



## South Dakota Board of Massage Therapy

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

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

#### **Regular Meeting**

**Conference Room #3, Kneip Building**

**700 Governors Drive, Pierre, SD**

**Monday, March 14, 2016 - 10:30 AM CDT**

#### **Proposed Agenda**

- 1) Call to Order
- 2) Open Forum: *15 minutes for the public to address the Board*
- 3) Approval of Agenda
- 4) Approval of Minutes: December 14, 2015
- 5) Financial Report: As of February 27, 2016
- 6) Office Update
  - a. New Licensee List
  - b. 2016 Legislation Update
  - c. 2016 Renewal Timeline
- 7) Old Business:
  - a. Adoption of Findings in the Matter of the Licensure of Jun Huguenin #2015-008
  - b. Adoption of Findings in the Matter of the Massage License of Yufang Xie #2015-005
  - c. Executive Services Request for Proposals
  - d. Long Term Finance Workgroup Report
- 8) New Business:
  - a. Surplus Property Request – Olympus Camera
  - b. Legal Services Contract Renewal
  - c. Administrative Rules Proposed Updates Timeline
- 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. June 13, 2016
- 11) Adjourn

Please contact the Board at 605-224-1721 or [SDBMT@midwestsolutionssd.com](mailto:SDBMT@midwestsolutionssd.com) by March 11, 2016 at 5:00 pm (CDT) if you wish to join this meeting via teleconference.



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### South Dakota Board of Massage Therapy

#### Regular Meeting

Monday, December 14, 2015

President Kappel called the meeting to order at 10:24 am central and determined a quorum.

Present in Person: Board Members Karen Kappel, Linda Zeller, Christine Ellwein, Bridget Myers and Margaret Johnson; Executive Secretary Jennifer Stalley; administrative staff Lisa Harsma; legal counsel Jim Carlon; and Assistant Attorney General Steve Blair. Also present in person: Olawa Rae-Bruhjell, Andrew Wilka, Shicai Yan, Qui Jie Wu, Yufang Xie, and Jun Huguenin. Present via telephone: Lacey Spralding, Deb Calmus, Gene Heller, Rhanda Heller and Al Trace.

#### **Public Forum**

Kappel asked for public comments. Deb Calmus, Rhanda Heller and Olawa Rae-Bruhjell addressed the Board.

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

Motion to approve the agenda as proposed with the noted case file number correction by Zeller. Seconded by Johnson. Motion carried.

#### **Executive Session**

Motion to go into executive session for consideration of contested cases and contractual matters at 11:03 am by Johnson. Seconded by Ellwein. Motion carried.

Motion to come out of executive session at 11:52 am by Ellwein. Seconded by Zeller. Motion carried.

#### **Approval of Minutes**

Motion to approve the Board Minutes of September 21, 2015 without any correspondence attached by Ellwein. Seconded by Johnson. Motion carried.

#### **Financial Report**

Motion to approve the Financial Report as of October 31, 2015 by Johnson. Seconded by Zeller. Motion carried.

### **Office Update**

Stalley presented an office update. Stalley noted that Board member e-mails have been added to the Board's website to allow members of the public to contact the members directly. Stalley informed the Board that Linda Zeller has been reappointed to the Board for another term. Stalley also updated the Board on the Board's appearance before the Government Audit and Operations Committee. Stalley also noted that the Board has been asked to present information about its role to an informational session of the Sioux Falls City Council in January.

Stalley provided an update on the 2015 renewal process. Overall the renewal process went very well. Approximately 57% of licensees used the online system for part or all of their renewal. The Board's office called 235 grandfathered licensees to ensure notification of the renewal requirements. Approximately 95% of the grandfathered licensees renewed, 4% of grandfathered licensees went inactive and 1% of grandfathered licensees expired. As of December 10, 2015 there are 797 active licensees, 219 inactive licensees, 10 temporary permit holders and 10 pending applications.

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

Stalley presented the updated Board Policies and Positions document to replace earlier versions of the document.

Stalley reported that there has not be a final determination on the Board's proposed legislation for the 2016 Session.

### **Adoption of the Minutes and Order in the Matter of the Declaratory Ruling Regarding ARSD 20:76:08:01 SL 2013, ch 184**

Motion to approve the minutes and adopt the declaratory ruling regarding ARSD 20:76:08:01 SL 2013, ch 184 and instruct legal counsel to file a petition in circuit court by Johnson. Seconded by Ellwein. Motion carried. Myers abstained.

### **Adoption of Findings in the Matter of Application of Yuafang Zhi #2015-007**

Motion to adopt the findings of fact and conclusions of law and sign the final order in the matter of the application of Yuafang Zhi and to overrule the objections of the applicant by Zeller. Seconded by Johnson. Motion carried.

### **Licensee Newsletter**

Motion to approve the December licensee newsletter with the addition of information about the teleconference option for board meetings and the announcement that this edition will be the last printed and mailed edition by Johnson. Seconded by Ellwein. Motion carried.

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

Zeller presented an update on the Long Term Finance Workgroup. Zeller reviewed the summary sheets on the Board's expenses, revenues, cash balance and licensees. Zeller indicated that the largest expense of the Board is executive services. The workgroup will wait to make formal recommendations until the contract for executive services is established at the next meeting.

### **Records Retention Policy**

Motion to approve the updated Records Retention Policy by Zeller. Seconded by Myers. Motion carried.

### **Federation of State Massage Therapy Boards Annual Meeting Report**

Myers provided an update on her participation in the Federation of State Massage Therapy Boards annual meeting. Myers highlighted the sessions she attended and provided a summary of issues discussed. A copy of the Federation's annual report can be found on its website for more detail on the meeting.

### **Hearing in the Matter of Yufang Xie (#2015-005)**

The Board noted the time and place for the disciplinary hearing of Yufang Xie. Ms. Xie appeared before the Board with her legal counsel, Andrew Wilka, and presented information concerning the complaint against her alleging unprofessional conduct. Mr. Shicai Yan served as the interpreter for Ms. Xie.

### **Hearing in the Matter of Jun Huguenin (#2015-008)**

The Board noted the time and place for the application hearing of Jun Huguenin. Ms. Huguenin appeared before the Board with her legal counsel, Andrew Wilka, and presented information concerning her application for licensure. Mr. Shicai Yan served as the interpreter for Ms. Huguenin.

### **Hearing in the Matter of Shuxia Guan (#2015-006)**

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

### **Executive Session**

Motion to go into Executive Session for consideration of contested cases and contractual matters at 4:49 pm by Johnson. Seconded by Zeller. Motion carried.

Motion to come out of Executive Session at 5:00 pm by Johnson. Seconded by Zeller. Motion carried.

Motion to accept the proposed settlement in Complaints #2015-002/2015-004 by Johnson. Seconded by Ellwein. Motion carried.

Motion to go into Executive Session for consideration of contested cases and contractual matters at 5:01 pm by Johnson. Seconded by Myers. Motion carried.

Motion to come out of Executive Session at 5:45 pm by Myers. Seconded by Zeller. Motion carried.

### **Executive Services Proposal**

Motion to proceed with a request for proposals for executive services to be published on December 16, 2015 and due on February 10, 2016 by Myers. Seconded by Johnson. Motion carried.

### **Election of Officers**

Motion to elect Kappel as president, Zeller as vice president and Ellwein as secretary of the Board for one year terms by Johnson. Seconded by Ellwein. Motion carried.

### **Meeting Schedule for 2016**

Motion to schedule Board meetings on March 14, 2016 and June 13, 2016 for the upcoming year by Zeller. Seconded by Ellwein.

### **Action on Hearings**

Motion to revoke the license of Yufang Xie due to unprofessional conduct for one year and require her to reapply for licensure at that time pursuant to Complaint #2015-005 by Zeller. Seconded by Johnson. Motion carried.

Motion to deny the application of Shuxia Guan (#2015-006) by Zeller. Seconded by Ellwein. Motion approved.

Motion to deny the application of Jun Huguenin (#2015-008) by Myers. Seconded by Zeller. Motion carried.

### **Announcements**

Kappel reminded the Board to take note of the scheduled meetings for 2016.

### **Adjourn**

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

Respectfully Submitted,

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Christine Ellwein, Secretary

Draft

# Remaining Authority by Object/Subobject

Expenditures current through 02/27/2016 08:51:17 AM

HEALTH -- Summary

FY 2016 Version -- AS -- Budgeted and Informational

FY Remaining: 34.2 %

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	720	0	0	1,524	67.9
<b>Subtotal</b>		<b>2,244</b>	<b>720</b>	<b>0</b>	<b>0</b>	<b>1,524</b>	<b>67.9</b>
<b>EMPLOYEE BENEFITS</b>							
5102010	Oasi-employer's Share	104	61	0	0	43	41.3
<b>Subtotal</b>		<b>104</b>	<b>61</b>	<b>0</b>	<b>0</b>	<b>43</b>	<b>41.3</b>
<b>51 Personal Services</b>							
<b>Subtotal</b>		<b>2,348</b>	<b>781</b>	<b>0</b>	<b>0</b>	<b>1,567</b>	<b>66.7</b>
<b>TRAVEL</b>							
5203030	Auto-priv (in-st.) H/rte	3,000	1,486	0	0	1,514	50.5
5203100	Lodging/in-state	650	279	0	0	371	57.1
5203120	Incidentals-travel-in St.	100	0	0	0	100	100.0
5203130	Non-employ. Travel-in St.	300	204	0	0	96	32.0
5203140	Meals/taxable/in-state	100	80	0	0	20	20.0
5203150	Non-taxable Meals/in-st	200	149	0	0	51	25.5
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>2,198</b>	<b>0</b>	<b>0</b>	<b>4,152</b>	<b>65.4</b>
<b>CONTRACTUAL SERVICES</b>							
5204020	Dues & Membership Fees	900	0	0	0	900	100.0
5204050	Computer Consultant	0	6,030	4,583	0	-10,613	0.0
5204080	Legal Consultant	8,500	6,559	0	0	1,941	22.8
5204090	Management Consultant	49,862	29,877	18,684	0	1,301	2.6
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	620	0	0	-42	0.0
5204204	Central Services	250	94	0	0	156	62.4
5204207	Central Services	650	225	0	0	425	65.4
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 Srves	500	1,164	0	0	-664	0.0
5204550	Garbage & Sewer	0	11	0	0	-11	0.0
5204590	Ins Premiums & Surety Bds	1,000	0	0	0	1,000	100.0

# Remaining Authority by Object/Subobject

Expenditures current through 02/27/2016 08:51:17 AM

HEALTH -- Summary

FY 2016 Version -- AS -- Budgeted and Informational

FY Remaining: 34.2 %

09211 Subobject	Board of Massage Therapy - Info	Operating	Expenditures	Encumbrances	Commitments	Remaining	PCT AVL
5204960	Other Contractual Service	200	1,515	0	0	-1,315	0.0
<b>Subtotal</b>		<b>69,140</b>	<b>46,095</b>	<b>23,267</b>	<b>0</b>	<b>-222</b>	<b>0.0</b>
<b>SUPPLIES &amp; MATERIALS</b>							
5205020	Office Supplies	450	34	0	0	416	92.4
5205310	Printing-state	600	360	0	0	240	40.0
5205320	Printing-commercial	600	366	0	0	234	39.0
5205350	Postage	1,500	2,052	0	0	-552	0.0
<b>Subtotal</b>		<b>3,150</b>	<b>2,812</b>	<b>0</b>	<b>0</b>	<b>338</b>	<b>10.7</b>
<b>52 Operating Subtotal</b>		<b>78,640</b>	<b>51,105</b>	<b>23,267</b>	<b>0</b>	<b>4,268</b>	<b>5.4</b>
<b>Total</b>		<b>80,988</b>	<b>51,886</b>	<b>23,267</b>	<b>0</b>	<b>5,835</b>	<b>7.2</b>

BA1409R1

STATE OF SOUTH DAKOTA  
CASH CENTER BALANCES  
AS OF: 02/29/2016

PAGE 114

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

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092100061840	1140000	90,064.03	DR	BOARD OF MASSAGE THERAPY
COMPANY/SOURCE TOTAL 6503 618			90,064.03	DR *	
COMP/BUDG UNIT TOTAL 6503 09211			90,064.03	DR **	
BUDGET UNIT TOTAL 09211			90,064.03	DR ***	

STATE OF SOUTH DAKOTA  
 REVENUE SUMMARY BY BUDGET UNIT  
 FOR PERIOD ENDING: 02/29/2016

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	.00	34,000.00	
092110061840	6503	4293102	INACTIVE FEES	.00	725.00	
092110061840	6503	4293103	TEMPORARY FEES	150.00	750.00	
092110061840	6503	4293104	REACTIVATION FEE	.00	225.00	
092110061840	6503	4293990	MESSAGE THERAPY LIC & APP	960.00	6,415.00	
ACCT:	4293	BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)		1,110.00	42,115.00	*
ACCT:	42	LICENSES, PERMITS & FEES		1,110.00	42,115.00	**
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	**
092110061840	6503	4595001	MISC INCOME COPIES-LISTS	.00	100.00	
ACCT:	4595			.00	100.00	*
ACCT:	45	CHARGES FOR SALES & SERVICES		.00	100.00	**
CNTR:	092110061840			1,110.00	43,780.95	***
CNTR:	092110061			1,110.00	43,780.95	****
CNTR:	0921100			1,110.00	43,780.95	*****
COMP:	6503			1,110.00	43,780.95	*****
B UNIT:	09211			1,110.00	43,780.95	*****

## Licenses Issued 12/14/2015 through 3/3/2016

License Number	First Name	Middle Name	Last Name	Original License Date	City - Home	State - Home
MT11433	Melissa		Ammons	1/22/2016	Kadoka	SD
MT11429	Paige		Athey	12/24/2015	Milbank	SD
MT11437	Carole		Benda	2/12/2016	Rapid City	SD
MT11432	Andrea		Berry	1/20/2016	Pullman	WA
MT11434	Jenna		Bowar	1/22/2016	Garretson	SD
MT11440	Laura		Eyer	2/26/2016	Brookings	SD
MT11431	Harley	Dawn	Ferguson	1/6/2016	Larchwood	IA
MT11435	Bethany		Hall	2/1/2016	Sioux Falls	SD
MT11415	Brooke		Knoepfel	9/22/2016	Sioux Falls	SD
MT11436	Brooke		Scheessele	2/1/2016	Philip	SD
MT11438	Robert	Darren	Simpson	2/12/2016	Vermillion	SD
MT11439	Celeste		Weinreis	2/25/2016	Scottsbluff	NE

## Permits Issued 12/14/2015 through 3/3/2016

Permit #	First Name	Last Name	Issued Date	Denotes Second Permit	Expiration Date	City - Home	State - Home
TEMP31	Laura	Brien	7/1/2015	*	7/4/2016	Elk Point	SD
TEMP41	Sarah	Haines	3/1/2016		9/1/2016	Sioux Falls	SD
TEMP40	Tiffany	Knight	2/25/2016		8/25/2016	Black Hawk	SD
TEMP32	Lang	Phan	7/17/2015	*	7/26/2016	Lennox	SD
Temp 14	Tonya	Schuldt	7/31/2014	*	7/20/2016	Parkston	SD
TEMP30	Kayla	Bredehoeft	6/29/2015	*	6/24/2016	Sioux Falls	SD

AN ACT

ENTITLED, An Act to revise certain provisions regarding licensure of massage therapists.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 36-35-1 be amended to read:

36-35-1. Terms in this chapter mean:

- (1) "Board," the Board of Massage Therapy;
- (2) "Licensee," a person who meets the qualifications for licensure pursuant to this chapter and holds a valid license to practice massage therapy;
- (3) "Massage," the systematic mobilization of the soft tissues of the body through the application of hands, feet, or devices for the purposes of therapy, relaxation, or education through means which include:
  - (a) Pressure, friction, stroking, rocking, kneading, percussion, compression, or stretching;
  - (b) External application of water, heat, cold, lubricants, or other topical agents; or
  - (c) The use of devices that mimic or enhance the actions of human hands or feet; and
- (4) "Practice of massage therapy," the performance of massage for a fee or other compensation or holding oneself out to the public as performing massage.

Section 2. That § 36-35-2 be amended to read:

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

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

Section 3. That § 36-35-4 be amended to read:

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

Section 4. That § 36-35-5 be amended to read:

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

Section 5. That § 36-35-8 be amended to read:

36-35-8. Any person engaged in the practice of massage in this state shall conspicuously display a valid license from the board in the licensee's regular place of business. If the licensee is providing massage therapy outside of the licensee's regular place of business, the licensee shall, upon request, produce photo identification and proof of licensure. Failure to comply with this section is a petty offense.

Section 6. That § 36-35-10 be amended to read:

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

Section 7. That § 36-35-12.1 be amended to read:

36-35-12.1. Upon application and payment of an application fee not to exceed seventy-five

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

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

Section 8. That § 36-35-12.2 be repealed.

Section 9. That § 36-35-12.3 be amended to read:

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

Section 10. That § 36-35-13 be amended to read:

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

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

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

Section 11. That § 36-35-14 be repealed.

Section 12. That § 36-35-15 be amended to read:

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

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

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

Section 13. That § 36-35-16 be amended to read:

36-35-16. Any licensee holding a valid license under this chapter may renew that license by making application for renewal, paying the required renewal fee, and providing proof of compliance with the continuing education requirements set by the board. If the board has not received a license renewal application by the expiration date, the board shall notify the licensee within five days that

the renewal application has not been received and that the licensee may not practice until the license is renewed. Any person who submits a license renewal application and provides proof of compliance with the continuing education requirements set by the board within thirty days after the expiration date may be granted a license renewal.

Section 14. That § 36-35-18.1 be amended to read:

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

Section 15. That § 36-35-20 be amended to read:

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

Section 16. That § 36-35-22 be amended to read:

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

Section 17. That § 36-35-24 be amended to read:

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

- (1) The form and information required for any license application;
- (2) A list of recognized facilities or instructors who may provide training or instruction required for licensure or continuing education requirements;
- (3) The amount of license fees;

- (4) The procedures for placing a license on inactive status and the procedures to regain active licensure; and
- (5) Approval of national competency examinations.

Section 18. That § 36-35-25 be amended to read:

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

- (1) As part of a licensed practice as a physician, physician assistant, chiropractor, nurse, physical therapist, athletic trainer, or other health care profession licensed or certified under title 36;
- (2) As part of a licensed practice pursuant to chapter 36-14 or 36-15, if the licensee is performing within the scope of the licensed practice and the licensee does not hold himself or herself out to be a massage therapist or to be engaged in the practice of massage therapy;
- (3) In furtherance of duties as an employee of the United States;
- (4) As part of a course of study with a facility or instructor recognized and approved by the board to provide training in massage or the provision of such instruction;
- (5) As part of providing a course of instruction or continuing education by a licensed massage therapist from another state or provider preapproved by the board, in the practice of massage therapy on a temporary basis not in excess of ten days per calendar year; or
- (6) Manipulation of the soft tissues of the human body is restricted to the hands, feet, or ears and the person does not hold himself or herself out to be a massage therapist or to be engaged in the practice of massage therapy.

Section 19. That chapter 36-35 be amended by adding a NEW SECTION to read:

The board may:

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

SOUTH DAKOTA  
BOARD OF MASSAGE THERAPY

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IN THE MATTER OF THE  
LICENSURE OF:  
JUN HUGUENIN

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CASE NO. 2015-008  
  
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 December 14, 2015 pursuant to the Notice of Contested Case Hearing dated November 6, 2015, and the applicant, Jun Huguenin appearing in person with legal counsel, Andrew Wilka, Sioux Falls, South Dakota, and the state appearing through Assistant Attorney General, Steve Blair, and Jennifer Stalley, Executive Secretary of the South Dakota Board of Massage Therapy, 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. Jun Huguenin has applied for licensure as a massage therapist.
2. Huguenin has not completed 500 hours of training or study in the practice of massage therapy with a facility or instructor recognized by the Board.
3. Huguenin completed a training program of more than 500 hours at Washington College in Los Angeles, California.
4. The Board has not recognized Washington College of Los Angeles, California as a provider of a 500 hour course of training or study in the practice of massage therapy.
5. Washington College of Los Angeles, California is not currently licensed or approved by the state of California as a provider of massage therapy training.

6. Washington College of Los Angeles, California was previously recognized by the state of California but, that recognition was withdrawn and Washington College of Los Angeles, California is no longer in good standing as a recognized provider of massage therapy training.
7. The South Dakota Board of Massage Therapy does not recognize Washington College of Los Angeles, California as a provider of a 500 hour course of training or study in the practice of massage therapy that meets the requirements of SDCL 36-35-12(2) and ARSD 20:76:08:02.

#### CONCLUSIONS OF LAW

8. The Board has personal and subject matter jurisdiction. This matter is properly before the Board for a decision.
9. An applicant for licensure 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, Jun Huguenin, does not meet this requirement.
10. Washington College of Los Angeles, California is not recognized by the Board as a provider of a 500 hour course of study.
11. A facility to be recognized by the South Dakota Board of Massage Therapy as a provider of a 500 hour training course must be accredited by one of the seven accreditation agencies named in ARSD 20:76:08:02(2).
12. Washington College of Los Angeles, California is not accredited by one of the seven accreditation agencies identified ARSD 20:76:08:02(2).

13. Alternatively, South Dakota will recognize a facility if it is licensed or approved by the state board of massage therapy where the facility is located.
14. Washington College of Los Angeles, California is not currently licensed or approved by the California Board of Massage Therapy.
15. Washington College of Los Angeles, California may have been previously recognized by California as a provider of massage therapy training but, that recognition was withdrawn and Washington College is no longer in good standing in the state of California.
16. The South Dakota Board of Massage Therapy will not recognize a facility that is not recognized and in good standing with the state board of massage therapy where the facility is located.
17. Washington College of Los Angeles, California is not recognized by the South Dakota Board of Massage Therapy.
18. The applicant, Jun Huguenin, does not meet the requirements of ARSD 20:76:08:02 or SDCL 36-35-12(2).
19. An order should be entered denying Huguenin's application.

Dated this 14<sup>th</sup> day of March, 2016.

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Karen Kappel  
President, South Dakota  
Board of Massage Therapy



5. YUFANG XIE is at all times relevant hereto the sole owner and operator of Asian Health Massage.
6. Asian Health Massage operates two massage therapy businesses in Sioux Falls, South Dakota. These two establishments both operate under the name Asian Health Massage. One establishment is located at 715 South Minnesota Avenue. The other is located at 25 South Shirley Avenue.
7. On December 16, 2014 the Sioux Falls Police Department (SFPD) conducted massage therapy license checks at the two Asian Health Massage locations.
8. At the Shirley Avenue location SFPD officers came into contact with Chunyan Yang. Chunyan Yang was an employee of Respondent YUFANG XIE. Yang is not licensed to practice massage therapy in South Dakota.
9. During the December 16 licensure checks, XIE was informed by SFPD officers McClure and Gross that it is a criminal offense in South Dakota to engage in the practice of massage therapy without a license.
10. At the same time, Respondent XIE indicated to the officers that she had two other female employees at the South Minnesota Avenue location, Yamin Yang and Dongmei Greer who were also giving massages. XIE indicated to the officers that she was licensed by the Board but that none of her employees held South Dakota licenses. Officers McClure and Gross reminded XIE at that time that she was the only person who could give any type of massage to her customers until her other employees became licensed by the state.
11. At the time of their employment, Yufang Xie as aware that Chunyan Yang, Dongmei Greer, and Yamin Yang were not licensed by the Board to practice massage therapy in South Dakota.

12. On February 10, 2015 SFPD Officers McClure and Gross conducted undercover follow-up checks at the two Asian Health Massage locations.
13. At the South Minnesota Avenue location Dongmei Greer and Meijun Zhang were cited for practicing massage therapy without a license in violation of SDCL 36-35-10.
14. At the Shirley Avenue location Chunyan Yang was cited for practicing massage therapy without a license in violation of SDCL 36-35-10. Respondent XIE was present at the Shirley Avenue location when the police investigated and cited Chunyan Yang.
15. The Sioux Falls Police, during their investigation on December 16, specifically notified XIE that Chunyan Yang was not allowed to provide massage therapy without a license.
16. On February 24, 2015, Dongmei Greer, Meijun Zhang, Chunyan Yang were arraigned, pled guilty, and were convicted of practicing massage therapy without a license in violation of SDCL 36-35-10.
17. There is a well known connection between human trafficking and the massage therapy industry.
18. Human traffickers attempt to provide a legitimate cover for their illegal prostitution activities by pretending to operate massage therapy businesses. They often do so with individuals who are not licensed to practice massage therapy.
19. Human trafficking endangers the health and welfare of the public.

20. The risk that a massage therapy business could be a cover or front for human trafficking by employing unlicensed massage therapists endangers the health and welfare of the public.
21. Respondent YUFANG XIE aided and abetted Dongmei Greer, Meijun Zhang, and Chunyan Yang in the violation of the massage therapy licensing laws by making her massage therapy business available and hiring Greer, Zhang and Yang to perform massages when XIE knew they were not licensed to do so.
22. It is unprofessional for a licensed massage therapist to hire and utilize the services of unlicensed individuals to provide massage therapy in South Dakota.
23. It is unprofessional for a licensed massage therapist to aid and abet in the violation of the massage therapy licensing laws.
24. Utilization of unlicensed individuals to provide massage therapy endangers the health and welfare of clients and other persons.

#### REASONING

This matter is before the Board on the complaint filed by Jennifer Stalley, the Executive Secretary of the South Dakota Board of Massage Therapy. Stalley has filed a complaint because facts came to her attention suggesting that the respondent YUFANG XIE was operating a massage therapy business utilizing the services of unlicensed individuals to provide massage therapy. This information came primarily from the Sioux Falls Police Department.

It was revealed that YUFANG XIE, a licensed massage therapist, was employing several unlicensed individuals to provide massage therapy at two business locations in Sioux Falls. The Sioux Falls Police warned XIE to discontinue the practice of using

unlicensed individuals in violation of state law. XIE disregarded the police warnings and continued utilizing the services of unlicensed individuals until such time as the Sioux Falls Police arrested and cited the unlicensed individuals at XIE'S business places for violating South Dakota's massage therapy practice laws. There is no doubt that XIE was aware that practicing massage therapy without a license is criminal violation. There is also no doubt that XIE knowingly aided and abetted the violation of state law by employing unlicensed individuals to provide massage therapy.

The use of unlicensed individuals in massage therapy businesses in South Dakota is a serious problem. It is the method and *modus operandi* used by many human traffickers to conceal their illegal and invidious activities. Human trafficking and the risk that massage therapy businesses could be used as a cover or front for illegal human trafficking activities seriously endanger the health and welfare of clients and the general public. XIE admits that her unlicensed employees were "trafficked" in that they were brought to Sioux Falls from other countries and states. She denies, however, that there was any illegal activity or prostitution involved in her utilization of unlicensed individuals to provide massage therapy. The Board has no evidence of illegal human trafficking occurring at XIE'S businesses. Nonetheless, the risk presented to the general public and to clients as well as workers is serious and substantial. The potential that massage therapy businesses operating illegally with unlicensed therapists could become involved in human trafficking threatens public safety and causes the general public to view massage therapy as an industry that is unprofessional and directly connected to illegal human trafficking. The Board, by this decision, makes it clear that a professional massage therapist does not aid and abet others in the violation of massage therapy laws. XIE allowed her license to be used as a front for illegal, unlicensed activities at XIE'S business places in Sioux Falls. XIE continued in these activities that endangered the health and welfare of clients and others, and are unprofessional even though she was warned by the Sioux Falls Police to stop. It is the opinion of the Board that the only appropriate remedy in this situation is to revoke XIE'S license.

## CONCLUSIONS OF LAW

25. The Board has personal and subject matter jurisdiction. This matter is properly before the Board for a decision.
26. The Board may cancel, suspend, or revoke the license of a massage therapist upon satisfactory proof of incompetence, unprofessional conduct or a violation of any provision of SDCL 36-35.
27. Evidence of incompetence, unprofessional conduct or a violation of SDCL 36-35 must be clear and convincing.
28. The nature of the remedy for a violation is a matter within the discretion of the Board of Massage Therapy once a violation has been shown by clear and convincing evidence.
29. For the purpose of massage therapy licensing laws “unprofessional conduct” includes without limitation willful misconduct or negligence in the practice of massage, engaging in conduct that endangers the health or welfare of clients or other persons and failing to comply with any provisions of SDCL 36-35.
30. Aiding and abetting others in violating the massage therapy licensing laws is unprofessional conduct.
31. The evidence of XIE’S unprofessional conduct and violation of SDCL 36-35 is clear and convincing. XIE by using her license to operate a massage therapy business employing unlicensed individuals has engaged in willful misconduct in the practice of massage.

32. XIE'S use of unlicensed individuals in her massage therapy business endangers the health and welfare of clients and others. Licensing protects clients and the public from the dangers presented to health and welfare by unlicensed individuals attempting to perform massage therapy.
33. Licensing also protects the health and welfare of clients and the general public by providing an assurance that massage therapy businesses are not and cannot be used as fronts for illegal human trafficking.
34. Revocation of YUFANG XIE'S license is appropriate and necessary.
35. An order should be entered revoking YUFANG XIE'S license as a massage therapist in South Dakota.

Dated this 14<sup>th</sup> day of March, 2016.

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Karen Kappel  
President, South Dakota  
Board of Massage Therapy