

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

MINUTES OF MEETING

- Date: Wednesday, June 19, 2019
- Time: 9:00 a.m.
- Place: Queen Liliuokalani 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: Marshall Scott, Elite Massage Academy
Kiyu Noguchi, HPPA
Kedin Kleinhans, DCCA-PVL, Board of Barbering & Cosmetology
- 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:
- 5. New Business, a. Email inquiry from Lawrence Reynolds: Requirements for Sanitation Station – Email from Mr. Reynolds
 - 7. Unfinished Business, a. Discussion on Revisions to Hawaii Revised Statutes ("HRS"), Chapter 452 – Draft Justification Sheet

3. Approval of
Minutes of the
May 1, 2019
and May 29,
2019 Meetings:

Chair Davis asked if there were any comments or concerns regarding the Board minutes of the May 1, 2019 meeting.

There were none.

Upon a motion by Ms. Nagashima, seconded by Ms. Hagerman, it was voted on and unanimously carried to approve the minutes of the May 1, 2019 meeting as circulated.

Chair Davis asked if there were any comments or concerns regarding the Board minutes of the May 29, 2019 meeting.

Ms. Nagashima requested the following corrections to page 10:

- Deletion of the second paragraph which states “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 Therefore, if parts of the sanitary guidelines become outdated, the only way to fix them would be to have them repealed.”
- Third paragraph, first bullet (bracketed material to be deleted): “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.”

Chair Davis asked the Board members if there were any additional comments or concerns.

There were none.

Upon a motion by Vice Chair Behnken, seconded by Ms. Hagerman, it was voted on and unanimously carried to approve the minutes of the May 1, 2019 meeting as amended.

Chair Davis asked the Board members if they finished reviewing the Executive Session minutes of the May 1, 2019 and May 29, 2019 meetings.

After receiving confirmation, he asked if there were any comments or concerns regarding the Executive Session minutes of the May 1, 2019 and May 29, 2019 meetings.

There being none, upon a motion by Ms. Nagashima, seconded by Ms. Bath, it was voted on and unanimously carried to approve the Executive Session minutes of the May 1, 2019 meeting as circulated.

Upon a motion by Ms. Nagashima, seconded by Vice Chair Behnken, it was voted on and unanimously carried to approve the Executive Session minutes of the May 29, 2019 meeting as circulated.

4. Executive Officer's Report:

None.

5. New Business:

a. Email inquiry from Lawrence Reynolds: Requirements for Sanitation Station

The Board reviewed an inquiry from Mr. Reynolds requesting specific requirements regarding a hand-washing station in a massage therapy office setting. Mr. Reynolds acknowledges that he was told by staff that the Board is taking over the responsibility of writing new rules and reinforcement. He states "I need to know what is needed currently, and for the next 3 years, so that I can begin my practice immediately in my new office."

EO Doi noted that she explained to Mr. Reynolds that the Board is currently in the process of drafting a bill and amending their rules regarding the sanitation requirements, however, because the Department of Health did not give the Board any notice prior to repealing their rules, the Board currently has no parameters, therefore, they cannot provide the specific requirements he is requesting. In addition, it would be impossible for the Board to predict what the sanitation requirements will be in the future as it depends on the outcome of the bill that they are currently drafting.

Ms. Bath asked if current massage establishments will be grandfathered in with regards to future sanitation requirements.

EO Doi said no, all massage establishments, both new and existing, will need to comply with the sanitation requirements.

Ms. Nagashima stated that the current application includes an attestation which states in part "I further certify that I have read, understand, and agree to comply with all laws and rules pertaining to the Board of Massage Therapy, including but not limited to, Hawaii Administrative Rules chapter 11-11-4 and HRS chapter 452." She noted that the reference to Hawaii Administrative Rules ("HAR") chapter 11-11-4 should be removed.

Vice Chair Behnken said her understanding is that the Board is using the language from HAR §11-11-4 as a template, therefore, the guidelines will generally remain the same.

Ms. Nagashima asked if the Board can tell Mr. Reynolds that the general standard of care is what was in HAR §11-11-4 and that is what the Board is looking at when revising the sanitation guidelines.

Chair Davis noted that the Board's current bill draft include language which states "In all new or existing establishments which have been extensively renovated, hand washing facilities that conform to applicable building code requirements shall be located in the operation area;".

DAG Leong noted that the Board should be cautious when responding to Mr. Reynolds as they have no way of knowing what the sanitation guidelines will actually be in the future.

Ms. Hagerman questioned why the Board doesn't just provide Mr. Reynolds with the current draft bill.

DAG Leong expressed concern that Mr. Reynolds may make changes to his massage establishment that ends up not being required, then blame the Board for added expense that was not necessary.

After further discussion, upon a motion by Vice Chair Behnken, seconded by Ms. Nagashima, it was voted on and unanimously carried to direct the EO to provide HAR §11-11-4 to Mr. Reynolds and inform him that the Board is using the language as a general guideline when drafting the bill and amending their rules regarding the sanitation requirements.

b. Email inquiry from Vicky Kisamitakis: Out-call Massage Service Requirements

The Board reviewed an email from Ms. Kisamitakis regarding out-call massage service requirements.

After some discussion, upon a motion by Vice Chair Behnken, seconded by Ms. Hagerman, it was voted on and unanimously carried to respond to Ms. Kisamitakis' questions as follows:

- a) Am I required to obtain an establishment license if I am only doing outcalls?

Board's Response: No.

- b) Am I required to obtain a separate establishment license if I practice at an establishment that is licensed and operated by another licensed massage therapist?

Board's Response: A separate massage establishment license is not required as long as she is on record with the Board as being associated with the existing establishment and a principal massage therapist is present when massage is being performed. If this is not the case, a separate massage establishment license is required.

- c) What about if I am doing only outcalls and using a D.B.A.?

Board's Response: No.

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 9:37 a.m., it was moved by Chair Davis, seconded by Ms. Nagashima, 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 10:20 a.m., it was moved by Chair Davis, seconded by Vice Chair Behnken, and unanimously carried to move out of Executive Session.

1) MWM Studio, LLC

Upon a motion by Chair Davis, seconded by Vice Chair Behnken, it was voted on and unanimously carried to approve MWM Studio, LLC's Application for License – Massage Therapy Establishment.

2) Julie Watts

Upon a motion by Chair Davis, seconded by Ms. Hagerman, it was voted on and unanimously carried to approve Ms. Watts' request for an examination waiver pursuant to HRS §452-16.

3) Elite Massage Academy

Upon a motion by Chair Davis, seconded by Ms. Hagerman, it was voted on and unanimously carried to defer Elite Massage Academy's application and directed the EO to inform the school that based on the review of their application and supporting documents, additional information and clarification is needed.

Recess: At 10:24 a.m., Chair Davis called for a recess.

Reconvene: At 10:28 a.m., the Board reconvened their meeting.

7. Unfinished Business:

a. Discussion on Revisions to HRS, Chapter 452

EO Doi noted that a justification sheet is required for all bills being submitted for consideration as administration bills. She provided the Board with a draft based on the Board's previous discussion on revisions.

Ms. Hagerman noted that the Board's revision to HRS §452-24 to make the minimum fine \$250 for each violation was also to make it consistent with HRS §452-23(b)(2).

EO Doi said she will add that to the justification.

Ms. Nagashima asked what the submission deadline is.

EO Doi said it is sometime in August, however, she does know the specific date.

DAG Leong suggested adding another sentence with regards to discouraging and decreasing unlicensed massage activity.

Ms. Nagashima stated that right now, Chapter 452 falls under consumer protection. She asked if it was possible to move it to a practice act for healthcare professionals. She noted that multiple states have their massage laws fall under or grouped with the nursing profession.

DAG Leong said he doesn't understand what she means by "grouped with". In Hawaii, the profession has its own board with its own set of laws and rules. They do not fall under the purview of the Board of Nursing.

Ms. Nagashima said she would like to raise the level of professionalism.

Ms. Bath said she thinks when the Board reviews their rules, they should be looking at it from a professional standpoint and not simply to prohibit prostitution.

Chair Davis said he believes that the way to change the perception of the profession is to change the laws and rules.

Ms. Nagashima asked for confirmation that the deadline to submit administration bills is in August whereas a member of the public has up to a few days prior to the session starts to get someone to introduce a bill.

DAG Leong said yes.

Ms. Bath said that as the Board is reviewing the laws and rules, they should be asking themselves “what” and “how”. She said back in the day, massage therapists were considered healers and medical professionals. Now, it seems the Board’s purpose is to assist police with prostitution and sex trafficking.

DAG Leong said if the Board feels the problems with the profession’s perception is because of how the laws are written, they can propose amendments.

Ms. Bath asked if other states require a massage therapy establishment (“MAE”) license.

Ms. Nagashima said that she believes Hawaii is the only state that requires an MAE license. Other states require a business license. She said five states are proposing a practice act. Some do not have a practice act, but have regulations.

Ms. Hagerman asked how the profession is regulated in other states.

Ms. Nagashima said that some are regulated through the Board of Nursing.

Ms. Bath said she is concerned about things like the MAE license and the principal massage therapist. She is self-employed and feels she does not need additional oversight. She thinks the MAE license may be necessary for those with apprentices but otherwise feels it is unnecessary. She stated that the MAE license is totally ridiculous as no other professionals have such a license.

Vice Chair Behnken said she believes the MAE license is beneficial to deterring unlawful activity.

Ms. Nagashima noted that barber and beauty shops are required to be licensed.

Ms. Bath said she feels that massage therapists are healthcare professionals and should not be compared with barbers and cosmetologists. The massage therapist's education should be sufficient.

DAG Leong said that there may be people not living up to the standard, but they still need to have a standard.

Chair Davis said he thinks the Board should have appropriate standards of care in their laws and rules. Then, they can be enforced.

Vice Chair Behnken agreed, noting that the MAE license tells the Board where massage can take place which may give them more control.

Ms. Bath reiterated that she feels the massage therapist license should be enough.

Vice Chair Behnken said they are all a big proponent of public health and safety. She believes the MAE license gives the Board more control.

Ms. Bath questioned whether having an MAE would stop illegal activity. She thinks it would be the same if only a business license were required. She said if there was any illegal activity, RICO could just cite the massage therapist.

Vice Chair Behnken noted that RICO does random checks of licensed MAE. This helps to limit illegal activity. If there was no MAE license, such checks could not be done as RICO would not know where massage activity is being performed.

Ms. Bath asked how the profession is regulated in other states where there is no MAE license.

Ms. Nagashima said they use the standard of care for nursing.

Vice Chair Behnken stated that the standard of care for nursing is different from the standard of care for massage.

Ms. Bath said that she would like to propose eliminating the MAE license as well as the principal massage therapist ("PMT") designation.

Chair Davis asked what course of action Ms. Bath is proposing.

Ms. Bath said she thinks the Board should finish the rules.

Ms. Nagashima suggested that the Board finish reviewing the committee's proposed draft and once they are done, they can step back and look at the draft in its entirety to see if it makes sense. She reminded the Board that they are updating their rules to minimize things from falling through the cracks.

Chair Davis agreed, stating that the rules should be the foundation for the profession.

Ms. Nagashima said that the Board should finish what they are working on, then they can look at changing the law.

Ms. Bath noted that the American Massage Therapy Association ("AMTA") is a reputable national organization. She questioned whether the AMTA has a standard of professional care.

Ms. Nagashima stated that the AMTA has a code of ethics, however, they do not cross state laws.

Chair Davis commented that without rules, practitioners will not know what to follow.

Ms. Nagashima agreed, stating that there needs to be a starting point to be able to govern.

Ms. Bath questioned if they are telling her to just accept the laws and rules as they are.

Ms. Nagashima said no. She is just suggesting that they should wait on any major changes until there is a full draft to look at.

Ms. Bath asked Chair Davis to read the definition of principal massage therapist.

Chair Davis did as she requested, stating that principal massage therapist means a massage therapist designated by an establishment or an out-call massage service as the person in charge.

Ms. Bath said that means the individual providing the service is responsible. She said there is no need for a PMT.

Chair Davis asked who would be responsible in an MAE where multiple licensees are providing massage services.

Ms. Bath said each therapist would be responsible for themselves.

Ms. Nagashima noted that MAEs do not need to be owned by a massage therapist. She feels that the person responsible for an MAE should be a massage therapist.

Vice Chair Behnken noted that on Maui, a veterinary clinic owned by a veterinarian was cited when the original owner passed away because the owner was not a licensed veterinarian. She feels it makes a difference to have a licensed professional in charge.

Ms. Bath said that maybe a compromise could be made for those with multiple practitioners or with apprentices, however, she feels it is unnecessary for sole practitioners.

Vice Chair Behnken noted that MAEs provide knowledge of where massage therapy may be performed so they can ensure that the sanitation regulations are being followed.

Chair Davis said his friend's husband has a medical facility. She asked if they have a permit for the facility, however, they have special credentials as a surgical location.

Ms. Bath said there are no laws in place for a licensed location for doctors. She questioned why the MAE is necessary if a similar license is not required for physicians or other medical professionals like physical therapists or occupational therapists.

Ms. Nagashima noted that physicians, physical therapists and occupational therapists have much more education and their practice requirements are more stringent than massage therapists. She believes the Board should look at a profession with more comparable education and practice requirements like barbering and cosmetology.

The Board asked Mr. Kleinhans to provide more insight on the Board of Barbering and Cosmetology's shop licenses.

Mr. Kleinhans stated that his board requires the shop license for purposes of adequate equipment and sanitation. It is not for tracking purposes or to minimize prostitution. He noted that unlike the Board, his board's statutes included language which states that the shops must be adequately equipped for the practice. This language was used to enforce sanitation requirements.

Ms. Hagerman asked how long its been since his board has passed their sanitation rules.

Mr. Kleinhans stated that the rules have not been drafted yet. To date, his board has amended their application and came up with sanitation policies.

Recess: At 11:45 a.m., Chair Davis called for a recess.

Reconvene: At 11:50 a.m., the Board reconvened their meeting.

Ms. Bath said the goal should be to stop helping law enforcement with regulation of prostitution.

Chair Davis said he does not see how the PMT has anything to do with prostitution. After the discussion at the last meeting, no one was left in charge. He feels there needs to be a hierarchy.

Vice Chair Davis noted that Ms. Bath commented that doctors regulate themselves. The difference is a non-physician can own a medical practice.

Ms. Nagashima said she understands Ms. Bath's concerns but the fact is that the profession is stereotyped with things like prostitution and sex trafficking. While it may seem overly burdensome for licensees, the MAE is in place in order to separate the profession from the stereotype.

Ms. Bath said she still does not see the purpose of the MAE license.

Vice Chair Behnken said if the Board can control where massage is being performed, they can follow through to make sure the guidelines are being followed.

Ms. Bath said that currently, MAEs are being regulated more than outcall services. She believes it is unfair that a whole other part of the profession, outcall, is not being regulated. Also, she would like to continue the discussion regarding newly constructed MAEs.

Ms. Hagerman questioned why RICO can't just visit a place with a business license to check if regulations are being followed.

Vice Chair Behnken stated that RICO would not be able to tell, just by the name of a business, whether massage is being performed there. This would lessen their ability to do random checks.

Ms. Bath stated that the massage therapist license includes the therapist's place of business.

EO Doi said in most cases, the address provided by the massage therapist is their residence, not where they work.

Vice Chair Behnken stated, as a public member of the Board, she does not think eliminating the MAE license and therefore, giving the profession less structure and regulation, would be helpful.

Ms. Hagerman noted that even with the current regulations, violations are still occurring.

Ms. Nagashima said she thinks that because regulations are in place, there are fewer violations than there would be otherwise.

After some discussion, the Board decided to defer discussion on the MAE license and the PMT designation.

Ms. Bath reiterated her request to continue the discussion regarding newly constructed MAEs.

Ms. Nagashima suggested amending the language to state "[i]n all newly constructed or existing establishments which have been extensively renovated, hand washing facilities that conform to applicable building code requirements shall be located in the operation area". This would then exclude establishments that may be located in older buildings from this requirement.

Ms. Bath said, with regards to the proposed bill, she does not think it is unreasonable for a sink to be located in the operation area.

Ms. Nagashima noted that some older buildings may not allow for extensive renovation to meet requirements.

7. Unfinished Business:

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

EO Doi noted at their last meeting, the Board asked RICO to provide the language from the Real Estate Commission's rules which requires licensees to cooperate with the Real Estate Commission's regulation of the profession. She stated that Ms. Brown provided the requested language from HAR §16-99-3(b) which states in part "The licensee shall assist the commission in its efforts to regulate the practices of brokers and salespersons in this State."

By consensus, the Board determined that they would like to add similar language to the draft rule amendments.

The Board deferred discussion on this matter. The Board will resume discussion of the current draft at their next scheduled meeting.

9. Next Meeting: After some discussion, Ms. Nagashima stated that if the deadline to propose administrative bills is prior to the August 7th meeting, she would like another meeting held before that.

EO Doi said she would find out what the deadline is and let the Board know.

Chair Davis announced the Board's next scheduled meeting as:

Wednesday, August 7, 2019
9:00 a.m.
King Kalakaua Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii 96813

EO Doi noted that if the Board decides to add a meeting, the additional date would be posted on the Board's website.

10. Adjournment: With no further business to discuss, Chair Davis adjourned the meeting at 12:49 p.m.

Taken by:

/s/ Jennifer Fong

Jennifer Fong
Secretary

Reviewed by:

/s/ Risé Doi

Risé Doi
Executive Officer

7/9/19

Minutes approved as is.

Minutes approved with changes; see minutes of _____.

BOARD OF MASSAGE THERAPY

RATIFICATION LIST
Wednesday, June 19, 2019

MASSAGE THERAPIST

MAT 16025 HOWARD B RONTAL
MAT 16026 ALEXIS K O'SULLIVAN

MAT 16027 NAGAKO YOSHIDA
MAT 16028 MARICAR C IGNACIO

MASSAGE THERAPY ESTABLISHMENT

MAE 3512 HAWAII CBD MASSAGE LLC
MAE 3513 PATTHAMAPORN C POPESCU
MAE 3514 BODYMINDMAUI INC
MAE 3515 ANOTHER WORLD HAWAII LLC
MAE 3516 CHRISTINA N CLEMENS
MAE 3517 KOZLOWSKI LLC
MAE 3518 JOHN E AVALLONE

MAE 3519 LEO C TECSON
MAE 3520 YAHAVAH A MATHISON
MAE 3521 JJ UNION NAILS LLC
MAE 3522 DARLENE A PALAMA
MAE 3523 SKI INVESTMENTS LLC

MASSAGE THERAPY WORKSHOP

None.