

SOUTH DAKOTA BOARD OF MASSAGE THERAPY MEETING MINUTES

Wednesday, February 21, 2024
1601 N Harrison Ave Suite 6 Pierre SD
And Teams Meeting

1. Call to Order

President Fallon Helm called the meeting to order at 9:00 am CDT. Members of the public could join the meeting via tele-conferencing or Teams Meeting.

President Fallon Helm read the roll and a quorum was established.

Members Present: Fallon Helm – via Teams Meeting
Kallyn Reinert – via Teams Meeting
Al Trace – via Teams Meeting

Members Absent: N/A

Others Present: Kate Boyd, Executive Secretary – via Teams Meeting
Steve Blair Staff Legal Counsel – via Teams Meeting
Tamara Lee, DOH Attorney – via Teams Meeting

Guests Present: Missy Regan, Christine Hooper-AMTA, Angela Gleason, Kara Goodrich, Angela Taylor, Olawa Rae-Bruhjell, Bobbi Buchholz, Kaylynn Overacker, Peggy Sproat, Ralph Wiedmann, Amber Hamburger, Heather Herrick, Mike Oster, Randa Heller, Sharolyn Sombke, Bridget Myers, Lorin Pankratz, All via Teams, and Bob Mercer-KELO at 1601 N Harrison Ave Suite 6, Pierre, SD.

2. Approval of Agenda

A motion was made by Al Trace, seconded by Kallyn Reinert, to approve the agenda as presented. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Trace yea)

3. Open Forum

Olawa Rue-Bruhjell asked if a recording of the January 17, 2024 meeting is available. It was not available at this time. She said that she will forward the recording she has so that it can be posted on the Board of Massage Therapy website. Randa Heller stated that she is looking forward to improved communication between the Board of Massage Therapy and the licensees.

4. Approval of January 17, 2024 Meeting Minutes

Al Trace made a motion, seconded by Kallyn Reinert, to approve the minutes of the January 17, 2024 meeting. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Trace yea)

5. Executive Secretary Report and Updates

Financial Report for the month ending January 31, 2024 - Executive Secretary Kate Boyd reported that the financial report for the month ending January 31, 2024, showed the available budget for the remainder of FY 2024 of \$24,526.34 and cash center balance of \$47,374.68 (reserve funds).

Title IV – Education Hours Required for Federal Financial Aid - Ms. Boyd reported that there are new rules being proposed at the federal level relating to qualification for IV financial funding. Some of the details are:

Title IV funding is available to students in an accredited school.

The current threshold for students to be eligible for funding under Title IV for clock hour education is 600 hours.

South Dakota's legal mandate for massage therapy education is 500 hours.

The current Title IV rule allows a school to increase hours up to 150% above the State mandate. South Dakota schools can require 750 hours and their students are eligible to apply for financial aid under Title IV.

The proposed Title IV rule would lower the 150% rule to 100%. The result, if the rules go into effect July 1, 2024, is that no students in South Dakota would be eligible for Title IV funding since South Dakota only requires 500 hours of education.

Legislation would need to be introduced in the 2025 South Dakota legislative session to increase the required education hours so that students at accredited schools can seek Title IV funding. The Board invited Christine Hooper, a representative of American Massage Therapy Association (AMTA) to share whatever information she had on this subject. Ms. Hooper stated that the new rules will likely go into effect. An effort is being made to delay the implementation of the rules to allow states to raise their education hours, but it may be doubtful that the delay will occur. It is also unknown how this will affect students who enroll prior to July 1, 2024. She stated that the US Department of Education believes that schools requiring more clock hours of education above what a State licensing board requires may be a money grab on the parts of the schools.

President Fallon Helm stated that the next step for South Dakota will be to form a Roundtable that will include one board member, representatives of the massage therapy schools, Executive Secretary Kate Boyd. President Helm appointed herself as the Board representative to lead the round table. It was noted that Board member Al Trace, while a school owner, would not be able to participate in the roundtable because it would violate the State's open meeting laws if a majority of the current board was present. A different representative from Black Hills Health & Education Center will participate in the roundtable. Representatives from AMTA and ABMP (Associated Bodywork & Massage Professionals) will also be invited to participate since their associations keep abreast of federal legislation and have lobbyists in DC.

President Helm suggested three possible dates for the roundtable and requested that Executive Secretary Kate Boyd, contact the stakeholders to determine the best date to hold the roundtable meeting. A report of the roundtable meeting will be given at the March 20, 2024 board meeting.

Business Licenses/Permits

Executive Secretary Boyd mentioned business licenses or permits. She said that if the Board would ever like to consider this, it will be placed on the agenda for further discussion.

How Do Schools Get Approved in South Dakota

Ms Boyd stated that she has received inquiries regarding the steps necessary for a massage school to become approved by the Massage Therapy Board in South Dakota. She said she did not have a definitive answer and the subject of approval of schools is not clearly defined in law or rule. It was agreed that the Board would like to discuss this at a future meeting.

Should the Board Be Regulating Schools

The subject of regulating schools is related to the process of seeking State approval of a school and will be discussed in conjunction with approval of a school at future meetings.

6. Payment for Student Massage Services

The subject of payment for student massage services was the result of inquiries from massage therapy schools. Attorney Steve Blair provided some preliminary information on this subject, and, it was once again agreed that this will be part of the discussion about massage schools as noted in the Executive Secretary report.

The Board asked that the subject of massage therapy schools be placed on the agenda beginning with the March 20, 2024 meeting, to include: (a) process for a school to become approved as a massage therapy school in South Dakota; (b) should the Board be regulating schools; and, (c) payment for student massage therapist services.

7. Disciplinary Cases 2023-002 and 2023-003 Massage Therapy Board vs HaiLing Zhang

President Helm turned the meeting over to Steve Blair, General Counsel to the Board, for the discussion and action concerning disciplinary cases 2023-002 and 2023-003 – In re Massage Therapy License of HaiLing Zhang. Deputy Attorney General Blair noted that a formal hearing was held on November 15, 2023. A verbatim court reporter transcript was made available to the Board members and included in the public meeting packet, together with the Findings of Fact and Conclusions of Law submitted by both attorney Robert Christenson, representing Ms. Zhang, and Special Assistant Attorney General Tamara Lee, appearing as prosecuting counsel for the Board. It was noted that Ms. Lee had also submitted objections to Mr. Christenson's Findings of Fact and Conclusions of Law.

Mr. Blair asked that the record state the following: (1) all current Board members were present, including President Fallon Helm, Vice President Kallyn Reinert and Secretary-Treasurer Al Trace; (2) former Board member Lorin Pankratz, who had been the investigator on this case was present; (3) neither Attorney Christenson representing Ms. Zhang nor HaiLing Zhang were present.

Mr. Blair advised the Board that all options concerning discipline of Ms. Zhang were available to the Board, including revocation or suspension of Ms. Zhang's massage therapy license. The Board was also advised that it may impose its costs of the proceedings upon Ms. Zhang, not to include attorney fees. Mr. Blair further advised the Board that Executive Session was available for the purposes of seeking legal counsel on the options available to the Board, but that deliberation of the matter should otherwise occur in general session.

Mr. Blair thereafter gave a detailed verbal report of the proposed Findings of Fact and Conclusions of Law presented to the Board.

Kallyn Reinert made a motion, seconded by Al Trace, to adopt the Findings of Fact and Conclusions of Law presented by Mr. Blair for cases 2023-002 and 2023-003 – In re Massage Therapy License of HaiLing Zhang, and to revoke Zhang's massage therapy license for one year.

The Board will consider the financial costs to be imposed upon Ms. Zhang at its March 20, 2024 Board meeting. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Trace yea)

The Final Order of the Board, including its Findings of Fact and Conclusions of Law are attached to these meeting minutes.

8. **Approval/Denial of Application T10854**
and
9. **Approval/Denial of Application T10867**

At 10:32 am, Kallyn Reinert made a motion, seconded by Al Trace, to go into Executive Session to discuss agenda item 8. License T10854 and agenda item 9. License T10867 pursuant to SDCL 1-25-2(3) and 1-27-1.5(5). **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Trace yea)

The Board exited Executive Session at 10:49 am and made the following motions.

Kallyn Reinert made a motion, seconded by Al Trace, to approve the application of T10854. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Trace yea)

Kallyn Reinert made a motion, seconded by Al Trace to defer action on Application T10867 and to request further information. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Trace yea)

11. **Adjourn**

Kallyn Reinert made a motion, seconded by Al Trace to adjourn. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Trace yea)

The meeting was adjourned at 10:57 am.

Respectfully submitted,

Executive Secretary Kate Boyd and Secretary Al Trace

STATE OF SOUTH DAKOTA
DEPARTMENT OF HEALTH

BOARD OF MASSAGE THERAPY

IN THE MATTER OF)	No. 2023-002 & No. 2023-003
DISCIPLINARY PROCEEDINGS OF:)	
HAILING ZHANG)	FINAL ORDER
(Lic. no. MT 11622))	

The above captioned matter came before the Board of Massage Therapy on Wednesday, February 21, 2024. Hailing Zhang did not appear personally or through counsel. Board staff was present and represented by Special Assistant Attorney General Tamara Lee.

Previously, this matter was heard by the Board as a contested case hearing held on November 15, 2023. Board member Fallon Helm (via Zoom), Kallyn Reinert, and Al Trace were present for the contested hearing. Board member Lorin Pankratz was recused from participating in the matter due to his involvement as the investigator for this matter. Board Staff was represented by prosecuting counsel, Special Assistant Attorney General Tamara Lee. Ms. Zhang was personally present for the contested hearing and represented by counsel, Robert Christenson. General Counsel to the Board, Assistant Attorney General Steven R. Blair, was appointed as Hearing Chair for the proceedings. A copy of the transcript of this hearing has been prepared and is included in the administrative record of this matter.

Subsequent to the contested hearing, the parties submitted proposed Findings of Fact and Conclusions of Law. Ms. Lee, as prosecuting counsel, also submitted objections to the Findings of Fact and Conclusions of Law submitted by Ms. Zhang.

The Board being otherwise fully informed of the facts and issues pertinent to this matter, and based upon the testimony, evidence, and arguments presented, makes and enters the following:

FINDINGS OF FACT

1. Hailing Zhang operated a massage therapy business named Go Spa located at the Empire Mall in Sioux Falls, South Dakota.
2. A complaint was filed with the Board on August 3, 2022, against Hongjie Yu by Brooke Sieff. Ms. Sieff alleged that she had been sexually assaulted by Hongjie Yu during a massage therapy session held at Go Spa on May 20, 2022.
3. Upon investigation of the Complaint, the Board's Executive Secretary determined that Hongjie Yu was not a licensed massage therapist in South Dakota, and therefore the Board did not have jurisdiction over him.
4. According to SDCL § 36-35-13, for purposes of massage therapy licensure in South Dakota:

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.
5. Pursuant to SDCL § 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."
6. On August 12, 2022, the Executive Secretary for the Board filed a complaint against Hailing Zhang for allowing an unlicensed individual, Hongjie Hu, to perform massage therapy services in Ms. Zhang's place of business, Go Spa.

7. A copy of the Complaint was sent to Ms. Zhang on August 12, 2022, along with a letter requesting a written response within twenty days.
8. On August 29, 2022, the Board received a letter from counsel for Ms. Zhang, Robert Christenson. The letter was submitted on Ms. Zhang's behalf.
9. Mr. Christenson's letter admitted that Ms. Zhang had been working with Hongjie Yu, and that Mr. Yu was not licensed as a massage therapist in South Dakota. The letter stated that Mr. Christenson advised Ms. Zhang that she could not allow Mr. Yu to work in her business because he was not licensed in South Dakota. The letter indicated that Ms. Zhang agreed that Mr. Yu would no longer work with Ms. Zhang until he was properly licensed in South Dakota.
10. Board member Lorin Pankratz was appointed to be the investigator in this matter.
11. Hailing Zhang is of Chinese descent and speaks Mandarin Chinese as her native language.
12. On October 12, 2022, Mr. Pankratz met with Ms. Zhang and her attorney, Mr. Christenson, at Mr. Christenson's law office. An interpreter was also present for this meeting.
13. Subsequent to this meeting, on October 13, 2022, Mr. Pankratz filed a report with the Executive Secretary.
14. Mr. Pankratz's report indicates that Ms. Zhang admitted that Mr. Yu had been providing massage services at her place of business for several years. Ms. Zhang also admitted that she knew Mr. Yu was not licensed, but should have been licensed before being allowed to provide massage services. Mr. Pankratz stated that Ms. Zhang knew she had made a mistake, and advised that Mr. Yu had not been allowed back to her business since the complaint had been filed.
15. Due to the admission of wrongdoing, Mr. Pankratz intended to recommend that the Board issue Ms. Zhang a formal letter of reprimand and do spot checks to ensure future compliance.
16. On approximately November 10, 2022, Mr. Pankratz received information from Ms. Sieff that Hongjie Yu was still performing massage therapy services at Go Spa. Ms. Sieff provided Mr. Pankratz a video of Mr. Yu performing

massage therapy at Go Spa. The video was not introduced as evidence as part of the contested case hearing before the Board.

17. On December 20, 2022, Special Assistant Attorney General Court Roper, sent notice to Ms. Zhang that her license was being summarily suspended. The notice also indicated that a formal hearing would be held in this matter on March 22, 2023.
18. On March 16, 2023, the Board's Executive Secretary sent an email to counsel for Ms. Zhang indicating the March 22 hearing was being postponed due to the unavailability of prosecuting legal counsel.
19. On May 8, 2023, a formal Complaint (no. 2023-002) and Notice of Formal Hearing were sent to Ms. Zhang and her attorney. The notice indicated the formal contested hearing to be held in this matter was scheduled for July 26, 2023.
20. Due to an interpreter not being available, the July 26, 2023, contested hearing was rescheduled to November 15, 2023. An Amended Notice of Formal Hearing was sent to Ms. Zhang and her attorney.
21. On August 23, 2023, Ms. Sieff again observed Mr. Yu providing massage therapy services at Go Spa. Ms. Sieff video recorded Mr. Yu massaging an individual. This video was not introduced as evidence at the contested hearing in this matter. Ms. Zhang was present at Go Spa at this time.
22. Subsequent to setting the November 15 hearing date, information was received by the Executive Secretary regarding Ms. Sieff's observation that Mr. Yu was still performing massage therapy services at Go Spa.
23. Yang Yu submitted an affidavit, dated September 5, 2023, admitted that he received massages from Hongjie Yu at Go Spa in the summer of 2023.
24. Hongjie Yu submitted an affidavit, dated September 5, 2023, admitted that he had provided massages during the summer of 2023 at Go Spa.
25. The Board entered its formal Order of Summary Suspension of Ms. Zhang's massage therapy license on September 19, 2023.
26. On September 21, 2023, the Order of Summary Suspension, a second Formal Complaint (no. 2023-003), and Notice of Formal Hearing were issued to Ms. Zhang and her counsel.

27. The Order for Summary Suspension required Ms. Zhang to submit her massage therapy license to the Board within ten days from the date of the Order. Mr. Christenson sent Ms. Zhang's massage therapy license to prosecuting counsel Ms. Lee. The license was received on November 6, 2023.
28. A contested case hearing was held regarding Complaints nos. 2023-002 and 2023-003 on November 15, 2023.
29. Any Finding of Fact improperly designated as a Conclusion of Law is hereby re-designated as an additional Finding of Fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter, and the parties thereto, pursuant to the applicable provisions of SDCL ch. 36-35 and ARSD ch. 20:76:04.
2. Both Complaints, all notices of hearings, and all other notices required by law were timely and properly given.
3. Hailing Zhang is licensed to practice as a massage therapist in South Dakota, license no. MT 11622, which license is currently suspended.
4. Ms. Zhang was aware that Mr. Yu was not licensed to practice massage therapy in South Dakota, and knowingly allowed him to provide massage therapy services as Go Spa, her place of business.
5. Ms. Zhang had knowledge, as of August 29, 2022, as indicated by the letter submitted by her attorney, that Mr. Yu was not allowed to provide massage therapy services without a license.
6. Ms. Zhang indicated in her October 12, 2022, meeting with Mr. Pankratz that she knew and understood that Mr. Yu was not allowed to provide massage therapy services without a license.
7. Subsequent to August 29, 2022, and October 13, 2022, Ms. Zhang allowed Mr. Yu, on at least two occasions, to provide massage therapy services at Go Spa without a license.
8. SDCL § 36-35-10 prohibits a person who owns a massage therapy business from knowingly employing an unlicensed person to offer or perform massage therapy. Ms. Zhang violated this provision when she allowed Mr. Yu to perform massage therapy without a license at Go Spa.

9. It is unprofessional conduct, pursuant to SDCL § 36-35-13(7) to “[engage] in conduct which endangers the health or welfare of clients or other persons[.]” To protect the health and welfare of clients, anyone who provides massage therapy in South Dakota (with limited exceptions) must be licensed by the Board. Mr. Yu is not licensed to practice massage therapy in South Dakota. By allowing Mr. Yu to practice massage therapy without a license, Ms. Zhang has engaged in conduct endangering the health and welfare of clients in violation of SDCL § 36-35-13(7).
10. It is also unprofessional conduct, pursuant to SDCL § 36-35-13(8) to fail to “comply with any provision of [SDCL ch. 36-35.]” Ms. Zhang has failed to comply with the requirements of SDCL § 36-35-10 as discussed above.
11. Further, it is unprofessional conduct, pursuant to SDCL § 36-35-13(9) to “[engage] in any act that aids, abets, facilitates, or promotes a violation of this chapter.” By allowing Mr. Yu to practice massage therapy in her place of business without a license, Ms. Zhang has aided, abetted, facilitated, or promoted a violation of SDCL ch. 36-35.
12. Any Conclusion of Law improperly designated as a Finding of Fact is hereby re-designated as an additional Conclusion of Law.

ORDER

Based upon the foregoing it is hereby:

ORDERED that Hailing Zhang’s license to practice Massage Therapy in South Dakota is hereby **REVOKED**. It is further

ORDERED that Hailing Zhang may not reapply for licensure to practice massage therapy in South Dakota for period of one year from the date of entry of this order. It is further

ORDERED that any renewal application submitted by Hailing Zhang while contested case proceedings were pending is hereby **DENIED**. It is further

ORDERED that Hailing Zhang is directed to reimburse the Board for its actual expenses associated with these contested case proceedings as allowed pursuant to SDCL 1-26-29.1. It is further

ORDERED that these documents are public records of the Board and the State of South Dakota and may be published on the Board’s website and reported as

necessary to any national data bank or other entity deemed appropriate by the Board in compliance with State and Federal law.

Dated this 2/22/2024 day of February, 2024

BOARD OF MASSAGE THERAPY


Fallon Helm
Board President

STATE OF SOUTH DAKOTA
DEPARTMENT OF HEALTH

BOARD OF MASSAGE THERAPY

IN THE MATTER OF)	No. 2023-002 & No. 2023-003
DISCIPLINARY PROCEEDINGS OF:)	
HAILING ZHANG)	NOTICE OF ENTRY
(Lic. no. MT 11622))	OF ORDER

TO: HAILING ZHANG, through her attorney of record, ROBERT CHRISTENSON;
and TAMARA LEE, Special Assistant Attorney General and prosecuting counsel for
the Board.

Please take notice that on February 21, 2024, the South Dakota Board of
Massage Therapy made and entered its Final Order in the above captioned matter.
The Order was signed on February 22, 2024. A true and correct copy of the Final
Order is attached and hereby served upon you.

The parties are hereby advised of their right, pursuant to SDCL ch. 1-26, to
appeal the Board's Final Order to the circuit court within thirty (30) days of service
of this Notice of Entry.

Dated this 23rd day of February, 2024



Steven R. Blair
Deputy Attorney General
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General Counsel – Board of Massage Therapy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Board's NOTICE OF ENTRY OF ORDER, and FINAL ORDER, entered in the above captioned matter were served via United States Mail, First Class, Postage Prepaid upon the following:

Robert A. Christenson
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Counsel – Ms. Hailing Zhang

Tamara D. Lee
Special Asst. Atty. General
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*Prosecuting Counsel – Brd. of
Massage Therapy*

On this 23rd day of February, 2024.



Steven R. Blair
Deputy Attorney General