

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

MINUTES OF MEETING

- Date: Wednesday, May 29, 2019
- Time: 9:00 a.m.
- Place: King Kalakaua Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii 96813
- Present: George Davis, Jr., Massage Therapist, Chair
Paula Behnken, Public Member, Vice Chair
Stephanie Bath, Massage Therapist
Jodie Hagerman, Public Member
Olivia Nagashima, Massage Therapist
Risé Doi, Executive Officer ("EO")
Christopher Leong, Deputy Attorney General ("DAG")
Jennifer Fong, Secretary
- Guests: Esther Brown, Regulated Industries Complaints Office ("RICO")
John Hassler, RICO
Neva Tsukiyama
- 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, Chair Davis called the meeting to order at 9:00 a.m.
 2. Additional Distribution to Agenda: Chair Davis announced that the following was distributed to the Board as additional distribution:
 - 7. Unfinished Business, a. Discussion on Revisions to Hawaii Revised Statutes ("HRS"), Chapter 452 – Proposed Bill Language
 3. Approval of Minutes of the May 1, 2019 Meeting: EO Doi announced that the Minutes of the May 1, 2019 Meeting are still being reviewed by staff.

By consensus, this matter was deferred.

4. Executive Officer's Report:

None.

5. New Business:

- a. John Hassler, Regulated Industries Complaints Office ("RICO") Supervising Attorney and Esther Brown, RICO Acting Complaints Enforcement Officer – Mr. Hassler and Ms. Brown will be available to answer questions from the Board relating to settlement agreements and other questions the Board may have

EO Doi reminded the Board that at their request, Mr. Hassler and Ms. Brown are present to answer the Board's questions regarding RICO's policies and procedures.

Ms. Brown gave a brief overview of RICO's procedures, noting that the staff reviews complaints and based on the violations and their circumstances make a determination. She noted that violations run the gamut from acts of deception and dishonesty to *manini* careless mistakes. There are also many violations between the two. When reviewing cases, discretion is used by the attorney.

Ms. Nagashima asked what RICO considers *manini*.

Ms. Brown noted that *manini* or small violations would possibly be things such as unintentional errors. She noted that there are various sanctions that can be imposed including no action, a warning letter, a fine, education courses, all the way up to suspension or revocation. The attorney looks at the facts of the case – whether there were mitigating and/or aggravating circumstances. Aggravating factors would include things such as how the individual responds to RICO's attempts to contact them regarding the allegation. While most individuals work with RICO, some do not cooperate. She cited an example in which the licensee refused to cooperate with RICO. In that situation, the Board had a law which required licensees to cooperate with the licensing authority. As they did not do so, RICO filed a petition and the license was suspended. Mitigating factors would include whether there is evidence of a violation, if the individual has already started to correct the error or if there were prior complaints. She noted RICO has a lot of discretion, however, they usually follow parameters set by the Board for previous disciplinary cases.

Mr. Hassler stated that the Real Estate Commission's rules include explicit language requiring licensees to cooperate that other boards and programs may not have. He noted that the DCCA statute does give the authority to subpoena records, if needed, however, it is not typical during an investigation to do so. Generally, RICO informs the licensees of the allegations and ask for their response.

Ms. Nagashima requested a copy of the explicit language that requires licensees to cooperate with the licensing authority.

Mr. Hassler stated he would get the information to EO Doi.

Chair Davis noted at the last meeting, an issue came up because the Board did not agree with the terms of a settlement agreement, however, they did not want the case dropped. The Board has been told in the past, that their options would be to accept, defer or deny the settlement agreement.

Vice Chair Behnken said the Board has been told that if they do not accept the settlement agreement, there is a risk of nothing happening.

Ms. Brown said there is some truth to that. Generally, what is put in the settlement agreement is RICO's best offer so if it is not accepted, there is no telling what will happen. Sometimes the allegations are not clear cut. The Board can defer and give general instructions to the Special Deputy Attorney General ("SDAG").

Ms. Nagashima asked what would happen.

Ms. Brown said the Board can defer and communicate general information back to RICO through the SDAG. She is unsure, however, if it would come back to the Board and if so, when it would come back.

Ms. Bath asked who the Board would communicate with.

Mr. Hassler said communication would come through the SDAG, Lei Fukumura ("SDAG Fukumura").

Ms. Brown noted that RICO's attorneys do consider everything in the file, however, everything in the file may not be reflected in the documents the Board sees.

Ms. Nagashima noted that the Board has a low percentage of complaints and said in the past, the Board has heard that people do not want to file complaints due to fear of retaliation because the massage industry is a small community. It's frustrating because people are not following the rules.

Chair Davis asked if there is a specific attorney that reviews the Board's cases.

Mr. Hassler said no, however, RICO does have attorneys that specialize in healthcare related complaints. He noted that if the assigned attorney is not

familiar with the Board, they generally will ask their colleagues and/or do research into past cases. He noted that the Board can bring their general concerns to RICO.

Chair Davis said that the past cases are not a good guide because the Board has tended to accept settlement agreements as they feared the cases would be dropped.

Ms. Bath asked if RICO considers massage therapists healthcare professionals.

Mr. Hassler stated that generally, RICO views any profession which can bill an insurance company for their services a healthcare profession.

Ms. Bath noted that a compliance fee is assessed for each license and renewal. She asked if RICO actively goes out to do inspections.

Ms. Brown stated that due to lack of resources, RICO is largely complaints driven.

Ms. Bath asked if people can file anonymous complaints.

Ms. Brown said yes.

Ms. Bath stated that she filed a complaint and believes the investigator did not follow up.

Mr. Hassler stated that the compliance resolution fund ("CRF") fee is paid by all licensees at the time of initial licensure and at every subsequent renewal. The fee is used by RICO staff to enforce the law. In addition, a large component of RICO is for unlicensed activity, which the boards and programs do not see. Investigators do investigate complaints against both licensees and unlicensed individuals. There are many enforcement activities. Generally, there are two types of anonymous complaints. The first are things such as advertisements which do not require additional information. The second are allegations such as inappropriate touching. With regards to the second type of allegation, it is hard for RICO to investigate these as generally, more information is needed and they cannot follow up as the complaint is anonymous.

Ms. Nagashima asked if priority is given to investigations depending on the severity of the allegation.

Ms. Brown said all complaints are reviewed and if it is determined that there may be a violation, it is sent to a field investigator to review. She noted that RICO cannot investigate allegations which do not fall under RICO's jurisdiction.

Ms. Nagashima said she sees a lot of bad advertising. She has personally forwarded Craigslist ads to RICO but she has seen no action taken.

Ms. Brown said generally, RICO would let the complainant know unless the complaint was filed anonymously. She noted that individuals who filed their complaint anonymously would not get a response.

Vice Chair Behnken asked if the complainant would be informed if a warning letter was sent and the person told RICO they would not do it again.

Ms. Brown said that if there is a complainant of record, the complainant should be informed of the resolution of the complaint.

Ms. Bath said she hears from the community that licensees are frustrated that they follow the rules and get the appropriate licenses while others work out of their home without regard for rules or regulations.

Ms. Nagashima said in the past, the Board has seen a fine between \$100 and \$1,000 per violation. She understands that RICO is given discretion when determining the fine amount, however, the Board is frustrated because it seems some of the fines are minimal when considering the severity of the violation. She stated that the Board has seen violations such as sexual assault where the fine assessed is minimal. She said the laws were created as anti-prostitution laws. The Board and the profession are trying to get away from perceptions of massage as being associated with those types of activities.

Ms. Bath noted that a \$500 fine is not going to stop someone from taking a chance and committing a violation such as prostitution if they are paid more than that to do so. The Board has been told before that it is worth the risk those willing to perform those types of activities.

Chair Davis agreed. He noted that the Board's laws also do not allow a massage therapist to use their photo to advertise their services because a small percentage uses the profession as a front for prostitution. He feels this is unfair as other professions such as lawyers and real estate agents are allowed to use their pictures. He feels if someone performs a sexual act or uses their massage therapy license as a front to do prostitution, their license should be revoked.

Mr. Hassler stated that he is not familiar with the case the Board is referring to.

Chair Davis clarified that his comments were general and not about any specific prior case.

Mr. Hassler noted that in the last massage case that he was assigned to, everyone involved lost their license, however, that case involved prostitution and the police assisted with that investigation.

Ms. Brown noted that in some cases, it is hard for RICO to obtain evidence.

Chair Davis asked how the Board should communicate with RICO regarding specific allegations.

Mr. Hassler noted that the Board cannot communicate with RICO regarding specific cases. They can defer or reject a proposed settlement agreement and give SDAG Fukumura general instructions to pass on to RICO. He cited, as an example, recently RICO received notification from the Contractors Licensing Board that one of its settlement agreements did not follow the past precedent set by the Board.

Ms. Hagerman asked what happens if the Board defers or rejects a settlement agreement.

Ms. Brown said that it depends what is in the case file and what the results of the investigation are.

Chair Davis asked if the Board can defer and request a meeting with the case investigator.

Mr. Hassler said no, because that would be considered ex parte communication. He noted that ultimately, the Board's DAG is their attorney.

DAG Leong reminded the Board that SDAG Fukumura was present at their last meeting. She informed them the risk in deferring or rejecting a settlement agreement is that the settlement agreement then gets sent back to RICO. RICO may decide not to pursue further action or if they do pursue further action, there is no telling when it would come back before the Board. He asked Ms. Brown and Mr. Hassler what the point would be to defer.

Mr. Hassler stated that when deferring, the Board could ask SDAG Fukumura to inform RICO of the Board's general concerns such as the fines do not reflect the severity of the conduct so that they can consider changing their negotiating strategies.

Chair Davis asked if the Board can accept a settlement agreement but tell RICO for future reference, for these types of allegations, they want something different such as higher fines or a stiffer penalty.

Ms. Brown noted that the Board has said they want to deter bad behavior. She questioned how a higher fine would deter such behavior.

Vice Chair Behnken said in most cases, if the fine is high enough, it may be a deterrent.

Chair Davis agreed, saying that he believes it would be a deterrent to most and would help correct bad behavior.

Ms. Bath commented that there is a diversity within the community and not a lot of communication amongst the profession, however, she gets an overlying sense that people either follow the laws or they don't. There is also a feeling that the county laws are anti-business.

Vice Chair Behnken asked what happens to other healthcare professionals, such as nurses, who work without a license.

Mr. Hassler stated that the massage profession is "pretty much like the wild west" with regards to unlicensed activity. It is harder for other healthcare professionals like nurses to work without a license because they would generally have to provide proof of licensure to be employed and also, to bill insurance providers for their services.

Chair Davis commented that generally, unlicensed activity is a guise for prostitution.

Ms. Hagerman asked if deferring would automatically signal RICO that they are not happy with the terms.

DAG Leong noted that a board can defer for multiple reasons. Sometimes, a settlement agreement is deferred for technical corrections, which he finds is most common. He reminded the Board that they cannot give input to RICO regarding a specific case.

Ms. Brown stated that she and Mr. Hassler will be taking the Board's comments from this discussion back to their staff. She said if the Board has additional questions regarding RICO's policies and procedures, they can always ask EO Doi to send an email.

Ms. Bath noted that when an application is submitted, it includes an attestation that must be signed which indicates that the individual agrees to abide by the Board's laws and rules. She feels licensees must live up to that attestation.

DAG Leong said that the Board mostly sees only the settlement agreement and based on the facts contained in that settlement agreement, they believe that the terms are not enough. He noted that the Board should consider that by the time they see the settlement agreement, RICO has already done an investigation which has been reviewed by a RICO attorney who has contacted the licensee and negotiated the terms in the settlement agreement. The Board has the option of accepting, deferring or rejecting that settlement agreement. If they choose to defer or reject, the case may be closed, or it could come back.

Chair Davis asked if the chances of the matter returning to the Board would be higher if they defer or reject the settlement agreement.

Ms. Nagashima commented that it probably depends on the mitigating circumstances.

Mr. Hassler stated for a deferral or rejection, the RICO attorney would need to communicate with the Respondent. It is hard to say what would happen.

At 9:57 a.m., Ms. Fong left the meeting.

Ms. Nagashima asked for RICO's email address.

Ms. Brown answered that the email address is *rico@dcca.hawaii.gov*.

Chair Davis thanked Ms. Brown and Mr. Hassler for attending the Board meeting.

Board members noted they hope that RICO understands that the fines on the settlement agreements do not always match the severity of the offenses.

Recess: At 10:11 a.m., Chair Davis called for a recess.

Reconvene: At 10:22 a.m., the Board reconvened their meeting.

6. Applications: a. Ratifications

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

b. Applications

Executive
Session:

At 10:23 a.m., it was moved by Ms. Nagashima, seconded by Ms. Hagerman, and unanimously carried to move into Executive Session in accordance with HRS, § 92-5(a)(1) and (4), "To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;" and "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities." Guests were excused from the meeting room.

At 10:47 a.m., it was moved by Ms. Nagashima, seconded by Vice Chair Behnken, and unanimously carried to move out of Executive Session.

1) Jamie Reid

Upon a motion by Chair Davis, seconded by Vice Chair Behnken, it was voted on and unanimously carried to approved Ms. Reid to sit for the Hawaii Massage Therapy Examination.

2) Kapolei Massage Institute

Upon a motion by Chair Davis, seconded by Ms. Nagashima, it was voted on and unanimously carried that based on the review of Kapolei Massage Institute's application and supporting documents, the school's curriculum meets the Board's minimum education and training hours required for an applicant to obtain a license in massage therapy. The Board directed the EO to issue an approval letter valid through the Department of Education ("DOE") licensure period from September 1, 2019 through August 31, 2021.

3) Lomino Hawaii Massage School

Upon a motion by Chair Davis, seconded by Vice Chair Behnken, it was voted on and unanimously carried that based on the review of Lomino Hawaii Massage School's application and supporting documents, the school's curriculum meets the Board's minimum education and training hours required for an applicant to obtain a license in massage therapy. The Board directed the EO to issue an approval letter valid through the DOE licensure period from September 1, 2019 through August 31, 2021.

7. Unfinished
Business:

a. Discussion on Revisions to HRS, Chapter 452

EO Doi explained that she showed RICO a draft of the Board's proposed revisions to HRS, Chapter 452. These revisions include giving the Board

statutory authority to enforce sanitation rules, changing unlicensed activity from the charge of a petty misdemeanor to a misdemeanor, and changing the fine of not less than \$100 to \$250 nor more than \$1,000 for each violation.

EO Doi summarized RICO's comments. She shared that RICO noted when specific sanitation/health/infection control requirements are placed in a statute, it can be difficult to amend or add to at a later date to account for changes in sanitation practices as well as evolving health federal or state health regulations. Therefore, if parts of the sanitary guidelines become outdated, the only way to fix them would be to have them repealed.

EO Doi summarized RICO's comments and suggestions which included the following:

- When specific sanitation/health/infection control requirements are placed in a statute, it can be difficult to amend or add to at a later date to account for changes in sanitation practices as well as evolving health federal or state health regulations. Therefore, if parts of the sanitary guidelines become outdated, the only way to fix them would be to have them repealed.
- Adding a definition for "extensively renovated" in the administrative rules. The proposed language is "(2) In all new or existing establishments which have been extensively renovated, ~~approved~~ hand washing facilities that conform to applicable building code requirements shall be located in the operation area."
- Contacting law enforcement agencies to request comments regarding changing unlicensed activity from the charge of a petty misdemeanor to a misdemeanor as RICO does not have criminal enforcement authority.
- The Board should be mindful in proposing a fine increase that for similar professions, like barbering and cosmetology, the floor amount remains at \$100. Therefore, the Board may want to consider articulating a good reason for the proposed increase.

Ms. Hagerman noted that the \$250.00 proposed increase is the floor amount for physical therapists who violate the laws and rules. She commented that the Board should align with the floor amount for physical therapists rather than barbering and cosmetology.

Chair Davis added that a fine increase will hold massage therapists accountable to refrain from unlawful activity.

There was some discussion regarding what “extensively renovated” means, and the Board agreed that it could be addressed in the rules.

DAG Leong suggested waiting until the statute changes before defining “extensively renovated” in the rules, noting that the statute needs to be amended before rules can be enforced.

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

- 8. Election of Officers.

8. Election of Officers:

Chair Davis noted that his term on the Board will end on June 30, 2019. He nominated Ms. Nagashima for Chair and Ms. Behnken for Vice Chair. There were no other nominations by the Chair or Board members.

Chair Davis took a vote to have Ms. Nagashima serve as the chair. It was voted on with Chair Davis, Vice Chair Behnken and Ms. Hagerman voting “yes”, Ms. Bath voting “no” and Ms. Nagashima abstaining.

Chair Davis took a vote to have Ms. Behnken serve as the vice chair. It was voted on with Chair Davis, Ms. Bath, Ms. Hagerman and Ms. Nagashima voting “yes” and Vice Chair Behnken abstaining.

The Board returned to its regular order of business.

7. Unfinished Business:

b. Rule Revisions – Title 16, Chapter 84, Hawaii Administrative Rules

The Board discussed the revised draft language of Subchapters 1, 2, 3 and 4. The following are some of the substantive changes which were discussed:

- “Responsible Principal Massage Therapist” means the single principal massage therapist who is on duty at the licensed massage therapy establishment and who is designated to carry out the duties of a principal massage therapist.
- Removed “review of pain process” from the required curriculum of the practical massage therapy training.
- Only one principal massage therapist shall be designated as the responsible principal massage therapist at any given time within the massage therapy establishment.

- A massage therapy establishment may have multiple principal massage therapists. The name of the responsible principal massage therapist on duty must be conspicuously displayed.

The Board will resume discussion of the current draft at their next scheduled meeting.

9. Next Meeting: Chair Davis announced the next meeting as:

Wednesday, June 19, 2019
9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii 96813

10. Adjournment: With no further business to discuss, Chair Davis adjourned the meeting at 12:54 p.m.

Taken by:

/s/ Jennifer Fong

Jennifer Fong
Secretary

Taken and Reviewed by:

/s/ Risé Doi

Risé Doi
Executive Officer

6/12/19

[] Minutes approved as is.

[✓] Minutes approved with changes; see minutes of June 19, 2019.

BOARD OF MASSAGE THERAPY

RATIFICATION LIST
Wednesday, May 29, 2019

MASSAGE THERAPIST

MAT 15995	DAVID L COREY	MAT 16010	MICHELANGELO CONRAD
MAT 15996	ARNELL-LISA K ROLOOS	MAT 16011	MIA KAWANO
MAT 15997	SABRINA M DYDA	MAT 16012	ELIZABETH SAMALA
MAT 15998	JOHN D CRAVEN	MAT 16013	STEVEN C SKIPPER
MAT 15999	ZACHARY A GRACE	MAT 16014	NAMFON BAYBAYAN
MAT 16000	BRANDI K BUSSELL	MAT 16015	ASHLEY L WARNER
MAT 16001	KUN Q LI	MAT 16016	MITSUKO KOJIMA
MAT 16002	NICOLE M TECSON	MAT 16017	PENN CALLIGAN
MAT 16003	RAVEN S WALKER	MAT 16018	LYNETTE P BADUA
MAT 16004	EVELINE S MURRAY	MAT 16019	CARLY T PARKER
MAT 16005	BETH A BALIK	MAT 16020	MICHAEL A LEAL
MAT 16006	ALEXANDRIA R RAST	MAT 16021	MAAVE M TAEFU-LEMAPU
MAT 16007	TRISHA K LIND	MAT 16022	PHOI Y QUAN
MAT 16008	MARI TAKAHASHI	MAT 16023	GABRIEL T LEGACY
MAT 16009	JESSE M MULLINS	MAT 16024	KALEIGH GALINDO

MASSAGE THERAPY ESTABLISHMENT

MAE 3506	PAUAHI L MCDONALD	MAE 3510	THE NATURAL ASSOCIATION
MAE 3507	MAHALO MASSAGE LLC		SIRENE HAWAII LLC
MAE 3508	MAHA YOGA LLC	MAE 3511	TAKAKO S NAKANDAKARI
MAE 3509	NO KA 'OI NAILS & SPA LLC		

MASSAGE THERAPY WORKSHOP

Lokelani Spa and Fitness LLC, MAE 3037

Instructor: Tasha Aipa, MAT 12328

Initial Course: July 1, 2019 – August 21, 2019

64-1061 Mamalahoa Highway, Unit 201

Kamuela, Hawaii 96743

Phone: (808) 688-8178