

North Carolina Board of Massage & Bodywork Therapy
Open Session Minutes
August 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 August 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 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 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. There being no conflict, the agenda was approved.

APPROVAL OF MINUTES

The Board approved its minutes of June 19, 2008.

TREASURER'S REPORT

The treasurer's report was approved as presented.

ADMINISTRATIVE REPORTS

Mr. Wilkins reported:

Proposed Amendments to Rules

The amendments to Rules .0102 and Rule .0201 and new Rule .0516 are being considered by the Rules Review Commission.

Status of Amendments to Practice Act

The amendments to the Practice Act contained in SB 1314 passed the legislature and were signed into law by the Governor on August 17, 2008.

Disciplinary Hearings

Mr. Wilkins reported that the disciplinary hearing scheduled for today was postponed until the October meeting since the respondent lives in Hawaii and may be resolved by Consent Order.

Superior Court Hearing re: Denial of License

Mr. Wilkins reported he appeared in Buncombe County Superior Court to argue in support of the Board's decision not to license an applicant due to the applicant's failure to fully disclose his criminal record and for his extensive criminal record. The Superior Court Judge entered an Order affirming the decision of the Board.

Criminal Court Hearing, Hendersonville, N.C.

Ms. Kennedy appeared in a criminal court proceeding in Hendersonville, N.C. and testified on behalf of the district attorney that two persons working at a spa that advertised massage were not licensed by the Board. The judge dismissed the cases because there was no proof from a witness that either of the persons performed a massage.

Ms. Kennedy reported:

Licensee Report

8285 licenses have been issued
6759 licensees are still in good standing

Renewal Report

3704 licensees scheduled to renew for December 31, 2008
271 licensees have renewed
549 licenses that expired December 31, 2006 can renew

2009 Meeting Dates

Meeting dates for 2009 were presented. Upon motion made, seconded, and approved, the Board agreed to change the proposed December meeting date from December 17, 2009 to December 10, 2009. Upon motion made, seconded and approved the Board agreed to meet February 19, April 16, June 18, August 20, October 15 and December 10, 2009.

COMMITTEE REPORTS

Policy Committee

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

Process for Approving Examinations

The policy committee recommends the following Guidelines for approving examinations accepted by the Board for initial licensure:

Criteria for Exam:

1. Psychometrically valid
2. Tests subjects and knowledge contained in massage and bodywork therapy entry-level training as set forth in Rule .0620
3. Organization that offers exam is acceptable to the Board

Process for Approving Exam:

1. An exam is presented to the Board for approval
2. Exam approval request goes to committee for research and to determine if the exam and the organization offering the exam meet the criteria
3. Committee makes recommendation to Board
4. Board votes
5. If Board votes to approve, examination is added to Board's Guidelines

A motion was made, seconded, and approved by the Board to accept the Guidelines as its process to approve examinations for initial licensure.

Rules Required to Comply with Practice Act Amendments

According to Mr. Wilkins' research, the only Practice Act changes that need a new Rule at this time are the two sections of the Practice Act that require an applicant to demonstrate proficiency in the English language. The Policy Committee recommends the Board consider the following rule:

Rule .0304 License by Endorsement
Evidence of English proficiency required to obtain a license by endorsement shall be the Test of English as a Foreign Language, or a test determined by the Board.

A motion was made and seconded to accept the Committee's recommendation. Extensive discussion followed about different ways to obtain evidence of English proficiency. The motion was withdrawn. The Board will seek more information about how specific the Rule needs to be about what methods will be used to determine proficiency and whether a specific test should be named in a rule or a guideline.

Jurisprudence Exam

The Committee will consider at its next meeting the offering by the Board of a Jurisprudence Exam to applicants. Possible options for the exam were suggested: adding questions to the application; seeing if MBLEx can incorporate our Jurisprudence Exam as an addendum; and finding someone to help us design an exam. Also discussed was under what circumstances the results of the exam would be verifiable. The matter was referred to the License Standards Committee for further consideration.

License Standards Committee

No report. The Committee will meet following the adjournment of today's Board meeting.

School Approval Committee

Ms. Weinberger reported on the Committee's meetings of July 16, 2008 and August 18, 2008 as follows:

Guidelines for Two-Year Approval of Schools

The requirements are already contained in Rule .0601 (c).

Site Visits

M&M Consulting has begun site visits.

School Surveys

The Committee decided the most appropriate way to share information from school surveys with the school is during the site visit.

College of Wilmington

The Committee is developing a process to assure that schools and programs claiming to be exempt from Board approval meet the requirements to be exempt pursuant to 90-631(c).

North Carolina School of Advanced Bodywork

A hearing may be scheduled regarding the advertising program of NCSAB prior to being approved by the Board.

Combining Esthetician, Cosmetology Schools With Massage and Bodywork Therapy Schools

After consulting with legal counsel, the Committee agrees there is nothing in the Practice Act or Rules that specifically prevents this practice so long as the massage and bodywork therapy programs comply with the Practice Act and the Board's rules. This practice often takes the form of the separate programs sharing resources.

Proprietary School Approval and Renewal Applications

These copyrighted forms are for the Board's internal use. Once the application is completed by a school and received by the Board, the information is public record subject to any applicable Board Rules and Guidelines. This information can be obtained by request and for a copying fee.

Communications Committee

The Committee will meet with the Board's Webmaster following today's Board meeting to redesign the Board website and to add some information features. The next Newsletter will announce the Practice Act and Rules changes and will be published after the Rules are accepted.

Licensing Boards Coordination Committee

No report.

OLD BUSINESS

CLEAR Conference, Anchorage, Alaska

Ms. Stephanie Thompson, Senior Program Coordinator of CLEAR, has informed us the conference training session will be available, free of charge to members, as a PowerPoint presentation on their website once the conference has ended. Ms. Beam asked that members who access this information share relevant findings with the Board.

Citizen Advocacy Center, Asheville Meeting

Mr. Farah will be attending the CAC Monday through Tuesday noon. Ms. Beam asked him to report back to the Board at the December meeting. Ms. Huffman will also attend.

Board Member Terms

An amendment to the Practice Act staggers the expiration dates of current Board terms so that no more than three Board members' terms will expire in any given year. The terms of Ms. Beam and Mr. Orenstein end June 30, 2010. The terms of Ms. Huffman and Ms. Middleswarth end June 30, 2009 and both may be reappointed for another three-year term through June 30, 2012. The terms of Ms. Allen and Ms. Weinberger end June 30, 2011 and both may be reappointed for another three-year term through June 30, 2014. The term of public member Mr. Farah ends June 30, 2010. Because Mr. Farah's original appointment was to complete the last 60 days of the previous public member's term, it is unclear if he is eligible to be reappointed for another three-year term. Legal counsel will be consulted.

Adoption of Rule.0626 Student Compensation Prohibited

The proposed amendment to this Rule is as follows:

"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."

A motion was made, seconded, and passed to accept this proposed amendment to Rule .0626.

NEW BUSINESS

FSMTB Letter

Board members were referred to a copy of the Response to Stakeholders

from the Federation of State Massage Therapy Boards. Following the executive level changes at the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB), the FSMTB has been inundated with requests for FSMTB to take a firm stand and offer stability and guidance to the profession. The letter expresses FSMTB's shared concern about the "seemingly fragile infrastructure of the primary certification body" for the profession, but reiterates that the conduct of any private certification body is not under the control of licensing boards and agencies. The letter reviews the accomplishments of the FSMTB, and states their "factually-based position that licensure is the function of the licensing boards - not the function of certification boards".

Continuing Education Contact Hours Changed From 25 to 24

Rule .0701 is amended as set forth in G.S. 90-632(b) and 150B-21.5(a)(6) changing continuing education requirements for license renewal from 25 contact hours every two years to 24 contact hours every two years. A motion was made, seconded and passed to accept this Rule change and to make it effective for the 2009-2010 license renewal period.

Letter to NCBTMB

Ms. Allen would like the Board to express its displeasure to the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) and to the National Organization for Competency Assurance (NOCA), of which NCBTMB is a member, concerning NCBTMB's actions to interfere with the passing of the Practice Act amendments. After much discussion about the NCBTMB's interference and the role of the Board in reporting this, Ms. Allen was asked to investigate whether NCBTMB might have violated the NOCA process and requirements for approval of NCOA's member boards and to make a report to the Board

Election of Officers for 2008-2009:

Ms. Beam was nominated for another term as Chair of the Board and upon motion made, seconded, and approved, was elected.

There was a question raised and discussed about the duties of Vice-Chair and whether there is an expected succession of Vice Chair to Chair. There is nothing in the Practice Act or Rules that requires that succession.

Ms. Weinberger, Ms. Huffman and Ms. Middleswarth were nominated for Vice-Chair. There was discussion of the qualifications of each candidate. Upon motion made, seconded, and approved by written ballot, Ms. Middleswarth was elected Vice-Chair.

Upon motion made, seconded, and approved Mr. Orenstein was nominated for and elected Treasurer.

Ms. Beam, Chair, reported she will be notifying Board members of several Committee appointment changes.

Unlicensed Persons Practicing in Area Malls

A memorandum from Mr. Wilkins was summarized for the Board. A complaint was received on July 14, 2008 that "Healthy First" was practicing in Triangle Town Center, Raleigh and Cary Towne Center, Cary with unlicensed therapists. Letters were mailed to both mall managers, and to the corporate owners of the malls, explaining why persons could not practice without a Board-issued license. The Triangle Town Center mall manager was responsive to the Board and anxious to assure compliance in her mall.

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 1:15 p.m.

RETURN TO OPEN SESSION

The Board returned to Open Session at 1:40 p.m.

Board Member Terms

Mr. Wilkins advised that it had been his experience that Board members who were appointed to complete the unfinished term of a Board member may complete that term and then serve two full terms.

FSMTB Conference, Seattle

Ms. Beam reported that she, as a board member of FSMTB and Ms. Middleswarth as the Board's delegate, will have their expenses to the FSMTB conference in Seattle paid by the FSMTB. Upon motion made, seconded, and passed, the Board agreed that Ms. Allen and Ms. Huffman will also attend the FSMTB conference in Seattle and the Board will pay their reasonable and necessary expenses. It is noted the FSMTB conference is not available online and attendance by Board members will be beneficial to the Board.

Rules Review Commission

Mr. Wilkins reported on his appearance today before the Rules Review

Commission on Rules .0102, .0201 and .0516. Rules .0201 and .0516 will be considered by the Commission again in September. Mr. Wilkins was absent from the Board meeting following his administrative report so he could attend the Rules Review Commission on behalf of the Board. He returned to the Board meeting for its Closed Session and resumption of its Open Session.

License by Endorsement

The Board agreed applicants who had been denied licensure for educational deficiencies or for failure to take the National Certification Examination should be contacted by the Board and advised of the procedure to be licensed by endorsement. Ms. Beam referred the issue of compliance with the requirement for license by endorsement to the LSC. Board staff was asked to provide a draft to the LSC of changes to the application for licensure that would gather sufficient information to consider issuance of a license by endorsement.

Guidelines for Examinations Recognized by the Board

Based on Mr. Wilkins' report from the Rules Review Commission, the Board considered whether it should accept the MBLEx offered by the Federation of State Massage Therapy Boards (FSMTB) as an entry-level examination.

Ms. Beam reminded the Board that she is a member of the FSMTB Board and since there is a potential for a conflict of interest she recused herself from participating in the discussion of amending Guideline 1.8. to add the MBLEx as an entry-level examination for licensing purposes. Ms. Beam turned her position as Chair of the meeting over to Ms. Middleswarth, Vice-Chair.

Following Ms. Beam's recusal, the Board considered its process for approving exams recommended by the Policy Committee earlier today and unanimously adopted by the Board. The Board confirms that the MBLEx meets Criteria 1 and 2 for approval, and that the FSMTB, of which the Board is a member, is acceptable to the Board. The Board notes it has been considering accepting the MBLEx as an entry-level examination for many months, that its Policy Committee has conducted its independent research of the MBLEx and recommends its acceptance by the Board, and that the Board's review of the MBLEx and the FSMTB is in compliance with its process for approving entry-level examinations adopted earlier today.

After a full discussion of the options available to the Board, a motion was made, seconded, and approved to amend Guideline 1.8 as follows and to make such Guideline effective as soon as permissible:

1.8 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) and the National Certification Examination in Therapeutic Massage (NCETM), both of which are administered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB).

(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).

Ms. Middleswarth returned the Chair of the meeting to Ms. Beam.

ADJOURNMENT

Upon motion duly made, seconded and passed, the meeting was adjourned at 2:05 p.m.

Ms. Susan Beam, Chair

Dr. Raphael Orenstein, Treasurer