



South Dakota Board of Massage Therapy

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Meeting Minutes **South Dakota Board of Massage Therapy** Via Teleconference July 19, 2018

The meeting of the South Dakota Board of Massage Therapy (“Board”) was called to order at approximately 4:37 p.m. MST and the presence of a quorum was confirmed. Board President Christine Ellwein facilitated the meeting.

Roll call was taken by Richter of Board members. All were in attendance.

Members of the Board present via phone: Christine Ellwein, Bridget Myers, Meg Johnson, Lorin Pankratz, Natalie Marsh.

Others in attendance via phone: Mitch Richter, Executive Secretary, Julie Richter, administrative assistant to Executive Secretary, Al Trace, Black Hills Health & Education Center, Heather Payden, South Dakota School of Massage Therapy, Rebecca Herman, South Dakota School of Massage Therapy, Mandy Steen, Sonja Way, Federation of State Massage Therapy Boards (FSTMB), Debra Persinger, FSTMB, Valerie Rowen, Government Relations Chair of the SD Chapter of AMTA, Peggy Sproat, Headlines Academy, Heather Thrash, Headlines Academy, Rhanda Heller, Gene Heller, Olawa Rae-Bruhjell, Springs Bath House School of Massage Therapy.

Richter introduced the Board’s newly appointed member, Natalie Marsh, and Marsh provided an overview of her professional background.

Myers made a motion to add delegate selection to the FSMTB convention to the agenda before Open Forum. Seconded by Pankratz. The Board voted by roll call. Ellwein, Myers, Johnson, Pankratz and Marsh voted aye. **MOTION PASSED.**

Pankratz made a motion to approve the amended agenda. Johnson seconded the motion. The Board voted by roll call. Ellwein, Myers, Johnson, Pankratz and Marsh voted aye. **MOTION PASSED.**

Myers made a motion to amend the May 10, 2018 board meeting minutes to add a paragraph on page 3, immediately after the third paragraph that starts with “With the assistance of Julie Richter.” The added paragraph should read: Myers move that e-mail would be the Board’s means of communication; Johnson seconded the motion. The Board voted by roll call. Ellwein, Myers, Johnson, Pankratz and Marsh voted aye. **MOTION PASSED.**

Myers made a motion to approve the May 10, 2018 meeting minutes as amended. Johnson seconded the motion. The Board voted by roll call. Ellwein, Myers, Johnson, Pankratz and Marsh voted aye. Ellwein was absent. **MOTION PASSED.**

Rule Changes to the removal of the seven approved training facilities was discussed by Richter. Sonja Way from FSTMB discussed the FSMTB education policy and the various methods of school recognition and options available to applicants taking the MBLEx. Discussion followed.

Johnson made a motion to move to open forum. Pankratz seconded the motion. The Board voted by roll call. Ellwein, Myers, Johnson, Pankratz and Marsh voted aye. **MOTION PASSED.**

Ellwein called for public comments. Peggy Sproat, Headlines Academy, Olawa Rae-Bruhjell, Springs Bath House School of Massage Therapy, Rhanda Heller, and Rebecca Herman, South Dakota School of Massage Therapy addressed the Board.

Pankratz made a motion the Board Chair to setup a subcommittee to review the issue of recognized schools listed in Rule; consider other options for schools to obtain recognition and to bring a recommendation back to the Board for consideration. Seconded by Johnson. Discussion by Myers. The Board voted by roll call. Ellwein, Myers, Johnson, Pankratz and Marsh voted aye. **MOTION PASSED.**

Pankratz made a motion the proposed fees to be at the maximum allowed by statute. Second by Johnson. Discussion followed. The Board voted by roll call. Ellwein, Myers, Johnson, Pankratz and Marsh voted aye. **MOTION PASSED.**

Johnson made a motion to nominate Bridget Myers to attend the FSMTB convention as a delegate. Second by Pankratz. Discussion followed. The Board voted by roll call. Ellwein, Myers, Johnson, Pankratz and Marsh voted aye. **MOTION PASSED.**

Upon a motion by Johnson and second by Pankratz to go into executive session pursuant to SDCL 1-25-2(4) for discussion of letter from legal counsel. The Board voted by roll call. Ellwein, Myers, Johnson, Pankratz and Marsh voted aye. **MOTION PASSED.** The Board invited Mitch Richter to join the Board at approximately 6:21 MST. The meeting attendees exited the meeting at this time.

Myers motioned to go out of executive session at approximately 6:45 p.m. MST. Second by Johnson. The Board voted by roll call. Ellwein, Myers, Johnson, Pankratz and Marsh voted aye. **MOTION PASSED.**

Pankratz made a motion to Adopt Option 2 as presented by council which creates a Board policy for investigation per legal council's description. Option 2 – Investigate the complaints: The Board could investigate complaints it receives pertaining to the unlicensed practice of massage. Because the Board's current statutes and administrative rules do not address the procedure for complaints involving the unlicensed practice of massage, the Board would need to develop a procedure for investigating and handling such complaints. Ideally, this procedure would be set forth in the Board's administrative rules. However, as you know, the Board previously eliminated its rulemaking authority pertaining to complaints from the Board's statutes. Thus, the Board would need to add this authority back into statute before proceeding with proposal of administrative rules. Given that the Board will not be able to undertake this process until the 2019 legislative session at

the earliest, the Board could adopt an internal policy setting forth its procedure for handling complaints involving unlicensed practice that would govern until any changes are made to the Board's statutes and administrative rules. I would anticipate that this policy/procedure would be relatively simple, as the investigation of a complaint pertaining to the unlicensed practice of massage essentially would be limited in scope to determining what services are being offered at an establishment, who provides these services and whether the individuals providing these services are licensed. Given the limited scope of these investigations, I also would anticipate that they could be conducted in a cost-effective manner for the Board¹. Upon completion of the investigation, the Board could then (1) refer the complaint and investigation materials to the state's attorney for prosecution if there appeared to be a violation of statute (presumably, the state's attorney would be more likely to act on cases the Board investigated and concluded that a violation may have occurred) and (2) determine whether to pursue civil action to enjoin further unlicensed practice (this determination could be made on a case-by-case basis depending on resources of Board). Second by Myers. The Board voted by roll call. Ellwein, Myers, Johnson, Pankratz and Marsh voted aye. **MOTION PASSED.**

Ellwein stated the next Board meeting is September 11, 2018 at 9:00 a.m. MST at Western Dakota Technical Institute, 800 Mickelson Drive, Rapid City.

Myers made a motion to adjourn the meeting at approximately 6:54 p.m. MST. Second by Marsh. The Board voted by roll call. Ellwein, Myers, Johnson, Pankratz and Marsh voted aye. **MOTION PASSED.**

Respectfully submitted,

Meg Johnson, Secretary

¹ Note that any due process rights of individuals who violate SDCL 36-35-10 would be addressed through the criminal proceeding or civil action for injunctive relief, as applicable. Thus, certain procedural elements required for complaints against licensees (such as the hearing process), would not be required for complaints pertaining to the unlicensed practice of massage.