

**North Carolina Board of Massage & Bodywork Therapy**  
**Open Session Minutes**  
**February 19, 2009**

**TIME AND PLACE**

The North Carolina Board of Massage and Bodywork Therapy met in Open Session in the Offices of the Board on February 19, 2009 at 10:00 a.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Ms. Nancy Toner Weinberger

**OTHERS PRESENT**

Mr. Charles Wilkins and Mr. Ben Thompson, Legal Counsel to the Board, Ms. Bonnie Kennedy, Administrative Director and Ms. Elizabeth Welden, Assistant 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. Ms. Allen stated she would recuse herself from any hearing or discussion regarding Mr. Yehuda Lev. Ms. Huffman stated she would recuse herself from any hearing or discussion regarding Mr. Jeffrey Bryant. There being no additional conflict, the agenda was approved.

Ms. Beam made general remarks about the importance of Board members remaining aware of actual or potential conflicts of interest and the importance of disclosure and recusal. Ms. Beam thanked the Board for its past and continued adherence to conflict of interest possibilities.

Mr. Farah discussed the importance of Board members being knowledgeable about the Administrative Procedures Act, the Open Meetings Act, conflict of interest and ethical issues, as well as the procedure for administrative hearings. It was agreed that the Board should continue to receive refresher training on these issues when possible. Ms. Beam agreed and suggested the possibility of a refresher training of Board members when the next new member is appointed.

### **APPROVAL OF MINUTES**

The Board approved its minutes of December 11, 2008.

### **TREASURER'S REPORT**

The treasurer's report was approved as presented.

### **ADMINISTRATIVE REPORTS**

Mr. Wilkins reported:

#### **Proposed Amendments to Rules**

There are no Rule changes currently under consideration by the Board.

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

There are no Practice Act changes currently under consideration by the Board however there have been some bills introduced in the 2009 session of the Legislature that may indirectly affect the practice of massage and bodywork therapy.

#### **Disciplinary Hearings**

There are two disciplinary hearings scheduled for today. Two potential hearings have been continued to the April meeting and one hearing was canceled due to a Consent Order being agreed upon.

Ms. Kennedy reported:

#### **Licensee Report**

8682 licenses have been issued  
7156 licensees are still in good standing

#### **Renewal Report**

Of the 4,126 licenses scheduled to renew for the 2009-2010 license

period, 3075 have renewed.

Ms. Kennedy provided a report to Board members of their past attendance at ethics training and the date by when their next training should be completed.

## **COMMITTEE REPORTS**

### **Policy Committee**

Ms. Middleswarth reported on the Committee's meeting of January 31, 2009 as follows:

#### **License Massage Establishments**

The Board sought to amend the Practice Act in 2008 to allow the Board to regulate establishments that provide massage and bodywork therapy services. Florida has regulated such establishments for many years and Massachusetts has just started doing so. The Committee continued its discussion on whether to seek such legislation in North Carolina. Due to the current economy the Committee recommended that the issue be tabled until January 2010, however, the Board thought it was such an important issue that it should not be delayed. Ms. Beam appointed Mr. Farah and Ms. Huffman to a committee to continue research on the issue.

#### **Jurisprudence Exam**

The Committee continued its discussion on development of the Jurisprudence Exam. Not much work had been accomplished since the December Board meeting due to the holidays and time commitments. The Board had appointed a committee of Ms. Allen and Ms. Weinberger to facilitate the development of the Exam. That Committee will continue its efforts and will advise this Committee and the Board on how it recommends the Jurisprudence Examination be developed. It was noted that various portions of the Practice Act and Rules had been assigned to Board members to develop test questions; that Ms. Middleswarth will contact Pearson Vue; and that the Committee may ask schools to send in suggested test questions. Ms. Beam encouraged the Board members to complete their assigned tasks.

#### **Amendment to Guideline 1.8 and 1.9**

The Board discussed the Committee's suggested changes to Guideline 1.8 and, upon motion made, seconded and passed, agreed to amend Guideline 1.8 as follows:

### **1.8.3 Approval of examinations required for licensure**

The Board approves the following examinations to meet the examination requirement for licensure set forth in G.S. 90-629(5) and G.S. 90-630.1(b):

(a) The National Certification Examination in Therapeutic massage and Bodywork (NCETMB), the National Certification Examination in Therapeutic Massage (NCETM), and the NESL options for the NCETMB and NCETM examinations, from any applicant who has passed an exam on or before December 31, 2010, including any applicant for licensure by endorsement who is from a state that does not regulate the practice of massage and bodywork therapy.

(b) The National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) that administers the Asian Bodywork Therapy Examination (ABTE).

(c) The Massage and Bodywork Licensing Examination (MBLEx) administered by the Federation of State Massage Therapy Boards (FSMTB).

(d) The National Certification Examination in Therapeutic Massage and Bodywork (NCETMB), the National Certification Examination in Therapeutic Massage (NCETM), and the NESL options for the NCETMB and NCETM examinations, will be accepted after December 31, 2010 from any applicant for licensure by endorsement who is from a state that does not regulate the practice of massage and bodywork therapy.

(Adopted January 6, 2000; revised July 13, 2000; August 30, 2001; October 20, 2005; February 19, 2009)

The Board discussed the Committee's suggested changes to Guideline 1.9 and, upon motion made, seconded and passed, agreed to amend Guideline 1.9 as follows:

### **1.9 Documentation of examination and certificant status.**

Pursuant to Rule .0201(6), the applicant shall submit one of the following:

1.9.1 Photocopy of the applicant's official score report from NCBTMB, NCCAOM or FSMTB; or

1.9.2 If the applicant has not received his/her score report from NCBTMB, NCCAOM or FSMTB the applicant may request an Official Score Report to be sent to the Board by the testing agency.

(Adopted January 6, 2000; revised July 13, 2000; August 30, 2001; October 20, 2005; February 19, 2009)

## **Disciplinary Actions on Website**

The Committee reported a specific situation where a person applied for a license but due to failing to meet the requirements for a license, the license was denied. The applicant later met the requirements and was licensed. On the Board's website under "Look Up A Licensee", the denial of the applicant's license showed up as "disciplinary action taken, contact the Board". This is not correct and the webmaster has been alerted to change the database so that licenses denied for non disciplinary reasons shall not appear as disciplinary action.

The Committee then discussed the type of disciplinary actions that should appear on the website. Mr. Wilkins will provide a list of all disciplinary actions the Board has taken to the Committee so the Committee can determine which disciplinary actions should be placed on the website and which should not. The issue will remain in Committee until the Committee can make a recommendation to the Board.

## **Criminal Background Checks**

The Committee discussed whether to amend its license application procedure to allow criminal background documents to be sent in to the Board prior to a person sending in their application. Currently the turn around time for the SBI to complete its background check is approximately seven days. The Committee did not think the criminal background check requirement delayed the issuance of a license sufficiently to change the Board's procedure at this time. If license issuance is delayed in the future due to the criminal background check requirement, the Committee will reconsider its decision.

Following full discussion, the Committee recommends that an applicant's criminal background check be considered valid for a period of six months from the date it is received from the SBI or other official government source, unless the time is extended by the License Standards Committee of the Board.

Upon motion made, seconded and passed the Board agreed to the following Guideline 8.1:

### **8. GUIDELINES FOR CRIMINAL HISTORY RECORD CHECKS (N.C.G.S. 90-629.1)**

8.1 Criminal history record checks shall be valid for a period of six (6) months from the date the criminal history record check is conducted, unless the period is extended by the License Standards

Committee.

### **Amma Therapy/Amma Massage Therapy**

The Committee reviewed an email and several websites that defined and described the history and current practice of Amma Massage and Amma Therapy. Although Amma Therapy may affect the human energy field, the therapy includes Swedish massage, Shiatsu, and other modalities that are specifically covered by the NC Massage and Bodywork Therapy Practice Act and the scope of practice of massage and bodywork therapy. If any modalities used in Amma Therapy or Amma Massage Therapy require a LMFT license, then a license is required. The Committee was of the unanimous opinion that Amma Massage or Amma Therapy definitely comes within the practice of massage and bodywork therapy in NC and was also of the opinion that anyone practicing Amma Massage or Amma Therapy should be licensed with the Board.

Upon motion made, seconded, and passed, the Board agreed with the recommendation of the Committee.

### **License Standards Committee**

Ms. Huffman, Chair, reported the Committee met December 10, 2008 as set forth in the minutes of that meeting and as attached to today's agenda. The Committee also met today prior to the Board meeting. Ms. Huffman reported on those two meetings as follows:

#### **Crystal Fugle and Sonvung Sikes Graduates of Richmond Community College**

Ms. Middleswarth recused herself from the discussion of this agenda item. The remaining Committee members reviewed Ms. Huffman's analysis (based on the information she could obtain) of the RCC curriculum as it existed when the applicants were enrolled in the program. There appeared to be some deficiencies in curriculum but it was not clear. The committee agreed to recommend to the Board that the applicants be licensed, provided the possible deficiency in the curriculum is resolved.

Following a full discussion, and upon motion, made, seconded, and passed, the Board agreed with the recommendation of the Committee.

#### **Rebekah Saylor**

The Committee again reviewed the application of Ms. Saylor including recent correspondence from Ms. Saylor and additional character

references. Ms. Saylor was arrested for shoplifting in 2005 and charged with misdemeanor larceny. She paid fines and performed 48 hours of community service. While she was complying with the judgment in her 2005 case she was charged with eight felony counts of embezzlement. She pled guilty to possession of stolen goods, a Class H Felony. She admitted she had a "serious problem with shoplifting". She has had no charges since 2006 but did not complete the conditions of her sentence until January 2008. She equates her shoplifting addiction to "being an alcoholic". The Committee did not believe sufficient time had passed to show proof of rehabilitation. The Committee remained of the opinion she should not be granted a LMFT license at this time due to her lack of moral character and suggested she be advised she may reapply after January 2010.

Following a full discussion, and upon motion, made, seconded, and passed, the Board agreed with the recommendation of the Committee.

### **Matthew J. McCloud**

Medicare fraud charges filed against Mr. McCloud in Florida were for continuing to practice chiropractic when his license was expired and for billing for chiropractic services during that time. His license expired March 31, 2004 yet he continued to practice through September 21, 2007 when he closed his business in Florida. Mr. McCloud has not been re-licensed in Florida or elsewhere as a Chiropractic Physician. Mr. McCloud has not applied for a license with the North Carolina Board of Chiropractic Examiners, however, he did submit his school transcript to the Chiropractic Board. Ms. Kennedy was advised Mr. McCloud would not be eligible for a chiropractic license in North Carolina because the chiropractic school he attended was not accredited at the time of his enrollment. The Committee reviewed documentation indicating Mr. McCloud has recently, in December 2008, complied with restitution in connection with the Medicare fraud charges against him in Florida. The Committee was of the opinion that the length of time Mr. McCloud continued to practice chiropractic after his chiropractic license was expired was unreasonable and a very serious matter and did not believe sufficient time had passed to show proof of rehabilitation. The Committee was of the opinion he should not be granted a LMFT license at this time due to lack of moral character.

Following a full discussion, and upon motion, made, seconded, and passed, the Board agreed with the recommendation of the Committee.

### **Richmond Community College**

Mr. Wilkins will continue his communication with Richmond Community College about its massage program's compliance with the

Practice Act and Rules of the Board.

### **School Approval Committee**

In Ms. Weinberger's absence, Ms. Allen reported the Committee is continuing to review site visit reports on the schools and programs visited by M&M Consulting.

### **Definition of "College"**

Upon motion made, seconded, and passed, the Board approved the following guideline defining "college":

#### 4.9 Definition of College.

An institution of higher learning that awards an Associate degree or higher. (Adopted February 19, 2009)

Upon motion made, seconded, and passed, the Board agreed that a Rule based on the guideline should be submitted to the Office of Administrative Hearings for the rule review process as follows:

#### .0602 Definitions

(12) College - An institution of higher learning that awards an Associate degree or higher.

### **Communications Committee**

Ms. Allen reported the Board website had been redesigned and is up and running.

### **Licensing Boards Coordination Committee**

No report.

## **OLD BUSINESS**

### **Citizen Advocacy Council**

The Board discussed membership in the Citizen Advocacy Council. Upon motion made, seconded, and passed, the Board agreed to join the CAC.

## **NEW BUSINESS**

### **LMBTs Writing Prescriptions**

The Board reviewed a letter written by Mr. Wilkins responding to a inquiry

as to whether a LMBT may recommend frequency of visits to their client. The concern was to do so might resemble writing a prescription. Mr. Wilkins reminded the LMBT of the Practice Act that precludes a LMBT from "prescription of medicines". The Board agreed a LMBT may not prescribe medicines. The Board was of the opinion that a LMBT may recommend to a client a number of visits based on the professional judgment of the therapist who treats the client. The LMBT shall not recommend a number of visits based on the direction or business plan of the owner or manager of the business. The recommendation for frequency of visits shall only be made by the LMBT who treats the patient and it shall be based on the LMBT's professional judgment. Mr. Wilkins was asked to respond further to the LMBT.

### **FSMTB Annual Meeting**

Ms. Beam announced the annual meeting of the FSMTB will be held October 9-11, 2009 in Nashville, TN. Board members are encouraged to attend. Ms. Allen indicated she would like to attend. Mr. Farah questioned whether the Board should allow the FSMTB to pay expenses for Board members who are officers of the FSMTB to attend the meeting. Mr. Wilkins was asked to obtain an ethics opinion on the issue for the next meeting of the Board.

### **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 12:20 p.m.

### **RETURN TO OPEN SESSION**

The Board returned to Open Session at 1:00 p.m.

### **Michael Chandler Hearing**

The Board conducted a hearing on allegations Mr. Chandler was negligent in performing a hot stone massage on a patient causing physical injury. The complainant was present and testified. Mr. Chandler was not present but offered documentary evidence.

### **Yehuda J. Lev Hearing**

The Board conducted a hearing on allegations Mr. Lev engaged in inappropriate sexual conduct with a client during a massage session. The complainant was present and testified and offered further evidence by witnesses and documents. . Mr. Lev was present along with his attorney,

testified and offered further evidence by witnesses and documents.

### **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 5:20 p.m.

### **RETURN TO OPEN SESSION**

The Board returned to Open Session at 6:00 p.m.

### **Michael Chandler Hearing**

The Board reported it regretted any physical pain the complainant encountered following the hot stone massage by Mr. Chandler, however, the Board was of the opinion the evidence presented was not sufficiently convincing to prove that Mr. Chandler was negligent in performing the hot stone massage on the complainant. The Board was of the opinion that the procedure followed by Mr. Chandler, and as described by complainant, was proper and correct. The complaint is dismissed.

### **Yehuda J. Lev Hearing**

The Board reported the evidence was sufficient and convincing to prove that Mr. Lev engaged in inappropriate sexual conduct with the complainant during a massage session. The Board ordered that Mr. Lev's license to practice massage and bodywork therapy be immediately revoked; that he immediately surrender his LMBT license to the Board; and that he pay a civil penalty of \$1,000 and cost of \$300 within 30 days from the entry of this Order.

### **ADJOURNMENT**

Upon motion duly made, seconded and passed, the meeting was adjourned at 6:05 p.m.

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Ms. Susan Beam, Chair

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Dr. Raphael Orenstein, Treasurer

