

SOUTH DAKOTA BOARD OF MASSAGE THERAPY MEETING MINUTES

Wednesday, November 20, 2024

Via Microsoft Teams

1. Call to Order

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

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

Members Present: Fallon Helm – via Teams Meeting
Kallyn Reinert – via Teams Meeting
Thor Thonvold – 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: Bridget Myers, Angela Taylor, Rhanda Heller, Tonia McGeorge, Shayla Nyberg-Sutton, Adrienne Shock, Dazee Gertz, Debra Barnes, Kammie Thompson, Mai Lin Petrine, and Bob Mercer

2. Approval of Agenda

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

3. Open Forum

Bridget Myers thanked board member Kallyn Reinert for placing several items on the agenda that she had requested. She provided reasons why pursuing legislation on these subjects would be beneficial, and she also suggested that the board implement a late fee and charge a fee for duplicate licenses. She commented that she knows a couple of legislators in leadership who she helped elect and believes one of them would likely agree to submit legislation in the 2025 legislative session.

Rhanda Heller stated that she is looking forward to the working with the board on the items listed on the agenda, as well as other changes that could be made. She said that uniting the massage therapists and the board is a positive step.

Tonia McGeorge thanks the board for it's willingness to work with the massage therapist licensees on important subjects.

4. Approval of July 24, 2024 Meeting Minutes

Al Trace made a motion, seconded by Kallyn Reinert, to approve the minutes of the July 24, 2024 meeting. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Thonvold yea; Trace yea)

5. Executive Secretary Report

Financial Report for the month and year ending October 31, 2024 - Executive Secretary Kate Boyd reported that the financial report for the month and year ending October 31, 2024, showed the available budget of \$49,914.57 and cash center balance of \$41,076.12 (reserve funds).

2024 Renewal Report

A recap of the 2024 renewals shows that there are 907 active licenses that will expire September 30, 2025, 47 licenses that expired September 30, 2024 without the licensee renewing their license, and 17 licensees applied to place their licenses in inactive status.

2025 Proposed Board Meeting Dates

Ms. Boyd provided the board with four proposed 2025 meetings: January 22, 2025, April 23, 2025, July 23, 2025, and November 19, 2025. All meeting dates are on a Wednesday and would be held from 9:00 – 11:00 central time. Additional meeting dates can be scheduled if there is a need. The consensus of the Board was that the above proposed meeting dates work for them.

Office Procedures and Policies

Ms Boyd stated that she would like to include an item for the January 22, 2025 meeting to discuss massage therapy board procedures and policies, to include the current duplication of hard copy and database files, Another topic would be whether or not an applicant who has been previously licensed in South Dakota should be required to request another copy of their national exam score documentation or proof of education from their school. This would be assuming that individuals file already has verification of education and national exam score.

6. Report from FSMTB Annual Conference

Fallon Helm reported on the Federation of State Massage Therapy Boards (FSMTB) annual conference held in Washington DC in early October. One of the highlights of the conference was complaints and the processes that are followed and the limitations that a State Board is faced with. Depending on the nature of the complaint, it may be important to contact law enforcement to have them get involved, as the State Board does not have law enforcement authority. Ms. Helm requested that at the January meeting, legal counsel provide education on the complaint process and the authority the board has or does not have, to better education the board, licensees, and the public.

Other discussion items included the kinds of issues that will be discussed under agenda item 7, i.e., title protection, advertising requiring a license name and license number, business permits or licenses.

7. Request from a Licensee for the Board's Consideration

Board member Kallyn Reinert discussed (a) Title Protection, (b) requiring a name and license number on any advertising for massage therapy services, (c) business permits, so that the board has some regulatory authority over massage therapy businesses; and, (d) changing licensing from annually to every two years. She also suggested that the Board should consider

legislation to charge a fee for duplicate licenses and late fees on renewals, limiting the period of time a licensee can have their license be inactive, regulating schools and instructors.

Ms. Reinert also talked about 7 (e), ensuring that any yes answers to legal question on the application be brought to the board's attention. With the Board going to 100 percent on-line renewals beginning in 2025, she asked if it would be possible for the online renewal system to flag any license renewal application with yes answers to the legal questions.

With the interest from licensees and the information Ms. Helm learned at the FSMTB conference, she recommended that the Board hold one or more round-table meetings to discuss these issues and determine if legislation should be pursued in 2026. Legal counsel Steve Blair clarified that the Board currently has one vacancy; however, the massage therapy board is a five-person board. He was of the opinion that two board members could participate in the round-table meetings since a quorum of a five-person board would be three members. It was agreed that Fallon Helm and Kallyn Reinert would be the two board representatives, at least initially, although it may be decided later to split the round-table topics into two separate round-table groups. It was noted that if the Board of Massage Therapy does decide they want to pursue any legislation for 2026, the process would need to be started by April or May so that the Board could vote on final wording to draft legislation. This is necessary because proposed legislation would likely need to be submitted to the Department of Health in August 2025.

8. Further Update on SB 57

Legal counsel Steve Blair provided further clarification of SB 57, that was passed by the Legislature in 2024. As a result of this bill, a licensing board or commission, cannot deny a license based on criminal convictions unless the felony is related to the occupation for which the individual is seeking a license. He stated that the board should have a policy and perhaps have a checklist for dealing with felonies. He added that he has access to checklists that other boards have developed. The Board requested that legal counsel Steve Blair, working with attorney Tamara Lee and Executive Secretary Kate Boyd bring a draft felony checklist to the January board meeting for the Board's review. Board member Kallyn Reinert offered to assist in the development of a checklist.

9. SCOTUS Ruling Regarding Chevron

Legal counsel Blair provided clarification of the US Supreme Court's ruling in the Loper Bright decision concerning Chevron deference. The Loper Bright decision overruled Chevron deference at the federal level. Chevron deference was not regularly applied at the state level.

10. Executive Session

Kallyn Reinert made a motion, seconded by Thor Thonvold to go into Executive Session. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Thonvold yea; Trace yea)

Executive Session began at 10:10 am. The Board fell out of Executive Session at 10:55 am.

10.a. Disciplinary Action Case 2024-001

Fallon Helm made a motion, seconded by Kallyn Reinert, to dismiss case 2024-001, due to lack of jurisdiction because the application was withdrawn at the request of the applicant. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Trace yea; Thonvold abstain)

10.b. Disciplinary Action Cases 2024-003-004-005-006

Kallyn Reinert made a motion, seconded by Fallon Helm, to proceed with a contested hearing by directing the investigative committee to file a formal complaint. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Trace yea; Thonvold abstain)

10.c. Disciplinary Action Case 2024-007

Kallyn Reinert made a motion, seconded by Thor Thonvold, to dismiss case 2024-007 for lack of probable cause. **MOTION PASSED.** Roll Call Vote (Reinert yea; Thonvold yea; Trace yea; Helm abstain)

10.d. Application T10960

Fallen Helm made a motion, seconded by Thor Thonvold, to send notice to applicant T10960 of the board's intent to deny application and advising applicant of their right to a hearing before the board. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Thonvold yea; Trace yea)

10.e. PP – Review of Education

President Fallon Helm directed the staff to request that the individual provide a formal application with supporting criteria. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Thonvold yea; Trace yea)

11. Election of Officers

Kallyn Reinert made a motion, seconded by Thor Thonvold, to elect Fallon Helm as President. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Thonvold yea; Trace yea)

Fallon Helm made a motion, seconded by Kallyn Reinert, to elect Al Trace as Vice President. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Thonvold yea; Trace yea)

Kallyn Reinert made a motion, seconded by Fallon Helm to elect Thor Thonvold as Secretary. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Thonvold yea; Trace yea)

12. Next Meeting – January 22, 2025

The next meeting agenda will include a draft checklist for dealing with applicants with felony convictions, a report of the status of the round-table committee that will research possible legislative proposals, education from legal counsel Steve Blair for the board, licensees, and the public on the complaint process, and discussion of office policies and procedures. If there are other suggested agenda items, please call or email the office.

11. Adjourn

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

The meeting was adjourned at 12:18 pm.

Respectfully submitted,

Executive Secretary Kate Boyd and Secretary Thor Thonvold