

North Carolina Board of Massage & Bodywork Therapy
Open Session Minutes
October 9, 2008

TIME AND PLACE

The North Carolina Board of Massage and Bodywork Therapy met in Open Session in the Offices of the Board on October 9, 2008 at 10:00 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Dr. Raphael Orenstein

OTHERS PRESENT

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

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. Beam stated she would recuse herself from any discussion of the Board accepting the MBLEx offered by the Federation of State Massage Therapy Boards (FSMTB) since she is a member of the FSMTB board. There being no additional conflict, the agenda was approved.

APPROVAL OF MINUTES

The Board approved its minutes of August 21, 2008.

TREASURER'S REPORT

The treasurer's report was approved as presented.

ADMINISTRATIVE REPORTS

Mr. Wilkins reported:

Proposed Amendments to Rules

The amendments to Rule .0102 was approved by the RRC in August 2008 and became effective September 1, 2008. The amendments to Rules .0201 and new Rule .0516 were approved by the RRC in September 2008 and became effective October 1, 2008.

Rules .0626 and .0701 are being considered by the RRC on October 16, 2008 and, if approved, will become effective November 1, 2008.

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 three of the disciplinary hearings scheduled for today were postponed until the December meeting and may be resolved by Consent Orders. One hearing is scheduled for 1 p.m. today.

Ms. Kennedy reported:

Licensee Report

8388 licenses have been issued
6862 licensees are still in good standing

Renewal Report

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

COMMITTEE REPORTS

Policy Committee

Ms. Middleswarth reported on the Committee's meeting of October 7, 2008 as follows:

Jurisprudence Exam

The Committee agreed a Jurisprudence Exam would be beneficial to applicants and continued its discussion of how to proceed with its implementation. Mr. Wilkins advised the Committee of the process followed by the North Carolina Board of Occupational Therapy in developing its Jurisprudence/Ethics Exam. The Committee agreed that Ms. Middleswarth would investigate the possibility of a Jurisprudence Exam being offered in conjunction to the MBLEx when she attends the FSMTB conference later this month. The Committee also agreed it might be advantageous to seek input from the schools on the ethics and jurisprudence questions they use in their curriculum as a basis for compiling test questions. The Committee agreed to continue its discussion of the Jurisprudence Exam at its next meeting.

Proficiency in the English Language

The Committee agreed that any applicant for a license whose proficiency in the English language was not clear should be interviewed by the LSC before a license is issued to determine if the applicant is proficient in the English language. An alternative to an interview with the LSC would be for the applicant to take and pass the Test of English as a Foreign Language. The Committee recommends the following guideline be adopted by the Board:

Guideline 1.12 Proof of proficiency in the English language.

Proof of proficiency in the English language shall be determined during an in-person meeting between the applicant for a license and the License Standards Committee of the Board or by the applicant providing proof satisfactory to the License Standards Committee of the Board that the applicant has taken and passed the Test of English as a Foreign Language or a test determined by the Board to be equivalent to the Test of English as a Foreign Language.

Upon motion made, seconded and passed the Board adopted Guideline 1.12.

Amendment to Guidelines 1.8 and 1.9

Mr. Rick Rosen had submitted a document titled "Recommendations on Amendments to Guidelines 1.8 and 1.9 of the Board of Massage &

Bodywork Therapy" for consideration by the Board and it was referred to the Committee. After fully reviewing Mr. Rosen's suggestions for phasing out the NCB examinations and the ABTE examination over a one year period, the Committee expressed concerns about the portability of therapists, the newness of the FSMTB and the MBLEx, the acceptance of the NCB and ABTE examinations for many years, and the need for immediate change. The Committee agreed to recommend to the Board that no changes be made to Guideline 1.8 or 1.9 at this time but to reconsider the issue on or before October 2009.

The Chair postponed discussion of the Committee's recommendation until later in the agenda.

Increase Business Management Hours for CE

Mr. Rick Rosen had submitted a request that the 3-hour maximum for continuing education courses in business management be increased. BTI is interested in offering a 25-hour course in Business & Marketing Practices and wanted it to be accepted by the Board as continuing education. After a full discussion, the Committee agreed to recommend to the Board that the 3-hour maximum for continuing education courses in business management found in Rule .0701(e) be increased to 8 hours. The committee agreed that until Rule .0701(e) is amended to this effect, only 3 hours of a business course can be used for continuing education in any given renewal period.

The Board entered into a full discussion of the pros and cons of expanding the hours of business management acceptable as continuing education. During the discussion, three members of the Board, Ms. Middleswarth, Ms. Weinberger and Ms. Allen became concerned there might be a conflict of interest in further participation in the discussion since they either teach or offer continuing education courses to LMBTs. Further discussion was postponed to the next meeting of the Board.

Absentee Voting

The Committee discussed whether to allow absentee voting by Board members and was of the opinion that absentee voting should not be allowed. The Committee was of the opinion that Board members who vote on an issue should be present to hear the discussion of the issue by the Board and, if applicable, other interested parties and members of the public.

The Board entered into full discussion of the pros and cons of allowing absentee voting by proxy and also discussed the possibility of attending the meeting remotely by telephone or other electronic means, such as teleconferencing. The issue was referred to the Policy Committee for further discussion.

Process for Approving Examinations

The Committee recommended the following Guidelines be adopted by the Board 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

The Committee affirmed its prior decision recommending the MBLEx to the Board as an entry-level examination for applicants. A motion was made, seconded, and approved by the Board to accept the MBLEx as an entry-level examination for applicants.

License Standards Committee

Ms. Huffman, Chair, reported the Committee met August 21, 2008 following the adjournment of the Board meeting 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 and plans to meet again following today's Board meeting.

School Approval Committee

Ms. Weinberger reported the Committee met August 21, 2008 following the Board meeting as set forth in the minutes of that meeting and as attached to today's agenda. The Committee also met October 7, 2008 and considered the following agenda items:

Site Visits

M&M Consulting has begun site visits and has completed site visits to Miller-Motte Technical Colleges in Wilmington and Cary

and to Medical Arts Massage School and ECPI in Raleigh. A site visit is scheduled for October 27 to North Carolina School of Advanced Bodywork in Asheville.

College of Wilmington

The Committee again considered status of the College of Wilmington, formerly Mr. David's School of Hair Design, regarding starting a massage therapy program at the school. The school has taken the position that College of Wilmington is exempt from Board approval pursuant to G.S. 90-631(c).

On August 6, 2008, Mr. Wilkins wrote the Council on Occupational Education and the NCCCS to determine the current status of College of Wilmington with those two entities and to determine if College of Wilmington meets the requirements of the statute to be exempt from approval by the Board. Mr. Wilkins was asked to also determine what criteria and what processes the Council on Occupational Education and the NCCCS follow to approve or accredit the College of Wilmington and specifically any massage therapy program offered by the College of Wilmington. Mr. Wilkins has received no response from either letter. Mr. Wilkins wrote a second letter to the COE and NCCCS asking for the information. The NCCCS has not responded to the inquiry. The COE did respond stating The College of Wilmington is in good standing with COE to offer cosmetology programs. COE further advised it had received an application for College of Wilmington to offer a new diploma program in therapeutic massage but that the application is under review. The COE was concerned about space and resources for the College of Wilmington to offer therapeutic massage and stated that the COE will visit the school prior to offering initial approval of the new therapeutic massage program. The COE stated the visit will take place only after the College of Wilmington has assured COE that the new therapeutic massage program has the necessary space, equipment, personnel and curricula to support the program. There has been no further correspondence from COE indicating the College of Wilmington has complied with the requirements, that a site visit has occurred, or that the therapeutic massage program has been approved at the College of Wilmington.

By letter dated September 9, 2008, the College of Wilmington replied to a September 8, 2008 letter from Mr. Wilkins asking for specific information on why the College of Wilmington considered itself exempt from approval by the Board. The Committee considered the College of Wilmington letter and was

of the opinion that the College of Wilmington did not meet the requirements for exemption required by NCGS 90-631(c) in that there was not sufficient proof that College of Wilmington was a college or university, nor was there sufficient proof that College of Wilmington was authorized to grant a degree or diploma in therapeutic massage, or that College of Wilmington was accredited by COE to offer a program in therapeutic massage.

The Committee is of the opinion that the College of Wilmington has not met the requirements of NCGS 90-631(c) and is not exempt from the school approval process of the Board.

The Board discussed the situation with the College of Wilmington and was in agreement with the Committee that College of Wilmington had not provided sufficient information or documentation to the Board that it has met the requirements of NCGS 90-631(c) and the school is not exempt from the school approval process of the Board.

Richmond Community College

Mr. Wilkins reported the Board has received two applications for licenses from graduates of an alleged continuing education massage program offered by Richmond Community College (RCC). The Board had no record that RCC had a massage therapy program. Mr. Wilkins was advised that RCC offers a "continuing education" program in massage and has a "school code" from the National Certification Board (NCBTMB). Mr. Wilkins contacted the NCBTMB and was advised RCC is not an approved provider but that it was issued a "school code" so its graduates could take the National Certification Exam.

Mr. Wilkins wrote a letter to the applicants and advised them RCC has not provided documentation that it is in compliance with the Practice Act or Rules of the Board and reminded them that they may not practice in North Carolina until licensed by the Board.

On September 22, 2008, the Board received a form from Richmond Community College indicating RCC was certified by NCCCS to offer therapeutic massage on January 16, 2007, that RCC submitted its application to offer therapeutic massage to the NCCCS on January 16, 2007, and that Maurena D. Rush, Program Director, dated her "Attestation Statement" January 16, 2007 attesting that the RCC therapeutic massage program was in compliance with "Section 8.15.(a)G.S. 90-631 and that the program meets or exceeds the minimum standards for curriculum, faculty, and learning resources established by the Board on January 16, 2007. It is also noted that the

"Attestation Statement" sent to the Board by RCC had typed on it the date "March 2008".

RCC did not advise the Board it was offering or planned to offer a therapeutic massage program in January 2007 or at any other time until sending the Board the "Attestation Statement" described above on September 22, 2008. RCC did not advise the Board it planned to open a therapeutic massage program on January 16, 2007 nor did RCC provide an "Attestation Statement" that it was in compliance with its exemption requirements before it began accepting students and offering its therapeutic massage program. RCC did not provide an "Attestation Statement" the school was offering a therapeutic massage program in June 2007 along with the other community college massage programs. RCC did not provide an annual renewal of its "Attestation Statement" in January 2008, nor did it provide an "Attestation Statement" the school was offering a therapeutic massage program in June 2008 along with the other community college massage programs.

The Committee was of the opinion that Richmond Community College had not complied with the requirements of NCGS 90-631(b) to offer a therapeutic massage program in North Carolina or to be exempt from Board approval. The Committee was of the opinion that the "Attestation Statement" provided by RCC was not in compliance with the requirements of the Board to show it was exempt from Board approval and had complied with the requirements of NCGS 90-631(b) during the times its students were enrolled in its therapeutic massage continuing education program.

The Committee recommends that students who might have graduated from RCC be denied a license to practice massage and bodywork therapy in North Carolina until the student graduates from a massage and bodywork therapy school or program approved by the Board or a school or program that meets the requirements of NCGS 90-631. The Committee notes that NCGS 90-629(4) requires successful completion of a course of study at a Board-approved school and the Board has consistently required that the school maintain its approval status with the Board, or its exemption status pursuant to NCGS 90-631(b), on a continuous basis during the applicant's time of enrollment.

The Committee further noted that the Board had received inquiry from Stanly Community College and James Sprunt Community College about the possibility of offering continuing education therapeutic massage programs. Mr. Wilkins had

advised Stanly Community College of the requirements of the Board and NCGS 90-631(b) for a community college to offer a program in therapeutic massage and was asked to also advise James Sprunt Community College of the requirements.

Prior to a discussion of the situation with Richmond Community College, Ms. Middleswarth, an employee of Forsyth Community College, recused herself from discussing or voting on the issues presented.

The Board considered the situation with Richmond Community College and the status of the two applicants for licensure who have provided information to the Board that they graduated from the therapeutic massage program offered by Richmond Community College. The Board also considered the document from Richmond Community College dated January 16, 2007 regarding the therapeutic massage program offered by Richmond Community College. The Board was of the opinion that Richmond Community College had not complied with the requirements of NCGS 90-631(b) to offer a therapeutic massage program in North Carolina or to be exempt from Board approval. The Committee was of the opinion that the "Attestation Statement" provided by RCC was not in compliance with the requirements of the Board to show it was exempt from Board approval and had complied with the requirements of NCGS 90-631(b) during the times its students were enrolled in its therapeutic massage continuing education program. The Board was of the opinion that an applicant for a massage and bodywork therapy license has the obligation to provide sufficient documentation that the school from which they graduated is a school or program approved by the Board to offer a therapeutic massage program in North Carolina or the school or program complies with the requirements of NCGS 90-631(b) to be exempt from Board approval.

The Board expressed concern about the two applicants who have provided information to the Board that they graduated from the therapeutic massage program offered by Richmond Community College and referred their applications to the Licensing Standards Committee of the Board for further consideration and asking that the Committee report its findings and recommendations back to the Board at its next meeting.

Communications Committee

Ms. Allen reported the Committee met with the Board's Webmaster following the August Board meeting and again today prior to today's Board meeting to redesign the Board website and to add some information features. The redesign is coming along nicely and should be online by December 1, 2008. The Board discussed the possibility of putting the Board's license application online but no decision was made.

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

There was no Old Business.

NEW BUSINESS

State Bureau of Investigation

Mr. Wilkins reported that he and Ms. Kennedy had been in contact with the SBI about forms and procedures for obtaining fingerprints and criminal records of applicants for licensure. All is moving along and should be complete before the end of the year.

Amend Guideline 1.8

Ms. Beam recused herself from any discussion of the Board accepting the MBLEx offered by the Federation of State Massage Therapy Boards (FSMTB) or phasing out acceptance of the various exams offered by the NCBTMB since she is a member of the FSMTB board. Ms. Beam turned her position as Chair of the meeting over to Ms. Middleswarth, Vice Chair.

Mr. Rick Rosen made an oral presentation to the Board in support of his September 28, 2008 written suggestions to the Board that it accept the MBLEx offered by the FSMTB as the sole licensing exam acceptable in North Carolina for "regular" licensure; that the Board phase out its acceptance of the various exams offered by the NCBTMB for "regular" licensure; that the Board no longer accept the ABTE exam; and that the Board accept the various exams offered by the NCBTMB only for applicants for licensure by endorsement.

Following Mr. Rosen's presentation the Board heard from various members of the public including, Mr. Ed Sansbury, President of AMTA/NC Chapter, Ms. Ann Christian, attorney for AMTA/NC Chapter, Ms. Monica Phillips, a school director, and Mr. Jack Cozort, attorney for the NCBTMB. Ms. Weinberger also summarized written comments she had received from various school owners or directors. There were

comments received opposing and supporting Mr. Rosen's suggestions.

The Board then entered into a discussion of the pros and cons of Mr. Rosen's suggestions. Following a full discussion, the Board, upon motion made, seconded and passed, voted by majority to (1) accept the MBLEx offered by the FSMTB as a licensing exam acceptable in North Carolina; (2) accept the various exams offered by the NCBTMB for any applicant who has passed an exam offered by the NCBTMB on or before December 31, 2010; and (3) accept the various exams offered by the NCBTMB from any applicant for licensure by endorsement who is from a state that does not regulate the practice of massage and bodywork therapy. The Asian Bodywork Therapy Examination (ABTE) will continue to be accepted by the Board as an entry-level examination.

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

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 1:30 p.m.

RETURN TO OPEN SESSION

The Board returned to Open Session at 1:30 p.m. due to a scheduled hearing.

Hearing re: Cindy Barrett

The Board conducted a hearing regarding allegations that Ms. Barrett violated the Practice Act and Rules and Regulations of the Board during massage therapy sessions with a client. Ms. Barrett was represented by her attorney and presented evidence on her behalf.

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 6:30 p.m.

RETURN TO OPEN SESSION

The Board returned to Open Session at 8:00 p.m. to report its decision in the hearing regarding Ms. Barrett.

After a full review and discussion of the evidence and exhibits presented at the hearing, the Board concluded that Ms. Barrett, during numerous massage therapy sessions with the complainant and in personal relationships with the complainant over several years, violated Rules .0505(4) and .0511(2) as well as N.C.G.S. 90-633(6) and (9). The Board entered an Order suspending Ms. Barrett's license to practice massage and bodywork therapy in the State of North Carolina for two years. The first thirty days of the two-year suspension will be active beginning October 20, 2008 and the remainder of the two-year suspension is stayed provided Ms. Barrett, within six months from October 20, 2008: (1) complete twelve hours of Board-approved in-person continuing education in ethics, including dual relationships, boundary issues, transference and counter-transference issues, (2) pay a civil penalty of \$1,000, and (3) pay the cost of the court reporter's appearance fee for the hearing.

ADJOURNMENT

Upon motion duly made, seconded and passed, the meeting was adjourned at 8:05 p.m.

Ms. Susan Beam, Chair

Ms. Jean Middleswarth, Vice Chair