

**North Carolina Board of Massage & Bodywork Therapy**  
**Open Session Minutes**  
**February 21, 2008**

**TIME AND PLACE**

The North Carolina Board of Massage and Bodywork Therapy met in Open Session in the Offices of the Board on February 21, 2008 at 10:00 a.m.

**MEMBERS PRESENT**

Ms. Susan Beam, Dr. Raphael Orenstein, Ms. Jean Middleswarth, Ms. Nancy Toner Weinberger, Ms. Laura Allen, Ms. Jaime Huffman and Mr. Victor Farah.

**MEMBERS ABSENT**

None

**OTHERS PRESENT**

Mr. Charles Wilkins and Mr. Ben Thompson, Legal Counsel to the Board, and Ms. Bonnie Kennedy, Administrative Director

**CHAIR**

Ms. Beam

**RECORDING SECRETARY**

Ms. Kennedy

**CONFLICT OF INTEREST**

Ms. Beam asked if any Board member had any conflict of interest with any item on the meeting's agenda. There being no conflict, the agenda was approved.

**APPROVAL OF MINUTES**

The Board approved the minutes of December 13, 2007.

**TREASURER'S REPORT**

The treasurer's report was approved as presented.

## **ADMINISTRATIVE REPORTS**

Mr. Wilkins reported:

### **Proposed Amendments to Rules**

Proposed amendments to the Board's Rules to expand the examinations accepted by the Board and to establish rules for massage in body cavities have been informally approved by the Rules Review Commission, filed with the Office of Administrative Hearings, and published in the North Carolina Register. The Public Hearing is scheduled for April 17, 2008 at 11 AM and the period for public comment ends June 3, 2008.

### **Status of Amendments to Practice Act**

The Board continues to work with the AMTA-NC Chapter on the Board's concerns in the current version of the Practice Act as set forth in the Policy Committee report.

### **Disciplinary Hearings**

Mr. Wilkins reported that no disciplinary hearings are scheduled for today.

Ms. Kennedy reported:

### **Licensee Report**

7820 licenses have been issued  
6394 licensees are still in good standing

### **Renewal Report**

1935 licensees scheduled to renew for December 31, 2007  
1544 have renewed as of February 20, 2008

Ms. Allen will review the letter sent to therapists whose license has expired and must renew or reapply.

## **COMMITTEE REPORTS**

### **Policy Committee**

Ms. Beam reported on the Committee's meeting of February 18, 2008 as follows:

## **Approval of Minutes of December 3, 2007 Meeting**

The December 3, 2007 minutes were approved by consensus.

### **Colonic Hydrotherapy**

The Committee reviewed the Florida Practice Act and Rules relating to Florida's regulation of colonic hydrotherapy, an email from Richard Carlton, attorney for the N.C. Colon Hydrotherapy Safety Association, an email from Darlene Holloway supporting licensing colonic hydrotherapy, and an email from Wendy Corcoran opposing licensing colonic hydrotherapy. The Committee agreed the Massage and Bodywork Therapy Practice Act and Rules do not include the practice of colonic hydrotherapy in the scope of practice of a massage and bodywork therapist. Accordingly, the Committee recommends that the licensing of colonic hydrotherapists not be regulated by the Board.

The Board concurred with the recommendation of the Committee.

### **Theraflex System**

The Committee reviewed information and documentation from M. Susan Todd, Director, BACA North America regarding her question of whether persons operating a "theraflex system" or "mathis plinth" in connection with operating a "theraflex system" would have to obtain a North Carolina massage and bodywork therapy license.

The "theraflex system" uses a hand-held device that provides alternating pressures by use of four pistons on both sides of the spinal column to provide treatment to the human back and spinal column. The Committee was of the opinion that the "theraflex system" does fall within the definition of massage and bodywork therapy as contained in GS 90-622(3) as it is a mechanical device that mimics or enhances actions that may possibly be done by the hands and that a North Carolina massage and bodywork therapy license is required for a person to offer such a service to the public for a fee and operate such a machine, unless the person is licensed by another North Carolina health care profession that allows the person to operate the "theraflex system".

The Board concurred with the recommendation of the Committee.

### **Process for Approving Examinations**

The Committee agreed to continue its work on guidelines for approving examinations accepted by the Board but to not make a final recommendation until the Rules are amended.

## **Reimbursement for Overnight Stays**

The question has arisen whether a Board member should be reimbursed for their lodging and sustenance expenses for the night before a Board meeting and for the night of the Board meeting. Following a general discussion, the Committee asked that Mr. Wilkins draft a guideline addressing this issue for the Committee to consider.

### **“Exemption” in 90-631(a) & (b)**

The Committee considered the Board’s role in the approval of a school or program that is “exempt” pursuant to NCGS 90-631(b) or (c). Mr. Wilkins reported he had not heard back from the Attorney General’s Office on his request for an informal opinion.

Mr. Wilkins stated he has further reviewed the issue as follows:

According to Webster's, exempt means to free from an obligation, liability, or duty to which others are subject.

It was Mr. Wilkins’ opinion that the use of the word "exempt" in 90-631(b) and (c) means the Board cannot require community colleges or certain proprietary schools to be subject to the approval process and be Board approved; likewise, the community colleges and certain proprietary schools cannot require the Board to allow them to submit applications for approval, review them, and become Board approved. He advised, if the Board is willing to approve community colleges or certain proprietary schools and the community colleges or certain proprietary schools want Board approval, the Board can do so. Being subject to the approval process would be voluntary on all parties. Community colleges or certain proprietary schools are free from the obligation of Board approval but they can chose Board approval if they wish. Likewise, the Board is free from the obligation of approving community colleges or certain proprietary schools but the Board can chose to approve them if it wishes.

The Committee agreed to recommend to the Board that it continue its current policy of approving proprietary schools that could be exempt but voluntarily seek Board approval.

The Board concurred with the recommendation of the Committee.

## **Practice Act Changes**

The Committee did meet by conference call on February 4, 2008 with representatives from AMTA-NC Chapter regarding the changes the Board would like to see to the Practice Act proposed for the 2008

session of the NC General Assembly. Present from AMTA-NC Chapter were Randolph Cloud, Ed Sansbury, Ann Christian, Rachel Mann, and Laura Landsiedel. It was a good, productive meeting. The four issues discussed were:

- (a) Rescinding Board authority to recoup disciplinary costs;
- (b) Limiting civil penalties to one fine per continuing violation;
- (c) Prohibiting the Board from assessing travel expenses incurred in conducting school inspections;
- (c) Moving "Prohibited Acts" out of the Definitions section and into the "License Required" section.

With regard to (a) the Board agreed it was not seeking to recoup major Board expenses such as attorney fees, but was only seeking to recover actual costs expended by the Board for the hearing, such as court reporter fees, transcription fees, deposition fees, etc. It was agreed that Mr. Wilkins and Ms. Christian would meet and clearly define what is meant by "disciplinary costs".

With regard to (b) the Board clarified that it was only seeking to assess a civil penalty against a person for the same act at the same time and not trying to assess multiple civil penalties for the same act, by the same person, at the same time. However, if the person kept repeating the same act at different times, the Board wanted to be able to assess more than one civil penalty. It was agreed that Mr. Wilkins and Ms. Christian would meet and clearly define what is meant by the term "continuing violation".

With regard to (c) the group agreed to confer with Senator Cowell to see if costs of a site visit are a problem with her or any other legislator.

With regard to (d) the group agreed that Mr. Wilkins and Ms. Christian would confer with persons at bill drafting to see if they could understand why they wanted "Prohibited Acts" moved out of the Definitions section and into the "License Required" section.

After Mr. Wilkins and Ms. Christian meet they will inform the Committee and the AMTA-NC Chapter of their findings and recommendations.

## **License Standards Committee**

Ms. Middleswarth, Chair, reported that the Committee met briefly today and will meet in the near future to complete matters on the

Committee's agenda.

## **School Approval Committee**

Ms. Weinberger, Chair, reported on the following of several matters considered by the SAC as contained in the minutes of the Committee of February 19, 2008:

### **Amendments to School Rules**

Sec.0600 amended school rules are posted on the Board's webpage.

### **Pass/Fail Rate of Schools**

The Committee discussed whether to obtain the Pass/Fail rates of North Carolina massage and bodywork therapy programs in community colleges for the past three years and decided not to do so at this time.

### **Schools Affected by 90-631(b) and (c)**

The Committee considered the Board's role in the approval of a school or program that is "exempt" pursuant to NCGS 90-631(b) or (c). Mr. Wilkins reported he had not heard back from the Attorney General's Office on his request for an informal opinion. Mr. Wilkins stated he has further reviewed the issue as follows:

According to Webster's, exempt means to free from an obligation, liability, or duty to which others are subject.

It was Mr. Wilkins' opinion that the use of the word "exempt" in 90-631(b) and (c) means the Board cannot require community colleges or certain proprietary schools to be subject to the approval process and be Board approved; likewise, the community colleges and certain proprietary schools cannot require the Board to allow them to submit applications for approval, review them, and become Board approved. He advised, if the Board is willing to approve community colleges or certain proprietary schools and the community colleges or certain proprietary schools want Board approval, the Board can do so. Being subject to the approval process would be voluntary on all parties. Community colleges or certain proprietary schools are free from the obligation of Board approval but they can chose Board approval if they wish. Likewise, the Board is free from the obligation of approving community colleges or certain proprietary schools but the Board can chose to approve them if it wishes.

The Committee agreed to recommend to the Board that it continue its current policy of approving proprietary schools that could be exempt but voluntarily seek Board approval.

Since Guilford Tech was an approved school last year, Ms. Weinberger will contact the director of the school to inquire whether the school wishes to submit an application for approval for 2008-2009 and will advise the Board staff whether or not to send a renewal application to Guilford Tech.

### **North Carolina School of Natural Healing**

The Committee discussed an email from Ms. Theresa Wilkes asking whether she would be allowed to open another massage and bodywork therapy school in North Carolina since her previous school NCSNH has filed for bankruptcy. The Committee was of the opinion that Ms. Wilkes could submit an application for school approval after her bankruptcy proceeding were finalized and she has complied with the rules of the Board for closing an existing school. If Ms. Wilkes does submit an application to own or operate a new school, the Committee will review the application and determine what, if any, conditions should be imposed on the new school due to the bankruptcy of NCSNH.

### **King Complaint**

Mr. Wilkins reported that he is continuing his investigation of the complaint by Mr. King. He has received responses to the complaint that are being reviewed and a report will be made to the Committee at its next meeting.

### **School Using Student Clinic Fees to Benefit Students**

The Committee considered an email from a school asking whether or not the school could collect fees for student massages and use the money to help pay for the students' state board exams or to send the students on a spring break trip to the Bahamas. The Committee was of the opinion neither use of student clinic money would be appropriate and would violate Rule .0626 that prohibits student compensation or "other consideration". Any money collected from student massages may not go back to the students in any form.

### **Community College Withdrawal of Application for Approval**

Mr. Wilkins reported the Board has received a letter withdrawing the application of Central Carolina Community College's application for Board approval.

### **Guidelines for Two-Year School Renewals**

The Committee agreed that all schools that qualify will be renewed for

one year for 2008-2009 and that the Committee will review the renewal applications for 2008-2009 to develop guidelines for allowing a school to have a two-year renewal beginning in 2009-2010. It was also agreed that site visits should be conducted at the schools before two-year renewals are approved. Site visits will begin to be scheduled now. The Committee will meet Wednesday, June 18, 2008 to review the renewals and to develop guidelines for two-year renewals.

### **Amend Rules Re: Board-Approved Language**

The Committee reviewed the portions of the Rules that use the term "Board-approved school" and agreed that Rules .0201 and .0226 should be amended to clarify the term "Board-approved". Mr. Wilkins will draft amended rules for the Committee to consider.

### **Communications Committee**

The December 2007 Newsletter was sent to licensees.

### **Licensing Boards Coordination Committee**

Ms. Huffman stated she planned to meet with the Acupuncture Board when she comes to Raleigh on March 21, 2008.

## **OLD BUSINESS**

### **Board Seal**

Ms. Weinberger reported on her research into what a graphic artist would cost for a professional rendering of a Board logo. After discussion, the Board agreed not to develop a Board seal at this time and to continue using the North Carolina State Seal.

## **NEW BUSINESS**

### **Payment of Debra Persinger, PhD's Travel Expenses**

Upon motion made, seconded, and approved, the Board agreed to pay the travel expenses of Debra Persinger, PhD, Executive Director of FSMTB, estimated to be approximately \$400, for her trip to speak to the Board and the massage and bodywork therapy schools in North Carolina about the Federation of State Massage Therapy Boards entry level examination.

### **Trading Massages as Other Compensation**



The Board considered whether trading massages would be considered “other compensation” and therefore prohibited within the meaning of Rule .0626 if done by an unlicensed person. Upon motion made, seconded, and passed, the Board agreed that a person, not licensed in North Carolina, who trades a massage with another person would be receiving “other compensation” in violation of Rule .0626 and such act or arrangement is prohibited.

### **Federation of State Massage Therapy Boards (FSMTB)**

The Board heard from Debra Persinger, PhD, Executive Director of FSMTB, regarding the development, administration, and content of the FSMTB examination.

### **PUBLIC COMMENT**

The Board received comments from the public.

### **CLOSED SESSION**

Upon motion duly made, seconded, and passed, and pursuant to NCGS 143-318.11(a)(1) and (3), the Board went into Closed Session at 12:40 p.m.

### **ADJOURNMENT**

The Board returned to Open Session and upon motion duly made, seconded and passed, the meeting was adjourned at 4:25 p.m.

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Ms. Susan Beam, Chair

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Dr. Raphael Orenstein, Treasurer