

North Carolina Board of Massage & Bodywork Therapy
Open Session Minutes
April 19, 2007

TIME AND PLACE

The North Carolina Board of Massage and Bodywork Therapy met in Open Session in the Offices of the Board on April 19, 2007 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, Board Administrator.

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.

APPOINTMENT OF MR. VICTOR FARAH

Ms. Beam welcomed Mr. Victor Farah, a Raleigh attorney, as the new public member of the Board. On April 5, 2007, Governor Easley appointed Mr. Farah to complete Mr. Richard Gammon's term that ends June 30, 2007.

APPROVAL OF MINUTES

The Board approved the minutes of February 15, 2007.

TREASURER'S REPORT

The treasurer's report was approved as presented.

ADMINISTRATIVE REPORTS

Mr. Wilkins reported:

Proposed Amendments to Rules

Rules Section .0600 was filed with the Office of Administrative Hearings on April 10, 2007. The Rules will be published in the May 1, 2007 issue of the North Carolina Register, Issue #21:21. A Public Hearing has been scheduled for June 21, 2007 at 11:00 a. m. and written public comment will be received until August 5, 2007. Ms Weinberger suggested a link to the OAH be placed on the Board's website.

Status of Amendments to Practice Act

Mr. Wilkins reported that amendments to the Practice Act have been introduced into the 2007 Session of the Legislature as SB 1314 and HB 1426. There followed an extensive discussion between Board members and representatives from AMTA-NC Chapter of changes the Board would like to see made to SB 1314 and HB 1426. The suggested changes are as follows:

- (1) In GS 90-629 (5) describe the required examination as one that meets "generally accepted psychometric principles and standards". Upon motion made, seconded and passed, the Board agreed to make this recommendation.
- (2) In GS 90-622 separate the definition of "Prohibited Activities" from the definition of "Practice of Massage and Bodywork Therapy" to make it a separate definition and change "does not include" to "shall not include." Upon motion made, seconded and passed, the Board agreed to make this recommendation.
- (3) In GS 90-622 remove from the definition of "massage and bodywork therapy" the words at the end of (c): "The application of systems of activity by a massage and bodywork therapist during the course of therapy shall not include any action pursued with the intent of providing sexual stimulation or pursuing sexual contact." Upon motion made, seconded and passed, the Board agreed to make this recommendation.

4) In GS 90-622 remove the list of criminal offenses from the definition of "Criminal history record check". The motion died for lack of a second.

The Board will continue to work with the AMTA-NC Chapter on the proposed amendments to the Practice Act.

HB 1358 The Consumer Health Freedom Act

The Board discussed the effect of HB 1358 on the Massage and Bodywork Therapy Practice Act. The Board was concerned about specific terms used in HB 1358 that seem to encroach on the Massage and Bodywork Therapy Practice Act, such as acupressure, cranial sacral therapy, bodywork, and others. The discussed whether a letter should be written to the sponsor of HB 1358 expressing the concerns of the Board. The issue was referred to the Policy Committee.

Disciplinary Hearings

Mr. Wilkins reported that no disciplinary hearing is scheduled for today.

Ms. Kennedy reported:

Licensee Report

7047 licenses have been issued
5621 licensees are still in good standing

Renewal Report

3257 licensees scheduled to renew for December 31, 2006
2667 licensees have renewed thus far

COMMITTEE REPORTS

Policy Committee

Staggered Terms for Board Members

The Board agreed with the Committee that the Practice Act should be amended to provide for staggered terms for Board members but extended the terms of the members appointed by the President Pro Tempore of the Senate instead of the members appointed by the Speaker of the House.

Student Compensation

The Board agreed with the Committee's opinion that a student in an externship at a spa cannot be paid for his massage work or his non-massage work, such as manning the front desk or doing laundry. Rule .0602(q) provides that "a student shall not receive a fee or other consideration for the massage and bodywork therapy they perform while completing clinical requirements for graduation..." and even though the student externship includes other duties than massage and bodywork therapy the student shall not be paid for any services performed as a part of his externship program.

Ortho-Bionomy

The Board wanted further consideration given to whether the practice of "Ortho-Bionomy" is massage and bodywork therapy as defined in the Practice Act. The issue will remain in the Policy Committee for further consideration.

Massage in Body Cavities

The Committee had an in-depth discussion regarding whether North Carolina should allow massage in body cavities below the waist and, if so, under what conditions. Ms. Beam reported on what some other states allow. Most states do not address the issue. Some states leave whether to do massage in body cavities up to the judgment of the therapist. One state, Tennessee, says massage in body cavities is outside the scope of massage and bodywork therapy and not allowed. Another state, Oregon, allows massage in body cavities if there is (1) signed consent, (2) proper intent, and (3) proper training. The Committee agreed there might be some circumstances where massage in body cavities below the waist could be beneficial to a person and did not want to disallow massage in body cavities below the waist in North Carolina as being outside the scope of massage and bodywork therapy. The Committee agreed to recommend to the Board that massage in body cavities below the waist be allowed as being within the scope of massage and bodywork therapy provided there is (1) signed consent, (2) proper intent, (3) proper education and training and that such education and training has been demonstrated and documented, (4) an order from a medical doctor, and (5) another person is present in the room during the massage.

The Board wanted further consideration given to the issue of massage in below the waist body cavities. The issue will remain in the Policy Committee for further consideration.

License Standards Committee

Ms. Middleswarth, Chair, reported the Committee met in the conference of the Board on February 15, 2007 and by conference call on March 21, 2007. All members were present. The Committee considered ten individual files as set forth in its minutes.

School Approval Committee

Ms. Weinberger, Chair, reported the Committee met March 21, 2007 by conference call to finalize the amendments to Rule .0600.

Communications Committee

No report.

Licensing Boards Coordination Committee

Ms. Huffman, Chair, reported the Committee met February 15, 2007 by conference call and discussed issues contained in the minutes of that meeting regarding the Board of Cosmetology and the Board of Chiropractic.

OLD BUSINESS

Letter of Reprimand for Late Renewal

The Committee reviewed and adopted the revised letter of reprimand for late renewals presented by Ms. Middleswarth.

Federation of State Massage Therapy Boards

Upon motion made, seconded, and passed the Board agreed to renew its membership in the Federation. Ms. Beam stated she had received the results of the Federation's Job Task Survey and would be reporting on the results at the June meeting.

Ms. Middleswarth reported the NCBTMB collaboration on establishing a national database had fallen through and that both the NCBTMB and the Federation were proceeding with individual versions of a database.

North Carolina Board of Ethics

Ms. Beam announced each Board member is required to complete the training offered by the Board of Ethics by December 31, 2007.

Board Education Retreat

Ms. Beam reported she is continuing discussion with the Acupuncture Board about the possibility of the Boards receiving training from Mr. Dale Atkinson, an attorney from Chicago, however the Chiropractic Board decided not to participate. Ms. Beam asked that Board members consider the dates of October 12, November 2, and November 9, 2007 as possible dates for training.

NEW BUSINESS

Decision Making Authority for Committee

Upon motion made, seconded, and passed the Board voted to give the Policy Committee authority to make decisions for the Board on matters before the 2007 Legislature so long as the Committee is in unanimous agreement and involves issues previously discussed by the Board. If the decision involves issues not previously discussed by the Board, Committee members would make their best efforts to poll the remaining members 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 12:55 p.m.

RETURN TO OPEN SESSION

The Board returned to Open Session at 2:30 p.m.

Board Education Retreat

Dates suggested for the retreat are October 12, November 2, and November 9, 2007. The best date for the Acupuncture Board is October 12, 2007. Board members are to let Ms. Beam know which dates they can attend.

ADJOURNMENT

Upon motion duly made, seconded and passed, the meeting was adjourned at 2:35 p.m.

Ms. Susan Beam, Chair

Dr. Raphael Orenstein, Treasurer