

North Carolina Board of Massage & Bodywork Therapy
Open Session Minutes
April 17, 2008

TIME AND PLACE

The North Carolina Board of Massage and Bodywork Therapy met in Open Session in the Offices of the Board on April 17, 2008 at 10:00 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Ms. Jaime Huffman

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 February 21, 2008.

TREASURER'S REPORT

The treasurer's report was approved as presented.

ADMINISTRATIVE REPORTS

Mr. Wilkins reported:

Proposed Amendments to Rules

The Public Hearing is scheduled for today 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 current version of the Practice Act as set forth in the Policy Committee report. Mr. Wilkins and Ms. Ann Christian have been working on proper wording for the changes suggested by the Board. Mr. Wilkins, Ms. Christian, Mr. Ed Sansbury and Mr. Randolph Cloud had a conference call with Senator Martin Nesbitt about several of the proposed changes. Also a meeting is scheduled for April 21, 2008 with the bill sponsor, Senator Janet Cowell.

Mr. Wilkins presented for consideration another amendment to Section 90-634 of the Practice Act that would make it unlawful for persons, businesses, or other entities to allow, aid, or abet a person not licensed to practice massage and bodywork therapy to hold themselves out as a massage and bodywork therapist. Upon motion made, seconded and passed the Board voted to submit the changes to Section 90-634 of the Practice Act as presented. The changes are as follows:

§ 90-634. Enforcement; injunctive relief.

(a) It is unlawful for a person not licensed or exempted under this Article to engage in any of the following:

- (1) Practice of massage and bodywork therapy.
- (2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.
- (3) Use any title descriptive of any branch of massage and bodywork therapy, as provided in G.S. 90-623, to describe his or her practice.

(b) A person who violates subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(c) It is unlawful for a person, business, or other entity to allow, aid, or abet a person not licensed under this Article to engage in any of the following:

- (1) Practice of massage and bodywork therapy.
- (2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.
- (3) Use any title descriptive of any branch of massage and bodywork

therapy, as provided in G.S. 90-623, to describe his or her practice.

(d) A person, business, or other entity who violates subsection (c) of this section shall be guilty of a Class 1 misdemeanor.

(e) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person, business, or other entity, has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action.

Disciplinary Hearings

Mr. Wilkins reported that the disciplinary hearing scheduled for today was postponed to the June meeting at the request of the attorney for the LMBT.

Standard of Proof in Board Hearings

Mr. Wilkins reviewed the standard of proof required in Board hearings as follows:

The *standard of proof for Board hearings is substantial evidence.*

Section 150B-2(8)(b) of the APA defines *substantial evidence as evidence that is relevant and, when considered as a whole, a reasonable person might accept it as adequate to support a conclusion.*

Article 3A of the APA also provides the following general rules you might find helpful:

(1) The provisions of Article 3A apply for hearings conducted by occupational licensing agencies, i.e. the Board. 150B-38(a)(1).

(2) Hearings shall be conducted in a fair and impartial manner. 150B-40(a).

(3) Hearings shall be conducted by a majority of the Board. 150B-40(b).

(4) A member of the Board assigned to make a decision in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. 150B-40(d).

(5) Relevant facts may be shown by the most reliable and substantial evidence available. 150B-41(a)

(6) A Board may use its experience, technical competence, and

specialized knowledge in the evaluation of evidence presented to it. 150B-41(d).

(7) A decision or order shall be supported by substantial evidence admissible under G.S. 150B-41. 150B-42(a)

Hearing Procedures

Following a general discussion on Board hearings, the Board asked Mr. Wilkins to prepare a summary of the Board's hearing procedure along with information on attorney representation that can accompany the Board's Notice of Hearing.

NCBTMB Presentation

Mr. Wilkins advised the NCBTMB's presentation requested for today was scheduled for the June Board meeting. The Board agreed the massage and bodywork therapy schools in North Carolina should be invited to attend a separate presentation by the NCBTMB following the Board meeting. Mr. Wilkins was asked to make the necessary arrangements and notifications for the meeting between the schools and the NCBTMB.

NCBTMB Letter

Mr. Wilkins advised a March 28, 2008 letter from the NCBTMB to him contained possible misleading language about licensure in North Carolina for students who pass the NESL. Mr. Wilkins was asked to write the NCBTMB and seek clarification.

Public Hearing

The Board interrupted its meeting at 11:10 A.M. to conduct its public hearing on amendments to Rules .0102, .0201 and new proposed Rule .0516. Following the public hearing the Board continued with its meeting.

Ms. Kennedy reported:

Licensee Report

7980 licenses have been issued
6554 licensees are still in good standing

Renewal Report

1935 licensees scheduled to renew for December 31, 2007
1591 have renewed as of April 17, 2008

Renewal Letters

The letters sent to therapists whose license has expired and must renew or reapply were reviewed and approved.

COMMITTEE REPORTS

Policy Committee

Ms. Beam reported on the Committee's meeting of March 31, 2008 as follows:

1. Approval of Minutes of February 18, 2008 Meeting

The February 18, 2008 minutes were approved by consensus.

2. Practice Act Changes

Mr. Wilkins reported on his meeting with Ms. Ann Christian regarding the changes the Board would like to see to the Practice Act proposed for the 2008 session of the NC General Assembly. Mr. Wilkins and Ms. Christian agreed:

1st item: Costs. We agreed to meet with Sen. Nesbitt on the first item for his approval. If he approves the concept of taxing some costs, the AMTA-NC Chapter agrees to authorize the Board to assess costs for court reporting incurred for the hearing.

2nd item: Limiting civil penalties. We will check with the Attorney General's office, Senator Nesbitt and others for better wording to accomplish both Board and AMTA-NC concerns.

3rd item: Allow Board to assess travel expenses for school inspections. We will check with Senator Cowell. Ms. Christian and AMTA-NC are okay with the Board assessing travel costs for site visits so long as it is okay with the schools and Senator Cowell. Charles advised the schools have no objection, so it is up to Senator Cowell.

4th item: Move "Prohibited Acts". Ms. Christian says she and AMTA-NC are okay with moving the "Prohibited Acts" language so long as it is okay with Senator Cowell.

Mr. Wilkins reported it is difficult to meet with Senator Cowell since she is running for State Treasurer and also with Senator Nesbitt since he lives in Asheville but we hope to meet with both prior to the Short Session beginning in May 2008.

3. 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. Mr. Wilkins will redraft the current suggestions and send them to the Committee.

4. 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. The Committee reviewed a draft guideline addressing this issue as well as per diem and subsistence. Based on Committee recommendations, Mr. Wilkins will redraft the proposed guideline and send it to the Committee for approval.

5. NESL Option Exam Offered by National Certification Board

The National Board for Certification in Therapeutic Massage and Bodywork (NBCTMB) offers two examinations: (1) the NCE that is taken by persons who have graduated from at least a 500-hour massage and bodywork therapy program, and (2) the NSEL that is taken by persons who may not have graduated from a 500-hour massage and bodywork therapy program. The Committee is informed that both examinations are identical and only the criteria for taking the two examinations are different.

The Board had been asked to accept the NSEL examination as part of its licensure process requirements in Rule .0201(6). After discussion and review of the Practice Act and Rules, the Committee determined that an applicant for a North Carolina LMBT license must also document that the applicant is a certificant in good standing with the certifying agency, i.e. the NBCTMB. The Committee understands that a person cannot be a certificant of the NBCTMB unless the person passes the NCE or, upon passing the NSEL and graduating from at least a 500-hour massage and bodywork therapy program, applies to be certified by the NBCTMB. It is therefore the opinion of the Committee that the Board's practice of only accepting for licensure purposes certification from the NBCTMB that an applicant is certified and in good standing with the NBCTMB is correct. Conversely, the Committee is of the opinion that the Board should not accept passage of the NSEL for licensure purposes unless the applicant also provides proof of graduation from at least a 500-hour massage and bodywork therapy program and proof that the applicant is a certificant in good standing with the NBCTMB.

6. Mechanical Shiatsu Massage System

The Committee considered a letter from Paula Williams asking whether a person must have a LMBT license to use a remote operated shiatsu massage system contained in chairs that are part of her shampoo system that also uses European backwash bowls. Based on Ms. Williams' description, the Committee did not have sufficient information to make a decision and asked that she be advised to provide additional information.

NESL Option Exam Offered by National Certification Board

Mr. Wilkins was asked to write a letter to the massage and bodywork therapy schools and programs in North Carolina advising them how the Practice Act and Rules of the Board affect students passing the NESL.

Board Per Diem and Travel Policy

Upon motion made, seconded, and passed the Board adopted policies for the reimbursement of Board members for per diem and travel, subsistence and lodging as follows:

Subject: **PER DIEM**

Effective Date: April 17, 2008

Authority Approval Date: April 17, 2008

The Massage and Bodywork Therapy Board pays its members a per diem pursuant to N.C.G.S. 93B-5. Members may receive full per diem payment for a Board meeting, committee meeting or approved conference that lasts four (4) or more hours and may receive half per diem payment for a Board meeting, committee meeting or approved conference that lasts less than four (4) hours. In determining the four (4) hours for half or full per diem payment, the member may include travel time the day of the Board meeting, committee meeting or approved conference. The amount of per diem cannot exceed full per diem for any given day.

For travel the day before or the day following a Board meeting, committee meeting or approved conference, the Board will pay half per diem for one-way travel in excess of 150 miles. A maximum of one day is allowed for travel to a meeting and a maximum of one day is allowed for travel to return from a meeting. No per diem is paid for travel less than 150 miles on the day before or the day following a Board meeting, committee meeting or approved conference.

A Board member may request additional reimbursement from the Board pursuant to the Board's "Board Member Training/Conference Request Form" or "Board Member Request to Increase Daily Subsistence Form."

Subject: **TRAVEL, SUBSISTENCE & LODGING**

Effective Date: April 17, 2008

Authority Approval Date: April 17, 2008

The Massage and Bodywork Therapy Board reimburses its members for reasonable expenses incurred on behalf of the Board. Members will be reimbursed pursuant to N.C.G.S. 138-6(a) for travel expenses incurred on behalf of the Board. The member may apply for prior approval for an increase in the allowance specified above if anticipated costs will exceed those rates.

A Travel Voucher has been designed to record travel and associated expenses. The Travel Voucher must be completed by the member, approved by and submitted to the Treasurer no later than thirty days after the event.

Members who travel from out of town and spend the night may be reimbursed for dinner and breakfast. If the Board or committee meeting lasts through lunch, members may be reimbursed for lunch only if lunch is not provided.

Travel and other expenses will be approved for reimbursement only in cases where such expenses are incurred at the Board's direction and appropriately documented (i.e. receipts for food, lodging, parking, etc). Receipts must include name(s), date(s), and amount(s). Each member shall maintain accurate records and attach all receipts to the Travel Voucher when submitted for payment. Travel Vouchers not received by the deadline date shall not be reimbursed, except in instances where it is physically impossible to meet the deadline. Payments requested for subsistence without receipts will not be paid.

The Board provides advance payment for travel expenses only when a bill from a travel agency, airline, or other responsible agency is submitted.

A. Travel

1. Reimbursement will not be made for first class air travel.
2. Reimbursement for travel to airline terminal and for parking must be submitted as follows:
 - a. Airport limousine/taxi - one round trip;
 - b. Private automobile - not in excess of the IRS rate per mile for maximum of two (2) round trips with no parking charge, or one (1) round trip with parking charge. Receipts are required for airport parking fees, taxi and limousine fares.
3. Mileage reimbursement should be for direct road map mileage between points on the members' itinerary and shall not exceed the IRS rate.

4. Mileage rate shall be considered as full reimbursement for all cost incurred in the operation of a privately owned automobile, except for tolls or parking fees.
5. Members shall observe all local and state ordinances pertaining to the operation of motor vehicles. Fines imposed for any violation under the control of the driver shall be the responsibility of the driver.

B. Subsistence

For one-day trips, a breakfast meal and/or dinner meal will not be reimbursed unless the member departs before 6:00 A.M. and/or returns after 8:00 P.M. In each case, if a breakfast and/or dinner meal is claimed, an explanation must be made on the member's request for reimbursement that sets forth the circumstances regarding the early departure and/or late return.

A receipt, with the address of the place of lodging, must be attached to the member's expense report to substantiate overnight lodging.

Reimbursement is not allowed for laundry, entertainment, alcoholic beverages, set-ups, between-meal snacks or refreshments or other personal expense.

C. Lodging

The Board will pay for a member's lodging the night before a Board meeting, committee meeting, or approved conference, if lodging is necessary for the member's attendance. The Board will pay for a member's lodging the night of a Board meeting, committee meeting, or approved conference, if the Board meeting, committee meeting, or approved conference ends after 5 P.M. and lodging is necessary due to the distance of travel of the member and the time the Board meeting, committee meeting, or approved conference ends.

License Standards Committee

Ms. Middleswarth, Chair, reported that the Committee met March 21, 2008 and considered agenda items as set forth in the minutes of its meeting.

The Board discussed MAT, muscle activation technique, as it relates to the practice of massage and bodywork therapy. The Board agreed with the recommendation of the Committee that the techniques described to the Committee as MAT also included manipulation of the soft tissues of the body and would be included within the definition of massage and bodywork therapy for which a massage and bodywork therapy license is required. The Board agreed that some portions of MAT as described to the Committee did not involve manipulation of the soft tissues of the body and would not be included within the

definition of massage and bodywork therapy for which a massage and bodywork therapy license is required. Mr. Wilkins was asked to advise the complainants and Ms. Martin.

Ms. Middleswarth also advised the committee is working on criteria for demonstrating sobriety and recovery from substance abuse or alcohol dependence.

School Approval Committee

Ms. Weinberger, Chair, reported the SAC had not met since the last Board meeting but reminded the Board that the issue of student compensation was considered by the SAC at its last committee meeting and that caused the issue of student compensation to be reviewed in the rules of the Board. The review determined that Rule .0626 Student Compensation Prohibited needed to be clarified and should be amended to delete the phrase "enrolled in a Board approved school".

Following discussion and upon motion, made, seconded, and approved the Board agreed that Rule .0626 should be amended to delete the phrase "enrolled in a Board approved school". Mr. Wilkins was asked to begin the rules review process to amend Rule .0626. The Rule will read as follows:

21 NCAC 30 .0626 STUDENT COMPENSATION PROHIBITED

A student ~~enrolled in a Board-approved school~~ shall not receive a fee, tip or other consideration for the massage and bodywork therapy they perform while completing clinical requirements for graduation, whether or not the school charges a fee for services provided in a student clinic.

Communications Committee

No report.

Licensing Boards Coordination Committee

No report however Ms. Beam advised that Ms. Huffman had communicated with the Acupuncture Board to schedule a meeting when the Acupuncture Board's attorney returns from a trip.

OLD BUSINESS

Items 1 and 2 were reviewed. No further action is necessary.

NEW BUSINESS

Citizen Advocacy Center-Asheville Meeting

The Board authorized Mr. Farah and Ms. Huffman to attend the Citizen Advocacy Center meeting in Asheville, NC with reasonable expenses being paid by the Board.

Ethics Question About Confidentiality

The Board considered an email raising the questions of whether a LMBT who provides massage and bodywork therapy to a guest in a hotel who seeks inappropriate sexual services can or should, without violating the confidentiality requirements of Rule .0505, (1) advise the hotel of the guest's name and inappropriate behavior, (2) advise other LMBTs who provide massage and bodywork therapy at the hotel of the guest's name and inappropriate behavior, and (3) document in her personal records the name and inappropriate behavior of the guest. Following some discussion, the matter was referred to the Policy Committee for consideration.

Acupressure

The Board considered whether acupressure was a modality within the scope of practice of massage and bodywork therapy. The issue was referred to the Policy Committee.

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.

ADJOURNMENT

The Board returned to Open Session and upon motion duly made, seconded and passed, the meeting was adjourned at 2:30 p.m.

Ms. Susan Beam, Chair

Dr. Raphael Orenstein, Treasurer

