in unprofessional conduct.
14. Practicing massage therapy in South Dakota without a license is by statutory definition unprofessional conduct. Zhang has engaged in unprofessional conduct by practicing massage therapy without a license.
15. Zhang is ineligible for licensure as a massage therapist because she does not meet the education and training requirements of SDCL 36-35-12(3).
16. Zhang is ineligible for licensure as a massage therapist because she engaged in unprofessional conduct by practicing massage therapy without a license in violation SDCL 36-35-10 and therefore fails to meet the requirements of SDCL 36-35-12(4).
17. An order should be entered denying Zhang's application.

Dated this \_\_\_\_ day of September, 2015

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Karen Kappel, President  
Board of Massage Therapy



11. Feng promoted, facilitated and aided and abetted the unlicensed practice of massage therapy at his massage therapy business in Rapid City.

#### CONCLUSIONS OF LAW

12. The Board has personal subject matter jurisdiction. This matter is properly before the Board for a decision.
13. An applicant to be licensed in South Dakota as a massage therapist must complete no less than 500 hours training or study in the practice of massage therapy with a facility or instructor recognized by the Board. Applicant, Wei Feng, does not meet this requirement.
14. The MIR Institute of Reseda, California is not recognized by the Board as a provider of a 500 hour course of study.
15. In addition to completing a 500 hour course of study at a facility or with an instructor recognized by the Board, the hours of training must meet the requirements of ARSD 20:76:01:06.
16. Feng's training program does not meet the requirements of South Dakota administrative rule requiring: 125 hours of classroom instruction in human anatomy, physiology and kinesiology; 40 hours of classroom instruction in clinical pathology and recognition of various conditions; and 10 hours of classroom instruction in business practices and professionalism including ethics.
17. Feng has engaged in unprofessional conduct by practicing massage therapy at his massage therapy business in Rapid City, South Dakota when he was not licensed in South Dakota to practice massage therapy.
18. Feng has engaged in unprofessional conduct by promoting, facilitating, and aiding and abetting the unlicensed practice of massage therapy.
19. An applicant who has engaged in unprofessional conduct does not qualify for licensure in South Dakota.
20. The Applicant, Wei Feng, does not meet the requirements of ARSD 20:76:01:06 or SDCL 36-35-12(3) and (4).
21. An order should be entered denying Feng's application.

Dated this \_\_\_\_ day of September, 2015.

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Karen Kappel, President  
Board of Massage Therapy

22-3-3. Aiding, abetting or advising—Accountability as principal. Any person who, with the intent to promote or facilitate the commission of a crime, aids, abets, or advises another person in planning or committing the crime, is legally accountable, as a principal to the crime.

**Source:** SDC 1939, § 13.0203; SL 1976, ch 158, § 3-2; SL 2005, ch 120, § 372.

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[Chapter 22-3](#)

19-7-14. Suppression or destruction of documentary evidence as misdemeanor. Every person who maliciously practices any deceit or fraud or uses any force or threat with intent to prevent any party to an action, proceeding, trial, investigation, or inquiry from obtaining or producing therein any book, document, paper, record, or other matter or thing which might be evidence, or with intent to prevent any person having in his possession or control any of the same or cognizant of any fact material thereto from producing or disclosing the same; or who, knowing that any of such things is about to be produced in evidence for any such purpose, intentionally destroys the same with intent to prevent it being so produced or used is guilty of a Class 2 misdemeanor.

**Source:** PenC 1877, § 169; CL 1887, § 6369; RPenC 1903, § 175; RC 1919, § 3763; SDC 1939, § 13.1246; SL 1979, ch 150, § 24.

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## South Dakota Board of Massage Therapy

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### South Dakota Board of Massage Therapy Regular Meeting Monday, June 15, 2016

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

Present in Person: Board Members Karen Kappel, Bridget Myers, Christine Ellwein, and Linda Zeller; Executive Secretary Jennifer Stalley; administrative staff Lisa Harsma; and legal counsel Jim Carlon and Steve Blair. Also present: Rebecca Herrmann, Laura Brien, Olawa Rae-Bruhjell, Rhanda Heller, Deb Calmus, Bill Calmus, Wie Feng, ZuoJin Zhang and Howard Wang. Board Member Margaret Johnson attended the meeting via telephone. Gene Heller and Jeanne Robinson also attended the meeting via telephone.

#### **Public Forum**

Kappel asked for public comments. Gene Heller, Bridget Myers, Olawa Rae-Bruhjell, Deb Calmus, Rhanda Heller and Bill Calmus addressed the Board. The comments included concerns about the Board's finances, unlicensed practice, the code of ethics, student internships and communications with licensees.

#### **Application Hearing of Laura Brien (#2015-005)**

The Board noted the time and place for the application hearing of Laura Brien. Ms. Brien appeared before the Board and presented information concerning her application for licensure.

#### **Executive Session**

Motion to go into Executive Session for consideration of contested cases at 10:44 am by Myers. Seconded by Ellwein. Motion carried.

Motion to come out of Executive Session at 11:06 am by Ellwein. Seconded by Zeller. Motion carried.

Motion to approve the temporary permit application of Laura Brien contingent on her having an approved licensed massage therapist as a mentor for six months by Zeller. Seconded by Myers. Motion carried.

#### **Application Hearing of Chunyan Chen (#2014-007)**

The Board noted the time and place for the application hearing of Chunyan Chen. Ms. Chen did not appear for the hearing. Stalley informed the Board that Mr. Todd Farah contacted the office on behalf of Ms. Chen and indicated she wished to withdraw her application. Blair informed the Board that Ms. Chen was previously represented by legal counsel, Andrew Wilka, who verbally indicated that Ms. Chen did not wish to proceed with the application.

Motion to deny the application of Chunyan Chen (#2014-008) by Zeller. Seconded by Ellwein. Motion carried.

### **Approval of Minutes**

Motion to approve the Board Minutes of March 16, 2015 by Zeller. Seconded by Ellwein. Motion carried.

### **Financial Report**

Motion to approve the Financial Report as of May 31, 2015 by Ellwein. Seconded by Zeller.

### **Office Update**

Stalley presented an office update. Stalley presented the Board with the updated lists of new licensees and temporary permit holders since March 16, 2015.

Stalley reviewed the renewal timeline for 2015 and the planned communications with licensees to provide information about the process and renewal deadlines. All licensees will receive a reminder letter on July 1<sup>st</sup> and the renewal database will open on August 1<sup>st</sup> and remain open through September 30<sup>th</sup>. This is the same timeline for renewal used in 2014. In 2015, licensees only need to provide proof of malpractice insurance with the renewal application.

### **Revised Application Forms**

Stalley presented proposed revisions to the Application for Licensure, Application for Temporary Permit, Application for Licensure by Reciprocity and Application to Reactive an Inactive License with a requirement of providing a color photograph with each of the application forms.

Stalley shared from a letter from licensee Janet Kosar expressing opposition to requiring photographs on massage therapy licenses. Stalley informed the Board that she spoke with Kosar and explained the proposal was not to require photographs of current licensees, but to require photographs of new applicants as of July 1<sup>st</sup>. Kosar does not oppose requiring the photograph with new applications.

The Board discussed other wording changes to the applications.

Zeller moved to change the heading of all applications from "Contact Information" to "Employment Information"; to change the wording of the question asking about membership in a

state association to membership in a national association and provide ABMP, AMTA, NAMT and Other as possible answers for the question; and to require a color photograph as part of the Application for Licensure, Application for Temporary Permit, Application for Licensure by Reciprocity and Application to Reactive an Inactive License for all new applications. Seconded by Ellwein. Motion carried.

#### **Application Hearing of Yamin Yang (#2014-008)**

The Board noted the time and place for the application hearing of Yamin Yang. Ms. Yang did not appear for the hearing. Stalley informed the Board that Mr. Todd Farah contacted the office on behalf of Ms. Yang and indicated she wished to withdraw her application. Blair informed the Board that Ms. Yang was previously represented by legal counsel, Andrew Wilka, who verbally indicated that Ms. Yang did not wish to proceed with the application.

Motion to deny the application of Yamin Yang (#2014-008) by Zeller. Seconded by Ellwein

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

Zeller reported the Long Term Finance Workgroup has not officially met due to member schedules but the workgroup is reviewing financial data to identify trends. The workgroup is looking at the revenue of the Board as well as the expenses. Zeller also informed the Board that the Department of Health would like the Board's executive services contract returned to a fiscal year term as soon as the opportunity presents. Having all contracts on a fiscal year will better help show trends and expense

#### **Practice Act Workgroup**

Stalley reported the Practice Act Workgroup hosted a call for licensees on June 1<sup>st</sup> and a meeting for stakeholder organizations on June 15<sup>th</sup> to discuss possible changes to the practice act. The Federation of State Massage Therapy Boards, Association of Bodywork and Massage Professionals, and American Massage Therapy Association were invited to provide input and did so through participants at the June 15<sup>th</sup> meeting. The plan is to follow up on the comments made during these two meetings, prepare a draft of possible changes and make the draft available for licensee and stakeholder input in August. Stalley reminded the Board this is a fluid process but there will be opportunities for input by interested parties.

Myers reported that the workgroup was progressing and the input to date was good. The focus of comments continues to be unlicensed practice and the workgroup hopes to look at changes that would allow for more action against unlicensed practice.

Ellwein thanked the parties who have participated in the workgroup sessions for their comments and openness to looking at possible revisions.

#### **Adoption of Findings in the Matter of Li Li (#2014-001)**

Kappel informed the Board she has signed the Findings in the Matter of Li Li denying the license application.

**Adoption of the Findings in the Matter of Bryan Broussard (#2014-006)**

Motion to adopt the Findings in the Matter of Bryan Broussard by Zeller. Seconded by Ellwein. Motion carried.

**Federation of State Massage Therapy Boards Membership Renewal**

Motion to renew the Board's membership in the Federation of State Massage Therapy Boards by Zeller. Seconded by Myers. Motion carried.

Motion by Zeller to have Ellwein attend the Federation of State Massage Therapy Board's annual meeting as the South Dakota delegate. Motion failed for lack of a second.

Motion by Ellwein to have Myers attend the Federation of State Massage Therapy Board's annual meeting as the South Dakota delegate. Seconded by Zeller. Motion carried.

**Executive Session**

Motion to go into Executive Session for consideration of contested cases and contractual matters at 1:13 pm by Ellwein. Seconded by Zeller. Motion carried.

Myers was recused from Executive Session at 1:55 pm.

Motion to come out of Executive Session at 2:19 pm by Zeller. Seconded by Ellwein. Motion carried.

Motion to dismiss Complaint 2015-01 by Myers. Seconded by Zeller. Motion carried.

Motion to dismiss Complaint 2015-03 with a letter of concern by Ellwein. Seconded by Zeller. Motion carried. Myers was recused.

Motion to approve a contract with Carlon Law Offices for legal services at a rate of \$100 per hour by Zeller. Seconded by Myers. Motion carried.

Motion to approve a contract with Midwest Solutions for executive and administrative services from October 1, 2015 until May 31, 2016 with a 2% increase by Zeller. Seconded by Ellwein. Motion carried.

**Application Hearing of Chunyan Yang (#2014-010)**

The Board noted the time and place for the application hearing of Chunyan Yang. Ms. Yang did not appear for the hearing.

Motion to deny the application of Chunyan Yang (#2014-010) by Zeller. Seconded by Ellwein. Motion carried.

**Application Hearing of Meijun Zhang (#2015-001)**

The Board noted the time and place for the application hearing of Meijun Zhang. Ms. Zhang did not appear for the hearing.

Motion to deny the application of Meijun Zhang (#2015-001) by Ellwein. Seconded by Zeller. Motion carried.

**Application Hearing of Zuojin Zhang (#2015-002)**

The Board noted the time and place for the application hearing of Zuojin Zhang. Ms. Zhang appeared before the Board and presented information concerning her application for licensure.

**Application Hearing of Feng Wei (#2015-003)**

The Board noted the time and place for the application hearing of Feng Wei. Mr. Wei appeared before the Board and presented information concerning his application for licensure.

**Application Hearing of Qunfang Huang (#2015-004)**

The Board noted the time and place for the application hearing of Qunfang Huang. Ms. Huang did not appear for the hearing.

Motion to deny the application of Qunfang Huang (#2015-004) by Zeller. Seconded by Ellwein. Motion carried.

**Executive Session**

Motion to go into Executive Session for consideration of contested cases at 4:39 pm by Ellwein. Seconded by Zeller. Motion carried.

Motion to come out of Executive Session at 5:05 pm by Zeller. Seconded by Ellwein. Motion carried.

Motion to deny the application of Zuojin Zhang (#2015-002) by Myers. Seconded by Ellwein. Motion carried.

Motion to deny the application of Feng Wei (#2015-003) by Zeller. Seconded Myers. Motion carried.

**Student Internships**

Zeller moved to defer discussion on recovering costs for student internships to the September 21, 2015 meeting. Seconded by Ellwein. Motion carried.

**Announcements**

Stalley informed the Board of a request by Olawa Rae-Bruhjell for clarification on the acceptance of education provided by Springs Bath House in Costa Rica. The Board accepted the request as a request for a declaratory ruling and will conduct a hearing on the matter.

Kappel reminded the Board of the meeting schedule for 2015. The remaining meetings for 2015 are scheduled for September 21<sup>st</sup> and December 14<sup>th</sup>.

**Adjourn**

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

Respectfully Submitted,

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Christine Ellwein, Secretary

# Remaining Authority by Object/Subobject

Expenditures current through 10/31/2015 09:51:13 AM

HEALTH -- Summary

FY 2016 Version -- AS -- Budgeted and Informational

FY Remaining: 66.3%

09211 Subobject	Board of Massage Therapy - Info Operating	Expenditures	Encumbrances	Commitments	Remaining	PCT AVL
<b>EMPLOYEE SALARIES</b>						
5101030	Board & Comm Mbrs Fees	2,244	420	0	0	1,824 81.3
<b>Subtotal</b>		<b>2,244</b>	<b>420</b>	<b>0</b>	<b>0</b>	<b>1,824 81.3</b>
<b>EMPLOYEE BENEFITS</b>						
5102010	Oasi-employer's Share	104	34	0	0	70 67.3
<b>Subtotal</b>		<b>104</b>	<b>34</b>	<b>0</b>	<b>0</b>	<b>70 67.3</b>
<b>51 Personal Services</b>						
<b>Subtotal</b>		<b>2,348</b>	<b>454</b>	<b>0</b>	<b>0</b>	<b>1,894 80.7</b>
<b>TRAVEL</b>						
5203030	Auto-priv (in-st.) H/rte	3,000	716	0	0	2,284 76.1
5203100	Lodging/in-state	650	156	0	0	494 76.0
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	28	0	0	72 72.0
5203150	Non-taxable Meals/in-st	200	76	0	0	124 62.0
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>976</b>	<b>0</b>	<b>0</b>	<b>5,374 84.6</b>
<b>CONTRACTUAL SERVICES</b>						
5204020	Dues & Membership Fees	900	0	0	0	900 100.0
5204050	Computer Consultant	0	750	9,250	0	-10,000 0.0
5204080	Legal Consultant	8,500	2,386	0	0	6,114 71.9
5204090	Management Consultant	49,862	14,655	39,640	0	-4,433 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	578	160	0	0	418 72.3
5204204	Central Services	250	62	0	0	188 75.2
5204207	Central Services	650	76	0	0	574 88.3
5204360	Advertising-newspaper	350	0	0	0	350 100.0
5204460	Equipment Rental	50	0	0	0	50 100.0
5204510	Rents-other	500	0	0	0	500 100.0
5204530	Telecommunications Svcs	500	634	0	0	-134 0.0
5204590	Ins Premiums & Surety Bds	1,000	0	0	0	1,000 100.0
5204960	Other Contractual Service	200	574	0	0	-374 0.0

# Remaining Authority by Object/Subobject

Expenditures current through 10/31/2015 09:51:13 AM

HEALTH -- Summary

FY 2016 Version -- AS -- Budgeted and Informational

FY Remaining: 66.3%

Subtotal	69,140	19,297	48,890	0	953	1.4
<b>SUPPLIES &amp; MATERIALS</b>						
5205020 Office Supplies	450	0	0	0	450	100.0
5205310 Printing-state	600	184	0	0	416	69.3
5205320 Printing-commercial	600	366	0	0	234	39.0
5205350 Postage	1,500	1,125	0	0	375	25.0
<b>Subtotal</b>	<b>3,150</b>	<b>1,675</b>	<b>0</b>	<b>0</b>	<b>1,475</b>	<b>46.8</b>
<b>52 Operating</b>						
<b>Subtotal</b>	<b>78,640</b>	<b>21,948</b>	<b>48,890</b>	<b>0</b>	<b>7,802</b>	<b>9.9</b>
<b>Total</b>	<b>80,988</b>	<b>22,402</b>	<b>48,890</b>	<b>0</b>	<b>9,696</b>	<b>12.0</b>

STATE OF SOUTH DAKOTA  
 REVENUE SUMMARY BY BUDGET UNIT  
 FOR PERIOD ENDING: 10/31/2015

AGENCY 09 HEALTH  
 BUDGET UNIT 09211 BOARD OF MASSAGE THERAPY

CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE	
COMPANY NO		6503				
COMPANY NAME		PROFESSIONAL & LICENSING BOARDS				
092110061840	6503	4293101	RENEWAL FEES	9,120.00	33,745.00	
092110061840	6503	4293102	INACTIVE FEES	400.00	625.00	
092110061840	6503	4293103	TEMPORARY FEES	50.00	200.00	
092110061840	6503	4293104	REACTIVATION FEE	45.00	180.00	
092110061840	6503	4293990	MESSAGE THERAPY LIC & APP	945.00	4,105.00	
ACCT:	4293	BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)		10,560.00	38,855.00	*
ACCT:	42	LICENSES, PERMITS & FEES		10,560.00	38,855.00	**
092110061840	6503	4491000	INTEREST & DIVIDENDS-PRGM	.00	1,565.95	
ACCT:	4491	INTEREST & DIVIDENDS (NON-GOVERNMENTAL)		.00	1,565.95	*
ACCT:	44	REVENUE FROM THE USE OF MONEY & PROPERTY		.00	1,565.95	**
CNTR:	092110061840			10,560.00	40,420.95	***
CNTR:	092110061			10,560.00	40,420.95	****
CNTR:	0921100			10,560.00	40,420.95	*****
COMP:	6503			10,560.00	40,420.95	*****
B UNIT:	09211			10,560.00	40,420.95	*****

BA1409R1

STATE OF SOUTH DAKOTA  
CASH CENTER BALANCES  
AS OF: 10/31/2015

PAGE 118

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

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092100061840	1140000	116,186.97	DR	BOARD OF MASSAGE THERAPY
COMPANY/SOURCE TOTAL 6503 618			116,186.97	DR *	
COMP/BUDG UNIT TOTAL 6503 09211			116,186.97	DR **	
BUDGET UNIT TOTAL 09211			116,186.97	DR ***	

## Licenses Issued 9/15/2015 through 12/2/2015

License Number	First Name	Middle Name	Last Name	Original License Date	City - Home	State - Home
MT11419	Angel		Anderson	9/24/2015	Brookings	SD
MT11421	Amber		Beisch	10/7/2015	Watertown	SD
MT11416	Justin		Bock	9/23/2015	Sioux Falls	SD
MT11423	Jill		Brotherton	10/21/2015	Rapid City	SD
MT11420	Breanna	L.	Bullington	9/24/2015	Arlington	SD
MT11426	Ray	Alan	Burns	11/2/2015	Belle Fourche	SD
MT11425	Aimee		Miritello	10/30/2015	Sioux Falls	SD
MT11417	Michelle		Pinkelman	9/23/2015	Hartington	NE
MT11427	Tessi		Robeson	11/24/2015	Rapid City	SD
MT11422	Traci		Schaubert	10/9/2015	Council Bluffs	IA
MT11424	Brenda		Trace	10/23/2015	Menlo	GA
MT11418	Sierra		Tschetter	9/23/2015	Sioux Falls	SD

## Permits issued 9/15/2015 to 12/2/2015

First Name	Last Name	Permit #	Issued Date	City - Home	State
Birhanu	Desta	TEMP37	11/9/2015	Sioux Falls	SD
Angela	Drown	TEMP36	11/9/2015	Harrisburg	SD
Tamara	Hanson	TEMP34	10/21/2015	Sioux Falls	SD
Brynn	Nugteren	TEMP33	9/23/2015	Highmore	SD
Carrie	Palmlund	TEMP35	11/3/2015	Sioux Falls	SD



## South Dakota Board of Massage Therapy

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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

*Updated 9.21.15*

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.*



## South Dakota Board of Massage Therapy

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South Dakota Board of Massage Therapy  
Declaratory Ruling Hearing  
Kneip Building, Conference Room #3, Pierre, SD  
Monday, September 21, 2015

Jim Carlon, Counsel for the Board of Massage Therapy, announced the commencement of a Declaratory Ruling Hearing at 1:00 pm.

The Board conducted a Declaratory Ruling Hearing to consider whether a South Dakota facility recognized pursuant to ARSD 20:76:08:01 may sell, bargain, transfer or assign its recognition and whether such a facility can relocate or expand and diversify its location. Olawa Rae-Bruhjell testified regarding the matter.

The Board closed the hearing at 1:25 pm.

Following the conclusion of other business by the Board, Ellwein moved to refer the questions contained in In Re the Matter of Declaratory Ruling Regarding ARSD 20:76:08:01 to the circuit court for a declaratory judgement. Seconded by Johnson. Motion carried. Myers voted no.

Respectfully Submitted,

Christine Ellwein  
Secretary

SOUTH DAKOTA  
BOARD OF MASSAGE THERAPY

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IN THE MATTER OF THE  
LICENSURE OF:  
YUANFANG ZHI

)  
)  
)  
)  
)  
)

CASE NO. 2015-007  
  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

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The above-captioned matter having come on for hearing before the Board of Massage Therapy on September 21, 2015 pursuant to the Notice of Contested Case Hearing dated August 25, 2015, and the applicant, Yuanfang Zhi appearing in person without legal counsel, and having indicated on the record her desire to proceed without legal counsel, and the Board having heard the testimony and considered the evidence, makes and enters Findings of Fact and Conclusions of Law as follow:

FINDINGS OF FACT

1. Yuanfang Zhi has applied for licensure in the form of a temporary permit pursuant to SDCL 36-35-12.1. Zhi indicates and testified that her residence is Hampton, Virginia. She does not have a residence or place of business in South Dakota.
2. Zhi testified that she has no intention of taking the examination required by SDCL 36-35-12(5).
3. Zhi testified that she has no intention of becoming licensed as a massage therapist in South Dakota pursuant to SDCL 36-35-12.

CONCLUSIONS OF LAW

4. The Board has personal and subject matter jurisdiction. This matter is properly before the Board of a decision.

5. A temporary permit to practice massage therapy in South Dakota is available to an applicant for licensure as a massage therapist in South Dakota when the applicant has completed requirements one through four of SDCL 36-35-12 but, has yet to take and pass a national exam required by SDCL 36-35-12(5).
6. Zhi does not plan to practice massage therapy in South Dakota or become licensed as a massage therapist in South Dakota. Nor does she plan to take a national exam required by SDCL 36-35-12(5).
7. Zhi does not qualify for a temporary permit under SDCL 36-35-12.1 because she does not plan to practice in South Dakota and become licensed in South Dakota. Nor does she plan to take a national exam required by SDCL 36-35-12(5).
8. An order should be entered denying Zhi's application for a temporary permit.

Dated this 14<sup>th</sup> day of December, 2015.

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Karen Kappel  
President, South Dakota  
Board of Massage Therapy



# SOUTH DAKOTA BOARD OF MASSAGE THERAPY

## 2016 Continuing Education Requirements

State law requires licensed massage therapists to show at least 8 hours of continuing education every two years.

All licensees who renew a license in 2016 will be required to show proof of at least 8 hours of continuing education in the previous two years.

In planning to meet the 2016 continuing education requirement, please consider the following information to help ensure the continuing education you submit will be accepted.

### Accepted Continuing Education

The Board accepts continuing education courses with a clear purpose and objective which maintains, improves, or expands the skills and knowledge relevant to massage therapy of the human body. Qualifying 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 (NCBTMB) or American Medical Massage Association (AMMA), or both.

In choosing a continuing education course, you should ask if the provider has a provider number from NCTBMB or AMMA. The certificate of completion you receive from a course provided

from a NCTBMB or AMMA provider should include the provider's number. This allows the Board to verify the continuing education as an approved course.

You may take continuing education courses from providers that are not certified by the NCTBMB or AMMA provided that the course meets the definition of massage and has a clear purpose of maintaining, improving or expanding the skills and knowledge relevant to massage therapy. The Board does not certify individual providers, but the Board will preapprove a specific course to ensure the course will be accepted as continuing education.

If you are considering taking a course from a provider who is not certified by the NCTBMB or AMMA, you should ask the provider to consider having the Board preapprove the course to ensure it will be accepted as continuing education.

### Repeating Courses

The Board allows a licensee to submit the same continuing education course for two consecutive renewal periods, but not a third. If you have taken a continuing education twice, please consider taking courses in a different area for the 2016 renewal period to ensure the hours will be accepted.

### CPR as Continuing Education

The Board accepts CPR taken from an American Heart Association or American Red Cross certified instructor. CPR courses will be counted as 4 hours of continuing education, subject to the Board's limitation on repeating a continuing education course for more than two consecutive renewal periods.

Please contact the Board with any question about qualifying continuing education courses to help ensure the courses you take

## Inside this Edition

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## Executive Secretary's Notes

Jennifer Stalley, JD

Thank you for another successful renewal period. The second year of a universal renewal date and using the online renewal system went very well. More licensees took advantage of the online option for payment of the renewal fee and to submit your renewal documentation electronically than last year

Overall, more than half of the license holders renewing used some or all of the online options. Hopefully you found the system to be user-friendly and easy to navigate.

If you have suggestions on any ways we can improve the online renewal process, please let us know. We are already making plans for the 2016 renewal period and welcome input.

The online database allows the Board to send important information

and reminders to you via e-mail. Many of you received renewal reminders electronically. This is made possible by you keeping your e-mail address up to date with the Board. Please be sure to notify the Board if your e-mail changes so we can update your record and you can continue to receive timely information from the Board.

The Practice Act Workgroup presented its recommendations for proposed changes to the massage therapy practice act to the Board in September. The Board adopted proposed changes that have been submitted to the Department of Health for consideration as legislation.

If approved to be introduced, the legislation will be considered by the 2016 Legislature and any changes the Legislature approves will be effective July 1st.

Licensees can follow the proposed legislation during the 2016 Session on the Legislative Research Council website at [www.legis.state.sd.us/index.aspx](http://www.legis.state.sd.us/index.aspx).

The Board's Long Term Financial Workgroup continues its review of the Board's revenues and expenses. Recommendations from this workgroup will be made at upcoming board meetings as the Board sets its priorities.

Please continue to use the Board's website as an update resource for information concerning the Board's meetings, your license and frequently asked questions that may be of interest to you.

Happy Holidays!

### Continuing Education Requirements by License Date

Because continuing education is required every two years, continuing education is prorated based on the initial date of your licensure. If you were licensed before October 1, 2014, you must show proof of 8 hours of continuing education to renew your license by September 30, 2016. If you were licensed after October 1, 2014, please refer to the following list for the continuing education hours required to renew your license by September 30, 2016:

October 1, 2014 – March 31, 2015	8 hours of continuing education required
April 1, 2015 – September 30, 2015	6 hours of continuing education required
October 1, 2015 – March 31, 2016	4 hours of continuing education required
April 1, 2016 – May 31, 2016	2 hours of continuing education required

Licensees are required to maintain proof of continuing education submitted for renewal. The records should be kept for at least two years after the continuing education is submitted to support renewal of your license.

### South Dakota Board of Massage Therapy Members

#### **President**

Karen Kappel, LMT  
Dell Rapids, SD

#### **Vice President**

Linda Zeller  
Pierre, SD

#### **Secretary**

Christine Ellwein, LMT  
Pierre, SD

#### **Board Members**

Bridget Myers, LMT  
Sioux Falls, SD

Margaret Johnson, LMT  
Sioux Falls, SD

## Odds & Ends

### **Name Change**

If you have changed your name due to marriage, divorce or other life circumstance, please submit proof of the name change to the Board so your massage license can be issued to you in your legal name. Proof of your name change can be provided by a copy of your marriage license, divorce decree or other legal documents noting the change.

A new license will be issued at no cost to you.

### **Electronic Communications**

The Board of Massage Therapy periodically shares information with licensees via e-mail. This information includes meeting notices, meeting minutes, upcoming licensee deadlines, and other important board information.

In order to ensure that you received these communications, please keep your e-mail address up to date with the Board and add the Board's e-mail to your address book. The Board's e-mail address is [SDBMT@midwestsolutionssd.com](mailto:SDBMT@midwestsolutionssd.com).

### **Massage Licensees by the Numbers**

(as of November 30, 2015)

Active Licensees:	796
Inactive Licensees:	219
Temporary Permits: (since July 1, 2015)	6
New Licensees: (since July 1, 2015)	38

## Frequently Asked Questions

**Q. What is the best way to contact the Board or individual Board members with a question or concern?**

**A.** The Board's office can be contacted a number of ways. You can call the Board's office at 605-224-1721 or e-mail the Board at [SDBMT@midwestsolutionssd.com](mailto:SDBMT@midwestsolutionssd.com). Your questions can be answered through either channel and the Board strives to respond to messages within a day of your contact.

The Board's website address is <https://doh.sd.gov/boards/massage/>

The members of the Board are listed on the homepage of the website as well as on the Frequently Asked Questions page of the website. Each Board member's name is hyperlinked to their e-mail address. You can e-mail an individual Board member by clicking on the hyperlink and sending your question or concern.

**Q. What is an inactive license and why should I consider it?**

**A.** You may choose to let your license become inactive if you are no longer planning to practice massage therapy for a period of time. ([ARSD 20:76:06:01](#))

You can reactive your inactive license to full license status at any time by showing proof of continuing education for the preceding two year period, proof of liability insurance and completing the [Reactivate Inactive License Application](#).

Inactive status is most beneficial to licensees who received their license through the original grandfather provisions of the massage therapy licensing laws. Those massage therapists grandfathered into licensure did not have to provide proof of education at the time of initial licensure. If a grandfathered licensee

were to allow that license to lapse, the licensee would be subject to licensure under the current education standards. By electing to allow the license to go inactive, the grandfathered licensee maintains the original licensure which can be reinstated as a full license at a later date without having to meet the current education standards.

**Q. Where can I find a list of disciplinary actions by the Board?**

**A.** A list of the formal disciplinary actions taken by the Board is listed on our website. Some complaints are resolved informally or without public sanctions. The number of those actions is noted on the website, but the resolution of those actions is not made public.

**Q. Where can I find a list of current licensees?**

**A.** A list of current licensed massage therapists and temporary permit holders is posted on the homepage of the Board's website.

South Dakota Board of Massage Therapy  
PO Box 340  
Pierre, SD 57501

PRST STD  
US Postage  
**PAID**  
Permit No. 24  
Pierre, SD



Vol. 3, No. 2 | December, 2015

## SOUTH DAKOTA BOARD OF MASSAGE THERAPY

### Important Dates to Remember - 2016

March 14, 2016	Board Meeting
June 13, 2016	Board Meeting
August 1, 2016	Online Renewal Opens for 2016 Renewals
September 30, 2016	All licenses expire. All licensees <b>must</b> renew by this date

#### South Dakota Board of Massage Therapy

1351 N. Harrison Avenue (Physical Address)  
PO Box 340 (Mailing Address)  
Pierre, SD 57501  
P: (605) 224-1721 | F: (888) 425-3032  
[SDBMT@midwestsolutionssd.com](mailto:SDBMT@midwestsolutionssd.com)



Board of Massage Therapy Financial Summary - Revenue										
Categories	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Application Fees (New)	\$0.00	\$48,000.00	\$27,200.00	\$13,400.00	\$5,700.00	\$9,600.00	\$12,100.00	\$9,500.00	\$7,725.00	\$6,675.00
New License Fees	\$0.00	\$91,065.00	\$21,270.00	\$8,450.00	\$3,510.00	\$5,850.00	\$7,280.00	\$6,175.00	\$4,095.00	\$4,095.00
Renewal Fees	\$0.00	\$0.00	\$910.00	\$42,185.00	\$38,874.00	\$38,740.00	\$40,495.00	\$49,465.00	\$0.00	\$33,615.00
Materials Sold	\$0.00	\$0.00	\$178.00	\$350.00	\$350.00	\$275.00	\$500.00	\$20.00	\$650.00	\$900.00
Interest Income	\$0.00	\$0.00	\$374.00	\$2,855.00	\$4,353.00	\$6,032.00	\$4,993.00	\$3,946.00	\$2,705.00	\$1,645.00
Miscellaneous Fees	\$0.00	\$25.00	\$30.00	\$225.00	\$175.00	\$150.00	\$190.00	\$175.00	\$20.00	\$15.00
Late Renewal Fee	\$0.00	\$0.00	\$0.00	\$5,850.00	\$4,125.00	\$4,050.00	\$4,650.00	\$3,225.00	\$0.00	\$0.00
Inactive License Fee	\$0.00	\$0.00	\$0.00	\$2,470.00	\$2,275.00	\$1,430.00	\$1,560.00	\$1,820.00	\$250.00	\$1,150.00
Reactivation Fee	\$0.00	\$0.00	\$0.00	\$0.00	\$585.00	\$325.00	\$715.00	\$130.00	\$180.00	\$90.00
Civil Penalties	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,000.00	\$70.00	\$75.00	\$0.00
Temporary Permit Fee	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$700.00	\$850.00
	\$0.00	\$139,090.00	\$49,962.00	\$75,785.00	\$59,947.00	\$66,452.00	\$73,483.00	\$74,526.00	\$16,400.00	\$49,035.00

Board of Massage Therapy Financial Summary - Expenses

Categories	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Management Services	\$0.00	\$37,720.28	\$28,760.78	\$33,400.00	\$33,345.88	\$32,288.67	\$36,315.02	\$43,141.00	\$42,815.00	\$43,896.00
Legal Services	\$0.00	\$10,333.18	\$0.00	\$0.00	\$835.00	\$2,070.00	\$9,624.25	\$9,765.00	\$4,089.00	\$6,365.00
Database Services	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$33,425.00	\$6,892.00
Board Expenses	\$0.00	\$8,280.29	\$6,695.89	\$7,260.22	\$2,788.73	\$5,624.49	\$11,192.69	\$7,962.00	\$10,445.00	\$10,561.00
<b>Total Expenses</b>	<b>\$0.00</b>	<b>\$56,333.75</b>	<b>\$35,456.67</b>	<b>\$40,660.22</b>	<b>\$36,969.61</b>	<b>\$39,983.16</b>	<b>\$57,131.96</b>	<b>\$60,868.00</b>	<b>\$90,774.00</b>	<b>\$67,714.00</b>





BOARD OF  
MASSAGE THERAPY

RECORDS RETENTION AND  
DESTRUCTION SCHEDULE

State of South Dakota

Bureau of Administration

Records Management Program

(605) 773-3589

STATE OF SOUTH DAKOTA  
RECORDS RETENTION &  
DESTRUCTION SCHEDULE  
AUTHORIZATION FORM  
(Std Form RM-1 Rev 1/03)

DEPARTMENT: Health  
DIVISION: Boards  
OFFICE: Massage Therapy  
PROGRAM: \_\_\_\_\_  
RECORDS OFFICER: Kari Williams  
RM CUSTOMER #: 0003

<u>RECORD</u> <u>SERIES NO.</u>	<u>TITLE---DESCRIPTION---RETENTION AND DESTRUCTION SCHEDULE</u>	<u>R.D.B.</u> <u>AUTHORITY</u> <u>NUMBER</u>
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**BMT-1. ADMINISTRATIVE REFERENCE FILES:**

!@#S

This series contains information used in the daily administration of the Board. Information may include, but is not limited to: equipment, inventory, mailing lists, monthly reports, research materials, reference manuals, rules and regulations, property management information, logs, and other related information. This record series is maintained for reference purposes.

**RETENTION:** Retain current in office. Destroy superseded or obsolete.

(Note: Review files on a yearly basis to avoid build-up of superseded or obsolete materials.)

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RM CUSTOMER #: 0003

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**NUMBER**

**BMT-2.** ADMINISTRATIVE RULES PROMULGATION FILES:

!@#S

This series is arranged by subject matter and contains administrative rules promulgation files. Information may include: notices of public hearings, affidavits of publication of notices, written comment from the public, transcripts of hearings, and final decisions. Files have little reference activity once the hearing has been held unless someone requests a copy of the transcript. This record series is maintained for documenting the proper promulgation of administrative rules pursuant to SDCL 1-26.

**RETENTION: FINAL DECISIONS:** Retain permanently in office.

**ALL OTHER DOCUMENTATION:** Retain in office for as long as rules are in effect, then destroy.

(Note: SDCL 1-26-7 states in part that "each agency shall keep the original records, documents, and instruments required by the chapter." There is no time frame included for these records. Since SDCL 1-26-6.8 provided that "No rule is enforceable in the courts unless properly adopted," the records must be maintained at least until a curative statute has been adopted by the Legislature similar to SDCL 1-26a-2, which cures all defects in the adoption of rules appearing in the 1974 printed ARSD.)

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**BMT-3. ANNUAL REPORTS:**

!@#S

This series is arranged chronologically and contains the originals of all annual reports written by the Board to summarize their activities for the previous year. Information may include: number of licenses issued, number of inspections conducted (if applicable), number of violations noted, man hours, time reports, and other related information. A copy of this report is filed annually with the Department of Health. This record series is used for reference to compare activities from year to year.

**RETENTION:** Retain 4 years in office, then destroy.

**BMT-4. APPLICATION FILES:**

!@#S

This series is arranged alphabetically and documents individuals applying for licensure, inactive licensure, reactive licensure, temporary permit, or licensure by reciprocity. Information may include: application, verification of education, official transcripts, and verification of licensure in another state. This record series is used to determine eligibility for licensure.

**RETENTION:** Transfer approved applications to respective "Licensee File".

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**BMT-5. APPLICATIONS, INCOMPLETE/NON-APPROVED:**

!@#S

This series is arranged alphabetically and contains applications that are incomplete or otherwise not approved for license. Information may include: an application, transcripts, and verification of licensure in another state. This record series is maintained to document application work in progress pending Board action.

**RETENTION:** Retain 4 years in office, then scan paper and convert digital images to microfilm. Maintain digital images and microfilm for 46 years. Destroy digital images and microfilm after 50 years.

**BMT-6. ASSOCIATION AND ORGANIZATION FILES:**

!@#S

This series is arranged chronologically and contains current correspondence and newsletters from professional associations and/or organizations to which the Board of Massage Therapy belongs. Information may include: minutes of association meetings, conference agendas, expense reports, participants names, and other State's massage therapy legislation. This record series is used for reference purposes concerning ideas and policies suggested and used by these associations.

**RETENTION:** Retain 4 years in office, then destroy.

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**BMT-7. AUDIT REPORTS:**

!@#S

This series is arranged chronologically and contains Legislative Audit reports concerning the expenditure and administration of funds. Information may include: cover letters, statement of assets, revenues and expenditures, change of fund cash balances, and observations and recommendations. This record series is maintained for identifying problem areas and discrepancies so that corrective measures may be implemented.

**RETENTION:** Retain 4 years, then destroy provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.

(Note: Legislative Audit maintains the reports permanently.)

**BMT-8. BOARD MEETING FILES:**

!@#S

This series is arranged chronologically by meeting date and may contain handout material and agenda items to be discussed at the next Board meeting. Information may include: date, time and location of the meeting, items under old business, items under new business, financial information, handouts, and any licensure related issues. This record series is used to determine the course of the board meetings.

**RETENTION:** Retain current in office. Destroy superseded or obsolete once the meeting minutes have been approved.

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**BMT-9. BOARD MEMBER FILES:**

!@#S

This series is arranged alphabetically and contains information regarding individual Board members. Information may include: letters of appointment, terms, expiration dates, payroll information, rosters, and correspondence. This record series is maintained to document member appointments to the Board of Massage Therapy and any related information pertaining to each.

**RETENTION:** Retain 4 years after termination, then destroy.

**BMT-10. BOARD OF MASSAGE THERAPY DATABASE RECORDS:**

!@#S

This computer licensure system is arranged numerically by license number and contains the actual license information for each licensee or certificate holder under the jurisdiction of the South Dakota Board of Massage Therapy. These records are stored on the Board's licensure computer system. Information may include: name, address, date of birth, social security number, license number, licensure status, education, exam information, continuing education information, and insurance information. This record series is maintained for verification and licensure purposes.

**RETENTION:** Retain 50 years after license expiration or inactivation, then delete.

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 PROGRAM: \_\_\_\_\_  
 RECORDS OFFICER: Kari Williams  
 RM CUSTOMER #: 0003

		R.D.B.
<b>RECORD</b>		<b>AUTHORITY</b>
<b><u>SERIES NO.</u></b>	<b><u>TITLE---DESCRIPTION---RETENTION AND DESTRUCTION SCHEDULE</u></b>	<b><u>NUMBER</u></b>

**BMT-11. BUDGET FILES:**

!@#S

This series is arranged chronologically and may contain the information used to prepare the yearly budget request. Information may include: budget requests, operating budgets balance sheets, budget projections, projected salaries, disbursements, and other related information. This record series is used throughout the year in monitoring program activities and for preparing new budget requests.

**RETENTION:** Retain 4 years in office, then destroy.

**BMT-12. COMPLAINT FILES:**

!@#S

This series contains all related correspondence received from either the general public or initiated by the Board of Massage Therapy concerning problems which have occurred with licensed or non-licensed massage therapists. Information may include: nature of the complaint, related correspondence, investigation of the allegation, conclusion of the investigation, National Practitioner Data Bank (NPDB) reports, and related materials. This record series is used by the Board to determine if a complaint is substantiated and if so, to take corrective action.

**RETENTION: LICENSED:** Retain until case closed, then transfer to the respective "Licensee File"

**NON-LICENSED:** Retain 50 years, then destroy.

**UNLICENSED PRACTICE CEASE & DESIST:** Retain 4 years in office, then scan paper and convert digital images to microfilm. Maintain digital images and microfilm for 46 years. Destroy digital images and microfilm after 50 years.

(Note: No complaint was found for these existing cease and desist files. This is a one-time microfilm request.)

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RECORDS OFFICER: Kari Williams  
RM CUSTOMER #: 0003

RECORD R.D.B.  
SERIES NO. TITLE---DESCRIPTION---RETENTION AND DESTRUCTION SCHEDULE AUTHORITY  
NUMBER

**BMT-13. CONTINUING EDUCATION CREDIT AUDITS:**

!@#S

This series is arranged chronologically and contains random audits of continuing education credits received by massage therapists. Information may include: date of audit, name, findings of fact, and education verifications. This record series is used to verify that massage therapists received the education stated on their renewal applications.

**RETENTION:** Retain 4 years in office, then destroy.

**BMT-14. CONTINUING EDUCATION PROGRAM RECORDS:**

!@#S

This series is arranged numerically by date, which is approved annually to offer continuing education courses in massage therapy. Information may include: school or seminar name, course information, sample of text or handouts, correspondence, course outline, names of participants, date, and credit given. This record series is used to certify qualified classes, and review course data.

**RETENTION:** Retain 4 years in office, then destroy.

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**BMT-15. CONTRACTS, LEASES, AND AGREEMENTS:**

!@#S

This series may contain contracts, leases, and agreements between the Board of Massage Therapy and other parties. Information may include: terms and conditions of the contracts and agreements, effective dates, costs, and funding sources. This record series is maintained for reference and audit purposes.

**RETENTION:** Retain current in office. Destroy 6 years after terminated provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.

(Note: SDCL 1-24A-1 requires consulting contracts be filed with the State Auditor.)

**BMT-16. CORRESPONDENCE, GENERAL:**

!@#S

This series is arranged chronologically and contains both copies of letters and memorandums sent, and originals of letters and memorandums received. The information is used for occasional reference and documentation pertaining to regulatory questions.

**RETENTION:** Retain 1 year in office, then destroy.

**BMT-17. DEPOSITS:**

!@#S

This series contains deposit slips submitted with receipts. Information may include: date, account number, an itemized list of who have paid license fees, receipt numbers, amounts, and total amount deposited. This record series is maintained for audit purposes to verify that all deposits were made.

**RETENTION:** Retain 4 years, then destroy provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.

STATE OF SOUTH DAKOTA  
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 RM CUSTOMER #: 0003

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**BMT-18. ELECTRONIC COMMUNICATION RECORDS:**

!@#S

This series may contain e-mail messages, voicemail messages, recorded telephone conversations, instant messages, etc. created or received by employees of the agency.

**RETENTION:** Determine the record status of the message based on the content. If the message is an official record made or received pursuant to law or in connection with the transaction of official business, the retention period should be covered by an existing record series in the respective agency's retention manual. It is permissible to print record e-mails and file them with like paper records.

**NON-RECORD MESSAGES:** Retain until action has been taken, then destroy or delete.

**BMT-19. EXPENSE FILES:**

!@#S

This series contains itemized listings of all expenses incurred by Board members. Information may include: name, dates, type of expenditures, amounts, and totals. This record series is used for support and documentation of vouchers submitted for payment.

**RETENTION:** Retain 4 years, then destroy provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.

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**BMT-20. FINANCIAL STATEMENTS:**

!@#S

Financial statements provide an overview of the agency's financial condition for a given year. Information may include: balance sheets, statement of revenues, expenditures, and changes in fund balances (budgeted and actual); statement of fixed assets; summary of significant accounting procedures; supplemental information and working papers. This record series is maintained for reference and audit purposes.

**RETENTION:** Retain 4 years, then destroy provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.

**BMT-21. JOB TICKETS, CENTRAL DUPLICATING:**

!@#S

This series is arranged numerically contains the printing requisition as submitted by the Board. Information may include: agency code, agency name, mailing address, submitted by, job description, date sent, date needed, number of pages, quantity of copies, printing specifications, and description. The information is used to ensure accurate completion of the request.

**RETENTION:** Retain 4 years in office, then destroy.

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**BMT-22. LEGISLATION FILES:**

!@#S

This series is arranged chronologically and constitutes the Board's central file of all proposed legislation and legislation from previous years. Information may include: resource materials, bill tracking printouts, copies of House and Senate bills, preliminary bill drafts, and the final drafts of proposed legislation. This record series is used for bill drafting, submission, and tracking during the legislative session.

**RETENTION:** Retain current in office. Destroy superseded or obsolete.

**BMT-23. LICENSEE FILES:**

!@#S

This series is arranged numerically and documents personal data for active, inactive, and expired licensed massage therapists. Information may include: original applications, college grade transcripts, renewal applications, verification of most current continuing education units, verification of education, substantiated complaints, and proof of insurance. This record series is used to document the licensing and renewal processes of all massage therapists.

**RETENTION:** Retain in office 4 years after license expiration or 10 years after license inactivation, then scan paper and convert digital images to microfilm. Destroy images and microfilm after 50 years.

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**BMT-24. LICENSEE LIST:**

!@#S

This series contains a list of grandfathered licensee, active licensees and temporary permit holders issued by the Board of Massage Therapy. Active licensees and temporary permit holders are available on the Board's website. Information may include: license number, first and last name, city, state, issue date, and expiration date. This record series is used reference and for licensure verification.

**RETENTION:** Retain information current. Destroy superseded or obsolete.

**BMT-25. NEWSLETTER FILES:**

!@#S

This series contains newsletters published by the Board of Massage Therapy. Information may include: date, topics discussed, and informational materials. Newsletters are available on the Board's website.

**RETENTION:** Retain 5 years, then destroy.

(Note: File newsletters with the State Library pursuant to SDCL 14-1A and ARSD 24:30:07:06, and two copies with State Archives.)

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**BMT-26. OPEN RECORDS REQUESTS:**

!@#S

This series contains open record requests received by agencies. Information may include: open records request, correspondence, denial letters, and supporting documentation. This series is maintained to document the outcome of requests and for reference purposes. Denial letters are maintained pursuant to SDCL 1-27-1.4.

**RETENTION:** DENIAL LETTERS: Retain permanently.

**ALL OTHER INFORMANTION:** Retain 4 years in office, then destroy provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.

**BMT-27. POLICIES AND POSITIONS:**

!@#S

This series is arranged by topic and contains the current policies and positions implemented by the Board. Information may include the Board's position or interpretation on issues and policies, and date of implementation or adoption. This record series is used to determine the proper course of action to take in certain situations.

**RETENTION:** Retain current in office. Destroy superseded or obsolete.

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**BMT-28. MINUTES, BOARD OF MASSAGE THERAPY:**

!@#S

This series is arranged chronologically and contains the official minutes of the Board meetings. Information may include: dates of meetings, members present, topics discussed, actions taken, and the signature of the secretary. This record series is used for occasional reference and documentation purposes.

**RETENTION:** Retain 4 years in office, then scan paper and convert digital images to microfilm. Maintain images and microfilm permanently.

**BMT-29. RECEIPTS:**

!@#S

This series contains receipts used to documents the receipt of money. Information may include: date money was received, amount received, funds and accounts to be credited, the amount to be credited, and signature of the person receiving the money. This record series is maintained for audit purposes.

**RETENTION:** Retain 4 years, then destroy provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.

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**BMT-30. RECORDS MANAGEMENT FILES:**

!@#S

This series contains records management information. Information may include: copies of the standard records transfer receipt forms, Records Retention and Destruction Schedule (RRDS), copies of microfilm project registration forms, inventory listings, and microfilm and box destruction authorization forms. This record series is maintained for tracking records sent to Records Management storage, to document the time each record series must be legally maintained, and to document authorization granted to RM for destruction of obsolete records.

**RETENTION: DESTRUCTION AUTHORIZATION FORMS:**  
Retain 4 years in office, then destroy.

**ALL OTHER INFORMATION:** Retain current in office. Destroy superseded or obsolete.

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**BMT-31. SOUTH DAKOTA FINANCIAL SYSTEM REPORTS:**

!@#S

These daily, weekly, monthly\*\*, and year-end \*\* reports are used to monitor and reconcile fiscal year receipts and expenditures. Information is maintained by the Finance Officer and may include: revenue and journal voucher reports\*, open purchase order reports, available funds reports\*, revenue analysis reports, state general ledger trail balance\*, company general ledger trial balance\*, expenditure reports\*, bank reconciliation reports\*, employee receivable reports\*, warrant register reports\*, encumbrance detail reports\*, accounts payable reports\*, projects reports\*, cash center reports\*, object/sub-object reports\*, budget adjustments reports, Special Bureau of Administration revenue reports, agency funds activity reports\*, company 8,000 trail balance by center\*, encumbrance balance report\*, and special travel expenditure reports. This record series is maintained for audit purposes.

**RETENTION:** Retain 4 years, then destroy provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.

(Note: the asterisk (\*) indicates reports maintained permanently by the Bureau of Finance and Management. (\*\*) Many of the June monthly reports serve as the year-end reports.)

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**BMT-32. SURPLUS PROPERTY FILES:**

!@#S

This series contains the form submitted to the director of South Dakota Property Management for approval to dispose of State-owned personal property and the written notification received from Property Management designating the manner of disposal. Information may include: agency name; date; address or location of property; phone number; name of individual requesting; Property Management Officer's name; description of item(s); quantity; serial number; equipment number; desired method of disposal as authorized; reason for declaring property as surplus; estimate of current value; suggested selling price; minimum acceptable price; statement of content; fixed asset number, if applicable; and any other information deemed necessary. This record series is maintained pursuant to SDCL 5-24A.

**RETENTION:** Retain 4 years, then destroy provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.

**BMT-33. TEMPORARY PERMIT FILES:**

!@#S

This series contains requests for temporary permit applications for individuals to become temporarily licensed as a massage therapist. Information may include: name of facility, facility's address and phone number, name of individual authorized to request the permit, position of authorized person, name of applicant, applicant's address and phone number, date of birth, social security number, license number, licensure status, education, exam information, continuing education information, insurance information, and authorized signatures. This record series is maintained for reference purposes.

**RETENTION:** Retain 50 years in office following the date of expiration, then destroy.

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**BMT-34. VOUCHERS:**

!@#S

This series may contain copies of direct vouchers, receiving vouchers, non-cash vouchers, travel vouchers, and journal vouchers, along with copies of any supporting invoices or receipts. Vouchers are used to enter transactions on the central accounting system.

**RETENTION:** Retain 4 years, then destroy provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.