

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE ALASKA BOARD OF MASSAGE THERAPISTS**

In the Matter of	)	
	)	
CONNOR STEFANO	)	OAH No. 19-0059-MAS
	)	Agency No. 2019-000074
_____	)	

**DECISION**

**I. Introduction**

Connor Stefano applied for a license as a massage therapist on June 29, 2018. The Division of Corporations, Business and Professional Licensing (Division) sent him notice on January 8, 2019 that his application was denied. Mr. Stefano requested a hearing to challenge that denial.

The undisputed evidence in this case shows that Mr. Stefano has extensive education and training in massage therapy. However, he did not complete his course of study at an approved massage school as required by the statutes that govern massage therapists. Consequently, he does not meet the statutory requirements for licensure as a massage therapist in the State of Alaska. The denial of his application is upheld.

**II. Facts<sup>1</sup>**

Mr. Stefano was enrolled in the massage therapy program at the Alaska Institute of Oriental Medicine, Acupuncture & Massage Therapy (Institute) from May 12, 2014 through August 25, 2015. The Institute is an approved massage school. The massage therapy program at the Institute was an 800-hour program, consisting of 11 courses. Mr. Stefano did not complete the program. Instead, he withdrew from the program early on August 25, 2015, after completing 552.5 hours of the 800-hour program. He completed and passed four courses: Anatomy and Kinesiology, Physiology, Chair Massage, and Table Massage. He partially completed five courses, receiving an incomplete grade in them: Ethics of Touch, Business Practices, Pathology & Special Populations, Meridian & Acupressure Theory, and the Student Clinic. He did not take the Oriental Medicine for Bodyworkers or the Acupressure Massage Lab courses.<sup>2</sup> Mr. Stefano provided 19 “Client Critiques” from his student clinic, all of which were positive.<sup>3</sup>

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<sup>1</sup> The following facts were established by a preponderance of the evidence.  
<sup>2</sup> Agency Record (AR) 65.  
<sup>3</sup> Stefano Ex, pp. 2 – 20.

Mr. Stefano completed a 60-hour course in Traditional Thai Yoga Massage in Thailand in 2016.<sup>4</sup> He took the Massage & Bodywork Licensing Examination (MBLEx) on June 25, 2018 and passed.<sup>5</sup>

Mr. Stefano completed an application for Alaska licensure as a massage therapist on June 27, 2018. The Division received the application on June 29, 2018.<sup>6</sup> He completed two American Heart Association classes, basic life support and CPR, and a course in bloodborne pathogens in July and August 2018.<sup>7</sup>

Division staff emailed Mr. Stefano inquiring about his massage school transcripts that showed he had not completed the massage therapy program. Mr. Stefano emailed back indicating that he did not finish the program because one of the program instructors offered him “Taoist sexual healing classes outside of school for 250\$ per session.”<sup>8</sup> Mr. Stefano’s testimony was consistent with his email. In addition, he testified about his ethical concerns with the Institute’s management and faculty, and his dissatisfaction with the curriculum. He also testified that the instructor who offered to teach him the Taoist sexual healing techniques began to show up at his other classes, for which she was not an instructor. Mr. Stefano withdrew from the Institute’s massage program due to his concerns over the curriculum, the ethical issues and the discomfort he experienced from being followed by the one instructor. Mr. Stefano did not file a complaint with the Institute because he did not know who to contact due to the small size of the faculty/management.<sup>9</sup>

Mr. Stefano’s application was presented to the Alaska State Board of Massage Therapists (Board) on December 28, 2018. The Board denied his application.<sup>10</sup> The Division sent Mr. Stefano notice on January 8, 2019 that the Board denied his application, and that the reason for denial was that he did not complete his massage program:

After careful consideration, the Alaska Board of Massage Therapists denied the application for licensure using authority AS 08.61.030(3)(A) “*the board shall issue a license to practice massage therapy to a person who furnished evidence satisfactory to the board that the person has completed a course of study of at least 500 hours of in class supervised instruction and clinical work from an*

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<sup>4</sup> AR 86.

<sup>5</sup> AR 20.

<sup>6</sup> AR 12 – 17.

<sup>7</sup> AR 69 – 70, 89.

<sup>8</sup> AR 83 – 84.

<sup>9</sup> Mr. Stefano’s testimony.

<sup>10</sup> AR 2 – 8.

*approved massage school*”. Upon examination of your transcript, it was found that while you took several courses, you did not complete the program.<sup>11</sup>

Mr. Stefano requested a hearing to challenge the denial of his application. Mr. Stefano’s hearing was held on April 24, 2019. Mr. Stefano represented himself and testified on his own behalf. Assistant Attorney General Robert Auth represented the Division. Dawn Dulebohn, a licensing examiner employed by the Division, testified on its behalf.

### III. Discussion

A person who wishes to practice as a massage therapist in the State of Alaska must first be licensed by the Board.<sup>12</sup> An applicant who does not currently hold a massage therapy license from another state or country, is eligible for licensure “by examination.” At the time of Mr. Stefano’s application, an applicant by examination had to show, in addition to meeting other requirements, that he or she satisfied the minimum educational requirements set out in AS 08.61.030:

**Sec. 08.61.030. Qualifications for license.** The board shall issue a license to practice massage therapy to a person who

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(3) furnishes evidence satisfactory to the board that the person has completed a

(A) A course of study of at least 500 hours of in-class supervised instruction and clinical work from an approved massage school;<sup>13</sup>

As an applicant for license to practice massage therapy, Mr. Stefano therefore bears the burden of proof to show by a preponderance of the evidence that he has completed a “course of study of at least 500 hours of in-class supervised instruction and clinical work from an approved massage school.”<sup>14</sup>

It is undisputed that Mr. Stefano did not complete the entire program at the Institute, but instead withdrew after completing 552.5 hours of the 800-hour program. The relevant issue is

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<sup>11</sup> AR 9 (emphasis in original).

<sup>12</sup> AS 08.61.070(a).

<sup>13</sup> There are alternative ways to qualify for licensure, such as through participation in a board-approved apprenticeship program pursuant to AS 08.61.030(3)(B), or through licensure by credentials pursuant to AS 08.61.040. However, these alternatives do not apply in Mr. Stefano’s case.

<sup>14</sup> Effective July 1, 2019, the statutory hours requirement increases to 625 hours. § 3, ch. 10, SLA 2018. It is possible that the board’s final decision in this case will not be made until after that date. Whether the lower or higher hours requirement applies to an application that straddles the effective date of the new statute—that is, and application made before the effective date but not finally ruled upon until afterward—is a complex question. It need not be decided here because it would not change the outcome of the case.

therefore whether Mr. Stefano’s completion of 552.5 hours of the Institute’s 800-hour program and his completion of the 60-hour Thai Massage course is sufficient to qualify him for licensure. While he has certainly completed more than 500 hours of in-class supervised instruction and clinical work from the Institute, which is an approved massage school, does that constitute the completion of “a course of study”? Neither the applicable statutes nor their accompanying regulations<sup>15</sup> define the phrase “course of study.” It is therefore necessary to determine what “course of study” means. This is an issue of statutory interpretation.

The statute as written is susceptible to two possible constructions. One is that as long as an applicant has completed classes of at least five hundred hours from an approved massage school, then he or she is eligible for licensure. The other is that “course of study” refers to the curriculum or entire program of study. In other words, the statutory requirement is that an applicant must have completed an approved massage school’s curriculum or program that has at least 500 hours of classes and clinical work.

Questions of statutory interpretation begin with an examination of the statutory language construed in light of its purpose.<sup>16</sup> The objective “is to give effect to the intent of the legislature, with due regard for the meaning that the statutory language conveys to others.”<sup>17</sup> Though unambiguous statutory language is to be given its ordinary and common meaning, the Alaska Supreme Court has rejected the “plain meaning” rule as an exclusionary rule and permits looking to legislative history as a guide to construing a statute’s words.<sup>18</sup> The legislation, AS 08.61.010 *et. seq.*, which created the Alaska Board of Massage Therapists and which established the standards for licensure was passed in 2014. The underlying legislative history does not provide a context from which to derive a definition of “course of study.”<sup>19</sup>

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<sup>15</sup> See 12 AAC 79.

<sup>16</sup> *Ganz v. Alaska Airlines, Inc.*, 963 P.2d 1015, 1017 (Alaska 1998).

<sup>17</sup> *Id.* (citing *City of Dillingham v. CH2M Hill Northwest, Inc.*, 873 P.2d 1271, 1276 (Alaska 1994)).

<sup>18</sup> *Id.*

<sup>19</sup> Neither the sponsor statement nor the various committee hearing minutes contain any information which provides any guidance on this issue. The sponsor statement is located online at [http://www.akleg.gov/basis/get\\_documents.asp?session=28&docid=24484](http://www.akleg.gov/basis/get_documents.asp?session=28&docid=24484). The minutes of the various committee meetings are located online at: March 10, 2014 House Labor & Commerce Committee - <http://www.akleg.gov/basis/Meeting/Detail?Meeting=HL%26C2014-03-1015:15:00>; March 28 House Labor & Commerce Committee - <http://www.akleg.gov/basis/Meeting/Detail?Meeting=HL%26C2014-03-1015:15:00>; the March 31, 2014 House Labor & Commerce Committee - <http://www.akleg.gov/basis/Meeting/Detail?Meeting=HL%26C2014-03-3116:31:00>; the April 3, 2014 House Finance Committee - <http://www.akleg.gov/basis/Meeting/Detail?Meeting=HFIN2014-04-0308:30:00>;; and the April 17, 2014 Senate Finance Committee - <http://www.akleg.gov/basis/Meeting/Detail?Meeting=SFIN2014-04-1713:30:00>. These online records were all accessed on May 16, 2019.

In these circumstances the Board, as the entity entrusted by the Legislature to implement this statute, has some liberty to adopt an interpretation of the statutory language that it feels makes the most sense in regulating this profession in keeping with the legislative purpose. This would often be done by regulation,<sup>20</sup> but it can also be done by means of an adjudication such as this one.<sup>21</sup>

The facts in this case provide a clear context from which to answer this statutory interpretation issue. Mr. Stefano has more than 500 hours of coursework from the Institute, which is an approved massage school. Under one possible interpretation of the statute, he would be eligible for licensure. But his transcript shows that he did only completed four of the eleven classes. He started and only partially completed five classes: Ethics of Touch, Business Practices, Pathology & Special Populations, Meridian & Acupressure Theory, and the Student Clinic. He did not take two entire courses. Under the first interpretation of the statute, a student could pick and choose which classes to take, and decide to not complete individual classes, and still be eligible for licensure. A student could fail or not take an important component of the entire coursework and still be eligible for licensure. He or she could also aggregate class hours from different approved massage schools that added up to a total of 500 hours. The balance of disciplines that an accredited school will include in a whole curriculum would be lost.

This is a problematic interpretation of the statute, at least in the absence of other law that would define what mix of courses would comprise a “course of study” if the one prescribed by the approved school is not completed. Instead, the statute’s requirement for completion of a “course of study” is best interpreted as requiring that an applicant must complete an entire curriculum presented by an approved massage school, which must consist of at least 500 hours. Mr. Stefano undeniably does not meet this standard. His 60-hour Thai Massage class cannot not help him meet this standard, because it was not part of a “course of study” of at least 500 hours.

Because Mr. Stefano did not complete his course of study at the Institute, the next question to answer is whether the particular facts of his case justify an exception from the statutory requirements. The statute reads, in pertinent part, that the applicant “has completed a ... course of study of at least 500 hours of in-class supervised instruction and clinical work from

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<sup>20</sup> An example of a regulatory definition of a statutory phrase is 2 AAC 64.020. In the present context, the Board could have adopted a regulation that prescribed what mix of courses would comprise a “course of study.”

<sup>21</sup> Cf. *SEC v. Chenery Corp.*, 332 U.S. 194,202-03 (1947).

an approved massage school.”<sup>22</sup> There is no ambiguity in that language: an applicant must have “completed” the course of study. There is nothing in the legislative history to suggest otherwise.<sup>23</sup> As such, the statute does not afford any discretion to consider extenuating circumstances. Mr. Stefano is not eligible for licensure.

#### **IV. Conclusion**

Mr. Stefano was enrolled at the Institute’s massage therapy program, where he did not complete the program. Although he voiced several reasons for not completing the program, once the Board concludes that a qualifying “course of study” has not been completed, it does not have discretion to consider individualized reasons and to diverge from the education requirements. As a result, Mr. Stefano’s application for licensure as a massage therapist is DENIED.

Dated: May 20, 2019

Signed  
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Lawrence A. Pederson  
Administrative Law Judge

### **Adoption**

The ALASKA BOARD OF MASSAGE THERAPISTS adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 19<sup>th</sup> day of September, 2019.

By: Signed  
\_\_\_\_\_  
Signature  
David Edwards-Smith  
\_\_\_\_\_  
Name  
Chair of Board of Massage Therapists  
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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<sup>22</sup> There are alternative ways to qualify for licensure, such as through participation in a board-approved apprenticeship program pursuant to AS 08.61.030(3)(B), or through licensure by credentials pursuant to AS 08.61.040. However, these alternatives do not apply in Mr. Stefano’s case.

<sup>23</sup> See fn. 19 above for the legislative history reviewed in preparing this decision.