

North Carolina Board of Massage & Bodywork Therapy
Open Session Minutes
June 18, 2009

TIME AND PLACE

The North Carolina Board of Massage and Bodywork Therapy met in Open Session in the Offices of the Board on June 18, 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, 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 its minutes of April 16, 2009.

TREASURER'S REPORT

The treasurer's report was approved as presented.

ADMINISTRATIVE REPORTS

Mr. Wilkins reported:

Proposed Amendments to Rules

The Board reviewed its proposed change to Rule .0602(4) to add a definition of "college". The Board has received no written or verbal comment on the rule change. Upon motion made, seconded and approved the Board adopted the rule as presented and agreed that it be presented to the Rules Review Commission.

Status of Amendments to Practice Act

There is no Practice Act change currently being recommended by the Board. None of the bills introduced in the 2009 session of the Legislature and being followed by the Board that may indirectly affect the practice of massage and bodywork therapy made the cross-over deadline and should not be considered further during the 2009-2010 sessions of the General Assembly.

Disciplinary Hearings

There is one disciplinary hearing scheduled for today.

Ms. Kennedy reported:

Licensee Report

8992 licenses have been issued
7466 licensees are still in good standing

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.

COMMITTEE REPORTS

Policy Committee

Ms. Middleswarth reported the Committee had not met since the April Board meeting.

License Standards Committee

Ms. Huffman, Chair, provided minutes of the Committee's April 16, 2009, May 4, 2009 and May 11, 2009 meetings as follows:

Adam Scott Jenkins

The Committee reviewed the application file of Mr. Jenkins and unanimously agreed Mr. Jenkins does not currently meet the requirement of good moral character required to be issued a massage and bodywork therapy license. The Committee will recommend to the Board that Mr. Jenkins does not currently meet the requirement of good moral character required to be issued a massage and bodywork therapy license. Mr. Jenkins' attorney was advised of the Committee's decision and was also advised that Mr. Jenkins may appear before the Board at its next meeting to make any statement or present any evidence regarding the Committee's recommendation.

Crystal Fugle and Sonvung Sikes

Ms. Middleswarth recused herself from the discussion of this agenda item. The remaining Committee members reviewed Ms. Huffman's analysis (based on the information she could obtain) of the RCC curriculum as it existed when the applicants were enrolled in the program. The apparent deficiencies in curriculum were still not resolved. The committee agreed to recommend to the Board that the applicants be issued conditional licenses with the condition that each of them take and complete a continuing education courses or courses in ethics, client/therapist relations, boundaries, transference and counter-transference as part of their continuing education requirements for their first license renewal.

Rebekah Saylor

The Committee again reviewed the application of Ms. Saylor and remained of the opinion she should not be granted a LMBT license at this time due to her lack of moral character and agreed to recommend to the Board at today's April 16, 2009 meeting that Ms. Saylor be advised she may reapply after January 2010. The Committee reviewed Mr. Wilkins' letter advising Ms. Saylor she would not be granted a LMBT license at this time due to her lack of moral character and advising she may reapply after January 2010.

Ginger Tickle

The Committee is awaiting the opinion from the Attorney General's office.

Matthew J. McCloud

The Committee again reviewed Mr. McCloud's application file and remained of the opinion that the length of time Mr. McCloud continued to practice chiropractic after his chiropractic license was expired was unreasonable and a very serious matter and did not believe sufficient time had passed to show proof of rehabilitation. The Committee was of the opinion he should not be granted a LMBT license at this time due to lack of moral character. The Committee cannot recommend to the Board that Mr. Jenkins be granted a massage and bodywork therapy license at this time. The Committee reviewed Mr. Wilkins' letter advising Mr. McCloud he would not be granted a LMBT license at this time due to his lack of moral character and advising him that he may appear before the Board at its next meeting to make any statement or present any evidence regarding the Committee's recommendation.

Jung Suk Whittaker

Ms. Whittaker will be given another opportunity to meet with Board staff and attorneys before the next Committee meeting.

Young Suk Stinnette

Ms. Stinnette met with a Board attorney to discuss her application for a license. During the meeting it was obvious that Ms. Stinnette could not demonstrate satisfactory proof of proficiency in the English language.

The Committee cannot recommend to the Board that Ms. Stinnette be granted a massage and bodywork therapy license at this time. The

Committee reviewed Mr. Wilkins' letter advising Ms. Stinnette she would not be granted a LMBT license at this time due to her lack of proficiency in the English language and advising her that she may appear before the Board at its next meeting to make any statement or present any evidence regarding the Committee's recommendation.

Richmond Community College

Mr. Wilkins will continue his communication with Richmond Community College about its massage program's compliance with the Practice Act and Rules of the Board.

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 will provide additional written comments. The Committee generally agreed with the procedure but will not make a recommendation to the Board until the procedure is

finalized. The issue will remain in the Committee for its next meeting. It was noted that the proposed procedure does appear on the Board's website but that the procedure has not been considered or approved by the Committee or the Board.

Daron Garmon

The Committee reviewed Mr. Wilkins' letter advising Mr. Garmon the Committee would recommend to the Board that he not be granted a LMBT license at this time due to his lack of moral character.

Deidre Doran

The Committee reviewed Ms. Doran's application for licensure pursuant to the Endorsement B provision of the Practice Act. The Committee agreed that Ms. Doran should be issued a license based on her Florida license, the passage of the National Certification Exam and her continuing education history.

Teresa Latendress

The Committee reviewed a Cease and Desist Letter sent to Ms. Latendress and her response to the letter. The Committee was not satisfied with Ms. Latendress' response and asked that Mr. Wilkins write her advising her the Board does not discriminate based on race of the practitioner, explaining to her the definition of massage and bodywork therapy and that it is prohibited for anyone to practice massage and bodywork therapy in North Carolina without a license, even if they might be of American Indian descent.

Seung Ok Kim

The Committee again reviewed Ms. Kim's application for licensure. The Committee noted that Ms. Kim had been issued a Cease and Desist Letter in 2002 and in 2008 for practicing massage and bodywork therapy in North Carolina without a license. The Committee amended it prior decision and agreed that she should be issued a conditional license provided she (1) agree to a Consent Order placing her on probation for two years, (2) agree to not violate the Practice Act or Rules within the term of probation, (3) agree to pay a civil penalty of \$1000 within 90 days of signing the Consent Order, (4) pay another \$1000 within one year of the day she signs the Consent Order and (5) pay costs of \$200.

Young Wood III

The Committee again reviewed Mr. Wood's application for licensure. The Committee noted that Mr. Wood admitted to practicing massage and

bodywork therapy in North Carolina from August 2007 through February 2009 without a license. Mr. Wood was licensed April 17, 2009 and issued license number 8665. In lieu of a public hearing and due to Mr. Wood

admitting he practiced before he was licensed, the Committee agreed that he should be offered the following Consent Order: (1) his license shall be changed from a regular license to a conditional license; (2) he shall be on probation for two years; (3) he shall not violate the Practice Act or Rules within the term of probation; (4) he shall pay a civil penalty of \$1000 within 90 days of signing the Consent Order; (5) he shall pay a civil penalty of \$1000 within one year of signing the Consent Order; and (6) he shall pay costs of \$200.

License By Endorsement A or B

The Committee reviewed the written procedure for licensing an applicant pursuant to Endorsement A or B of the Practice Act. The Committee agreed generally with the procedure, however, if staff has any concern about whether an applicant's qualifications meet the requirements for licensure pursuant to Endorsement A or B, staff will consult with the Chair of the LSC Committee, if available, and, if not available, will consult with another member of the Committee. This requirement is particularly necessary when the applicant is seeking a license pursuant to Endorsement B, does not clearly meet the requirements and needs to be reviewed on a case by case basis. The License by Endorsement A or B procedure will be added to the Board's Standard Operating Procedures Manual.

John C. Williford

The Committee reviewed Mr. Williford's application file that showed he had 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 notified he may appear before the Board at its June meeting to make any statements or offer any further evidence regarding his moral character and proof of rehabilitation.

Angela Nichole McCall

The Committee considered Ms. McCall's license application. Ms. McCall graduated from Richmond Community College in February 2008. She passed the National Certification Exam September 23, 2008. She has been practicing massage and bodywork therapy at Dr. David M. Arnold's chiropractic office while unlicensed. She thought she could practice once she passed the National Certification Exam but now realizes she

was misinformed. The Board received two complaints from LMBTs about Ms. McCall practicing without a license and she was sent a Cease and Desist Letter on March 17, 2009. Ms. McCall stated she "sat for and passed the North Carolina State Board Examination" after passing the National Certification Exam. The Committee would like to know what North Carolina exam she is referencing. Assuming her reference to the North Carolina exam was an unintentional error, the Committee agreed to issue Ms. McCall a Conditional License provided she (1) agree to a Consent Order placing her on probation for one year, (2) agree not to violate the Practice Act or Rules within the term of probation, (3) agree to pay a civil penalty of \$1000 within 90 days of signing the Consent Order, (4) pay costs of \$200, and (5) complete continuing education courses that include ethics, client/therapist relations, jurisprudence, boundaries, transference and counter-transference for her first renewal.

School Approval Committee

Ms. Weinberger reported the Committee met on June 4, 2009 with M&M Consulting and reviewed in detail the renewal applications and files of all Board approved schools to determine which schools qualify for a two-year renewal and presented the following minutes of that meeting.

Two-Year Renewals for Approved Schools

The Committee began its implementation of the amendment to Rule .0601(c) that says in part: "If a school has remained in compliance with all Board rules for a period of five consecutive years and has no disciplinary action taken against it by the Board for a period of five consecutive years, the Board shall increase the period of approval for that school from one to two years."

The Committee reviewed all currently approved schools in detail. The review consisted of examining the following documents: (1) List of Infractions by School from 2004 through 2009; (2) Summary of Renewal Application Process for each school; (3) Information Requested to Complete Renewal of School approval sent to schools with information missing from the school's Application for Renewal; M&M Consulting's Two-Year Rotation Suggestion; the Board's files on each school; and previous school renewals. Following its review, the Committee discussed each school and determined which schools the Committee would recommend to the Board for a two-year renewal and which schools the Committee would recommend to the Board for a one-year renewal. Schools in operation for less than five years were not eligible for a two-year renewal.

The schools recommended for approval for a two-year renewal are:

1. American & European Massage Clinic, Inc.
2. Blue Ridge Healing Arts Academy
3. Body Therapy Institute
4. Center for Massage & Natural Health
5. Edmund Morgan School
6. Miller-Motte Technical College of Wilmington
7. Southeastern Institute
8. The Whole You School of Massage and Bodywork

The schools recommended for approval for a one-year renewal are:

1. Asheville School of Massage
2. ECPI College of Technology
3. Healing Arts & Massage School
4. Medical Arts Massage School
5. Miller-Motte Technical College of Cary
6. Natural Touch School of Massage Therapy – Greensboro
7. Natural Touch School of Massage Therapy – Hickory
8. North Carolina School of Advanced Bodywork
9. Therapeutic Massage Training Institute

Most schools on one or more occasions failed to comply with the requirements of Rule .0601(d) by not notifying the Board in writing within 30 days of changes in instructional staff. The Committee agreed to recommend to the Board that amnesty be granted to those schools who failed to meet this requirement with the understanding that any school that does not meet this requirement for any future renewal will only be renewed for one year.

Upon motion made, seconded and approved, the Board agreed with the recommendations of the School Approval Committee and the eight above schools were approved for a two-year renewal and the nine above schools were approved for a one-year renewal.

College of Wilmington

The Committee reviewed correspondence between Mr. Wilkins and College of Wilmington regarding College of Wilmington's contention that it is exempt from Board approval pursuant to NCGS 90-631(c); specifically Mr. Wilkins' letter to College of Wilmington dated April 16, 2009; College of Wilmington's letter to Mr. Wilkins dated April 20, 2009 and attached exhibits 1, 2 and 3; College of Wilmington's letter to Mr. Wilkins dated May 18, 2009; Mr. Wilkins' letter to College of Wilmington dated May 22, 2009; and College of Wilmington's letter to Mr. Wilkins dated May 26, 2009. The Committee was still of the opinion that the College of Wilmington has not met the requirements of NCGS 90-631(c) because the College of Wilmington is not a college or university and is therefore not exempt from the school approval

process of the Board. The term "college" is not defined in NCGS 90-631(c), contrary to the contentions of College of Wilmington, and is not defined elsewhere in the Practice Act or Rules of the Board. The only definitions of "college" are found in the Guidelines of the Board and in the proposed pending amendment to Rule .0602(4) that define "college" as "an institution of higher learning that awards an Associate degree or higher". College of Wilmington is not a college that awards an Associate degree or higher and College of Wilmington is not exempt from the requirements of the Practice Act and Rules that its massage and bodywork therapy program be approved the Board.

The Committee will try to set up a meeting with representatives of College of Wilmington in advance of the Board meeting on June 18, 2009 to discuss this matter.

Medical Arts Massage School

The Committee agreed Medical Arts Massage School cannot put language in its school documents that would permit it to unilaterally change its contractual obligations. Mr. Wilkins is to advise the school.

Communications Committee

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

Licensing Boards Coordination Committee

No report.

OLD BUSINESS

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

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 consensus of the Board was that the purpose of the Jurisprudence Examination was to educate applicants of North Carolina law, rules and ethics. The Board was of the opinion this could be accomplished through a process developed by the Board and similar to the process used by the North Carolina Board of Physical Therapy Examiners. The Board asked the Committee to continue its research and

advise the Board on how it recommends the Jurisprudence Examination be developed and implemented.

Matthew McCloud

Mr. McCloud presented evidence supporting why he should be issued a license.

NEW BUSINESS

The Board acknowledged its review of agenda items 1 and 3.

FSMTB

Ms. Beam appointed Ms. Allen to replace Ms. Middleswarth as the Board's delegate to the FSMTB.

Leonard Martineau

Mr. Wilkins was asked to advise Mr. Martineau that his request was referred to the Policy Committee.

International Association of Structural Integrators

Ms. Beth Bergin made a presentation in support of the request of IASI that its certification exam be accepted by the Board to determine entry level competence. The issue was referred to the Policy Committee for consideration and study.

Ortho-Bionomy

Mr. Wilkins was asked to respond to Ms. Paula Forehand's email since the issue presented had been resolved by the Board previously.

LMBTs Teaching Massage and Bodywork Therapy

The issue of whether LMBTs who are not associated with a Board-approved school can teach massage and bodywork therapy classes was referred to the School Approval Committee.

Jean Middleswarth

The Board recognized Ms. Middleswarth's contributions to the Board during her term and expressed appreciation to her for her dedication, insight, advice and hard work. Ms. Middleswarth read a letter she had written to the Board expressing her thanks, her respect for the Board and its members and her hope and wishes for the future of the Board as it continues its

mission to protect the public. Ms. Middleswarth's letter was included as a part of the minutes of the meeting.

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 3:05 p.m.

RETURN TO OPEN SESSION

The Board returned to Open Session at 4:25 p.m.

Matthew McCloud

The Board reported it had agreed in Closed Session to issue a Conditional License to Mr. McCloud upon the following conditions: (1) that he not violate the Practice Act or Rules during his first licensure period; (2) that he provide a copy of his recent criminal record with his first renewal; and (3) that he advise the Board of any administrative actions regarding any license he holds in North Carolina or any other state during his first licensure period.

Adam Scott Jenkins

The Board reported it had decided in Closed Session to issue a Conditional License to Mr. Jenkins provided he agrees to a Consent Order with the conditions that he: (1) continue to abstain from drinking alcohol; (2) provide a recent copy of his criminal record with his first renewal; (3) agree to random blood and alcohol tests during his first term of licensure; (4) agree that all matters in controversy between him and the Board are resolved, including issues regarding public records access to Board files and fees for copying Board documents; and (5) not violate the Practice Act or Rules during his first licensure period.

Thomas Bryant Clephane Order

The Board reported it had decided in Closed Session there was substantial evidence to show that Mr. Clephane violated Rule .0502(2) during his massage session with the complainant due to his failure to deliver treatment that ensured her safety, comfort and privacy. The Order of the Board is that Mr. Clephane (1) be placed on probation until December 31, 2011; (2) prior to November 1, 2009, take six hours of in-class ethics training at a class or classes pre-approved by the Board that relate directly to ethics, roles and boundaries; (3) pay a civil penalty of \$750; (4) pay

costs of the court reporter; and (4) not violate the Practice Act or Rules during his term of probation.

Policy Committee

Ms. Beam appointed herself to the Policy Committee to replace Ms. Middleswarth when Ms. Middleswarth's term ends June 30, 2009.

ADJOURNMENT

Upon motion duly made, seconded and passed, the meeting was adjourned at 4:30 p.m.

Ms. Susan Beam, Chair

Dr. Raphael Orenstein, Treasurer