

North Carolina Board of Massage & Bodywork Therapy
Open Session Minutes
April 16, 2009

TIME AND PLACE

The North Carolina Board of Massage and Bodywork Therapy met in Open Session in the Offices of the Board on April 16, 2009 at 10:00 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

None

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 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.

APPROVAL OF MINUTES

The Board approved its minutes of February 19, 2009.

TREASURER'S REPORT

The treasurer's report was approved as presented.

ADMINISTRATIVE REPORTS

Mr. Wilkins reported:

Proposed Amendments to Rules

There is one Rule change to add a definition of "college" currently under consideration by the Board.

Status of Amendments to Practice Act

There is no Practice Act change currently being recommended 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. Mr. Wilkins reviewed those pending bills. There was then a general discussion of the entities and efforts to track legislation of bills introduced in the General Assembly in 2009. Ms. Beam reported that the FSMTB has hired Ms. Sally Hacking to assist it in tracking legislation nationwide that affects the profession of massage and bodywork therapy and that Ms. Hacking regularly reports to Ms. Beam bills introduced in the North Carolina General Assembly that may be of interest to the Board. In addition the lobbyist for the AMTA-NC Chapter tracks legislation introduced in the North Carolina General Assembly that may be of interest to the Chapter. The Chapter and Board share information on pending legislation and their efforts to better the profession and protect the public.

Disciplinary Hearings

There is one disciplinary hearing scheduled for today.

Ms. Kennedy reported:

Licensee Report

8842 licenses have been issued
7316 licensees are still in good standing

Renewal Report

Of the 4,126 licenses scheduled to renew for the 2009-2010 license period, 3112 have renewed.

COMMITTEE REPORTS

Policy Committee

Ms. Middleswarth reported on the Committee's meeting of April 14, 2009 as follows:

Disciplinary Actions on Website

The webmaster has been alerted to change the database so that applicants denied a license for non-disciplinary reasons shall not appear as disciplinary action.

The Committee discussed the type of disciplinary actions that should appear on the website. The Committee recommends to the Board that the following disciplinary actions not be listed on the Board's website:

(1) Letters of Reprimand issued for late renewals; (2) Letters of Reprimand issued for non-sufficient checks issued to the Board for renewals; (3) Cease and Desist Letters issued for advertising without the therapist's license number on the advertisement; and (4) Cease and Desist Letters issued for advertising without the therapist's name on the advertisement. The Committee recommends to the Board that the other disciplinary actions be designated as "disciplinary actions taken" on the website.

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

Microphone for Board Meetings

The Committee reviewed several proposals ranging in price from \$800 to \$13,000. The Committee recommends that the Board try the Fender Passport Deluxe PD-150, portable sound system that costs \$741.91 to determine if it meets the needs of the Board.

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

Payment of Board Member Expenses by Another Entity

The Committee agreed to do further research and to consider the issue at a subsequent meeting.

Colon Hydrotherapy – HB 1122

A bill has been introduced in the 2009 Legislature to establish a Practice Act and a Board to regulate persons who provide colon

hydrotherapy. The Committee recommends that the issue be referred to the Licensing Boards Coordination Committee and that Mr. Wilkins, legislative liaison between the Board and the Legislature, contact the sponsors of the bill to clarify the definition of colon hydrotherapy and the relationship between colon hydrotherapy and the North Carolina Massage and Bodywork Therapy Practice Act.

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

Retention of Records by LMBTs Employed by Spas – HB 1062

A bill has been introduced in the 2009 Legislature to set the time “a licensee of a resort spa” has to maintain massage and bodywork therapy records at six months from the date of service. The Committee noted that neither the Practice Act nor the Rules of the Board regulate how long a spa must maintain massage and bodywork therapy records. However, Rule .0505(2) provides: “In managing the client/therapist relationship, licensees shall: (2) maintain client files for at least four years after the termination of the client/therapist relationship and store and dispose of client records in a secure manner;”

The Committee discussed the purpose of Rule .0505(2) and the fact that the Massage and Bodywork Therapy Practice Act appears in Chapter 90 of the North Carolina General Statutes along with other professional medical providers. While there was some difference of opinion between Committee members, the Committee was generally in agreement that Rule .0505(2) protects the public as well as the LMBT and that the issue should be further discussed by the Board.

Mr. Wilkins, legislative liaison between the Board and the Legislature, will contact the sponsors of the bill to discuss the need for the legislation and clarify the relationship between the bill and the North Carolina Massage and Bodywork Therapy Practice Act and the Rules of the Board.

Consumer Health Freedom Act – HB 842

A bill has been introduced in the 2009 Legislature to establish Consumer Health Freedom by recognizing use of complementary and alternative health care services by citizens of North Carolina. The Committee recommends that the issue be referred to the Licensing Boards Coordination Committee and that Mr. Wilkins, legislative liaison between the Board and the Legislature, contact the sponsors of the bill to amend the bill to conform its contents to the North Carolina Massage and Bodywork Therapy Practice Act. Specific recommended amendments are:

"§ 90E-4. Prohibited acts.

(5) Performs massage or **bodywork** therapy, except for a practice already exempt from massage therapy violations.

"§ 90E-3. Definitions.

The following definitions shall apply in this Chapter:

- (1) Complementary or alternative health care service. – Health care services that include, but are not limited to: acupressure; aromatherapy; Ayurveda; biofield therapy; cranial-sacral therapy; culturally-based traditional healing practices; dance, music, and art therapy; energetic modalities; folk practices; practices utilizing food and dietary supplements; individual biological therapies, such as bee pollen, nutrients, and the physical forces of heat, cold, water, touch, and light; herbology or herbalism; homeopathy; therapeutic touch or bodywork; mind-body therapeutic practices; Native American medicine; naturopathy; polarity therapy; reiki; traditional Tibetan practices; and Qigong.

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

Uncovering Female Breasts During Massage Session

The Committee considered an email that sought information about the protocol for female breast massage. The Committee reviewed Rule .0506 DRAPING REQUIREMENTS that provides:

Licensees shall adhere to the following requirements, except in the case of treatments where the client remains fully clothed:

- (1) provide draping in a manner that ensures the safety, comfort and privacy of the client;
- (2) maintain a supply of clean drapes, such as towels, sheets, gowns or other coverings, for the purpose of draping the client's body during treatment;
- (3) explain expected draping procedures to the client before treatment; and
- (4) ensure that the following areas are draped during treatment: the gluteal and genital areas for male and female clients, and the breast area for female clients. With voluntary and informed consent of the client, the gluteal and breast drapes may be temporarily moved in order to perform therapeutic treatment to structures in those areas.

The Committee also reviewed Rule .0503(3) regarding the

requirements for “informed consent” and Rule .0502 regarding appropriate training and protecting the client’s safety, comfort and privacy.

The Committee asked that Mr. Wilkins respond to the email citing the applicability of the above Rules.

Serving Alcohol at Massage Establishments

The Committee considered an email that expressed concern and sought information about serving alcoholic beverages at establishments that provide massage and bodywork therapy services. The Committee reviewed the following Rules:

.0510 PROVIDING OR TERMINATING SERVICE

(a) Licensees shall have the right to provide therapeutic services to whom they choose.

(b) Licensees shall also have the right to refuse treatment, or to terminate a treatment in progress to protect their own safety and well-being, including situations such as: (1) a client who is abusive; under the influence of alcohol, drugs, or any illegal substance; or otherwise impaired;

.0512 IMPAIRMENT

In the practice of massage and bodywork therapy, licensees shall not provide therapeutic services to clients when the licensee is under the influence of alcohol, drugs, or any illegal substance, with the exception of prescribed dosage of a prescription medication that does not impair the cognitive, psychological, or motor capacity of the licensee.

The Committee asked that Mr. Wilkins respond to the email citing the applicability of the above Rules and advising the Board regulates LMBTs and does not regulate establishments that provide massage and bodywork therapy services.

Students Providing Massage While in School

The Committee considered an email that expressed concern and sought information about students providing massage and bodywork therapy services to the public. The Committee reviewed the following Rule:

.0626 STUDENT COMPENSATION PROHIBITED

A student 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.

The Committee asked that Mr. Wilkins respond to the email citing the applicability of the above Rule and advising students who provide massage to the public do so under the supervision of their instructor; it is a proper way for students to learn "hands on" massage and bodywork therapy techniques; and the limited amount of student massage is not unfair competition to LMBTs.

License Standards Committee

Ms. Huffman, Chair, reported the Committee met this morning and will make its written report at the next meeting of the Board.

School Approval Committee

Ms. Weinberger reported the Committee is continuing to review site visit reports on the schools and programs visited by M&M Consulting and the school renewals.

Communications Committee

Ms. Allen reported she had received positive comments on the Board's redesigned website.

Licensing Boards Coordination Committee

No report.

OLD BUSINESS

License Massage Establishments

Ms. Huffman provided her current research to the Board. The Board agreed the issue could not reasonably be considered until the 2011 session of the General Assembly and further that the economy would not favor a change at this time. Mr. Farah and Ms. Huffman will continue research on the issue.

Jurisprudence Exam

The Board continued its discussion on development of the Jurisprudence Exam and examined various possibilities for development and implementation of the Exam. Primary issues were whether the exam should meet the standards to be psychometrically valid and whether it should be administered by the Board. The Committee of Ms. Allen and Ms.

Weinberger will continue its efforts and will advise the Board on how it recommends the Jurisprudence Examination be developed and implemented.

College of Wilmington

Ms. Weinberger reported on a Craig's List advertisement for the massage program at the College of Wilmington that indicated the program would start in May 2009. The massage program offered by the College of Wilmington is not approved by the Board nor has it provided documentation to the Board that would demonstrate to the satisfaction of the Board that it meets the requirements of N.C.G.S. 90-631(b) to be exempt from approval by the Board. Mr. Wilkins was asked to send College of Wilmington a letter advising it that it cannot offer its massage therapy program to the public before it is either approved by the Board or is determined to be exempt from Board approval.

Yehuda J. Lev Order

Mr. Thompson reported that Mr. Lev had appealed the Order of the Board to the Superior Court of Orange County and that the Board had responded to the appeal.

Daron Garmon

The Board received the recommendation of the License Standards Committee that Mr. Garmon should not be granted a LMBT license at this time due to his lack of moral character. The Board then heard from Mr. Garmon in response to the recommendation of the Committee. The Board agreed to consider the recommendation of the Committee and Mr. Garmon's comments to the Board during its Closed Session and advised Mr. Garmon he would be advised of the Board's decision.

Rebekah Saylor

The Board received the recommendation of the License Standards Committee that Ms. Saylor should not be granted a LMBT license at this time due to her lack of moral character and suggested she be advised she may reapply after January 2010. The Board then heard from Ms. Saylor in response to the recommendation of the Committee. The Board agreed to consider the recommendation of the Committee and Ms. Saylor's comments to the Board during its Closed Session and advised Ms. Saylor she would be advised of the Board's decision.

NEW BUSINESS

Public Hearing on Proposed Rule .0602(12) Defining College

The Board held a public hearing on its proposed Rule .0602(12) that defines the word "college" as follows:

.0602 Definitions

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

There was no public comment on the content of the rule. Ms. Ann Christian did comment on issues unrelated to the content of the proposed rule.

PUBLIC COMMENT

The Board received comments from the public.

Patrick Santa Lucia Hearing

The Board conducted a hearing on allegations Mr. Lucia provided improper draping and improper contact on a patient during a massage. The complainant was present and testified. Mr. Lucia was present, represented by an attorney, and also testified and offered documentary exhibits and witnesses.

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 6:15 p.m.

RETURN TO OPEN SESSION

The Board returned to Open Session at 8:15 p.m.

Patrick Santa Lucia Order

The Board reported it had decided in Closed Session that Mr. Lucia had violated Rule .0503(3) during his massage session with the complainant due to his failure to obtain written informed consent from complainant before providing massage and bodywork therapy services to complainant. The Board specifically found that the form signed by complainant for chiropractic services was insufficient informed consent for Mr. Lucia to provide massage and bodywork therapy services to complainant. The Board determined there was not sufficient convincing evidence that Mr. Lucia violated the provisions of Rule .0506(4). The Order of the Board is that Mr. Lucia be publicly reprimanded for failure to comply with Rule .0503(3) and that he provide to the Board a copy of his current intake/consent to treatment form to determine compliance with the Rules of the Board.

Daron Garmon

The Board reported it had decided in Closed Session that Mr. Garmon should not be granted a LMBT license at this time due to his lack of moral character.

Rebekah Saylor

The Board reported it had decided in Closed Session that Ms. Saylor should not be granted a LMBT license at this time due to her lack of moral character. Ms. Saylor's application will be reconsidered in January 2010, provided she (1) obtain a positive employment or volunteer history; (2) provide the License Standards Committee with copies of her prior psychological treatment records; (3) obtain an opinion of her psychological status from a licensed mental health practitioner; and (4) not further violate the criminal laws of North Carolina.

ADJOURNMENT

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

Ms. Susan Beam, Chair

Dr. Raphael Orenstein, Treasurer