

THE BOARD OF MASSAGE THERAPY
Professional & Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawaii Revised Statutes ("HRS").

- Date: Wednesday, October 29, 2014
- Time: 9:00 a.m.
- Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii 96813
- Present: Olivia Nagashima, Massage Therapist, Chair
George Davis, Jr., Massage Therapist, Vice Chair
Stephanie Bath, Massage Therapist
Rodney J. Tam, Deputy Attorney General ("DAG")
Carlos Keen, Executive Officer ("EO")
Jennifer Fong, Secretary
- Guests: Arlene Estrella, American Massage Therapy Association ("AMTA") Hawaii
Anne Fritz, AMTA Hawaii
Shelagh Lampshire, Maui School of Therapeutic Massage
Mathew Pardini, Hawaii Massage Association
- Agenda: The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by section 92-7(b), Hawaii Revised Statutes ("HRS").
1. Call to Order: There being a quorum present, the Chair called the meeting to order at 9:04 a.m.
 2. Additions/
Additional
Distribution
to Agenda: None.
 3. Approval of Minutes
of the August 6,
2014 Meeting: Upon a motion by the Chair, seconded by the Vice Chair, it was voted on and unanimously carried to approve the minutes of the August 6, 2014 meeting as circulated.
 4. Chair's Report: The Chair had no issues to report.

5. Vice Chair's Report: The Vice Chair had no issues to report.

6. Executive Officer's
Officer's Report: a. **2015 Board Meeting Schedule**

The 2015 Board Meeting Schedule was distributed to the board members.

The EO reminded the Board that if they have any conflicts or are unable to attend a scheduled meeting, they should contact the board office as soon as possible.

b. **Orientation for Board/Commission Members**

The EO reported that Ms. Bath will be attending the orientation for new board/commission members on December 5, 2014.

c. **Hawaii Massage Therapist Exam Update**

The EO reported that he will be working with Prometric to update the content of the Hawaii Massage Therapist Exam. He recently wrote to the Hawaii Department of Education ("DOE") licensed schools and requested that they send the Board a list of the reference materials they are currently using.

The Chair stated that she recalled a similar review of the exam questions in 2010. She asked if Prometric had updated the exam questions as a result of that review.

The EO said that he would contact Prometric and find out.

7. Correspondence: a. **Letter from Atsumi Hara regarding Structural Integration**

Ms. Hara recently sent to the Board a copy of her letter to the Federation of State Massage Therapy Boards ("FSMTB") regarding structural integration. In her letter, Ms. Hara states in part "Structural integration is an emerging bodywork profession that is distinct from massage, with a different scope of practice. Massage is only one kind of bodywork; all bodywork is not massage."

The EO stated that according to Ms. Hara's website, she operates a studio that offers structural integration sessions.

The Chair stated that she disagrees with Ms. Hara's statement that structural integration is distinct from massage. According to Ms. Hara's website, "Structural Integration is also known as "Rolfing," which is a nickname from the founder's name, Dr. Ida P. Rolf." The Board's rules clearly state that Rolfing is

a type of massage. She noted that Hawaii Administrative Rules (“HAR”) §16-84-43(b) states “A licensee may advertise as being able to perform the type of massage known as Rolfing if the licensee has received basic Rolfing training in classes sponsored by the Rolf Institute and been certified as a Rolfer and given membership in the institute.”

After some discussion, upon a motion by Ms. Bath, seconded by the Vice Chair, it was voted on and unanimously carried that Rolfing, which according to Ms. Hara’s website is also known as “Structural Integration”, is a type of massage, therefore, a massage therapy establishment license would be required in order to provide Rolfing/Structural Integration services at the Body & Beyond studio.

This is an informal interpretation for informational and explanatory purposes only and is not an official opinion or decision and therefore is not to be viewed as binding on the Board.

b. Letter from Thomas Langenstein regarding background information on previous rule revisions

The Board reviewed a letter from Mr. Langenstein, who previously served on the Board between 1995-1999 regarding historical background on proposed rules as well as his suggestions regarding mobile location massage establishments.

The DAG noted that he was the DAG during Mr. Langenstein’s tenure on the Board and he does recall the discussion on the information provided by Mr. Langenstein.

The Vice Chair noted that Mr. Langenstein states “We also proposed requiring a business registration with BREG for all massage therapy services doing business under a DBA”. He stated that registrations issued by the Business Registration Division (“BREG”) are not under the purview of the Board.

The DAG noted that individuals that may register a DBA with BREG may not necessarily operate a massage establishment. They may be performing out call massage which would not require a massage establishment (“MAE”) license.

Ms. Bath stated that only some massage therapists have an MAE license because they are only for fixed locations.

The Chair noted that the current MAE license application instructions state in part “An MAE license is required for all permanent fixed locations (e.g., an

office), and all other types of premises where massage therapy is performed on a regular basis (e.g., open-air markets, farmers' markets, swap meets, flea markets, shopping center booths, tents, cabanas, etc.).”

By consensus, the Board directed the EO to inform Mr. Langenstein that the Board is currently working on revising their administrative rules and will take his comments under advisement.

c. Complaint from Gerald Lam regarding Lomilomi; Response from the Regulated Industries Complaints Office (“RICO”); Gerald Lam’s Response to RICO

The DAG gave a brief summary of Mr. Lam’s letter regarding the practice of lomilomi under HRS Chapter 452.

In his letter, Mr. Lam states that he is submitting his letter of complaint on behalf of the Kupuna Council of the Native Hawaiian Organization Charity (“Council”). The complaint states that the Council believes the following statements to be true:

1. Licensed Massage Therapists (“LMTs”) advertising and practicing lomilomi commonly violate the massage licensing law;
2. LMTs advertising and practicing lomilomi are misrepresenting themselves and defrauding consumers;
3. LMTs practicing lomilomi must be medically licensed, or certified as statutorily exempt from medical licensing;
4. Licensing massage therapists for lomilomi is unconstitutional and violates the fundamental rights of traditional Native Hawaiian healing practitioners;
5. LMTs advertising and practicing lomilomi that lack Hawaiian ancestry are in violation of state laws;
6. LMTs advertising and practicing lomilomi violate cultural ethics and social propriety exposing themselves and conspirators to tort liability.

The Council is requesting that LMTs be immediately ordered and directed to cease all advertisements, representations and practice of “Hawaiian massage commonly known as lomilomi” and that the public be promptly notified that licensed massage therapists are prohibited from practicing the Native Hawaiian traditional practice of lomilomi, and that such spiritual practice is not subject to authorization and regulation under the Board of Massage Therapy.

Ms. Bath commented that when she first moved to Hawaii, she did not know what lomilomi was, however, she has since experienced lomilomi from individuals taught by a Native Hawaiian cultural practitioner. She understands

the Council's concerns about these types of individuals versus a massage therapist who was taught "lomilomi" as another type of massage modality. The Vice Chair noted that Mr. Lam references Act 153 which amended both HRS Chapter 453 and Act 162, Session Laws of Hawaii ("SLH") 1998 neither of which is under the purview of this Board.

The Chair noted that HRS Chapter 452 defines "Massage", "massage therapy", and "Hawaiian massage" commonly known as lomilomi as "any method of treatment of the superficial soft parts of the body, consisting of rubbing, stroking, tapotement, pressing, shaking, or kneading with the hands, feet, elbow, or arms, and whether or not aided by any mechanical or electrical apparatus, appliances, or supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in this practice. Any mechanical or electrical apparatus used as described in this chapter shall be approved by the United States Food and Drug Administration."

She stated that she respects the Hawaiian community and their cultural practices. After she received a copy of Mr. Lam's letter, she asked a few individuals she knew of who practice traditional lomilomi. One of the individuals informed her that Aunty Margaret Machado ("Aunty Margaret"), who was a Native Hawaiian cultural healing practitioner, was actively involved when that definition was established and the definition was intentionally made broad in order to encompass all modalities of massage.

The Vice Chair stated that at his massage school, there was an instructor who was a student of Aunty Margaret's. While the instructor did include pule and spiritual practices in the course, it was mostly technique.

The Chair stated that the methods of lomilomi vary depending on the practitioner, even amongst Native Hawaiian cultural healing practitioners. She questioned what part of HRS Chapter 452 does not apply to the practice of lomilomi.

The DAG noted that the Board's statutes only address the physical action and does not address spiritual components of any massage therapy modality. He asked what the differences are between modalities.

Ms. Bath stated that the differences are mostly in the technique and how it is applied.

Mr. Pardini commented that whereas the definition of some professions includes intent, if you look at the massage law, massage is defined very clearly as an act and does not include the intent.

The Chair noted that the laws and rules were created for the profession as a whole, not just one group. To segregate lomilomi and put it in a separate class would be difficult as it would be considered no different than any other modality such as Shiatsu.

Ms. Estrella commented that it would be difficult to get a consensus from the Native Hawaiian community about what the practice of lomilomi entails as it varies depending on the lineage of your instructor.

Ms. Bath noted that she has a friend, Ashlin Kekaula Jarvis, who is a cultural practitioner. She read the following statement from Ms. Jarvis: "Licensing a cultural practitioner is an ongoing issue. Cultural healing practices were prohibited when the first missionaries came to Hawaii and caused the healing practices to go underground. The laws were repealed for a short time during Kalakaua's reign. When the monarchy ended in 1893, so did the legitimacy of cultural healing practices. It was not made legal to practice on non-family until 1998. The questions come up now; who has the right to say a practitioner meets the requirements of a legitimate practitioner? Who is the board? Many Kupuna councils have been formed to claim that right but what gives them that legitimate right? The state? Themselves? The community? Who are the experts? I practice Ikehāhā (the root of lomilomi) and the Kupuna board does not recognize my practice as legitimate because of political and petty reasons. These issues stir up a lot of bad blood. The very mention of Ikehāhā might bring angry feelings, though, with the Kupuna Council. In my opinion, the real experts have died generations ago. The definition of an expert is kahuna. Bits and pieces of their knowledge still exist but a good part of it is replaced with western philosophy, other cultural practices, personal intuition and good intentions. Anything today is not pure, even Ikehāhā."

Ms. Bath said with regards to public protection, there may be people who make an appointment with a massage therapist for a lomilomi treatment who really just receive a glorified Swedish massage and don't know any better.

The Vice Chair said it appears as if the Council would basically like massage therapists who are not properly trained Native Hawaiian cultural healing practitioners to stop identifying themselves as being able to provide lomilomi. The DAG stated that the definition in the law only focuses on the act of massage therapy. The law doesn't address spiritual or religious aspects of any individual modality. It also does not address any methods of enhancing a massage treatment. If a massage therapist wants to include something like chanting or prayer into a massage treatment, it is beyond the Board's scope of jurisdiction.

Ms. Bath expressed concern that some massage therapists may be using the term "lomilomi" as a marketing gimmick to attract clients.

Ms. Estrella stated that she believes that for traditional lomilomi instruction, the kahuna tells their students when they feel the student is ready to practice on their own. She feels it is the teacher's responsibility to tell their students when they can hold themselves out to be lomilomi practitioners.

Ms. Bath said that she objects to Mr. Lum's statement that "Hawaii state laws require that lomilomi practitioners have indigenous Hawaiian ancestry...". She stated that she has had what she would consider a lomilomi massage from a non-Hawaiian practitioner.

The Chair stated that while she can understand the Council's concerns, the bottom line is that any massage method which includes treatment of the superficial soft parts of the body as defined in the statute would require a massage therapist license. She agreed with Mr. Pardini's previous comment that the definition does not include intent, nor does it include any other possible components of a massage method including spiritual and/or religious components.

The DAG noted that HRS §452-23(a)(3) states that "It is a misdemeanor for any person, including a person who is exempt by section 452-21 from this chapter, to advertise with or without any limiting qualifications as a massage therapist unless the person holds a valid license under this chapter. Further, it shall be a violation of this chapter for any person to advertise as performing massage in a form in which the person has not received training, or of a type which is not licensed or otherwise recognized by statute or administrative rule." and HAR §16-84-43(a) which states "Any person advertising as being able to perform massage in any form shall have received training in the massage technique that is being advertised."

Upon a motion by the Chair, seconded by Ms. Bath, it was voted on and unanimously carried to defer discussion on this matter. The Board directed the EO to inform Mr. Lam that the Board will continue discussion of this matter at their next meeting.

d. Inquiry regarding massage on the beach

The Board reviewed the website printout for "Kauai Couples Massage" which offers massage on the beach as well as an excerpt from the April 2, 2003 board minutes regarding William Brian Acason's request regarding a cabana at the Waikiki Marriott. In his request, Mr. Acason inquired about the requirements to operate a cabana at the Waikiki Marriott. At that time, the Board determined

that based on the information in Mr. Acaison's request, the cabana would be considered a massage establishment and therefore, would require an MAE license.

The EO noted that he placed this matter on the agenda after receiving a phone call from Andrea Slaski's husband inquiring about performing a massage in a cabana on a hotel's property. Mr. Slaski informed the EO that his wife had permission from the hotel, however, employees of the hotel spa went to the cabana and took pictures while the massage was taking place. Ms. Slaski owns and operates "Kauai Couples Massage LLC" as a business but does not hold a current MAE license.

After some discussion, upon a motion by Ms. Bath, seconded by the Vice Chair, it was voted on and unanimously carried that based solely on the EO's discussion with Mr. Slaski as well as the information on Ms. Slaski's website, it is the Board's informal interpretation that a massage therapy establishment license is required in order to provide massage therapy services at a cabana as well as on the beach. The Board directed the EO to refer this matter to the Regulated Industries Complaints Office.

This is an informal interpretation for informational and explanatory purposes only and is not an official opinion or decision and therefore is not to be viewed as binding on the Board.

At this time, the Chair announced she was taking the agenda out of order to discuss the following agenda item:

- 10. Chapter 91, HRS, Adjudicatory Matters, a. In the Matter of the Massage Therapist License of **Kari-Ann L. Moku, MAS 2014-14-L**, First Amended Settlement Prior to Filing of Petition for Disciplinary Action and Board's Final Order; Exhibits "1" & "2"

10. Chapter 91, HRS Adjudicatory Matters: The Chair called for a recess from the Board's meeting at 10:16 a.m., to discuss and deliberate on the following adjudicatory matters, pursuant to Chapter 91, HRS:

- a. **In the Matter of the Massage Therapist License of Kari-Ann L. Moku; MAS 2014-14-L – Settlement Agreement After Filing of Petition for Disciplinary Action and Board's Final Order; Exhibits "1" & "2"**

After discussion, it was moved by the Chair, seconded by the Vice Chair, and unanimously carried to approve the Settlement Agreement.

Following the Board's review, deliberation and decision on this matter, pursuant to Chapter 91, HRS, the Chair announced that the Board was

reconvening its scheduled meeting at 10:19 a.m. pursuant to Chapter 92, HRS.

Recess: At 10:20 a.m., the Chair called for a recess.

Reconvene: At 10:30 a.m., the Board returned to its regular order of business.

8. Unfinished Business: a. **Rule Revisions – Title 16, Chapter 84, Hawaii Administrative Rules - Discussion of Current Draft**

The EO noted that the board members were provided with a copy of Ms. Bath's comments on the proposed rules as well as revised language from the sub-committee of §16-84-1 through §16-84-4.

Executive Session: At 10:30 a.m., upon a motion by the Vice Chair, seconded by Ms. Bath, it was voted on and unanimously carried to move into Executive Session in accordance with HRS, 92-5(a)(4), "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities".

At 10:49 a.m., upon a motion by Ms. Bath, seconded by the Vice Chair, it was voted on and unanimously carried to move out of executive session.

The Chair noted that the process of amending the rules is long and laborious. She reported that the sub-committee has started revising the language in the current draft, however, Ms. Bath has requested additional time in order to review the draft in-depth. She asked Ms. Estrella whether the AMTA Hawaii would be providing any comments on the draft.

Ms. Estrella said she assumed that they would be.

The Board set a deadline of November 21, 2014 for any comments or concerns on the current HAR Chapter 84 and/or the proposed rules to be submitted to the board's office.

Ms. Bath stated that she would also submit her comments to the board's office by this date.

By consensus, the Board deferred discussion on the rule revisions to HAR Chapter 84.

At 10:51 a.m., the DAG left the meeting.

9. Applications: **a. Ratifications**

Upon a motion by the Chair, seconded by the Vice Chair, it was voted on and unanimously carried to approve the attached ratification list.

b. Applications

None.

11. Next Meeting: Wednesday, January 28, 2015
 9:00 a.m.
 Queen Liliuokalani Room
 King Kalakaua Building
 335 Merchant Street, First Floor
 Honolulu, Hawaii 96813

12. Adjournment: With no further business to discuss, the Chair adjourned the meeting at 11:03 a.m.

Taken by:

/s/ Jennifer Fong

Jennifer Fong
Secretary

Reviewed by:

/s/ Carlos Keen

Carlos Keen
Executive Officer

11/10/14

Minutes approved as is.

Minutes approved with changes; see minutes of _____.

BOARD OF MASSAGE THERAPY

RATIFICATION LIST

Wednesday, October 29, 2014

MASSAGE THERAPIST

MAT 13950 MARK A NELSON	MAT 13992 SHINICHI YOSHIDA
MAT 13951 DIANNE A M DE LARA	MAT 13993 ANALIZA P AGOOT
MAT 13952 HAILORD M BAGUYO	MAT 13994 KYLE M T FLOCCHINI
MAT 13953 TONY Y YIP	MAT 13995 OLAF M WILBERG
MAT 13954 ASAKO M MICHAELSON	MAT 13996 TRACI M TAKESHITA
MAT 13955 ANGEL K BONE	MAT 13997 TERESA L HARLOW
MAT 13956 OYATE K MCGHAN	MAT 13998 ANDREW R CHRISTENSEN
MAT 13957 MAYUMI T KANESHIRO	MAT 13999 THAMONWAN NAUBON
MAT 13958 KINUKO MILLER	MAT 14000 MARIAN S WORRELL
MAT 13959 MOLLY L BOND	MAT 14001 ROBERT B WEBSTER
MAT 13960 RACHEL S RITCHIE	MAT 14002 JUNKO DEMOTTA
MAT 13961 IONELA D BOARIU	MAT 14003 MELISSA A MACDONOUGH
MAT 13962 ASHLYNN K GOODHUE-SOUZA	MAT 14004 STEVEN D CRUMSEY
MAT 13963 KUPONO K SPROAT	MAT 14005 MARIA T ROTH-TIJERINA
MAT 13964 JAY C F FERNANDEZ	MAT 14006 LAUREN F DEWEESE
MAT 13965 WANDEE W THURSTON	MAT 14007 YOSHIHARU IKEDA
MAT 13966 DOUGLAS S FREDRICKSON	MAT 14008 ANALET B SALARDA
MAT 13967 NEAL S TAKAMOTO	MAT 14009 BRYAN C THOMAS
MAT 13968 AKIKO M NAKAI	MAT 14010 JOHN A SZALAY
MAT 13969 BRONSON H D YOUNG	MAT 14011 BARBARA S REA
MAT 13970 GWEN E GREGG	MAT 14012 DUSTI M MEEKS
MAT 13971 HANNAH C CRAFT	MAT 14013 RACHEL J GREEN
MAT 13972 BRITTANY R CHAPMAN	MAT 14014 SIRINAPA APORNRAT
MAT 13973 KELLY T HYNES	MAT 14015 NICOLE M L CHAVES
MAT 13974 CHIMIKO FUKUI	MAT 14016 CHRISTI L GARNER
MAT 13975 MELISSA A BREWER	MAT 14017 APHAI KOMESU
MAT 13976 CARTER E BEALE	MAT 14018 WENDY L YOUNG
MAT 13977 AOI KAMITAMARI	MAT 14019 SLADE S SHIM
MAT 13978 MARK W WITTY	MAT 14020 VICKY A BROOKE
MAT 13979 LIZA B MOLINA	MAT 14021 MARIA C R USI
MAT 13980 HEATHER KRAMER	MAT 14022 WANTHANEE VINCENT
MAT 13981 MICHELLE R CECH	MAT 14023 SUSAN A DE LOS SANTOS
MAT 13982 LACY A BERLIN	MAT 14024 DONNA P PORQUEZ
MAT 13983 LANE L LOWMAN	MAT 14025 SON OK KILGORE
MAT 13984 KATHRYN A HUINKER	MAT 14026 STEVIE-SKY A STRANDLEY
MAT 13985 LYNNE M CIOLLI	MAT 14027 AILADA P DAY
MAT 13986 MALIA R L MADEIRA	MAT 14028 JESSICA J BOOTH
MAT 13987 PRANITHI BUACHA SODEN	MAT 14029 SHAYNE M GUTHRIE
MAT 13988 KUMIKO IMAI	MAT 14030 SARA C BASSO
MAT 13989 TAMIE A LOVINGFOSS	MAT 14031 YOKO GARCIA
MAT 13990 IRENE G LIANG	MAT 14032 MAYUMI WEIDNER
MAT 13991 NUMNGERN K ELLIS	MAT 14033 PINGYANG XU

MASSAGE THERAPIST (continued from previous page)

MAT 14034 BONNIE M RATCLIFF
MAT 14035 MARTA L BALDWIN
MAT 14036 DAVID SPROUSE
MAT 14037 JESSICA L HAYWOOD
MAT 14038 DILOROM ASIMOVA
MAT 14039 ANNA KOLEY
MAT 14040 JESSICA R DECKER
MAT 14041 RYAN A M IZUTSU
MAT 14042 MEGAN D BUSH
MAT 14043 MELISSA E KICKERT
MAT 14044 SAMARHA K M LACY
MAT 14045 HOLLY L LADNER

MAT 14046 DAROLENE M AGTAGUEM
MAT 14047 MIKIKO YOSHIGATA
MAT 14048 MARIA S ARCEO
MAT 14049 RAINA L W SANTOS
MAT 14050 KARI LAMBERT
MAT 14051 KUMI NAGANO
MAT 14052 STEPHANIE J LARSON
MAT 14053 MARIE G JAMORABON
MAT 14054 WARAPORN BAYHI
MAT 14055 JENNIFER ZABALA
MAT 14056 ARIANA L REHORN
MAT 14057 JORDAN T HERD

MASSAGE THERAPY ESTABLISHMENT

MAE 2992 ZENSATIONS SPA INC
MAE 2993 KALAHEO WELLNESS CENTER LLC
MAE 2994 HANNE J HOLLAND
MAE 2995 MAUI ZEN INC
MAE 2996 SPA LUNA LLC
MAE 2997 RIIKO OSONE
MAE 2998 HAWAII HEALING WORKS LLC
MAE 2999 PREMKAMAL SPAS LLC
MAE 3000 MANKWAN WONG MD LLC
MAE 3001 NONGYAW ARIN
MAE 3002 MARGIE S KAISER
MAE 3003 SAITARA THAI MASSAGE LLC
MAE 3004 ASPIRE FUNCTIONAL TRAINING LLC
MAE 3005 J BOUTIQUE LLC
MAE 3006 HONOLULU THAI MASSAGE & SPA LLC
MAE 3007 TGF WORLD LLC
MAE 3008 THONG THAI MASSAGE LLC

MASSAGE THERAPY WORKSHOP

William Acaon, MAT 1837
Kaanapali Massage and Fitness, Inc., MAE 2085

October 1, 2014 – November 16, 2014

MASSAGE THERAPY WORKSHOP (continued from previous page)

Yahavah Mathison, MAT 11629 Jayne Henderson, MAT 11950 Yahavah Mathison dba Big Island Academy of Massage, MAE 2548	September 18, 2014 – November 28, 2014
Cheriess Bugado, MAT 6644 Megan Neal, MAT 5170 Micah Miller, MAT 943 Hilo Massage Clinic and Day Spa LLC, MAE 2826	October 6, 2014 – December 12, 2014
Susan Wilesmith, MAT 9933 Supergreen 528 HZ, Inc., MAE 2892	January 16, 2015 – February 25, 2015
Brian Nakatsu, MAT 11600 Diane Tran dba Diane's Day Spa, MAE 2739	November 11, 2014 – January 19, 2015
Kwang Chai, MAT 2662 Dr. Chai's Health Center Inc., MAE 841	October 13, 2014 – January 13, 2015
Jong Sang Choi, MAT 4765 Jong Sang Choi, MAE 2026	October 27, 2014 – January 26, 2015