

Kevin Meyer
Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Debbie Morgan
Department of Commerce, Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor *AS*
465.4081

DATE: April 1, 2019

RE: Filed Permanent Regulations: Board of Massage Therapists

Board of Massage Therapists regulations re: requests for criminal justice information and update to code of ethics and standards of practice (12 AAC 79.130(c); 12 AAC 79.900)

Attorney General File:	2019200071
Regulation Filed:	4/1/2019
Effective Date:	5/1/2019
Print:	230, July 2019

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis
Sher Zinn, Regulations Specialist

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE BOARD OF MASSAGE THERAPY

The attached two pages of regulations, dealing with educational requirements, criminal justice information, and the Code of Ethics and Standards of Practice, is certified to be a correct copy of the regulation changes that the Board of Massage Therapy adopted at its February 28, 2019 meeting, under the authority of AS 08.61.020, AS 08.61.030, AS 08.61.040, AS 08.61.090, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

It is estimated that this action will not require an increased appropriation.

On the record, in considering public comments, the Board of Massage Therapy paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 3-1-19



David Edwards-Smith, Chair

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on April 1st, 2019 at 11:12 Am., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.



Kevin Meyer, Lieutenant Governor

Effective: May 1, 2019

Register: 230. July 2019

79.
Chapter ~~28~~ 79. ~~Board of Massage Therapy.~~ Therapists.

12 AAC 79.100 is amended by adding a new subsection to read:

(c) In this section, "in-class supervised instruction" means education received either in a physical classroom or through online distance education. Online courses must meet the requirements of (b)(2)(A) or (B) of this section. (Eff. 1/17/2016, Register 217; am

 / / , Register)

Authority: AS 08.61.020 AS 08.61.030 AS 08.61.090 9

*Withdrawn
3/28/2019*

ACR

12 AAC 79.130(c) is amended to read:

(c) The request under (b) of this section for a criminal justice information report does not delay administrative processing [CONSIDERATION] of the applicant's license application.

An application will not be considered complete until the criminal justice information

required in (a) of this section is received by the board. If criminal justice information that raises questions about an applicant's qualifications for licensure is received after a license has been issued to the applicant, the department and the board will take action under AS 08.61 and AS 44.62 as appropriate. (Eff. 1/17/2016, Register 217; am 5 / 1 / 2019, Register 230)

Authority: AS 08.61.020 AS 08.61.030 AS 08.61.040

12 AAC 79.900 is amended to read:

*italicize
the title*

the title 12 AAC 79.900. **Code of ethics and standards of practice.** The Alaska Board of

*italicize
the title*

Message Therapists Code of Ethics and Standards of Practice, dated **December 2018** [JUNE 2015], is adopted by reference as the code of ethics for massage therapists in the state. In order to maintain a high standard of integrity in the profession and to safeguard the health and welfare of

Register 230, July 2019 PROFESSIONAL REGULATIONS

the public, massage therapists licensed in this state shall adhere to the code of ethics. (Eff.

1/17/2016, Register 217; am 5 / 1 / 2019, Register 230)

Authority: AS 08.61.020

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: March 28, 2019

File No.: 2019200071

Thru: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Tel. No.: 465-3600

From: Steven C. Weaver *ACW*
Senior Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Re: Board of Massage Therapists
regulations re: requests for criminal
justice information and update to
code of ethics and standards of
practice (12 AAC 79.130(c); 12 AAC
79.900)

The Department of Law has reviewed the attached regulations of the Board of Massage Therapists (board) against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations, other than those regulations that have been withdrawn as described in this memorandum. The regulations were adopted by the Board of Massage Therapists after the close of the public comment period. The regulations clarify the administrative process while the board awaits criminal justice information, and update the code of ethics and standards of practice for massage therapists.

We have staff confirmation that we defer our review, to another regulations project, of proposed 12 AAC 79.100(c), pending additional board work on that provision. That provision would have defined the term "in-class supervised instruction" to mean "education received either in a physical classroom or through online distance education." We were unclear what the board meant by "online distance education", since the full phrase used in both statute and regulation is "in-class supervised instruction *and clinical work*." AS 08.61.030(3)(A); 12 AAC 79.100(b)(2). [Emphasis added.] Proposed 12 AAC 79.100(c) would have required that online courses meet the requirements of 12 AAC 79.100(b)(2)(A) and (B); those provisions include the minimum hours of in-class supervised instruction and clinical work required, with the number of hours increasing on or after July 1, 2019 from 500 to 650 hours. 12 AAC 79.100(b)(2)(B).¹

¹ New 12 AAC 79.100(b)(2)(B) was filed on March 18, 2019 and takes effect April 17, 2019. The provision implements statutory amendments to AS 08.61.030(3)(A) that take effect July 1, 2019 and that increase, from 500 to 625, the number of hours required to be completed in a course of study. See secs. 3 and 7, ch. 10, SLA 2018.

In its additional work on proposed 12 AAC 79.100(c), we request that the Board of Massage Therapists more closely examine how "online distance education" would work in practice. Proposed 12 AAC 79.100(c) does not clarify, for example, whether online distance education would need to be streamed live with an instructor in order to constitute "in-class supervised instruction." Also, we would want the board to clarify whether "online distance education" would or could include "clinical work" required under AS 08.61.030(3)(A) and 12 AAC 79.100(b)(2); or whether the board meant online distance education to apply only to the "in-class supervised instruction" component, and not to clinical work. Finally, if clinical work were included, would the board need to specify how many hours of online distance education could address clinical work rather than in-class supervised instruction? Alternately, is the matter resolved through 12 AAC 79.100(b)(2), requiring that courses have Alaska Commission on Postsecondary Education authorization or national accreditation, or through the hours required for specified subjects in 12 AAC 79.140, filed March 18, 2019 and taking effect April 17, 2019? If so, perhaps the board could tie the "online distance education" option more explicitly to regulations already adopted.

The provisions of regulations that are withdrawn pending additional board review are shown on the attached copy of regulations. The remainder of the regulations are ready for filing.

The January 18, 2019 public notice and the March 1, 2019 certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SCW

cc: David Edwards-Smith, Chair
Board of Massage Therapists
(via e-mail through Sher Zinn)

Debbie Morgan, Regulations Contact
Department of Commerce, Community, and Economic Development

Sara Chambers, Director
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community, and Economic Development

Sher Zinn, Regulations Specialist
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community, and Economic Development

Jun Maiquis, Regulations Specialist
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community, and Economic Development

Dawn Dulebohn
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community, and Economic Development

Harriet Dinegar-Milks, Senior Assistant Attorney General
Commercial, Fair Business, and Child Support Section

**NOTICE OF PROPOSED CHANGES RELATING TO EDUCATIONAL
REQUIREMENTS, CRIMINAL JUSTICE INFORMATION, AND THE CODE OF
ETHICS AND STANDARDS OF PRACTICE IN THE REGULATIONS OF
THE BOARD OF MASSAGE THERAPY**

BRIEF DESCRIPTION: The Board of Massage Therapy is proposing to update the regulations of the educational requirements defining “in-class supervised instruction”, require criminal justice background information prior to licensure, and changes to the Code of Ethics and Standards of Practice.

The Board of Massage Therapy (Board) proposes to adopt regulation changes in Title 12, Chapter 79 of the Alaska Administrative Code including the following:

1. **12 AAC 79.100. Application for licensure by examination**, is proposed to be changed by adding a new section defining “in-class supervised instruction”.
2. **12 AAC 79.130. Criminal justice information**, is proposed to be changed to clarify that the criminal justice information is to be received before the board will review an application for licensure.
3. **12 AAC 79.900. Code of ethics and standards of practice**, is proposed to update the code of ethics and standards of practice, adopted by reference.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Sher Zinn, Regulations Specialist, Division of Corporations, Business and Professional Licensing, P.O. Box 110806, Juneau, AK 99811-0806. Additionally, the Board will accept comments by facsimile at (907) 465-2974 and by electronic mail at RegulationsAndPublicComment@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system at <http://notice.alaska.gov/192649>, and using the comment link. **The comments must be received not later than 5:00 p.m. on February 19, 2019.** Comments received after this deadline will not be considered by the Board.

You may submit written questions relevant to the proposed action to Sher Zinn, Regulations Specialist, Division of Corporations, Business and Professional Licensing, P.O. Box 110806, Juneau, AK 99811-0806 or by e-mail at RegulationsAndPublicComment@alaska.gov. **The questions must be received at least 10 days before the end of the public comment period.** The Board will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and on the Board’s website at <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/BoardofMassageTherapists.aspx>. The Board may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Sher Zinn at (907) 465-1049 or RegulationsAndPublicComment@alaska.gov, not later than February 12, 2019, to ensure that any necessary accommodation can be provided.


A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Sher Zinn at (907) 465-1049 or RegulationsAndPublicComment@alaska.gov, or go to <https://www.commerce.alaska.gov/web/portals/5/pub/MAS-0119.pdf>.

After the public comment period ends, the Board will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.** Written comments and questions received are public records and are subject to public inspection.

Statutory Authority: AS 08.61.020; AS 08.61.030; AS 08.61.040; AS 08.61.090

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.


DATE: 11/18/19



Sher Zinn, Regulations Specialist
Division of Corporations, Business and
Professional Licensing

For each occupation regulated under the Division of Corporations, Business and Professional Licensing, the Division keeps a list of individuals or organizations who are interested in the regulations of that occupation. The Division automatically sends a Notice of Proposed Regulations to the parties on the appropriate list each time there is a proposed change in an occupation's regulations in Title 12 of the Alaska Administrative Code. If you would like your address added to or removed from such a list, send your request to the Division at the address above, giving your name, either your e-mail address or mailing address (as you prefer for receiving notices), and the occupational area in which you are interested.

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. **Adopting agency:** Board of Massage Therapy – Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing.
2. **General subject of regulation:** Educational requirements for in-class supervised instruction, criminal justice information, and the Code of Ethics and Standards of Practice.
3. **Citation of regulation:** 12 AAC 79.100; 12 AAC 79.130; 12 AAC 79.900
4. **Department of Law file number:** To be assigned.
5. **Reason for the proposed action:** Define educational requirements, update criminal justice information requirements, update Code of Ethics and Standards of Practice.
6. **Appropriation/Allocation:** Corporations, Business and Professional Licensing – #2360.
7. **Estimated annual cost to comply with the proposed action to:**
A private person: None known.
Another state agency: None known.
A municipality: None known.
8. **Cost of implementation to the state agency and available funding (in thousands of dollars):**
No costs are expected in FY 2019 or in subsequent years.
9. **The name of the contact person for the regulation:**
Dawn Dulebohn, Licensing Examiner
Division of Corporations, Business and Professional Licensing
Telephone: (907) 465-3811
E-mail: dawn.dulebohn@alaska.gov
10. **The origin of the proposed action:** Board of Massage Therapy.
11. **Date:** 11/18/19 **Prepared by:** 

Sher Zinn
Regulations Specialist

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

AFFIDAVIT OF NOTICE OF PROPOSED ADOPTION OF REGULATIONS
AND FURNISHING OF ADDITIONAL INFORMATION

I, Sher Zinn, Regulations Specialist, of the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 12 AAC 79.100, 12 AAC 79.130, and 12 AAC 79.900, dealing with educational requirements, criminal justice information, and the Code of Ethics and Standards of Practice, has been given by being:

1. published in a newspaper or trade publication;
2. furnished to every person who has filed a request for notice of proposed action with the state agency;
3. furnished to appropriate state officials;
4. furnished to interested persons;
5. furnished to the Department of Law, along with a copy of the proposed regulation;
6. furnished electronically to incumbent State of Alaska legislators;
7. posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);

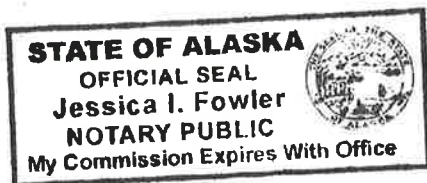
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 3/15/19

Sher Zinn
Sher Zinn, Regulations Specialist

Subscribed and sworn to before me at Juneau, AK on
3/15/19

(date)



Jessica Fowler
Notary Public in and for the State of Alaska
My commission expires with office

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

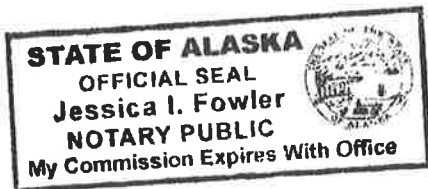
I, Sher Zinn, Regulations Specialist, of the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, being sworn, state the following:

In compliance with AS 44.62.215, the Department of Commerce, Community, and Economic Development has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Board of Massage Therapy regulations on dealing with educational requirements, criminal justice information, and the Code of Ethics and Standards of Practice.

Date: 3/15/19

Sher Zinn
Sher Zinn, Regulations Specialist

Subscribed and sworn to before me at Suneau, Ak on
3/15/19
(date)



Jessica Fowler
Notary Public in and for the State of Alaska
My commission expires: with office

ANCHORAGE DAILY NEWS

RECEIVED
Juneau

JAN 24 2019

AFFIDAVIT OF PUBLICATION

CBPL

Account #: 268972

ST OF AK/DEC/OCCU
PO BOX 110806
JUNEAU, AK 998110806

Order# 0001433378
Cost \$507.98

Product ADN-Anchorage Daily News
Placement 0300
Position 0301

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Sarah Jennett

being first duly sworn on oath deposes and says that he/she is a representative of the Anchorage Daily News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

January 18, 2019

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

Signed

Sarah Jennett

Subscribed and sworn to before me
this 18th day of January, 2019

Britney Thompson

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska

MY COMMISSION EXPIRES

2/23/2019

Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019

NOTICE OF PROPOSED CHANGES RELATING TO EDUCATIONAL REQUIREMENTS, CRIMINAL JUSTICE INFORMATION, AND THE CODE OF ETHICS AND STANDARDS OF PRACTICE IN THE REGULATIONS OF THE BOARD OF MASSAGE THERAPY

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Advair 250mcg/50mcg 18
Vagifem 10mcg
Premarin 0.625mg
Combivent 18mcg/103mcg 60
Symbicort 160mcg/4.5mcg 36
Entocort 3mg
Januvia 100mg
Aggrenox 200mg/25mg 2
Abilify 5mg
Colcrys 0.6mg

FIRST JUDICIAL DISTRICT

AFFIDAVIT OF BOARD ACTION

I, Dawn Dulebohn, Licensing Examiner for the Board of Massage Therapy, being duly sworn, state the following:


The attached motion dealing with educational requirements, criminal justice information, and the Code of Ethics and Standards of Practice, was passed by the Board of Massage Therapy during its February 28, 2019 meeting.

Date: 3/4/19


Dawn Dulebohn, Licensing Examiner

Subscribed and sworn to before me at STATE OF ALASKA DEED SUDENO AK on 03/04/2019.
(date)





Notary Public in and for the
State of Alaska
My commission expires: WITH OFFICE

the board that the statute that allows for disciplinary action for falsification of application (AS 11.56.210) is different than the statute used for fraud in obtaining a license (AS 08.61.060). Historically, AS 11.56.210 hasn't been used for disciplinary action but it is possible to utilize it. After completing research from the board's September 2018 meeting minutes, Mr. Jacobs relays to the board that civil fines cannot be used for patient/client care, diagnosis, treatment, unfit to practice, unlicensed practice, crimes of moral turpitude and cannot exceed \$5,000.

The board addressed Code of Ethics, Standards of Practice, Falsification of Application, Engaged in Deceit, Fraud, or Intentional Misrepresentation in the Course of Providing Massage Services, False or Misleading Massage Advertisement, and Convicted of a Felony or Crime that Affects Ability to Practice Competently and Safely and then opted to review the rest later in the meeting.

Agenda Item 15 **Adoption of Proposed Regulations (ended 2/18/2019)**

Regulation Specialist Zinn joined the meeting at 2:55 p.m.

The board reviewed the proposed regulations changes that were sent out for public comment on January 18, 2019. Regulation Specialist Sher Zinn submitted the comments that were received by the public for board review. Some comments that were received were that internet is not readily available in all parts of Alaska to which board members replied that all distance education can be received either online or by mail correspondence and that internet is also available in public libraries located in cities and villages. Chair Edwards-Smith responded to a comment that regulations being proposed are not fair to Native Americans by stating that there is an exception to chapter for traditional Native American healers. After the board read and considered these comments, no changes were recommended for the existing regulations document.

In a motion duly made by Jill Motz, seconded by Traci Gilmour, and passed unanimously with a roll call vote, it was RESOLVED to ADOPT the regulations that closed public comment on February 19, 2019 (DOL File #2019-200071).

TASK: OLE Dulebohn will submit Board Certifying Order and Examiner Affidavit to Ms. Zinn on Monday when she returns to Juneau.

Ms. Motz took this time to ask Regulations Specialist Zinn about the status of the previously adopted regulations projects from December 2018 and when they would be going to the Lt. Governor for signature. Ms. Zinn replied that, to the best of her knowledge, it was almost done with its Department of Law review and should be sent to the Lt. Governor very soon. Ms. Zinn stated that she had no intention of sending the one adopted in today's meeting to the Lt. Governor's office until the one from December has been filed but she would be sending it out for the LAW review.

Ms. Zinn left the meeting at 3:10 p.m.

Agenda Item 5(continued) **Old Business**