

# MESSAGE REGULATOR

Editor: Carmen E. Payne, Board Director

New Mexico Massage Therapy Board

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## BOARD MEMBERS

The New Mexico Massage Therapy Board is composed of three licensed massage therapists and two public members appointed by the Governor. The Board currently has a public member vacancy. The following persons are now serving on the Board:



### Professional Members:

Kathleen Egenes, LMT and Chair  
(Term expires 9/30/2006)  
W.D. "Peter" Lane, LMT  
(Term expires 12/31/2006)

## FEDERATION OF STATE MASSAGE THERAPY BOARDS FORMED

Randy Barnes, LMT  
(Term expires 9/30/2005)

### Public Members:

Quinn Lopez, Public Member  
(Term expires 09/30/2005)  
Vacant, Public Member  
(Term expires 12/31/06)

### Board Attorney

Mona Valicenti, Assistant A.G.

Geraldine Mascarenas, the Board's former Director is now the Board's Compliance Officer and Complaint Investigator.

## FEDERATION OF STATE MASSAGE THERAPY BOARDS

Notable Mention

By Kathleen Egenes, LMT, RMTI  
Professional Board Member & Chair

## Boards & Commissions Section Relocation and Reorganization

On April 1, 2004, the Board, as part of the agencies under the umbrella of the New Mexico Regulation and Licensing Department (RLD), moved to a new state office building, the Toney Anaya Building at the West Capitol Complex located at 2550 Cerrillos Road in Santa Fe, NM (87505).



At the same time of the move, RLD reorganized the Boards and Commissions (B&C) Division in the Santa Fe offices. The administration of the Massage Therapy Board was transferred to a new Director. Board staff is shared with the Respiratory Care Advisory Board.

### BOARD STAFF

Carmen E. Payne, Director  
Anita S. Villegas, Administrative Assistant

A Compliance Section was also organized to handle complaints for all the boards under the RLD umbrella.



In an article published in the July 2005 edition of *Massage Today*, Editor Cliff Korn stated, in reference to the Federation of State Massage Therapy Boards, "...a new organization formed to benefit massage therapy, this is potentially the most significant massage news of the decade".



Last Spring, a two-day meeting was held in Denver CO, hosted by the Associated Bodywork & Massage Professionals (AMBP). Myself and 16 other massage professionals attended the meeting, including State Board Directors, Board Members, and Educators from throughout the United States.

At the conclusion of this meeting, an interim Board was established and the

## Federation of State Massage Therapy Boards was founded.

As the Chairperson for the New Mexico State Massage Board and a recently appointed member of the Federation of Massage Therapy Boards, I am proud to say that New Mexico has developed and implemented one of the most comprehensive programs for the monitoring and licensing of massage therapists in the country. We take pride in the professionalism and dedication that our Governor and State Legislature have afforded the Board and are doing our best to continue to improve the conditions and controls that have established our state as one of the leaders in this complex and essential effort.

Like the State of New Mexico, the goals of the Federation are focused on the establishment of conditions that are designed to protect the general public and make certain that those individuals that deliver massage services are monitored to certify their competency and maintain a level of service that is of the highest quality. The specific goals of the Federation include:

- Creating a national licensing examination to ensure that current knowledge and techniques are in place.

- Enhancement of the Continuing Education programs throughout the country.
- Integration with accrediting commissions, school associations, professional membership associations, and the like to establish national standards.
- Public protection with enforcement of regulatory standards.

The establishment of clear and comprehensive regulations in support of “portability” of licensing reciprocity among State Massage Boards is a major objective of the Federation. The Federation believes that it will play a major role in facilitating the communications and exchange of ideas between representatives from each State and will afford a common forum in which all members will be represented equally. To that end, the Federation has the vision that it will provide a standard environment from which all States can develop a congruent and cooperative series of standards that will guide each State in the development of testing and licensing programs that meet the highest standards for the message profession



**ARE YOU AN INDEPENDENT CONTRACTOR?**  
By Quinn Lopez, Public Board Member

When a massage therapist works in a spa or other type of business, the massage therapist may need to consider whether he or she is an em-

ployee therapist or an independent contractor therapist.

Whenever an employer employs three or more employees, the New Mexico Workers Compensation Act requires the employer to provide workers compensation insurance coverage for any on-the-job injury. However, the Act does not require business owners or employers to provide this coverage for independent contractors. The question of whether a massage therapist is an employee therapist or an independent contractor therapist determines whether the business owner or the massage therapist the business owner/employer has must pay for workers compensation coverage.



The law does not merely distinguish between the labels of “employee therapist” and “independent contractor therapists”. The Workers Compensation Administration or a court of law will take a hard look at the actual relationship that exists between the employer and the therapist to determine who is responsible for providing coverage.

Simply put, the law looks at the degree that the employer exercises control over the details or manner of the work to be done to determine whether the therapist is an employee or independent contract. There are two tests, under New Mexico law, that help the Workers Compensation Administration or a court in answering these questions – the *Right to Control Test* and the *Relative Nature of Work Test*.

The *Right to Control Test* focuses on the degree of control exercised by an employer over independent

contractors and regular employees. Here are some factors covered by this test:

- **Method of Payment** – For instance, does the business owner/employer compensate the therapist by the massage or by time (e.g., hour, day or week)? If the business owner compensates the therapist by time, then the law would deem an employer-employee relationship and not an independent contractor relationship.



- **Control of Work Premises** – For instance, does the therapist agree to obey general rules for the regulation of employee conduct (an employee) versus abiding by general rules policing the work on the premises (an independent contractor)? And, does the employer/business owner impose guidelines on the quality and performance of massage services rendered to clients (employee)?
- **Control Over Manner and Details of Work** – For instance, does the business owner or employer control how and when massages are to be done or procedures to be followed in performing a massage such as in the areas of draping, work shifts or scheduling? Does the business owner or employer provide mandatory training as a condition of continued employment? Again, the greater the degree of control over the details of massage therapy services would indicate an

employer-employee relationship.

- **Termination of Employment Contract** – For instance, other than for dissatisfaction or non-performance, can the business owner or employer terminate the therapist at-will, or is a breach of contract required? At-will termination would not indicate an independent contractor relationship.
- **Professional Workers**- For instance, does the business owner/employer or management have the same professional skills as therapists? What degree is the therapist regularly at the disposal of the employer to perform massages as opposed to the degree of time the therapist is available to the public for massages? Can a therapist maintain and market a private massage practice?



- **Other Factors** – For instance, can therapists solicit business owner or employer customers for their own outside private practice? Are therapists required to stock supplies daily? Does the business owner or employer provide supplies? Does the business owner or employer control the therapist's continuing education compliance? Does the therapist need to abide by an employer's code of hygiene, or attire? Can an business owner or employer discipline a therapist at its discretion, which would indicate an employer/employee relationship? Is there a separate contract for therapists as opposed to other em-

ployees? Are therapists entitled to benefits?

The *Relative Nature Test* focuses on the work or service performed by the therapist. This test tries to determine whether the therapist's services are part of a regular part or process in the trade or business of the employer, as opposed to a casual employment relationship to complete massage services.



If a business owner/employer or a therapist has questions, they may contact, the Worker's Compensation Administration at 1-800-255-7965, [www.state.nm.us/wca](http://www.state.nm.us/wca), or by writing to PO Box 27198 Albuquerque, NM 87125-7198, for more information.

### 2005 LEGISLATIVE UPDATE

Following the 2005 Legislative Session, Governor Bill Richardson signed legislation extending the agency life of the Massage Therapy Board. The extension language reads, "The massage therapy board is terminated on July 1, 2015 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Massage Therapy Practice Act until July 1, 2016. Effective July 1, 2016, Chapter 61, Article 12C NMSA 1978 is repealed."



Note: At this writing, the Board is waiting for an updated copy of the Massage Therapy Practice Act to be distributed by the Conway Greene Inc., the company that publishes the laws of the State of New Mexico.

**PUBLIC RULE HEARINGS HELD**

On March 24, 2005 and June 24, 2005, the Board convened public rule hearings to receive comments on proposed amendments to several board regulations in 16.7 NMAC.

Following the hearings the Board took action and adopted the proposed amendments to Parts 1, 3, 5, 6, and 11. The Board also repealed Parts 4 and 12 and replaced them with new Parts 4 and 12. Parts 1, 3, 6, 11, and 12 were filed at State Records and Archives on May 23, 2005 and became effective on June 24, 2005.

Parts 4 and 5 were filed on June 28, 2005 and became effective July 28, 2005.

**HOW TO RECOGNIZE NEWLY AMENDED SECTIONS IN THE**

Here's how to recognize Sections of regulations that have been recently amended. At the end of each "Section" is a bracketed historical date segment that contains the effective dates of various amendments to that section.

The Sections that were recently amended will have the effective date "06-24-2005" as the last date shown.

In the case of Parts 4 and 5, the effective date of the most recent amendments is "07-28-2005".

All current licensees will receive copies of the amended rules this fall. **Future updated rules will be mailed to each licensee to update their master copy of 16.7 NMAC.**



We advise that licensees keep these documents in a three ring binder for future reference and updates. The updated regulations are also accessible and downloadable through the Board's Web-site @ [www.rld.state.nm.us/b&c/massage](http://www.rld.state.nm.us/b&c/massage)

Following is a summary of **some** of the major changes recently promulgated in the Board's rules.

**Caution!**

**Because this is not an inclusive listing of all the changes the Board strongly recommends that all licensees take the time for a careful reading of all the regulations to ensure a personal understanding of all the amendments and how they impact you personally and professionally.**

**16.7.1 NMAC (Part 1) General Provisions**



Legal counsel advised the Board that a couple of its regulations did not track with the Massage Therapy Practice Act in terms of the licensure exemptions. Therefore, effective June 28, 2005, the rules provision exempting Craniosacral, Feldenkrais, Polarity therapy, and Reiki, was repealed, as was the provision allowing "alternative qualifying experience", because both provisions exceeded the Board's statutory authority.

The Board decided that the statutory definition of massage therapy should be the factor used to determine whether a modality falls within the massage therapy scope of practice. Statutorily authorized exemptions from massage therapy licensure were added to Part 4 in 16.7.4.9 NMAC.

Other changes to Part 1 were primarily for clarification purposes.

**PART 3 (16.7.3 NMAC) "Fees"**

- ✘ Massage Therapy application fee was increased to \$75.
- ✘ Late renewal and reactivation fees are no longer going to be prorated.
- ✘ The fee is \$125 PLUS the late renewal penalty fee of \$75 for LMT's, and \$50.00 PLUS the late renewal penalty fee of \$75 for RMTI's.

**PART 4 - REPLACEMENT RULE "Requirements for Licensure"**

The Board repealed Part 4 and replaced it with a new Part 4 that essentially contains information and instructions on the application process for temporary and permanent licenses for massage therapists, and the registration application process for massage therapy instructors and for massage therapy schools.

Many of the Board's policies and procedures and administrative practices are included in the rule so that the applicant knows what is required, how to complete the application process, and what to expect during the process.



This rule revision was the outcome of countless questions from applicants to Board staff, and will, hopefully help simplify the application process for future applicants. The Board's intent is to make the process more "user-friendly" while increasing board office operation.

**PART 5 (16.7.5 NMAC) "Requirements for Schools"**

Amendments to Part 5 added definitions and changed the required curriculum by increasing the minimum number of hours in the anatomy and physiology section to 125, and the

minimum number of pathology hours to 40. It also specifies six (6) as the minimum number of ethics hours required. This change was effective July 28, 2005.

**16.7.6 NMAC (Part 6)  
Requirements for Instructors**

Most of the changes to Part 6 were reformatting, clarification changes. However, the Board did add a new provision entitled, "Requirements for Teaching Assistants".

**16.7.11 NMAC (Part 11)  
Continuing Education**

Many of the changes to Part 11 were reformatting and clarification changes. In addition to transferring the four (4) hour ethics requirement from the instructors to the massage therapists, there were too many other substantive changes to this rule to enumerate here.

**A careful reading is advised.**

**16.7.12 NMAC (Part 12)  
"License/Registration Renewal"**

Part 12 was repealed and a new, replacement Part 12 was promulgated. Many changes involved reformatting, rearranging and expanding information already in the rule. In addition, the administrative process for handling renewals, inactive status, and reactivation is clarified in the rule in answer to the myriads of questions received by the Board office regarding this topic.

**Due to the many changes to Part 12, the Board strongly advises a careful review and acquaintance with the provisions in this new rule.**

**ULA Grants Board Authority  
Over Unlicensed Practice**

The 2003 Legislature amended the Uniform Licensing Act (ULA) Section 61-1-3.2 NMSA 1978 (2003 Repl. Pam) by granting boards authority over unlicensed persons practicing their professions.

The Board, therefore, added a new rule, Section 16 of 16.7.12 NMAC (Part 12) that tracks with the new ULA provisions. It provides the following:

- ✓ That the board may impose civil penalties in an amount not to exceed \$1,000 for each violation.
- ✓ That the board may assess all the costs associated with the disciplinary action to the respondent.
- ✓ That reports of unlicensed practice may be reported for investigation to the board by phone, fax, mail, or e-mail
- ✓ That approved complaints form are available to report violations to the board.

**The Board collected \$12,500 in fines and penalties for unlicensed practice in FY05 (7/1/04 through 6/30/05).**



**NOTIFICATION TO BOARD OF  
CHANGES IN CONTACT  
INFORMATION IS REQUIRED**

Just a quick reminder that it is a requirement that all licensees and registrants must keep the Board office informed of address and employment location and phone number changes. The address change form is available in the FORMS link on the Board's Website.



**"MEDICAL MASSAGE"**  
by W.D. "Peter" Lane, LMT, CNMT  
Professional Board Member

**SUMMARY:**  
*There is a need to define the frequently used term "medical massage."*

*One proposed definition would require a medical massage therapist to have*

*significantly more training to qualify for licensure.*

*The curriculum for medical massage would include cadaver studies, chemistry and nutrition, as well as an internship.*

*The state would provide a separate license for a medical massage therapist, which would allow the practitioner to bill insurance. The insurance component would compensate a therapist for the additional required education.*

*A medical massage therapist would work with a patient's primary care physician to provide optimum health for the patient.*

**DISCUSSION:**

One of the most vexing issues facing the massage therapy industry today concerns the term "medical massage." All healthcare professionals know what it is; yet few are able to define it. Yet, when we as body work practitioners, answer the question of what medical massage is, we will further the goal of legitimizing and establishing advanced body work in the healthcare environment.

Why is "medical massage" creating such a stir in the massage and medical community at large? Who should be allowed to practice medical massage and how? When is it indicated and when is it not?

I attempt to answer these questions from the standpoint of a Licensed Massage Therapist and a Certified NeuroMuscular Therapist who has been treating

patients in New Mexico for the past eleven years. My opinions are based upon practicing in both the massage and medical environments. I have come to these opinions based upon a sincere desire to see the perception, understanding and appreciation of body work advanced throughout the United States with some degree of uniformity. More importantly, the body work industry needs a universal definition so that when a patient seeks out the services of a medical massage therapist (MMT) he or she will know that a MMT is licensed and properly trained to treat their pathology. It's important to define medical massage to both eliminate imposters and to protect legitimate medical massage therapists.



In my opinion, medical massage should be an accepted part of allied health care and physical medicine. It should be a system of patient care and treatment based on a medical model that is scientific, hands-on, and results-oriented. Medical massage is derived from a specific diagnosis that requires certain specific techniques or procedures to bring about a specific measurable response from the patient. Medical massage should be a discipline that operates as

a scientific system utilizing universally accepted medical terminology. Medical massage practitioners should participate in scientific research that demonstrates a measurable response to a patient's chief medical problem. It should treat a variety of specific musculoskeletal indications with an educated understanding of how every system of the body is affected by every other system. There should also be a comprehensive set of contraindications for the modality as well. Medical massage should NOT be a system of diagnosis and treatment that relies upon the use of prescription medication to treat musculoskeletal related dysfunctions.

These days, many other definitions of medical massage are floating around the country. Some serve the limited financial gain of a person or organization promoting a particular definition. Some definitions state that medical massage should only be practiced in a doctor's office under the absolute control of an MD or DC. If practiced in a PT clinic, it must be under the domain of a PT. One organization states that only students who take their "national certification examination" in medical massage should be recognized as a medical massage therapist. From an insurance billing perspective, there has been recent litigation attempting to prevent a body worker from filing insurance unless they are a "medical massage therapist."

Fortunately, when the judge asked for a definition of medical massage and none could be offered, he ruled in favor of the massage therapist. It has become quite clear that these definitions do not have at their core the benefit of the patient.



Under the definition that I propose, a LMMT (licensed medical massage therapist) should be someone who has received training requiring more than the universal 500-hour training threshold that has become the norm for massage therapists. The curriculum should require more hours in anatomy and physiology, pathology, patient assessment, kinesiology, musculoskeletal anatomy, including cadaver studies, chemistry and nutrition. The curriculum would include alternative therapy electives, a segment on business and ethics, practice management and insurance billing. I also propose a significant clinical practicum and internship.

Included in this formula is a continuing education requirement that exceeds the current eight to sixteen continuing education units required biannually by many states. The extra education can be accomplished within the context of a 1200 to 1400-hour program similar to the structure of training programs in place in Canada where

2200-3000 hour programs are standard. A Licensed Medical Massage Therapist would have the option of practicing in a controlled environment such as an HMO, working in private practice or something in between. The state would be required to adopt separate licensure for Licensed Medical Massage Therapists. Furthermore, the LMMT should automatically be included in the mix of approved therapies for insurance billing.



The benefits for patients and therapists are obvious. The patient will know his or her therapist is properly trained, qualified and competent to treat the condition that they have been referred for. The therapist will have the satisfaction of knowing that their training will bring measurable results to the patient and they will be compensated for their work by insurance. The insurance industry benefits by knowing Licensed Medical Massage Therapist are ethically and legally following a standard of treatment and documentation. By arriving at a national consensus about the definition and training of a Licensed Medical Massage Therapist, the United States will have gained a cost-effective tool in containing spiraling healthcare costs.

*W.D. 'Peter' Lane is a LMT, LMTI and Certified NeuroMuscular Therapist practicing in Albuquerque. He teaches anatomy and physiology and certifies and trains a variety of licensed healthcare practitioners in NeuroMuscular Therapy as a NCBTMB Category 'A' continuing education provider. He is a professional member of the New Mexico Board of Massage Therapy and is chairman of the Board's Complaint Committee. Mr. Lane welcomes comments concerning this article. His e-mail address is [www.wdlane@salubria.org](mailto:www.wdlane@salubria.org).*

**LICENSE STATISTICS**  
August 22, 2005

2695	LMT Licensees
78	Independent RMTI Registrants
102	School-Based RMTI's
18	Registered Massage Schools
166	Temporary LMT Licensees
333	"Pending" Applications
229	"Withdrawn" Applications
567	"Inactive" LMT's & RMTI's
4	"Revoked" Licensees
5	"Suspended" Licensees

**FY05 COMPLAINTS**  
(7-1-04 to 6-30-05)

The Board received twenty-two complaints in FY05.

- The Board issued Pre-NCA's (notice of contemplated action) Agreements in three (3) of the complaints. One respondent accepted the Agreement and the respondent in the other two cases refused to accept the agreement and those two cases have been referred to the Attorney General's Office for prosecution.
- The other eighteen FY05 cases are still in various stages of investigation.

For more detail on the types of sanctions imposed in past complaints, see the Board's meeting minutes at the "MINUTES" link on the Board's Website.

**FINES ARE BEING IMPOSED FOR ADVERTISING VIOLATIONS**

The Board continues to receive complaints against licensees/registrants for advertising violations of Part 2, 16.7.2.8.E (4) NMAC, and is issuing **hefty fines for these violations. A word to the wise: BEWARE!**

The law requires that your advertisement **MUST** include the following:

- ❖ Full name as licensed or registered by the Board.
- ❖ The license or registration number issued by the Board.
- ❖ The license or registration designation or abbreviation.

For instance:  
Licensed Massage Therapist or LMT;  
Registered Massage Therapy Instructor or RMTI;  
Registered Massage School or RMTS

**FINANCIAL HISTORY**  
FY99-FY03

<u>FY03 (7/1/02 to 6/30/03)</u>	
Board Expenses:	\$ 146,194
Board Revenues:	\$ 95,991
<u>FY04 (7/1/03 to 6/30/04)</u>	
Board Expenses:	\$ 153,663
Board Revenues:	\$ 201,861
<u>FY05 (7/1/04 to 6/30/05)</u>	
Board Expenses:	\$ 180,066
Board Revenues:	\$ 224,617

**BOARD'S FY05 YEAR-END BUDGET REPORT**

Following is the Board's budget report for FY05 (7/1/04 through 6/30/05):  
Approved operating budget: \$216,400.

**Disbursements:**

Personnel Services	\$86,720
Employee Benefits	\$31,493
Contractual Services	\$ 794
Operating Costs:	
Liability Insurance	\$ 1,700
In-State Travel	\$ 5,522
Auto Lease Costs	\$ 1,950
Equipment Maintenance	\$ 746
Property Insurance	\$ 100
Supplies	\$ 7,930
Court Reporting	\$ 3,486
Information Systems Svc.	\$ 235
Printing	\$ 373
Postage	\$ 241
Bond Premiums	\$ -0-
Telecommunications	\$ 1,533
Conference Registrations	\$ 1,660
Mtg Registration Fees	\$ 745
Legal Advertising	\$ 193
Misc. Expense	\$ 209
Capital Outlay	\$ 4,245
Out-of-State Travel	\$ 4,401
Operating Transactions*	\$ 26,600
<b>Total Expenditures</b>	<b>\$ 180,132</b>

\*NOTE: Operating costs to the Regulation and Licensing Department are paid out of the *Operating Transactions* category.

**Revenues:**

Application/License Fees	\$ 47,975
Renewal Fees	\$ 146,211
Examination Fees	\$ 635
Other Current Svcs	\$ 1,765
Lists and Labels	\$ 1,664
Late Penalty Fees	\$ 12,895
Fines	\$ 12,548
<b>Total Revenues:</b>	<b>\$ 224,617</b>

**2005 RENEWAL CYCLE**

This October 31, 2005, is the renewal date for 1042 licensed massage therapists, 34 independent massage therapy instructors; 29 school-based massage therapy instructors; and 18 massage therapy schools.

The renewal notices will be mailed before September 15, 2005, to the last

address on file with the Board. "Failure to receive the renewal application notice shall not relieve the licensee or registrant from the responsibility of renewing the license by the renewal date" (see 16.7.12.A. (4) NMAC).

The renewal process is clearly outlined in Part 12 of the Board's regulations and we recommend a careful reading of the rule to ensure that you understand what is expected.

**Ethics Requirement**

One of the amendments Part 12 is that the four (4) hour ethics requirement will be the required for massage therapist license renewal and not for the massage therapy instructor registration renewal.

However, since the rules will be distributed with the 2005 renewal notices, The Board has decided that this provision will not be enforced until the 2006 renewal cycle.

Therefore, massage therapy instructors must still submit the four (4) hours of ethics for their 2005 renewal.

**Synchronizing Instructor Registration's Renewal Date With Massage License**

In preparation for the 2005 renewal cycle, an audit was conducted to ensure that all instructor registration renewals coincided with their respective massage therapy license. We discovered that a few MTI registrations were not in sync with the MT license.

As you are aware, only persons with current, active massage therapy licenses (LMT's) are allowed to hold a massage therapy instructor registration (RMTI), and if these are not synchronized to renew the same year, there is a possibility that the registration might be left in the active status when a person fails to renew his or her massage therapy license, if the registration is scheduled to renew the next year.

In order to correct this situation, the affected persons will be sent renewal notices this September to either prorate their MT license or their MTI registration (depending on which is set to renew in 2005) so that the license and registration are synchronized to renew in 2006 and the same year thereafter.

**BOARD OFFICE INFORMATION**

The Board's street address is:

**2550 Cerrillos Road, 2nd. Floor  
Toney Anaya Building  
Santa Fe, NM 87505**

Current phone # is: (505) 476-4870  
Current Fax #: (505) 476-4620 attn:  
Message Board

The post office address continues the same:

**P.O. Box 25101  
Santa Fe, New Mexico 87504**

E-mail Addresses:  
[Message.Board@state.nm.us](mailto:Message.Board@state.nm.us)  
Website Address:  
[www.rld.state.nm.us/b&c/message](http://www.rld.state.nm.us/b&c/message)



Umbrella Agency:  
**New Mexico Regulation and  
Licensing Department**  
[www.rld.state.nm.us](http://www.rld.state.nm.us)

Arturo L. Jaramillo, Superintendent  
Thomas Buckner, Deputy Superintendent  
Kathleen O'Dea, Boards and Commissions  
Section Director