



South Dakota Board of Massage Therapy

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

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doh.sd.gov/boards/Massage

NOTICE OF MEETING AND AGENDA

SOUTH DAKOTA STATE BOARD OF MASSAGE THERAPY

Conference Room #3, Kneip Building

700 Governors Drive, Pierre, SD

Monday, September 21, 2015 - 10:00 AM CDT

- 1) Call to Order
- 2) Open Forum: *15 minutes for the public to address the Board*
- 3) Approval of Minutes: June 15, 2015
- 4) Financial Report: As of August 29, 2015
- 5) Office Update
 - a. Renewal Update
 - b. New Licensee List
 - c. Records Retention Policy
 - d. Assistant Attorney General Assignments
- 6) Old Business:
 - a. Student Internships
 - a. The Board has been asked to provide guidance to schools on recovering costs associated with internships for students related to practice massages and the costs associated with those practice massages.
Recommendation: Costs associated with a student performing a massage may be recovered when the students performs such services within the scope of an approved massage therapy school curriculum under the supervision of a licensed massage therapist.
 - b. Adopted Code of Ethics
 - a. The Board previously adopted the NCTBM Code of Ethics. The Board was informed the board lacked authority granted to adopt a code of ethics and the adopted code was unenforceable by the Board.
Recommendation: Unadopt the NCTBM Code of Ethics adopted by the Board on May 16, 2011. Proposed legislation for 2016 will provide the authority to adopt a code of ethics, if approved. The Board can consider a code of ethics at that time.
 - c. Executive Services Request for Proposals
 - d. Practice Act Workgroup Recommendations for 2016 Legislation
- 7) New Business:
 - a. Adoption of Findings in the Matter of Application of Zuojin Zhang #2015-002
 - b. Adoption of Findings in the Matter of Application of Feng Wei #2015-003
 - c. Application Hearing for Yufang Zhi #2015-007
 - d. Declaratory Hearing: In Re Matter of the Declaratory Ruling Regarding ARSD 20:76:08:01 SL 2013, ch 184

8) EXECUTIVE SESSION:

Pursuant to SDCL 1-25-2 (3) for consideration of proposed contested cases or contractual matters

9) Announcements:

a. Upcoming meetings

a. December 14, 2015

10) Adjourn

Please contact the Board at 605-224-1721 or SDBMT@midwestsolutionssd.com by September 16, 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, 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 1st and the renewal database will open on August 1st and remain open through September 30th. 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 1st. 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 1st and a meeting for stakeholder organizations on June 15th 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 15th 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 21st and December 14th.

Adjourn

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

Respectfully Submitted,

Christine Ellwein, Secretary

09211 Board of Massage Therapy - Info	Operating	Expenditures	Encumbrances	Commitments	Remaining	PCT AVL
EMPLOYEE SALARIES						
5101030 Board & Comm Mbrs Fees	2,244	240	0	0	2,004	89.3
Subtotal	2,244	240	0	0	2,004	89.3
EMPLOYEE BENEFITS						
5102010 Oasi-employer's Share	104	18	0	0	86	82.7
Subtotal	104	18	0	0	86	82.7
51 Personal Services						
Subtotal	2,348	258	0	0	2,090	89.0
TRAVEL						
5203030 Auto-priv (in-st.) H/rte	3,000	340	0	0	2,660	88.7
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	0	0	0	100	100.0
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
Subtotal	6,350	572	0	0	5,778	91.0
CONTRACTUAL SERVICES						
5204020 Dues & Membership Fees	900	0	0	0	900	100.0
5204080 Legal Consultant	8,500	1,590	0	0	6,910	81.3
5204090 Management Consultant	49,862	7,275	13,114	0	29,473	59.1
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	31	0	0	219	87.6
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 Srvcs	500	368	0	0	132	26.4
5204590 Ins Premiums & Surety Bds	1,000	0	0	0	1,000	100.0
5204960 Other Contractual Service	200	64	0	0	136	68.0
Subtotal	69,140	9,564	13,114	0	46,462	67.2

Expenditures current through 08/29/2015 10:20:53 AM
 HEALTH -- Summary
 FY 2016 Version -- AS -- Budgeted and Informational
 FY Remaining: 83.8%

09211 Board of Massage Therapy - Info						PCT
Subobject	Operating	Expenditures	Encumbrances	Commitments	Remaining	AVL
SUPPLIES & MATERIALS						
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	961	0	0	539	35.9
Subtotal	3,150	1,511	0	0	1,639	52.0
52 Operating Subtotal	78,640	11,647	13,114	0	53,879	68.5
Total	80,988	11,905	13,114	0	55,969	69.1

BA1409R1

STATE OF SOUTH DAKOTA
CASH CENTER BALANCES
AS OF: 08/31/2015

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

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092100061840	1140000	99,053.45	DR	BOARD OF MASSAGE THERAPY
COMPANY/SOURCE TOTAL 6503 618			99,053.45	DR *	
COMP/BUDG UNIT TOTAL 6503 09211			99,053.45	DR **	
BUDGET UNIT TOTAL 09211			99,053.45	DR ***	

Licenses issued 6/15/2015 through 9/14/2015

License Number	First Name	Middle Name	Last Name	Original License Date	City - Home	State - Home
MT11393	Kevin	M.	Alexander, Sr.	07/08/2015	Box Elder	SD
MT11392	Beth	A.	Burkhart	07/08/2015	Custer	SD
MT11389	Susan		Dedekam	06/29/2015	Rapid City	SD
MT11407	Robin	Mitsu	England	08/03/2015	Spearfish	SD
MT11394	Janae		Fitzpatrick	07/08/2015	Rapid City	SD
MT11409	Heather	Marie	Flynn	08/10/2015	Rapid City	SD
MT11391	Kimberly	Lynn	Franzen	7/8/2015	Rapid City	SD
MT11399	William		Hittner	07/20/2015	Sioux Falls	SD
MT11406	Deborah	Jean	Jacobs	07/20/2015	Sturgis	SD
MT11413	Ashley		Jensen	08/27/2015	Rapid City	SD
MT11404	Jennifer	Lauren	Kanz	07/20/2015	Ft. Pierre	SD
MT11330	Shane		Kramer	08/21/2015	Magnolia	MN
MT11412	Briana		Kroeger	08/27/2015	Mitchell	SD
MT11410	Denise	C	Krueger	08/10/2015	Hecla	SD
MT11402	Tracy	Lynn	Lee	07/20/2015	Reva	SD
MT11395	Greg		Letizia	07/08/2015	Bellville	OH
MT11387	Bonnie	Lorraine	Lewis	06/18/2015	Newcastle	WY
MT11388	Sara		Nelson	06/18/2015	Harrisburg	SD
MT11411	Teresa		Opbroek	08/10/2015	Burke	SD
MT11414	Djuro		Petrovic	09/09/2015	Sioux Falls	SD
MT11397	Julia	C.	Read	07/13/2015	Rapid City	SD
MT11400	April	Mae	Rendon	07/20/2015	Rapid City	SD
MT11408	Jade		Sarsland	08/03/2015	Ludlow	SD
MT11398	Michelelin	K.	Shelburg	07/20/2015	Sioux Falls	SD
MT11403	Debra	Lynn	Shepard	07/20/2015	Sturgis	SD
MT11405	Dianne	M	Solberg	07/20/2015	Chamberlain	SD
MT11390	Krisanna		Thomas	07/07/2015	Murdo	SD
MT11401	Emily	Joy	Van Gendeven	07/20/2015	Harrison	SD

Permits issued 6/15/2015 to 9/14/2015

Permit #	First Name	Last Name	City - Home	State - Home	Issued Date
TEMP30	Kayla	Bredehoeft	Sioux Falls	SD	6/29/2015
TEMP31	Laura	Brien	Elk Point	SD	7/1/2015
TEMP32	Lang	Phan	Lennox	SD	7/17/2015

1 not considered a full term.

2

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

7

8 Any member's term ending June 30, 2013, or thereafter is extended to
9 October thirtieth in the year the term is to expire.

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

11

12 36-35-3. Resignation of board members--Effective date. Any member of the
13 board may resign by giving written notice to the board and to the Governor.
14 Resignations are effective when delivered to the Governor and the board.

15 **Source:** SL 2005, ch 206, § 3.

16

17 36-35-4. Selection of officers--Executive secretary. The board shall ~~select~~
18 elect annually from its members a president, vice-president, and secretary, at its
19 annual meeting. No member may serve as president for more than three
20 consecutive one year terms. The board may hire an executive secretary to
21 perform any managerial, clerical, or other duties directed by the board.

22 **Source:** SL 2005, ch 206, § 4.

23

24 36-35-5. Meetings of board. The board shall hold at least two meetings
25 annually an annual meeting at a place and time set by the board. The board
26 may hold ~~special~~ other meetings at a time and place set by the president or a
27 majority of the board, ~~by giving written notice to the board prior to the meeting.~~

28 **Source:** SL 2005, ch 206, § 5.

29

30 36-35-6. Quorum--Majority vote. Three board members present at any
31 meeting constitute a quorum. No board action may occur unless approved by
32 a majority vote of the entire board.

33 **Source:** SL 2005, ch 206, § 6.

34

1 36-35-7. Compensation of board members. Board members shall receive a
2 per diem set pursuant to § 4-7-10.4 and expenses at the same rate as other state
3 employees while actually engaged in official duties.

4 **Source:** SL 2005, ch 206, § 7.

5
6 36-35-8. Display of license. Any person engaged in the practice of massage
7 in this state shall conspicuously display a valid license from the board in the
8 person's place of business.

9 **Source:** SL 2005, ch 206, § 8; SL 2013, ch 184, § 1.

10
11 36-35-9. Use of fees. Any fees collected under this chapter shall be used for
12 the operation of the board and the implementation of this chapter.

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

14
15 36-35-10. Practice of massage without license as misdemeanor--Injunction.
16 ~~Any person~~ No one may who engages in the practice of massage or holds
17 ~~himself or herself oneself~~ out to the public as engaged in the practice of
18 massage without a license issued pursuant to this chapter, is guilty of a Class 1
19 ~~misdemeanor.~~ The board may file bring a civil action to enjoin any violation of
20 this chapter, person engaging in the practice of massage without a license.

21
22 It is a Class 1 misdemeanor for anyone to:

- 23 (1) Practice massage therapy without a license;
24 (2) Own, operate or manage a business which employs, contracts with or
25 allows any unlicensed person to offer or provide massage therapy; or
26 (3) Represent, hold out, offer or advertise massage unless licensed
27 pursuant to this chapter.

28
29 The board may, in addition to an injunction, issue a cease and desist order for a
30 violation of this chapter following a hearing conducted pursuant to chapter 1-
31 26. Each day of continued violation after a cease and desist order is issued
32 constitutes a separate Class 1 misdemeanor.

33 **Source:** SL 2005, ch 206, § 10; SL 2013, ch 184, § 3.

34
35 36-35-11. Repealed by SL 2013, ch 184, § 4.
36

1 36-35-12. Application for license--Qualifications--Appeal of denial. The board
2 shall issue a license to engage in the practice of massage to any person who
3 submits an application form and the nonrefundable application fee as
4 approved in § 36-35-17 and who demonstrates the following qualifications:

5
6 (1) Eighteen years of age or older;

7
8 (2) Completion of no less than five hundred hours of training or study
9 in the practice of massage with a facility or instructor recognized by the board;

10
11 (3) Absence of unprofessional conduct;

12
13 (4) Professional liability insurance coverage pursuant to § 36-35-21;
14 and

15
16 (5) Passing score on a nationally recognized competency
17 examination approved by the board in rules promulgated pursuant to chapter
18 1-26.

19
20 The board may refuse to grant a license to any person based on failure to
21 demonstrate the requirements of this section. The board may grant a license,
22 subdivision 36-35-13(1) notwithstanding, if the applicant has been convicted of,
23 or pled guilty to a felony, any crime involving or relating to the practice of
24 massage, or any crime involving dishonesty or moral turpitude and the board
25 determines that the plea or conviction is of a nature or is sufficiently remote in
26 time that the applicant does not constitute a risk to public safety. An applicant
27 may appeal the denial of a license in compliance with chapter 1-26.

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

30
31 36-35-12.1. Temporary permit. Upon application and payment of an
32 application fee not to exceed seventy-five dollars, the board may issue a
33 temporary permit to practice massage therapy as a licensed massage therapist
34 to an applicant who has met the requirements of subdivision 36-35-12(1) to (4),
35 inclusive, pending completion and results of the examination required pursuant
36 to subdivision 36-35-12(5), if the applicant intends to practice massage therapy
37 in the state during the time the permit is valid. A temporary permit license may
38 be issued no more than twice and is effective for a term of not more than ninety
39 one hundred eighty days. A temporary permit license automatically expires on
40 the occurrence of the following:

- 1 (1) Issuance of a regular license;
2
3 (2) Failure to pass the licensing examination; or
4
5 (3) Expiration of the term for which the temporary license was issued.
6

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

8
9 ~~36-35-12.2. Expiration date of existing licenses. The board shall automatically~~
10 ~~issue a license with an expiration date of September 30, 2014, to any massage~~
11 ~~therapist licensed in South Dakota before July 1, 2013.~~

12 **Source:** SL 2013, ch 184, § 7.

13
14 ~~36-35-12.3. Expiration of license. Unless automatically issued pursuant to this~~
15 ~~section, a~~ license issued under this chapter is valid until September thirtieth
16 following the date it is issued and automatically expires unless it is renewed.

17 **Source:** SL 2013, ch 184, § 8.

18
19 ~~36-35-13. Unprofessional conduct. For the purposes of this chapter, any of~~
20 ~~the following acts constitute unprofessional conduct:~~

21
22 (1) Conviction of or a plea of guilty to any felony, any crime involving
23 or relating to the practice of massage, or any crime involving dishonesty or
24 moral turpitude;

25
26 (2) Providing the board false or misleading information on any
27 application for a license or renewal of a license;

28
29 (3) Willful misconduct or negligence in the practice of massage;

30
31 (4) Exceeding the scope of practice of massage as defined in § 36-
32 35-1;

33
34 (5) Engaging in any lewd or immoral conduct;

35
36 (6) Making fraudulent charges for services;

37
38 (7) Engaging in conduct which endangers the health or welfare of
39 clients or other persons; or
40

1 (8) Failure to comply with any provision of this chapter; or;

2
3 (9) Engaging in any act that aids, abets, facilitates or promotes a
4 violation of this chapter.

5
6 **Source:** SL 2005, ch 206, § 13; SL 2013, ch 184, § 9; SL 2015, ch 201, § 3.

7
8 ~~36-35-14. Temporary authority to issue license upon completion of~~
9 ~~alternative education or experience requirements. Until July 1, 2008, the board~~
10 ~~may issue a license to a person who demonstrates completion of a minimum of~~
11 ~~one hundred hours of training or study in the practice of massage with a facility~~
12 ~~or instructor recognized by the board or adequate experience derived from the~~
13 ~~active practice of massage for at least the three years immediately preceding~~
14 ~~the date of the application. Any person applying for a license under this section~~
15 ~~is not required to comply with the examination and training or study~~
16 ~~requirements of § 36-35-12 but shall meet the other criteria set forth in § 36-35-12.~~
17 ~~Any person applying for a license under this section shall submit an application~~
18 ~~as required by § 36-35-12 along with proof of active practice for at least three~~
19 ~~years prior to the date of application. Any person who qualified for licensure~~
20 ~~pursuant to this section and allowed the license to lapse may be issued a~~
21 ~~license, notwithstanding the initial time period provided in this section, by~~
22 ~~complying with this section before June 30, 2012.~~

23 **Source:** SL 2005, ch 206, § 14; SL 2007, ch 223, § 2; SL 2011, ch 187, § 1.

24
25 ~~36-35-15. Applicants licensed or registered in other states. Any person~~
26 ~~holding a valid license or registration to practice massage from another state~~
27 ~~whose requirements for licensure or registration are not less restrictive than this~~
28 ~~state is exempted from the requirement for any examination for licensure by~~
29 ~~§ 36-35-12. Any person applying for a license under this section shall submit an~~
30 ~~application as required by § 36-35-12 along with proof of a current license.~~

31
32 The board may issue a license to an applicant licensed to practice massage
33 therapy in another state, SDCL 36-35-12 notwithstanding, if the applicant
34 demonstrates the following qualifications:

- 35
36 (1) Eighteen years of age or older;
37 (2) Absence of unprofessional conduct;
38 (3) Professional liability insurance pursuant to SDCL 36-35-21;
39 (4) Verification form the authority that issued the applicant's license
40 indicating the applicant is in good standing and currently licensed to
41 practice; and

1 (5) Experience and competency in massage indicated by education that
2 substantially complies with SDCL 36-35-12(2) or verification of an active
3 massage therapy in the state of licensure in the two years immediately
4 preceding the date of application for licensure. An active massage
5 therapy practice is at least 200 hours of patient contact in the
6 preceding two year period.

7 **Source:** SL 2005, ch 206, § 15; SL 2013, ch 184, § 10.

8
9 36-35-16. Renewal of license. Any ~~licensee~~~~person~~ holding a valid license
10 under this chapter may renew that license by making application for renewal,
11 paying the required renewal fee, and providing proof of compliance with the
12 continuing education requirements set by the board. If the board has not
13 received a license renewal application by the expiration date, the board shall
14 notify the licensee within five days that the renewal application has not been
15 received and that the licensee may not practice until the license is renewed.
16 Any person who submits a license renewal application and provides proof of
17 compliance with the continuing education requirements set by the board within
18 thirty days after the expiration date ~~shall~~ may be granted a license renewal.

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

20
21 36-35-17. Application and license fees. Any applicant for a license under this
22 chapter shall submit a nonrefundable application fee not to exceed one
23 hundred dollars. Any person who has a license issued or renewed by the board
24 shall submit a license fee in an amount not to exceed sixty-five dollars. Fees shall
25 be set by the board by rule promulgated pursuant to chapter 1-26.

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

27
28 36-35-18. Duplicate license. The board may issue a duplicate license to a
29 licensee upon request.

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

31
32 36-35-18.1. Inactive license--Fee. The board may inactivate a valid license
33 upon submission of an application and issue an inactive massage therapist
34 ~~license upon~~ payment of the application fee.

35 **Source:** SL 2007, ch 223, § 5.

1
2 36-35-19. Continuing education requirements. Any person licensed under this
3 chapter shall complete eight hours of continuing education relating to
4 competence in the practice of massage on a biennial basis of a type and from
5 a facility or instructor approved by the board. The required continuing
6 education hours may be obtained by electronic means. The board may waive
7 the continuing education requirement upon proof of illness or hardship.

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

9
10 36-35-20. Investigation of complaints--Inspections. The board ~~shall~~ may
11 initiate, receive and ~~may~~ investigate any complaint filed with the board alleging
12 a violation of this that any licensed massage therapist has violated the
13 requirements of this chapter. The board may inspect ~~the~~ any place of business
14 of any person licensed pursuant to this chapter, or where the unlicensed
15 practice of massage is alleged with a license issued pursuant to this chapter
16 named in a complaint pursuant to this section during normal business hours or
17 upon written notice.

18 **Source:** SL 2005, ch 206, § 20; SL 2013, ch 184, § 14.

19
20 36-35-21. Professional liability insurance coverage. Any person holding a
21 valid license under this chapter and engaged in the practice of massage
22 therapy shall carry malpractice or professional liability insurance coverage with
23 a company with a certificate of authority from the South Dakota Division of
24 Insurance with limits of no less than two hundred fifty thousand dollars per
25 occurrence. A licensee shall notify the board of any change of carrier occurring
26 after a license or renewal is granted.

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

28
29 36-35-22. Grounds for cancellation, suspension, or revocation of license--
30 Hearing--Appeal. The board may cancel, suspend, or revoke a license following
31 a contested case hearing in compliance with chapter 1-26 upon satisfactory
32 proof of incompetence, unprofessional conduct, or a violation of any provision
33 of this chapter. The board may waive the requirement of prior notice and an
34 informal meeting set forth in § 1-26-29 if the licensee presents an immediate
35 threat to the public or has engaged in willful misconduct. Any ~~licensee person~~
36 may appeal the cancellation, suspension, or revocation of a license in
37 compliance with chapter 1-26.

1 **Source:** SL 2005, ch 206, § 22.

2
3 36-35-23. Reapplication for cancelled, suspended, or revoked license. Any
4 person whose license has been cancelled, suspended, or revoked by the board
5 may not reapply for a license until one year after it was cancelled, suspended,
6 or revoked unless a different time has been set by the board.

7 **Source:** SL 2005, ch 206, § 23.

8
9 36-35-24. Promulgation of rules. The board may promulgate rules pursuant to
10 chapter 1-26 to establish in the following areas:

- 11
12 (1) The form and information required for any license application;
13
14 (2) A list of recognized facilities or instructors who may provide training
15 or instruction required for licensure or continuing education requirements;
16
17 (3) The amount of license fees;
18
19 (4) ~~The procedures for conducting disciplinary proceedings;~~
20
21 (5) ~~The procedures for conducting complaint investigations;~~
22
23 (6) The procedures for applying for an inactive license and the
24 procedures to regain active licensure; ~~and~~
25
26 ~~————(7) Approval of national competency examinations; and~~
27
28 (6) A code of ethics for licensees.

29
30 **Source:** SL 2005, ch 206, § 24; SL 2007, ch 223, § 6; SL 2013, ch 184, § 16.

31
32 36-35-25. Application of chapter. The provisions of this chapter do not apply
33 to any person performing massage for compensation if the massage is done
34 under one of the following circumstances:

- 35
36 (1) As part of a licensed practice as a physician, physician assistant,
37 chiropractor, nurse, physical therapist, athletic trainer, or other health care
38 profession licensed or certified under Title 36;
39
40 (2) As part of a licensed practice pursuant to chapter 36-14 or 36-15, if
41 the licensee is performing within the scope of the licensed practice and the

1 licensee does not hold himself or herself out to be a massage therapist or to be
2 engaged in the practice of massage therapy;

3
4 (3) In furtherance of duties as an employee of the United States the
5 official discharge of duties as a massage therapist in any branch of the armed
6 services of the United States, the United States Public Health Service, or the
7 United States Veterans Administration;

8
9 (4) As part of a course of study with a facility or instructor recognized
10 and approved by the board to provide training in massage or the provision of
11 such instruction;

12
13 (5) As part of providing a course of instruction or continuing education
14 by a licensed massage therapist or provider preapproved by the board, in the
15 practice of massage therapy on a temporary basis not in excess of ten days; or
16

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

20
21 **Source:** SL 2005, ch 206, § 25.

22
23 New Section:

24
25 The board may:

- 26
27 (1) Administer, coordinate, and enforce the provisions of this chapter;
28 (2) Evaluate the qualifications of applicants for licensure and permits and
29 issue and renew licenses and permits;
30 (3) Maintain the names of persons that meet the qualifications for
31 licensure;
32 (4) Conduct all disciplinary proceedings under this chapter;
33 (5) Maintain a record of each complaint received by the board;
34 (6) Establish standards for the safe and qualified practice of massage
35 therapy;
36 (7) Report licensing actions and status to relevant state and federal
37 governing bodies as may be required, or as the board may determine
38 is appropriate;
39 (8) Employ or contract with personnel and enter into contracts in a
40 manner specified by law to carry out the board's responsibilities; and
41 (9) Pursue legal actions against persons or entities in violation of this
42 chapter;

1
2
3
4
5
6
7

New Section:

The board, its members and its agents are immune from personal liability for actions taken in good faith in the discharge of the board's duties. The state shall hold the board, its members and its agents harmless from all costs, damages, and attorney fees arising from claims and suits against them in respect to all matters to which this immunity applies.



Associated Bodywork & Massage Professionals

25188 Genesee Trail Rd, Ste 200
Golden, CO 80401
800-458-2267
fax 800-667-8260
www.abmp.com

August 21, 2015

South Dakota Board of Massage Therapy
ATT: Jennifer Stalley, Executive Secretary
P.O. Box 340
1351 N. Harrison Avenue
Pierre, SD 57501

Via Email: www.doh.sd.gov/boards/Massage

Dear Board Members,

Thank you for the opportunity to comment on the draft proposed changes to South Dakota's Massage Therapy Practice Act (Act). Associated Bodywork & Massage Professionals (ABMP) has several comments, as follows:

Section 1 (definition of massage)

We were asked to provide feedback specifically with respect to section 1 (definition of massage). The proposed definition of massage makes only minor changes to the current definition by adding "vibration" as an activity falling under the definition of massage and clarifying that manual methods and electronic devices are included in the definition of massage. We support these proposed changes.

Section 6 (meetings of board)

ABMP supports increasing the number of required annual board meetings from one to two per year. Most state boards meet at least quarterly.

Section 9 (board authority)

It is our understanding that there has been some confusion as to whether the board actually has the authority to enforce the Act's provisions under the current language. The board does in fact have that authority under the current language of the Act, but, to the extent that the addition of proposed section 9 lends further clarification, then it is helpful. We presume that the board has conferred with its legal counsel to obtain counsel's agreement that the proposed language removes any perceived doubt as to the board's enforcement authority.

We question whether you should add or change the language to be more specific since there have been questions regarding the board's authority. For example, language under the Board of Medical & Osteopathic Examiners seems more specific than what the massage board is proposing. Example below:

Rules and regulations of board--Scope. The Board of Examiners may adopt rules pursuant to chapter 1-26 pertaining to licensure, fees, discipline, and supervision which promote the health and safety of persons utilizing the services of physical therapists licensed and physical therapist assistants certified under this chapter.
36-10-37.

Procedure for adoption of rules and regulations. All rules and regulations made by the Board of Examiners pursuant to this chapter shall be adopted and amended in accordance with the provisions of chapter 1-26 and acts amendatory thereto known as the Administrative Procedures Act.

Section 13 (penalties)

We were asked to provide feedback specifically with respect to section 13 (penalties). The proposed changes add that it is a Class 1 misdemeanor to "Own, operate, or manage a business which employs, contracts with, or allows one or more unlicensed persons to offer or provide massage therapy[.]" We question whether the board has jurisdiction over owners, operators, and managers who are not licensees and are not practicing massage therapy. For the same reason, the inclusion of separate, unrelated entities (such as, for example, utilities, insurance companies, and maintenance companies) which have merely entered into contracts with massage businesses employing unlicensed persons is jurisdictionally problematic and unworkable as a practical matter. This provision should be deleted or clarified. Adding somewhere in the statute that it is unlawful to employ an unlicensed massage therapist may help.

Additionally, we suggest clarification regarding the statement that "Each continued violation after an order constitutes a separate offense." Is this intended to mean that each continued violation after an order constitutes a separate, new misdemeanor, or simply that misdemeanor penalties will continue to accrue, or something else?

Section 21 (licensure by endorsement)

We were asked to provide feedback specifically with respect to section 21 (licensure by endorsement). Proposed subsection (2) states that an endorsement applicant must demonstrate an "Absence of unprofessional conduct." This requirement is quite vague, and it is doubtful that the board could actually obtain such information in a useful form. The purpose of the proposed requirement is already served by subsection (4), requiring proof that there are no unresolved complaints against the applicant in his or her originating state. We respectfully suggest deletion of subsection (2).

We further suggest that the term "primary source verification" in subsection (4) be expanded upon since it may not be a commonly-understood term. We suggest that subsection (4) read, "Primary source verification from another state's massage board or other state license-issuing entity that the applicant is currently licensed..."

Requiring 500 hours of education or two years of active practice immediately preceding the endorsement application unfairly penalizes qualified therapists who obtained their licenses under the grandfathering provisions of their state. There are myriad circumstances under which a qualified and experienced massage therapist could be prevented from working in South Dakota under such a provision. As but one example, a therapist who obtained his or her license by grandfathering but has recently taken time away from his or her practice due to medical issues or the birth of child would be unable to obtain a South Dakota license unless he or she actually re-enrolled in massage school. Massage therapists who have already satisfied another state that they are qualified for licensure should be able to move to South Dakota and obtain a license with minimal additional hoop-jumping. We respectfully suggest that the language of subsection (5) read:

Proof of experience and competency in massage therapy. For purposes of this section, an applicant may demonstrate proof of experience and competency either through:

1. Verification of active massage therapy practice in that state during the two years immediately preceding the date of application for licensure. The work experience shall be attested to in a manner prescribed by the Board/Director, **or**
2. Completion of twenty-four hours of continuing education related to the practice of massage therapy during the two years immediately preceding the date of application. The state must have a compelling reason to disapprove of continuing education already approved by another state.

Section 27 (Investigation of complaints—Inspections)

Again, using the language under the Board of Medical & Osteopathic Examiners as an example, the language being proposed by the massage board seems less impactful than it could be. Example below:

Investigation of violations. Employment of counsel to assist in prosecution. The Board of Examiners and/or the physical therapy committee shall investigate every supposed violation of this chapter, and shall report the same to the proper law enforcement officials wherein the act is committed. The board is authorized to employ special counsel subject to the supervision, control and direction of the attorney general, to assist in the prosecution of violations of this chapter and to expend the necessary funds for such purpose.

We suggest that you use similar language to the Board of Medical & Osteopathic Examiners and add this addition that has proved to be helpful in Colorado:

(2) **Local government law enforcement agencies** may inspect massage therapy licenses and the business premises where massage therapy is practiced for compliance with applicable laws. Nothing in this section precludes criminal prosecution for a violation of any criminal law. If an inspection reveals the practice of massage therapy by a person without a valid license, the local government law enforcement agency shall charge the person with a misdemeanor pursuant to section 36-35-10 (Section 13 in this proposal).

Section 31 (authority to adopt a code of ethics)

We were asked to provide feedback specifically with respect to section 31 (authority to adopt a code of ethics). We support this proposed provision.

We have no specific comments with respect to the remaining proposed changes.

Thank you for your consideration of ABMP's comments. If you have any questions please do not hesitate to contact me at 800-458-2267 extension 645 or jean@abmp.com. We are happy to help in any way.

Sincerely,



Jean Robinson
Government Relations Director

Jennifer Stalley

From: Charlotte Grill <cgrill@amtamassage.org>
Sent: Thursday, August 13, 2015 9:31 AM
To: Jennifer Stalley
Subject: RE: SD Practice Act Revisions -- Draft for Comments - Please respond by August 21st

Hi Jennifer,

Thanks for forwarding on the draft. We here at AMTA national office have reviewed the changes and have no comments to make at this time. However, we have not discussed it with our SD chapter, so they may have different input! Let me know if there's anything else you need from us at this time!

Best
Charlotte

From: Jennifer Stalley [mailto:Jennifer.Stalley@midwestsolutionssd.com]
Sent: Monday, August 10, 2015 3:00 PM
To: Jennifer Stalley
Cc: 'Christine Ellwein'; 'Bridget Myers'
Subject: SD Practice Act Revisions -- Draft for Comments - Please respond by August 21st

Greetings:

The South Dakota Board of Massage Therapy is seeking comments, suggestions and recommendations for changes to the massage therapy practice act through its appointed Practice Act Workgroup. The workgroup has prepared this draft for review and comment by membership organizations, interested parties and licensees.

Please review the attached draft and provide your feedback to the workgroup by August 21, 2015. Written comments are preferred. Section numbers have been added to the document to allow for your easy reference to current statutory sections of the practice act and to proposed new sections to the code to aid in you providing comments. The strikethroughs indicate language that is proposed to be removed from current law and the underlines indicate language that is proposed to be included in the practice act.

The workgroup is interested in your feedback on the entire proposal, but in particular, is interested in feedback on section 1 (definition of massage), section 13 (definition of unlicensed practice), section 21 (licensure by reciprocity) and section 31 (authority to adopt a code of ethics). These sections contain the most substantive changes proposed to the current law.

Please refer to the section number when providing your comments so we can associate your comments with the correct language. Your comments will be shared with the workgroup to aid in drafting a final proposal for consideration by the Board of Massage Therapy at its September 21st meeting. Should there be a particular section that illicit opposing views, we will share those comments with all interested stakeholders so additional information can be provided, if necessary.

Please note that this is a proposal at this time. Circulation of this draft does not guarantee any changes will be proposed by the Board for consideration by the Legislature in 2016.

Thank you for your comments and feedback on this draft – if you have any questions, please contact me at 605-224-1721.

Jennifer Stalley

Jennifer Stalley

From: Brock Ingmire <bingmire@fsmtdb.org>
Sent: Thursday, August 20, 2015 11:17 AM
To: Jennifer Stalley
Cc: Sally Hacking
Subject: Requested Information; Verification of Patient Contact
Attachments: Verification of Patient Contact - Licensure by Endorsement; SD Materials.docx

Hi Jennifer,

I just wanted to follow up on that request of information that we were able to do for you. You had iterated that concern arose with regard to verifying the hours of patient contact that an applicant for licensure by endorsement was required to submit evidence for. I went through the statutes and rules of the 45 regulated and states and found five states who follow somewhat of a similar pathway towards licensure by requiring, or at least making it an avenue, a number of patient contact hours: Colorado, Connecticut, Kentucky, Mississippi, and New York.

I've attached a document that illustrates how they verify such hours in the board's operations of determining whether or not to approve the application. Forms and/or notes about the verification were put into the document as review comments, otherwise the text on the document is a synopsis of their governing language. Should you need anything further from us, please don't hesitate to let me know.

Thanks,

Brock Ingmire
Government Relations Specialist
Federation of State Massage Therapy Boards
10801 Mastin Boulevard, Suite #350
Overland Park, KS 66210
(p) 913-681-0380



Licensure by Endorsement Verification of Patient Contact

Colorado

The state requires applicants to submit proof that they have licensure in another state of a substantially equivalent nature, however discretion is left to the director to ensure applicants have proof of experience and competency on a form determined by the director.

In their rules, the state requires that applicants submit verification of an active massage therapy practice for a minimum of 400 hours OR 24 hours of CE in the past two years immediately preceding the date of application for licensure by endorsement.

Commented [B11]: The state requires that applicants submit this verification to prove number of hours worked:
https://drive.google.com/file/d/0B0iIA2uoe_oVUc5STNuYk1qMW6/view?pli=1

Connecticut

One avenue for which the state can approve an application for licensure through endorsement is if the applicant submits: a current license to practice in another jurisdiction, documentation of practice for at least one year immediately preceding application, and successful competency exam (MBLEx) completion;

Commented [B12]: The department requires "Verification directly from the appropriate authority verifying at least 1 year of practice as a massage therapist".

I followed up with the department's director and he indicated that the department will accept correspondence on letterhead from an employer, a colleague, or someone in a professional position to know that this applicant has been practicing as they claim to have.

Kentucky

Licensure by endorsement applicants who apply with a license from a jurisdiction with less stringent requirements than the state has the option to submit proof of hands-on therapeutic massage experience. Supporting documentation for this avenue would include appointment books, employer verification, or log books.

Mississippi

Requires that applicants for licensure by endorsement show proof of at least three years of work experience as a massage therapist.

Commented [B13]: I followed up with the state licensing board and they indicated to me that they purely utilize proof of licensure over the past three years to indicate proof of three years "work experience".

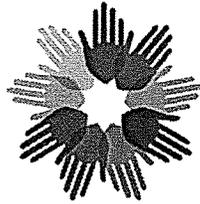
New York

The department has two avenues for licensure by endorsement. The first pathway requires satisfactory proof of two years of massage therapy experience. The second pathway requires five years of professional experience.

Commented [B14]: The department requires that you fill out two specific forms for departmental review and consideration:

- (1) Report of Professional Experience:
<http://www.op.nysed.gov/prof/mt/mt4.pdf>
- (2) Verification of Professional Experience:
<http://www.op.nysed.gov/prof/mt/mt4b.pdf>

The state defines one year of experience as 52 weeks in which massage therapy is practiced an average of 12 hours each week.



FSMTB

FEDERATION OF STATE
MASSAGE THERAPY BOARDS

June 30, 2015

South Dakota Board of Massage Therapy
Attn: Practice Act Workgroup
600 East Capitol Avenue
Pierre, SD 57501

Dear Members of the Practice Act Workgroup:

Re: Request for Information

The Federation of State Massage Therapy Boards (FSMTB) appreciates the workgroup's invitation to provide information as you go about the process of determining appropriate steps in statutory revisions. The mission of the FSMTB is to support our 41 member boards, including South Dakota, in their work to ensure that the practice of massage therapy is provided to the public in a safe and effective manner. In doing so, we are available as a resource for knowledge with regard to best practices for the regulation of massage therapy.

We are able to provide the following information based on the prompts provided by the workgroup:

- 1. How many states are allowing attendance at a licensing board meeting to count as continuing education, and if so, how many hours does it count for where accepted?**

Unfortunately, we do not have this specific data and are unable to provide you with a current list of such states and the quantity of hours awarded. However, we are aware that a small number of states do allow attendance at a licensing board meeting to qualify as continuing education.

If further information is desired, we can poll our member boards and solicit responses to this prompt.

- 2. Do any states regulate acupuncture under their massage therapy board?**

There are no states that regulate acupuncture under their massage therapy board. Additionally, when acupuncture is regulated through a state agency, states will keep that office of licensure separate from the office that licenses massage therapists.

3. What are other states doing to handle unlicensed practice – any specific regulation that seems to be working better than others?

While we do not have specific data that illustrates any specific regulation that appears to be working more successfully than others, language from Section 403 of the Model Practice Act addresses the authority provided to a board to address unlawful activity.

As a brief anecdote, we do know that Florida has the authority to address unlawful activity. However, this responsibility with Florida's board is outsourced to an independent governing agency, thus not the immediate responsibility of the state board. While this outsourcing of responsibility has proven to be successful, it is a costly endeavor. For more information with regard to Florida, you are able to contact their staff through the following information:

Florida Board of Massage Therapy
Executive Director: Christy Robinson
Email: Christy.Robinson@flhealth.gov
Phone: 850-245-4161

4. What states regulate or register establishments offering massage services?

Based upon findings from our most recent research (2013) into this inquiry, we have identified nine states who regulate establishments offering massage services. However, as of 2015, we know of at least two other states who are considering an adoption of rules to regulate establishments (e.g., North Carolina and Tennessee).

Enclosed to this correspondence, you'll find a list of the nine states who are known as of 2013 to regulate establishments offering massage services. Should you require more information than what is provided with regard to establishment regulation, please let us know.

5. What other states regulate advertising about massage therapy and what does that regulation look like?

We do not have this information specifically on a state-by-state analysis, however Section 404 of the Model Practice Act addresses the authority provided to a board to regulate advertising of unlicensed practitioners.

6. Is there recommended reciprocity language?

Section 302 of the Model Practice Act provides recommended licensure by endorsement language that is based upon known best practices.

7. Do other states use civil fines to address unlicensed practice, and if so, are any having particular success?

Unfortunately, we do not have this information readily available. When looking for this information, access to our collation of state board/agency websites might provide more ease for navigation: <https://fsmtb.org/content/?id=9>.

Thank you again for the opportunity to provide you with what information we had available as you continue your work in the name of public protection. Should you have any further questions, please do not hesitate to let us know.

Sincerely,

Brock Ingmire
Government Relations Specialist
(p) 913.681.0380
(e) bingmire@fsmtb.org

Sally Hacking
Director of Government Relations
(p) 727.686.0966
(e) shacking@fsmtb.org

Enclosure

State Establishment Regulations and Associated Materials

Alabama

Rule 532 – 3.04 http://www.almtbd.state.al.us/PDF/Rules/2014_MAS_Rules_Regulations.pdf

Forms & Documents

Application http://www.almtbd.state.al.us/PDF/Forms/Establishment_Appl_2013.pdf

Exemption Request <http://www.almtbd.state.al.us/PDF/Forms/ExemptionMemo04-04-12.pdf>

Renewal http://www.almtbd.state.al.us/PDF/Forms/Therapist_renewal_app2013.pdf

Contact Information

Alabama Board of Massage Therapy

Executive Director: Keith Warren

Email: keith@warrenandco.com

Phone: 334-420-7233

Florida

Rule 64B7-26 <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=64B7-26>

Forms & Documents

Application <http://floridasmassagetherapy.gov/applications/app-bus-original-mt.pdf>

Information <http://floridasmassagetherapy.gov/forms/massage-establishment-ownership-information-form.pdf>

Sample Massage Establishment Inspection Form <http://floridasmassagetherapy.gov/applications/massage-app-sample-est-inspec.pdf>

Contact Information

Florida Board of Massage Therapy

Executive Director: Christy Robinson

Email: Christy.Robinson@flhealth.gov

Phone: 850-245-4161

Hawaii

Rules 6-84-15 http://cca.hawaii.gov/pvl/files/2013/08/har_84-c2.pdf

Forms & Documents

General Information and Instructions http://cca.hawaii.gov/pvl/files/2013/06/Info-Instruct-App-for-Massage-Therapy-Establishment_10.14R.pdf

Contact Information

**Not a member board

Louisiana

Rules Chapter 17 <https://www.labmt.org/uploads/rules.pdf>

Forms and Documents

Application https://www.labmt.org/uploads/LBMT006_Establishment_License_Application_01_01_2013.pdf
Renewal

https://www.labmt.org/uploads/Establishment_License_Renewal_Form_LBMT_0008_2013_Law.pdf

Establishment FAQ <https://www.labmt.org/site431.php>

Contact Information

Louisiana Board of Massage Therapy

Executive Director: Rhonda McManus

Email: rhonda@labmt.org

Phone: 227-756-3488

Massachusetts

Rules 269 CMR 600 <http://www.mass.gov/ocabr/licensee/dpl-boards/mt/regulations/269-cmr/269-cmr-600.html>

Forms & Documents

Single LMT Establishment Application <http://www.mass.gov/ocabr/docs/dpl/boards/mt/single-therapist-massage-establishment-license-application.pdf>

Multiple LMT Establishment Application <http://www.mass.gov/ocabr/docs/dpl/boards/mt/multiple-therapist-massage-establishment-license-application.pdf>

Contact Information

Massachusetts Board of Registration of Massage Therapy

Associate Executive Director: Ana Garcia

Email: Ana.Garcia@state.ma.us

Phone: 617-727-3074

Missouri

Rules 2197 – 5 <http://www.sos.mo.gov/adrules/csr/current/20csr/20c2197-5.pdf>

Forms & Documents

Establishment Application Instructions

<http://pr.mo.gov/boards/massage/Business%20Application%20Instructions.pdf>

Establishment Application Form <http://pr.mo.gov/boards/massage/Business%20Application%20Form.pdf>

Business Inspection Form

<http://pr.mo.gov/boards/massage/Business%20Inspection%20Form%20Sample.pdf>

Contact Information

Missouri State Board of Therapeutic Massage

Executive Director: Loree Kessler

Email: loree.kessler@pr.mo.gov

Phone: 573-522-6277

Nebraska

Rules 172 - 82

[http://www.sos.state.ne.us/rules-and-regs/regsearch/Rules/Health and Human Services System/Title-172/Chapter-82.pdf](http://www.sos.state.ne.us/rules-and-regs/regsearch/Rules/Health_and_Human_Services_System/Title-172/Chapter-82.pdf)

Forms & Documents

Application <http://dhhs.ne.gov/publichealth/Licensure/Documents/MTestablishmentApp.pdf>

Self-Inspection Report http://dhhs.ne.gov/publichealth/Documents/SELF_Inspection_report.pdf

Contact Information

Nebraska Massage Therapy Board

P.O. Box 94986

Lincoln, NE 68522

Email: kris.chiles@nebraska.gov

Phone: 402-471-4918

Oregon

Rules: Facility Permits <http://www.oregon.gov/OBMT/Documents/Effective%201.1.2014%20Final.pdf>

Forms & Documents

Application <http://www.oregon.gov/OBMT/Documents/Facility%20Permit%20Application.pdf>

Contact Information

Oregon Board of Massage

Executive Director: Kate Coffey

Email: kate.coffey@state.or.us

Phone: 503.365.8657

Texas

Rules for Establishment http://www.dshs.state.tx.us/massage/mt_establish.shtm

Forms & Documents

Information http://www.dshs.state.tx.us/massage/mt_aestablishment.shtm

Application http://www.dshs.state.tx.us/massage/mt_estab.pdf

Renewal http://www.dshs.state.tx.us/massage/mt_estabrenew.pdf

Contact Information

Texas Department of State Health Services

Massage Therapy Licensing Program

Executive Director: Jerry Gonzalez

Email: jerry.gonzalez@dshs.state.tx.us

Phone: 512-834-6616

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

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.

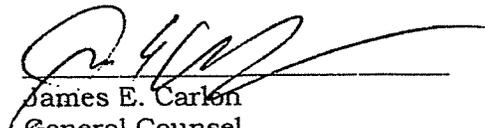
Dated this ____ day of September, 2015.

Karen Kappel, President
Board of Massage Therapy

thereof, the Board may take action to grant or deny the pending application for a license to practice massage therapy.

4. This hearing is a contested case as that term is defined in SDCL 1-26-1(2). As such, this hearing is an adjudicatory hearing at which Respondent has the right to be present and to be represented by legal counsel to introduce evidence and present testimony, to call witnesses to testify, to cross-examine all witnesses present, and to submit written argument. If these and other due process rights are not exercised at this hearing, they will be forfeited. If the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to §1-26-17.
5. Notice of the Board's decision must be sent within thirty (30) days after the conclusion of the hearing. The decision of the Board of Massage Therapy may be appealed to Circuit Court and the State Supreme Court as provided by law.
6. You are further notified that prior to September 21, 2015, you must contact the undersigned, either personally or through your legal counsel, and inform him of your intent to appear, and the names of any witnesses that you will call at the hearing in the above-captioned matter. If you fail to comply with this requirement, an order may be entered by default denying your application for licensure.

Dated this 25th day of August, 2015.


James E. Carlen
General Counsel
PO Box 249
Pierre, SD 57501
(605) 224-5880

SOUTH DAKOTA
BOARD OF MASSAGE THERAPY

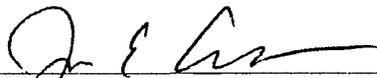
IN THE MATTER OF THE)
DECLARATORY RULING)
REGARDING ARSD 20:76:08:01)
SL 2013, ch 184)

NOTICE OF HEARING ON
DECLARATORY RULING

TO: Olawa Rae-Bruhjell, dba Springs Bath House School of Massage; and all others similarly situated.

Please take notice that on the 21st day of September, 2015, at 1:00 o'clock p.m. (Central time) or as soon thereafter as the matter may be heard, in Conference Room #3, 700 Governor's Drive, Pierre, South Dakota, the Board of Massage Therapy will consider and may enter a declaratory ruling pursuant to SDCL 1-26-15, declaring and clarifying whether a South Dakota facility recognized pursuant to ARSD 20:76:08:01 may sell, bargain, transfer or assign its recognition. The Board will also consider whether a facility recognized pursuant to ARSD 20:76:08:01 can relocate or expand and diversify its location.

Dated this 25th day of August, 2015.



James E. Carlon
General Counsel, Board of
Massage Therapy
PO Box 249
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(605) 224-5880
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