

North Carolina Board of Massage & Bodywork Therapy
Open Session Minutes
August 20, 2009

TIME AND PLACE

The North Carolina Board of Massage and Bodywork Therapy met in Open Session in the offices of the Board on August 20, 2009 at 10:00 a.m.

MEMBERS PRESENT

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

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

INTRODUCTION OF NEW BOARD MEMBER KEVIN POWELL

Ms. Beam welcomed Mr. Kevin Powell to the Board. Mr. Powell was appointed by Joe Hackney, Speaker of the North Carolina House of Representatives, to a three year term beginning July 1, 2009.

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 18, 2009 and July 30, 2009.

TREASURER'S REPORT

The treasurer's report was approved as presented. The expenses for updating the Board's webpage were reviewed and approved.

BUDGET FOR 2009/2010

The operating budget for fiscal year July 1, 2009 through June 30, 2010 was discussed and upon motion made, seconded and passed, the budget was approved.

ADMINISTRATIVE REPORTS

Mr. Wilkins reported:

Proposed Amendments to Rules

Rule .0602(4) to define "college" was approved by the Rules Review Commission and became effective August 1, 2009.

Status of Amendments to Practice Act

The 2009 session of the NC General Assembly adjourned July 22, 2009 and will reconvene May 2010. The bills being followed by the Board that may indirectly affect the practice of massage and bodywork therapy did not make the cross-over deadline and should not be considered further during the 2009-2010 sessions of the General Assembly. The tax on massage therapy services issue was not in a bill pending during the legislature but was "considered" by the Senate as a possibility for raising money when it was discussing ways to increase revenues in the Budget Bill. The legislature may reconvene this Fall or next Winter to discuss ways to increase State revenues and the "tax on services" issue may again be discussed and considered.

Licensees in the US Armed Forces (House Bill 1411)

Licensees in the US Armed Forces may have their continuing education, renewal fees, and other conditions required to maintain their license postponed or waived, provided they have been granted an extension of time to file their US tax return pursuant to G.S. 105-249.2.

Reporting Board Activities to State Agencies

The Board is required to report its activities to various State agencies pursuant to a bill passed in the 2009 Session of the Legislature. Mr. Wilkins reported the Board has been filing the reports before the legislation was passed and will continue to do so.

Disciplinary Hearings

The disciplinary hearing scheduled for today for Ms. Estelle Ledbetter has been proposed to be resolved by Consent Order.

NC Law/ Rules and Ethics Requirement

In some disciplinary actions taken by the Board there is a requirement that the licensee obtain additional continuing education in North Carolina law, rules and ethics. The Board considered the availability of such courses in North Carolina. The issue was referred to the License Standards Committee.

Ms. Kennedy reported:

Licensee Report

9123 licenses have been issued
7597 licensees are still in good standing
54 licensees have renewed

Renewal Report

There are 2406 licensees scheduled to renew by November 1, 2009. There are also 287 licensees whose licenses expired December 31, 2007 who must renew by December 31, 2009 or they will be required to reapply.

Board Meeting Dates

Proposed dates for the Board to meet in 2010 are:

February 18
April 15
June 17
August 19
October 21
December 9

Board members agreed to review their calendars and confirm the 2010 dates at the October 2009 Board meeting.

The Board was provided updated Travel Subsistence Rates effective

July 1, 2009 and amended Board meeting and travel reimbursement forms.

COMMITTEE REPORTS

Policy Committee

Dr. Orenstein and Ms. Weinberger reported the Committee met July 13, 2009 and considered the following issues:

Payment of Board Member Expenses by FSMTB

The Committee reviewed the following memorandum from Mr. Wilkins:

I have spoken with Ms. Cathy Edwards, an attorney with the NC Ethics Commission, about whether the FSMTB can pay expenses of NCBMBT Board members who attend FSMTB official meetings or conferences without violating the NC law that bans gifts to "interested persons". NCBMBT Board members are "interested persons" pursuant to N.C.G.S. 138A-3(10). However, NCBMBT Board members fall within the exception of N.C.G.S. 138A-32(f) that allows reimbursement for expenses that would otherwise be paid for the NCBMBT Board member by the NCBMBT. Therefore, it is permissible for NCBMBT Board members who attend official FSMTB meetings or conferences to be reimbursed their expenses to attend the meeting, such as travel, room, board, tuition and parking. The NCBMBT Board shall pre-approve the payment or reimbursement of the Board member's expense by the FSMTB in writing. The NCBMBT Board member who has expenses paid by FSMTB will be required to report the payment of those expenses as a "scholarship" when the Board member files the Statement of Economic Interest the following April in accordance with N.C.G.S. 120C-800(d).

Following further discussion, the Committee agreed to recommend that the Board allow the FSMTB or similar entities to pay or reimburse Board members who attend official meetings of the FSMTB or similar entities the Board members' expenses to attend the meeting, such as travel, room, board, tuition and parking, since these are expenses that would otherwise be paid for the Board member by the Board, provided the attendance and payment or reimbursement are pre-approved by the Board.

The Committee also asked that Mr. Wilkins obtain a formal written opinion on this issue from the Ethics Commission.

International Association of Structural Integrators Examination

The Committee reviewed the request of the IASI that the Board accept its competency assessment examination as an entry-level examination that would meet the requirements of N.C.G.S. 90-629(5). The Committee reviewed the materials presented and also reviewed the Board's procedure for approving examinations. The Committee was of the opinion that it did not have sufficient information to make a recommendation to the Board and asked Mr. Wilkins to request additional information from IASI.

LMBTs Teaching Massage and Bodywork Therapy

The Committee reviewed an email from a LMBT questioning if and under what circumstances she might be allowed to teach a class on therapeutic massage at a community college. The class would not certify the students as a massage therapist but would teach some therapeutic massage techniques to persons in the health care field. According to the LMBT, the class will also teach indications and contraindications, legalities, medication awareness, body mechanics "and anything else that needs to be included in the class".

The Committee was of the opinion that under the scenario described by the LMBT neither the class nor the LMBT teaching the class are regulated by the Board since they are not within the Practice Act or Rules of the Board. The Committee asked that Mr. Wilkins respond to the LMBT advising her that the Board does not regulate her or her class but also emphasizing that persons who take her class cannot hold themselves out as LMBTs, may not provide massage and bodywork therapy to the public for a fee or other consideration, cannot advertise massage or bodywork therapy, and may only provide massage to their immediate family or within the scope of their profession. The Committee recommends that she inform her students of such.

Martineau Disciplinary Action

The Committee reviewed Mr. Martineau's correspondence and agreed the Cease and Desist Order he received should be removed from Mr. Martineau's designation on the Board's website, and that this case falls under exception 3 in the list of exceptions decided upon previously.

Disciplinary Actions on Website

The Committee discussed whether all disciplinary actions taken by the Board could be linked to the website so the public could click on the link and see the Board's orders, consent orders, cease and desist orders, and other disciplinary actions taken by the Board. Mr. Wilkins will check with Ms. Kennedy and the Board's webmaster to see what

this change would entail.

License Standards Committee

In the absence of Ms. Huffman, Chair, Mr. Farah provided minutes of the Committee's July 15, 2009 meetings as follows:

K. Nicole King

The Committee reviewed Ms. King's application file and criminal record. The Committee considered the applicable statutes, N.C.G.S. 90-629(3), N.C.G.S. 90-629.1 and N.C.G.S. 90-633(a). Based on the factors set forth in N.C.G.S. 90-629.1(c), the Committee determined the applicant was in violation of N.C.G.S. 90-633(a)(3) and (4) and was of the opinion Ms. King's application for a license should be denied for lack of moral character.

Sherrill Smith

The Committee reviewed Ms. Smith's application file and criminal record. The Committee considered the applicable statutes, N.C.G.S. 90-629(3), N.C.G.S. 90-629.1 and N.C.G.S. 90-633(a). Based on the factors set forth in N.C.G.S. 90-629.1(c), the Committee determined the applicant was in violation of N.C.G.S. 90-633(a)(3) and (4) and was of the opinion Ms. Smith's application for a license should be denied for lack of moral character.

Edward H. Wilson, IV

The Committee reviewed Mr. Wilson's application file and criminal record. The Committee considered the applicable statutes, N.C.G.S. 90-629(3), N.C.G.S. 90-629.1 and N.C.G.S. 90-633(a). The Committee determined the applicant should be interviewed by the Committee prior to making a recommendation to the Board whether his license should be denied for lack of moral character.

Wendell Spencer Manning

The Committee reviewed Mr. Manning's application file and criminal record. The Committee considered the applicable statutes, N.C.G.S. 90-629(3), N.C.G.S. 90-629.1 and N.C.G.S. 90-633(a). The Committee determined the applicant should be interviewed by the Committee prior to making a recommendation to the Board whether his license should be denied for lack of moral character.

Christina McCormick

Ms. McCormick had reported to the Board that she received a DWI on January 18, 2009. She was advised by Mr. Wilkins to provide details of the incident and she did. She was further advised to notify the Board of the outcome of the charge when determined. The charge is still pending.

Gregg Leslie Steinberger

The Committee reviewed Mr. Steinberger's application file and his correspondence to the Board. Mr. Steinberger stated on his "Practicing Disclosure Form" dated July 6, 2009 that "I have not been practicing Massage and Bodywork Therapy in North Carolina prior to being licensed in North Carolina". However, in his letter to the Board dated July 7, 2009 Mr. Steinberger stated "From late 2006 thru early 2008, I worked maybe 4-5 weekend festivals her in NC, doing massage to earn a little extra money..." He further stated in his July 7, 2009 letter "It was one of the festivals and the AMTA that alerted me in 2007 that I needed to be licensed in order to practice massage in NC and that I was not grandfathered in, as I had originally thought".

The Committee was of the opinion Mr. Steinberger practiced massage and bodywork therapy in North Carolina without a LMBT license, advertised his practice without a license, practiced after he knew he should be licensed, and made a misrepresentation in his application for a license.

The Committee agreed Mr. Steinberger should be offered a Conditional License. The conditions of the license are that he enter into a Consent Order that provides that he shall (1) be on probation for one year, (2) not violate the Practice Act or Rules of the Board during his term of probation, (3) in addition to the 24 hours of continuing education required to renew his license, he obtain 3 in-class hours of continuing education approved by the Board in North Carolina law, rules and ethics within 6 months from receiving his Conditional License, (4) pay a civil penalty of \$1000 for practicing without a license, (5) pay a civil penalty of \$500 for filing a false "Practicing Disclosure Form", and pay costs of \$500.

Kristina Hailey

The Committee reviewed Ms. Hailey's application for licensure pursuant to N.C.G.S. 90-630.1(b), licensure by endorsement. The Committee agreed that Ms. Hailey should provide a new fingerprint card for the criminal record check and asked that the letter from Hawaii Board of Massage Therapy be independently verified or on original letterhead. If the fingerprint card is returned and her criminal record is satisfactory and the Hawaii Board of Massage letter is

verified, she may be issued a Conditional License. The condition of her license will be that the 24 hours of continuing education required to renew her license shall include at least 3 in-class hours of continuing education in North Carolina law, rules and ethics.

Zheng Wang

The Committee reviewed Mr. Wang's application file and criminal record. The Committee considered the applicable statutes, N.C.G.S. 90-629(3), N.C.G.S. 90-629.1 and N.C.G.S. 90-633(a). Based on the factors set forth in N.C.G.S. 90-629.1(c), the Committee determined the applicant was in violation of N.C.G.S. 90-633(a)(1) and (4) and was of the opinion Mr. Wang's application for a license should be denied for lack of moral character.

Linda G. Sewell

The Committee reviewed Ms. Sewell's application for licensure pursuant to N.C.G.S. 90-630.1(b), licensure by endorsement. The Committee agreed that Ms. Sewell should provide a record of her continuing education classes, proof of employment, proof of her 70 hours of activities as a teacher's assistant, a record of the number of massages she provided during her employment, and any other documentation or information she would like the Board to consider. If the requested information is returned and is satisfactory, she may be issued a Conditional License. The condition of her license will be that the 24 hours of continuing education required to renew her license shall include at least 3 in-class hours of continuing education in North Carolina law, rules and ethics and 3 in-class hours of psychological concepts.

Review Board's Procedure When Denying A License

The Committee reviewed the procedure proposed for the Board to follow when denying an applicant a license. Ms. Huffman has provided additional written comments. The Committee generally agreed with the procedure but will not make a recommendation to the Board until the procedure is finalized.

John C. Williford

The Committee reviewed Mr. Williford's written explanation of his criminal charges in 2005 for indecent exposure and in 2006 for possession of marijuana and drug paraphernalia. Both charges resulted in pleas of PJC, were later dismissed and the record expunged. Based upon the circumstances of the charges and their recent time frames, the Committee agreed Mr. Williford should not be issued a license at this time and he should be interviewed by the

Committee prior to making a recommendation to the Board whether his license should be denied for lack of moral character.

School Approval Committee

Ms. Weinberger reported the Committee met on July 22, 2009 as set forth in the minutes below:

College of Wilmington

The Committee reviewed and discussed the application and site visit summary report of the College of Wilmington prepared by M&M Consulting. The Committee agreed to recommend to the Board that the College of Wilmington be approved provided the school complies with the request for additional information as provided in Mr. Wilkins' July 21, 2009 letter to the school. The Committee recommended that a Special Meeting of the Board be called on Thursday, July 30, 2009 at 11:00 a.m. for the sole purpose of considering the Committee's recommendation.

Medical Arts Massage School

The Committee reviewed Mr. Wilkins' letters to Medical Arts Massage School dated December 28, 2008 and July 19, 2009. The Committee agreed that another site visit to the school should be conducted to see if it is in compliance with the requirements set forth in the two letters.

North Carolina School of Advanced Bodywork

The Committee reviewed a photograph of the sign in front of the NCSAB school building and observed the sign did not have the name of the school stated but instead had the name "School of Clinical Massage Therapy". The Committee agreed the sign should be removed or changed to state the correct name of the approved school or NCSAB should provide the necessary documentation to the Board to change the name of the school.

School of Communication Arts dba Living Arts Institute

The Committee reviewed Mr. Wilkins letter dated July 2, 2009 to Ms. Debra Ann Hooper, Vice-President of School of Communication Arts requesting that the school provide evidence to the Board that it meets the requirements to be exempt from Board approval. The Committee also reviewed Ms. Hooper's response and attachments.

Based upon its review, the Committee was of the opinion that the branch of the School of Communication Arts located in Winston-Salem

and called Living Arts Institute, the site for the massage and bodywork therapy program being offered, may not meet the requirements for exemption. It has been the policy of the Board to require that any separate location where a massage and bodywork therapy program is taught obtain Board approval. It appears Living Arts Institute does not meet the requirements for Board exemption.

The Committee agreed that Mr. Wilkins would set up a meeting between Ms. Hooper and members of the Committee to gather more information and discuss the concerns of the Committee.

LMBTs Teaching Massage

It has come to the attention of the Board that LMBTs are offering instruction in massage and bodywork therapy and teaching massage and bodywork therapy to the public in settings other than an approved massage and bodywork therapy school. This issue was also discussed by the Policy Committee. The Committee agreed with the conclusion reached by the Policy Committee but also discussed the possibility of amending the Rules of the Board to clarify when and under what circumstances an LMBT can offer instruction in massage and bodywork therapy and teach massage and bodywork therapy to the public in settings other than an approved massage and bodywork therapy school.

It was agreed that Vitality Massage should be sent a letter stating that even though the Board does not regulate him or his class he is reminded that persons who take his class cannot hold themselves out as LMBTs, may not provide massage and bodywork therapy to the public for a fee or other consideration, cannot advertise massage or bodywork therapy, and may only provide massage to their immediate family or within the scope of practice of their profession and it is recommended that he include this information in his instruction.

Chinese Techniques Course

The Committee considered whether an instructor in a Chinese techniques course that states "students learn various Chinese massage techniques focusing on the systems of meridians and the ways of movement of energy affects physical, physiological, mental and emotional functions" is required to be licensed as a LMBT. The Committee agreed the instructor should be licensed as a LMBT or an acupuncturist.

Ms. Weinberger reported that a meeting was held with representatives of Living Arts Institute and the school agreed it would submit its application for Board approval.

Ms. Weinberger reported the Committee met on August 20, 2009 as set forth in the minutes below:

American & European

The Committee reviewed the report of M&M Consulting on American & European following their site visit on July 24, 2009. American & European had a few issues with its catalogue but those issues have been addressed. The school shall also be advised that 85% attendance is required and the students making up missed hours is not optional, the hours must be made up. Also, it is not permissible teaching to "save up" break time and let students out early; the purpose of breaks is to enhance the learning process.

North Carolina School of Advanced Bodywork

The Committee reviewed advertisements of North Carolina School of Advanced Bodywork, signage and web page, and determined they met the conditions of the Consent Order entered into between the Board and North Carolina School of Advanced Bodywork in December 2008. The school will be advised.

Kneaded Energy School of Massage

The Committee reviewed correspondence between Mr. Wilkins and Kneaded Energy School of Massage following the receipt of the school's application for Board approval and the site visit conducted by M&M Consulting. It appeared from the documents submitted by Kneaded Energy School of Massage in response to Mr. Wilkins request for additional information and documentation, that all conditions for Board approval had been met. Upon motion made, seconded and passed, the Committee agreed to recommend to the Board that Kneaded Energy School of Massage be approved.

Upon motion made, seconded and approved, the Board approved Kneaded Energy School of Massage effective August 20, 2009.

Communications Committee

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

Ms. Allen also reported that the Board will produce a Newsletter again this year.

Licensing Boards Coordination Committee

No report.

OLD BUSINESS

The Board acknowledged its review of agenda items 1-7.

Jurisprudence Exam

The Board reviewed a report to the North Carolina Occupational Therapy Board about implementation of its Jurisprudence Exam and considered various cost issues. The Board continued its discussion on development of the Jurisprudence Exam and examined various possibilities for development and implementation of the Exam. The Board asked the Committee to continue its research and advise the Board on how it recommends the Jurisprudence Examination be developed and implemented.

K. Nicole King

Ms. King was advised by the License Standards Committee that it would recommend to the Board that she be denied a license but that she could appear before the Board to present any information she would like the Board to consider when considering the recommendation of the License Standards Committee. Ms. King did not appear, however, the Board agreed she should be contacted to see if she wants the opportunity to appear before the Board before it makes its decision.

NEW BUSINESS

The Board acknowledged its review of agenda item 1.

Meeting with Community College System President

Ms. Beam and Mr. Farah reported on their meeting with Dr. Scott Ralls, President of the Community College System on July 17, 2009. It was a cordial, introductory meeting. All parties seemed willing to move forward on the issue of providing massage and bodywork therapy education in North Carolina. Dr. Ralls agreed that Ms. Renee Batts would serve as a liaison between the Community College System and the Board. Ms. Beam recognized Ms. Batts who was present.

Guidance for Potential Students with Criminal History

Ms. Allen presented her concern that a massage and bodywork therapy student might go to school, finish the program, pass the entry-level examination, but not be licensed due to the student's criminal record that would prevent the student from providing proof of good moral character.

The issue was discussed generally and referred to the School Approval Committee and then to the License Standards Committee.

Election of Officers

Ms. Beam called for nominations for election of officers. She advised the Board she would not be voting except in the event of a tie. She also announced the new officers would take office following today's meetings.

Mr. Farah was nominated for Chair of the Board and was elected by signed, written ballot.

Ms. Weinberger and Ms. Huffman were nominated for Vice-Chair. Ms. Weinberger was elected by signed, written ballot.

Mr. Orenstein was nominated for Treasurer and was elected by signed, written ballot.

The Board agreed the procedure for election of officers needed to be amended and clarified. Ms. Beam referred the issue 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 11:55 a.m.

RETURN TO OPEN SESSION

The Board returned to Open Session at 2:15 p.m.

Estelle Ledbetter

The Board reported it had reviewed and approved the proposed Consent Order revoking Ms. Ledbetter's license for inappropriate sexual contact with a client during a massage session.

Thomas Clephane

The Board reported it had reviewed and approved the Order entered by the Board following the Thomas Clephane hearing June 18, 2009.

Gregg Steinberger

The Board reported it had reviewed and approved the proposed Consent Order disciplining Mr. Steinberger for practicing without a license.

ADJOURNMENT

Upon motion duly made, seconded and passed, the meeting was adjourned at 2:20 p.m.

Ms. Susan Beam, Chair

Dr. Raphael Orenstein, Treasurer