### State Board of Massage Therapy August 7, 2018

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#### BOARD MEMBERS:

7 Becky D. Lesik, LMT, Chairperson 8 Katelin Lambert, Deputy Commissioner, on behalf of Ian 9

J. Harlow, Commissioner of Professional and Occupational Affairs

Gloria E. Rosado, LMT, Vice Chairperson/Secretary, Professional Member

Camille Baughman, BS, MA, LMT, Professional Member Jamie H. Corey, LMT, Professional Member

Mary Meyers, LMT, Professional Member - Absent

Nancy M. Porambo, MS, LMT, CNMT, NCTMB, Professional Member

Linda A. Chamberlain, MS, BSN, RN, CNDLTC, Secretary of Health Designee

Jessica A. Nelson, Office of Attorney General Designee Shea M. Rhodes, Esquire, Public Member - Absent

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#### BUREAU PERSONNEL:

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Thomas Davis, Esquire, Board Counsel Peter D. Kovach, Esquire, Board Counsel Adam L. Morris, Esquire, Board Prosecutor

Monty J. Batson, Esquire, Board Prosecutor

David Smith, Esquire, Board Prosecutor

Cynthia K. Montgomery, Esquire, Deputy Chief Counsel/Regulatory Counsel, Department of State Carol J. Niner, Board Administrator

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Julie Snader, Deputy Director, Bureau of Finance and Operations

Kimberly A. Mattis, Director, Bureau of Finance and Operations

Kimberly Adams, Chief of Fiscal Management, Board of Finance and Operations

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# State Board of Massage Therapy August 7, 2018

# ATıS

## ALSO PRESENT:

Carolyn Hubert-Black, LMT, CE Provider in Philadelphia Edward Portley Jr., LMT, CE Provider in Philadelphia Nina M. Kottcamp, LMT, NCBTMB, Harrisburg Area Community College

Richard Caufman

Han Ryoo, Ph.D., MSOM, LMT, HR School of Alternative Therapy/Ace Training School

Carrie Shaley, LMT, Honor Your Body Wellness Stephanie Shull, WellSpan

Katie Cassidy, LMT, Hand & Stone, Balance by Katie Natalie Cook, The Winter Group

Shirley Scranta, LMT, American Organization for Bodywork Therapies of Asia, International School of Shiatsu

Laura B. Embleton, Government Relations Director, Associated Bodywork & Massage Professionals

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2 State Board of Massage Therapy

3 August 7, 2018

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The regularly scheduled meeting of the State

Board of Massage Therapy was held on Tuesday, August

7, 2018. Becky Lesik, LMT, Chairperson, called the

meeting to order at 9:32 a.m.

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[Chairperson Lesik requested that all cell phones be turned off and audience members register. She welcomed Thomas Davis, Esquire, as the new Board

Counsel.1

15 Appointment - Legal Office Presentation

16 [Adam L. Morris, Esquire, Board Prosecutor, provided a

\* \* \*

17 presentation outlining the role of the Prosecutorial

18 Division in the licensing, regulation, and

19 disciplinary enforcement process.

Mr. Morris welcomed David Smith, Esquire, as a new Board Prosecutor. Mr. Morris described the State Board of Massage Therapy as a complaint-driven Board, where all complaints must be investigated. He noted the Bureau of Enforcement and Investigation (BEI) acquires facts to determine whether or not a case

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should be prosecuted. He stated the Board receives a lot of sexual misconduct, unlicensed practice, and lapsed licensed practice complaints.

Mr. Morris discussed immediate temporary
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suspension cases that do not come before the full Board, noting Ms. Corey as the Board's Probable Cause Screening Committee that cannot discuss details because of a possible conflict with the case if the matter comes to the full Board for a resolution. He also reviewed the regulatory work for the Board.

Mr. Morris noted approximately 119 files per year from 2015 to 2017.

Chairperson Lesik welcomed Mr. Smith.]

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15 Report of Prosecutorial Division

16 [Monty J. Batson, Esquire, Board Prosecutor, presented

17 the Consent Agreement for File No. 18-72-006317.]

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19 | Appointment - Bureau of Finance and Operations Budget

20 Presentation

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21 [Julie Snader, Deputy Director, Bureau of Finance and

22 Operations; Kimberly A. Mattis, Director, Bureau of

23 Finance and Operations; and Kimberly Adams, Chief of

Fiscal Management, Bureau of Finance and Operations

25 introduced themselves.

The Board was referred to the license population from FY13-FY14 to FY18-19, noting license population at 9,104 with a recent increase of 9 additional licensees.

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Ms. Mattis referred to the revenue by source for FY16-17 and FY17-18. She noted that the bulk of the revenue came through renewals and applications, which is 86 percent of the Board's revenue.

Ms. Mattis reviewed Board expenses, stating the fiscal years run from July 1 through June 30. She noted that FY17-18 just closed on June 30, but expenses may still be incurred through the end of October and anticipates additional expenses between now and October.

Ms. Mattis broke down expenses into administrative costs and legal costs. She noted Board expenses as direct charges, timesheet-based charges, and licensee-based charges. She discussed administrative costs for FY16-17 and FY17-18. She noted that the Board's budget should accommodate for expenses anticipated during the renewal cycle in January.

Ms. Mattis reviewed legal costs including professional compliance office, enforcement and investigation, and legal. She noted expenses for

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FY16-17, FY17-18, and FY18-19.
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Ms. Mattis discussed the financial status of the Board, where the revenue and expenses are put together. She estimated expenses for the FY17-18 budget, noting the new FY18-19 in the red. She stated the Board has been using excess funds in the augmentation account from other entities to make the Board solvent, and noted the impact from the fee increase in 2014.

Ms. Mattis noted FY18-19 revenue. She projected that 2021 as the first year for the Board to be in the black since the Board was established due to the fee increase.

Ms. Mattis reviewed Board member expense categories. She noted expenses for the last biennial renewal period for FY16-17 and FY17-18. She noted the budgets for FY18-19 and FY19-20.]

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19 Introduction of Audience

20 [Chairperson Lesik requested the introduction of

21 audience members.]

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23 [Han Ryoo, Ph.D., MSOM, LMT, HR School of Alternative

24 Therapy/Ace Training School, provided a brief summary

25 of his educational and professional background. He

explained that he provides a valuable massage therapy education to help students develop a successful career. Mr. Ryoo voiced his opinion that the State Board relied on communications from the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB) to reach a conclusion about the school. He believed NCBTMB sent a letter to the State Board in 2016 making a number of erroneous and exaggerated claims. Mr. Ryoo stated the school opened in 2010, was approved by NCBTMB, granted a school code without issues, and granted renewal over the next five years without any issues.

Mr. Ryoo claimed that NCBTMB put the school through an unending, unprofessional, and unfair process following its application for renewal in April 2015 and was denied a school code. The final letter denied the school code, citing problems previously addressed. He did not realize NCBTMB would send erroneous claims to the State Board affecting graduates.

Mr. Ryoo reviewed his process for revising the curriculum and increasing class hours. He requested that the State Board grant a license for the current students.]

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   [The Board recessed from 10:20 a.m. until 10:30 a.m.]
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   CHAIRPERSON LESIK:
                  We have a motion on the floor for Gloria
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                  to be Secretary of the State Board of
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                  Massage Therapy.
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   MS. BAUGHMAN:
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                  Second.
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   CHAIRPERSON LESIK:
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                  Camille seconds. All those in favor?
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                  All those opposed? Any abstentions?
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   [The motion carried unanimously.]
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   Report of Board Counsel
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   [Thomas Davis, Esquire, Board Counsel, discussed the
   proposed Fees regulation (16A-724). He received over
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   400 comments over the last 30 days regarding the
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   proposed regulation amending Section 20.3 related to
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   fees. He stated the regulation would increase the
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   application fee for initial licensure from $65 to
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   $100, increase the CE for approval of a continuing
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   education program from $65 to $100, and increase the
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   biennial fee from $75 to $200.
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        Mr. Davis stated the comments suggested a smaller
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   or incremental fee increase. He noted comparison fees
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between massage therapists and nurses, noting
approximately 9,100 licensed massage therapists and
221,000 licensed nurses in the Commonwealth.

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- Mr. Davis stated the current proposal covered approximately four years. The Board requested new budget numbers.
- Chairperson Lesik stated the regulation permitted massage therapists to work in a cosmetology setting, noting the expectation for the Massage Therapy Board to incur the cost of inspections, which was not included in the budget.
- Mr. Davis stated that the Independent Regulatory
  Review Commission (IRRC) has a right to weigh in on
  the proposal. He is hopeful for a reply from IRRC, a
  final Board vote in September, and the strong
  possibility for promulgation of the regulation for the
  next renewal.
- Mr. Kovach added that the Professional Licensing Committee, as well as both the House and Senate, may submit comments on regulations.
- Mr. Davis discussed the continuing deficit of the Board until the regulation is promulgated. He stated the current projections lead to a surplus within the next decade.
- 25 Ms. Kottkamp noted concerns regarding massage

therapists paying inspection fees, suggesting an option that businesses pick up the costs of an inspection fee, not licensed massage therapists. She also noted a decline in enrollment in massage therapy nationwide.

The Board discussed the continuing education fees and the continued downward trend in massage therapy.

Mr. Kovach discussed the Board's inability to impose a fee on facilities, the fees for service, and the Board's costs to process applications.

Mr. Davis pointed out that the Board is created by the legislature for two specific purposes. One is to regulate the profession and the other is to protect the public. Mr. Davis discussed the Board's responsibility to pay for the legislatively mandated programs and hearings.

Chairperson Lesik noted the Pennsylvania Bulletin for legal issues, the opportunity to discuss issues in a Board room or emailing the Massage Therapy Board.

Mr. Davis discussed professional associations advocating for the Board.

Ms. Shull challenged the Board and the prosecution to be more vigilant in collecting fees and exploring alternative avenues for achieving solvency. She suggested combining Boards and reducing resources

to reduce state costs.

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Ms. Hubert-Black commented that the Board should consider application fees to make the Massage Therapy Board solvent.

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6 Report of Commissioner

7 | [Katelin Lambert, Deputy Commissioner, on behalf of

Ian J. Harlow, Commissioner of Professional and

9 Occupational Affairs, discussed the Pennsylvania

10 Licensing System (PALS), noting the stabilization and

11 the development of the system. Ms. Lambert reviewed

12 the new functionality updates with PALS Tips and PALS

13 support desk.

Ms. Lambert offered to return to the Board to demonstrate the changes to the system and the renewal process. She noted an activity section with checklist items that can be reviewed after the submission of an application. She reviewed the ability to make changes to an application.

Chairperson Lesik noted the need for CE provider documentation to verify education. Ms. Lambert stated the CE applications are still in the process of being configured in PALS and instructions could be updated.

Ms. Lambert agreed to review the language on the applications and follow up with the Board at its next

13 1 meeting.] 2 \* \* \* [Katelin Lambert, Deputy Commissioner of Professional 3 4 and Occupational Affairs, exited the meeting at 5 11:30 a.m.l \* \* \* 6 7 [Thomas Davis, Esquire, Board Counsel, clarified a previous statement regarding projections. He stated the older projection was based on 100 percent renewal, 10 and the new projection was based on an 85 percent 11 renewal. \* \* \* 12 13 [Peter D. Kovach, Esquire, Board Counsel, provided an overview of the Executive Session process and offered 14 15 a copy of the presentation. 16 17 Miscellaneous - City of Philadelphia Ordinance 18 [Thomas Davis, Esquire, Board Counsel, discussed a proposed expanding ordinance that affects massage 19 20 therapists in Philadelphia related to human 21 trafficking. Mr. Davis noted the Massage Therapy Act 22 and recommended that the Board keep apprised of 23 expanding ordinances in the metropolitan areas. Не 24 stated that an ordinance cannot preempt state law and 25 can only expand upon it.

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Ms. Embleton stated that Associated Bodywork &
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   Massage Professionals was engaging in the Philadelphia
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   ordinance. She noted that Hand & Stone and the
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   American Massage Therapy Association (AMTA) were also
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   engaging. Ms. Embleton works on these ordinances at
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   the local level and will make a national statement
   regarding Philadelphia.
        It was discussed that the Philadelphia Zoning
   Board uses masseuse and masseur as a wrong connotation
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   for licensed professionals.]
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   Cannabidiol (CBD) Article
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   [Thomas Davis, Esquire, Board Counsel, stated Counsel
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   cannot give legal advice to anyone outside of the
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   Board regarding cannabinoids. Mr. Davis noted the
   fight between the federal government and state
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   government in this matter and suggested hiring a
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   private attorney for legal advice.
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        Mr. Davis stated only definitive announcements
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   will be posted to the website.]
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   Correspondence - Federation of State Massage Therapy
2.3
      Boards (FSMTB) Massage Therapy Licensing Database
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       (MTLD) Memorandum of Understanding
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   [Thomas Davis, Esquire, Board Counsel, discussed the
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- 1 | national database for massage therapy practitioners.
- 2 Mr. Davis believed this third-party database would
- 3 send very little other than what is already publically
- 4 available.
- 5 Chairperson Lesik explained an initial request
- 6 from the member Boards of the Federation of State
- 7 | Massage Therapy Boards. Mr. Ed Bolden is the
- 8 | President of the Federation of State Massage Therapy
- 9 Boards. Chairperson Lesik noted a Memorandum of
- 10 Understanding. She discussed the need for IT and
- 11 legal to design encryption software data
- 12 specifications at no cost to the Board and the
- 13 benefits of a single point of access for relevant
- 14 | information to supporting massage therapy licensing
- 15 | Boards, licensure eligibility determination, and
- 16 public protection mission. She stated FSMTB cannot
- 17 | populate this database with prelicense information and
- 18 that information and continuing education data comes
- 19 back via the member Boards.
- 20 Chairperson Lesik stated licensees and applicants
- 21 | will benefit from the single point of access approach
- 22 to this disclosure of information, as well as from the
- 23 storage of their documentation.
- 24 Mr. Davis discussed his review of the Memorandum
- 25 of Understanding. He contacted Sonja Way regarding

the Massage Therapy Licensing Database (MTLD) Policy & 1 2 Procedures Manual. Laura Simmons at FSMTB responded, 3 stating that the MTLB Policy & Procedures Manual was replaced by the Terms of Use for ease of use.

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Mr. Davis noted his concerns with the Memorandum of Understanding (MOU) as far as ownership of the data. He was advised by the Department of State's contract liaison to obtain additional information should the Board vote to participate. The Attorney General or the Office of General Counsel still may advise the Board to not enter into the contract.

Ms. Rosado questioned whether the Massage Therapy Licensing Database (MaTiLDa) would just be the state of Pennsylvania. Chairperson Lesik explained that any infractions conducted in a regulatory setting would be in MaTilDa.

Ms. Niner clarified the National Practitioner Data Bank Self-Query required for all new applicants. Mr. Kovach defined the National Practitioner Data Bank as a statutory construction under the Social Security Act for all health-related Boards that require a query to the data bank when applying for licensure. stated that the data bank will provide notice of any disciplinary action. He noted the reporting requirements.

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Ms. Corey suggested contacting DEG, which is the
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   technical software writing business that FSMTB has
3
   contracted to build MaTiLDa. Chairperson Lesik
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   requested legal to make the suggested contact.
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        The Board agreed to turn this issue over to legal
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   and IT to obtain additional information.
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   Approval of Minutes of the June 12, 2018 meeting
   [The Board discussed a motion issue.]
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   CHAIRPERSON LESIK:
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                  Are there any other additions or
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                  corrections to the minutes? I need a
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                  motion from the Board to approve the
                  minutes for June.
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   MS. COREY:
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                  So moved.
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   MS. CHAMBERLAIN:
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                  Second.
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   CHAIRPERSON LESIK:
2.0
                  Linda seconds. All those in favor?
                                                        All
2.1
                                  Any abstentions?
                  those opposed?
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   [The motion carried unanimously.]
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   [Chairperson Lesik requested Board approval for
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   Mr. Davis to attend the FSMTB Annual Meeting in
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18 October. ] 1 2 CHAIRPERSON LESIK: 3 Now, if we are done with the discussion, we need a motion from the floor. 4 5 MS. CHAMBERLAIN: 6 I'll make the motion for Board Counsel 7 to attend. MS. COREY: 9 I'll second. 10 CHAIRPERSON LESIK: 11 All those in favor? All those opposed? 12 Any abstentions? 13 [The motion carried unanimously.] \* \* \* 14 15 [Thomas Davis, Esquire, Board Counsel, addressed Section 3(f) of the law under forfeiture of 16 17 membership, referring to a Board member who has missed 18 3 meetings within an 18-month period. 19 Ms. Niner requested another Board member take 20 over the responsibilities of the Education Review 21 Committee.1 2.2 CHAIRPERSON LESIK: 2.3 I need a motion from the floor that 2.4 Nancy Porambo be on the Education Review 25 Committee.

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   MS. BAUGHMAN:
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                  I so move.
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   CHAIRPERSON LESIK:
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                  I need a second.
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   MS. ROSADO:
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                  I second.
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   CHAIRPERSON LESIK:
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                  All those in favor? All those opposed?
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                  Any abstentions?
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   [The motion carried unanimously.]
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   [The Board recessed for lunch from 12:26 p.m. until
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   1:00 p.m.]
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   [Pursuant to Section 708(a)(5) of the Sunshine Act, at
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   1:00 p.m. the Board entered into Executive Session
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   with Thomas Davis, Esquire, Board Counsel, and Peter
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   D. Kovach, Esquire, Board Counsel, for the purpose of
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   conducting quasi-judicial deliberations on a number of
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   matters currently pending before the Board and to
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   receive the advice of Counsel. The Board returned to
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   open session at 2:12 p.m.]
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   [Chairperson Lesik noted a Regulatory Committee
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   Meeting scheduled for Monday, September 17, 2018, at
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   12:30 p.m., the day before the September 18, 2018
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   Board meeting.
        Chairperson Lesik noted the Board meeting on
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   December 4, 2018.
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        Ms. Corey updated the Board on the status of
   FSMTB policy resolutions, noting the September Board
   meeting to review and make a decision on the proposed
   resolutions.1
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   MOTIONS
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   MR. DAVIS:
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                  Number 10 on the agenda is a consent
                  agreement. Based on the Board's
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                  discussion in Executive Session, I
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                  believe the Chair would accept the
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                  motion to approve the Consent Agreement
                  in File No. 18-72-006317.
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   MS. COREY:
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                  So moved.
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   MS. PORAMBO:
2.2
                  Second.
2.3
   CHAIRPERSON LESIK:
2.4
                  Jamie first. Nancy seconds.
                  discussion? All those in favor? All
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21 1 those opposed? Any abstentions? 2 [The motion carried. The Respondent's name is Greta 3 Lynn Denny, LMT.] \* \* \* 4 5 MR. DAVIS: 6 Next, we have adjudications and orders. 7 Number 3 on today's agenda, which is File No. 17-72-03578, Shanice Lataye 9 Adams, LMT. 10 Based on the Board's discussions in 11 Executive Session, I believe the Chair 12 would accept the motion to adopt as 13 final the proposed Adjudication and 14 Order of the Hearing Examiner in the 15 Adams' matter as I just read. 16 MS. PROAMBO: 17 So moved. MS. BAUGHMAN: 18 19 Second. 20 CHAIRPERSON LESIK: 21 All those in favor? All those opposed? 22 Any abstentions? 23 [The motion carried unanimously.] \* \* \* 24 25 MR. DAVIS:

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Based on the Board's discussions in
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                  Executive Session, I believe the Chair
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                  would accept the motion to adopt as
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                  final the proposed Adjudication and
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                  Order of the Hearing Examiner in the
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                  following matter, which is Xiuqin Li,
                  File No. 18-72-01657, which is No. 4 on
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                  the agenda.
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   CHAIRPERSON LESIK:
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                  Motion from the floor?
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   MS. ROSADO:
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                  So moved.
   MS. CHAMBERLAIN:
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                  Second.
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   CHAIRPERSON LESIK:
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                  Gloria moves. Linda seconds. All those
                  in favor? All those opposed? Any
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18
                  abstentions?
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   [The motion carried unanimously.]
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   MR. DAVIS:
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                  Number 5 on today's agenda is the
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                  application of Albert William Bowker
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                  Jr., licensure for massage therapist.
                       Based on the Board's discussions in
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23 Executive Session, I recommend a motion 1 2 provisionally denying the application. 3 MS. COREY: So moved. 4 5 MS. PORAMBO: 6 Second. 7 CHAIRPERSON LESIK: Nancy seconds. Jamie first. All those 9 in favor? All those opposed? Any abstentions? 10 11 [The motion carried unanimously.] \* \* \* 12 13 MR. DAVIS: Numbers 6 and 7 on today's agenda, 14 15 applications for licensure as a massage 16 therapist of Heehwa Choi Polowski and 17 Shannon Lee Hardner. Based on the Board's discussions in 18 19 Executive Session, I recommend a motion 20 provisionally denying the applications. 21 MS. BAUGHMAN: 22 So moved. 2.3 MS. NELSON: 24 Second. 25 CHAIRPERSON LESIK:

24 Camille first. Jessica seconds. 1 All 2 those in favor? All those opposed? 3 abstentions? 4 [The motion carried unanimously.] \* \* \* 5 6 MR. DAVIS: Next is No. 8 on the agenda, Citation 8 Appeal of Tiffany A. Rendall, File No. 9 17-72-13295. Based on the Board's discussions in 10 11 Executive Session, I believe the Chair 12 would accept the motion to adopt as 1.3 final the proposed Adjudication and Order in relation to the citation in 14 15 that matter. To be clear, we are 16 adopting the citation and denying the 17 appeal. MS. ROSADO: 18 19 So moved. 2.0 MS. PORAMBO: 21 Second. 22 CHAIRPERSON LESIK: 2.3 Linda first. Nancy seconds. All those 2.4 in favor? All those opposed? 25 abstentions?

25 1 [The motion carried unanimously.] 2 3 MR. DAVIS: Number 9 on the agenda is the matter of 4 5 application to licensure of Jessica Danielle Silvas, File No. 18-72-004869. 6 Based on the Board's discussions in Executive Session, I recommend a motion 9 approving the application with a 10 typographical correction on page 1 of 11 the order, moving the July date to the 12 August date. MS. CHAMBERLAIN: 13 14 So moved. 15 MS. COREY: 16 Second. 17 CHAIRPERSON LESIK: 18 Linda, so moved. Jamie seconds. All 19 those in favor? All those opposed? Any 20 abstentions? 21 [The motion carried unanimously.] \* \* \* 22 2.3 MR. DAVIS: Numbers 11, 13, and 14 on the agenda, 2.4 25 Application for licensure of Christopher

26 Cole, Lori Cornell, and Pedro Castro. 1 2 Based on the Board's discussions in 3 Executive Session, I recommend a motion 4 approving these applications. 5 MS. PORAMBO: 6 So moved. 7 MS. COREY: Second. 9 CHAIRPERSON LESIK: 10 Nancy first Jamie seconds. All those 11 in favor? All those opposed? Any 12 abstentions? 13 [The motion carried unanimously.] \* \* \* 14 15 MR. DAVIS: 16 Numbers 12 and 15 on the agenda, Juanita Gonzalez and Lillian Kim. 17 Based on the Board's discussions in 18 19 Executive Session, I would recommend the 20 motion provisionally denying these 21 applications. 22 MS. CHAMBERLAIN: 23 So moved. 2.4 MS. BAUGHMAN: 25 Second.

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   CHAIRPERSON LESIK:
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                  Linda first. Camille seconds.
                                                    All
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                  those in favor? All those opposed?
 4
                  abstentions?
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   [The motion carried unanimously.]
                               * * *
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7
   Adjournment
   CHAIRPERSON LESIK:
                  We need a motion to adjourn.
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   MS. CHAMBERLAIN:
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                  So moved.
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   CHAIRPERSON LESIK:
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                  Linda moved.
   MS. BAUGHMAN:
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15
                  Second.
16
   CHAIRPERSON LESIK:
17
                  Camille seconds. All those in favor?
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                  All those opposed? Any abstentions?
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   [The motion carried unanimously.]
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   [There being no further business, the State Board of
22
   Massage Therapy Meeting adjourned at 2:23 p.m.]
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I hereby certify that the foregoing summary minutes of the State Board of Massage Therapy Meeting, was reduced to writing by me or under my supervision, and that the minutes accurately summarize the

CERTIFICATE

Meeting.

substance of the State Board of Massage Therapy

Haley J. Neumeister,

Minute Clerk

Sargent's Court Reporting Service, Inc.