

SOUTH DAKOTA BOARD OF MASSAGE THERAPY MEETING MINUTES

Wednesday, July 24, 2024

Via Microsoft Teams

1. Call to Order

President Fallon Helm called the meeting to order at 9:01 am CDT. 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, Laura Puryear, Tonia McGeorge, Rebecca Hermann, Shannon Nelson, Adrienne Shock, Deborah Barnes, 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)

Executive Session

A motion was made by Kallyn Reinert, seconded by Thor Thonvold, to go into Executive Session to discuss Agenda Items 3 and 4. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Thonvold yea; Trace yea)

Executive Session began at 9:06 am and ended at 9:55 am.

3. Application TEMP147

A motion was made by Fallon Helm, seconded by Al Trace, to dismiss the complaint against application TEMP147, due to the lack of jurisdiction because the application was withdrawn at the request of the applicant. **MOTION PASSED.** Roll Call Vote (Helm yea; Thonvold yea; Trace yea; Reinert abstain)

4. Application T10867

A motion was made by Fallon Helm, seconded by Kallyn Reinert, to accept the recommendation of the board staff that the Application T10867 be set up for a formal hearing for. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Trace yea; Thonvold abstain)

5. SB 57 and its implication for applicants with criminal history

Board legal counsel, Steve Blair, provided information on SB 57 that was passed during the 2024 legislative session and became law. He informed the group that any licensing board under SDCL 36-1C-17 and 36-1C-22 cannot use criminal history in denying a license unless the felony is directly related to the profession for which the applicant is seeking licensing.

6. Open Forum

Adrienne Shock asked the Board if they have reviewed the June 28, 2024 Supreme Court decision in the Loper Bright v. Raimondo, et al, that overruled Chevron deference to administrative boards and agencies. The Board had not been aware of the ruling, but it will be reviewed and clarified at the next Board meeting that is scheduled for November 20, 2024.

Rhanda Heller addressed the Board and reiterated her suggestion from the previous meeting that the board seek input from licensees on budget, enforcement, and consider two-year licensing. She also suggested that the Board seek legislation for Title Protection, requiring the name and massage therapy license number on any advertising offering massage therapy service, licensing or registration of schools. She had questions on how SB 57 affects applicants for licensure and that the board revisit its policy on which applications get referred to the board to ensure that those applicants with criminal convictions aren't issued a license.

7. Approval of May 22, 2024 Meeting Minutes

Al Trace made a motion, seconded by Kallyn Reinert, to approve the minutes of the May 22, 2024 meeting. **MOTION PASSED.** Roll Call Vote (Helm yea; Reinert yea; Thonvold yea; Trace yea)

8. Executive Secretary Report

Financial Report for the month and year ending June 30, 2024 - Executive Secretary Kate Boyd reported that the financial report for the month and year ending June 30, 2024, showed the available budget for the remainder of FY 2024 of \$30,510.28 and cash center balance of \$18,028.43 (reserve funds). She added that the reserve funds are lower toward the end of the annual fiscal year on June 30.

CE Broker

Ms Boyd recommended that the Board not move forward with a contract with CE Broker as a repository for continuing education. She had recently learned that the Bureau of Information & Technology (BIT) now requires single sign-on. CE Broker cannot comply with BIT's requirement; therefore, BIT would require that the contract state that BIT would be held harmless in case of a breach of personal identity of our licensees. That would pass the liability to the Department of Health and the Board of Massage Therapy. Further, CE Broker now states that they cannot monitor the continuing education courses that a licensee submits. We review all continuing education courses that a licensee submits with their renewal in even-numbered years. Licensees will need to continue to submit their continuing education with their license renewal.

Annual License Renewals begin August 1, 2024 – Continuing Education Required

Ms Boyd reminded those present that the annual license renewal notices will be sent to licensees August 1, 2024 and noted that eight continuing education is required to renew. The continuing education courses need to have been taken and completed from October 1, 2022 – September 30, 2024.

Added security for database and NPDB

Lastly, Ms Boyd stated that two of the agencies the staff works with on a continual basis have added additional security that requires a two-step verification to access the system. The first is the company that hosts and maintains our database and the other is NPDB where we do background checks on all new applicants. These additional steps help to keep private records secure.

9. Proposed Legislative bill to increase required massage therapy education hours

Following Board discussion, Fallon Helm made a motion, seconded by Kallyn Reinert, finalize the draft education hour bill for introduction in the 2025 legislative session to require 650 hours of massage therapy education, and amend the curriculum as follows:

1. One hundred sixty hours of training in the body's systems and anatomy, physiology, and kinesiology;
2. Two hundred fifty hours of training in massage and bodywork assessment, theory, and application;
3. Fifty hours of training in pathology;
4. Forty hours total of training in massage therapy laws, business practices, and professional ethics, with a minimum of ten hours in professional ethics;
5. One hundred fifty hours of additional training in an area or related field that theoretically completes a massage program of study.

It was noted that the curriculum is set in administrative rule but the DOH legislative coordinator had recommended that the curriculum be included in the draft proposed legislation. The formal rules review process will still need to be completed if the bill is introduced and passes. Any interested individuals can send written comments to the board office and/or address the administrative rules review committee during the rules adoption process.

The State of Texas and other interested parties filed a lawsuit against the U.S. Department of Education to stop the implementation of the 100% rule related to Title IV education funding that was proposed to go into effect July 1, 2024. A judge has placed an injunction on the rule, pending the outcome of the lawsuit. It was noted that the proposed change to the 100% rule is only one of the reasons that lead to the development of draft legislation. All of the seven massage therapy schools in the state require a minimum of 600 hours or more, with hours ranging from 600, 650, 700, and 750 hours.

MOTION PASSED. Roll Call Vote (Helm yea; Reinert yea; Thonvold yea; Trace yea)

10. Next Meeting – November 20, 2024

The next meeting agenda will include further updates on how SB 57 affects the Board of Massage Therapy and a report of the June 28, 2024 Supreme Court decision in the Loper Bright v. Raimondo, et al, that overruled Chevron deference to administrative boards and agencies. If there are other suggested agenda items, please call or email the office.

11. Adjourn

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

The meeting was adjourned at 9:50 am.

Respectfully submitted,

Executive Secretary Kate Boyd and Secretary Al Trace