

NEW MEXICO MASSAGE THERAPY BOARD

Regulation & Licensing Department
725 Saint Michael's Drive, Santa Fe, NM
February 9, 2001 – 10:00a.m.

AGENDA

CALL TO ORDER

APPROVAL OF AGENDA

NEXT BOARD MEETING DATE AND PLACE

- A. April 5, 2001 – Las Cruces – 10:00a.m.
- B. Strategic Plan Meeting – Proposed: April 4th or 6th

NEW BUSINESS

- A. Introduction of new Board Members:
 - (1) Gene V. Henley, Public Member (Replaces Daniel G. Hill)
 - (2) W. "Peter" Lane, Massage Therapist (Replaces Mary P. Roemer)
- B. Minutes of 12/08/00 -----Page 1
- C. Open Meeting Notice - Resolution No. 1 ----- Page 2
- D. Code of Conduct - Resolution No. 2 ----- Page 3
- E. Parental Responsibility Act – Delegating Authority ----- Page 4
- F. Request meeting with Boards that have Scope of Practices that overlap, including: Chiropractic, Acupuncture, Physical Therapy Athletic Trainer, and Cosmetology/Barber (David Lang)
- G. Attorney General Opinion/Advise Requested:
 - (1) Does the Board have the authority to waive fees without having to amend the fee schedule rule? (Larry Suzuki)
 - (2) To what extent does the Board have jurisdiction over schools? (David Lang)
- H. National Alliance of State Massage Therapy Boards Symposium -----Page 5

OLD BUSINESS

- A. Attorney General Opinion/Advise Requested:
 - (1) Healthcare Integrity and Protection Data Bank (HIPDB) Is the Board required to report adverse action under the Health Insurance Portability and Accountability Act of 1996, Section 221(a), Public Law 104-191?
 - (2) Are the cease & desist generic letters acceptable to send to alleged violators of the Massage Therapy Practice Act/Rules?
- B. FAQ's – Consumer Protection ----- Page 6
- C. Cash Balance Committee – Fee Reduction Plan ----- Page 7
- D. Proposed Rules (Parts) ----- Page 8

FOR YOUR INFORMATION

- A. Memorandum to Schools Dated January 19, 2001 ----- Page 9
- B. Budget Status Report (dated: 2/2/01) ----- Page 10
- C. Attorney General Opinion Request – Degree Granting Programs
- D. SB329 – Enacting the Alternative Health Care Client Bill of Rights Act - - Page 11

COMMITTEE REPORT/BOARD ACTION

- A. Inspections of Schools and Businesses (David Lang)
- B. Rules Committee (Larry Suzuki)
 - (1) General Area of competency for examination for Initial Licensure
- C. Communications
- D. Education & Licensing & Examination Compliance (Sharon White)
- E. Breast Massage (Sharon White)
- F. Complaints (David Lang)
- G. Statute - Exemptions (David Lang) - - - - -Page 12

EXECUTIVE SESSION pursuant to § 10-15-1.H (1) and (3)

- A. Complaints
- B. Matters Related to the Issuance, Suspension, Renewal, or Revocation of Licenses - - - - - Page 13
- C. Pending or Threatened Litigation

BOARD ACTION ON EXECUTIVE SESSION ITEMS

- A. Complaints
- B. Matters Related to the Issuance, Suspension, Renewal, or Revocation of Licenses
- C. Pending or Threatened Litigation

ADJOURNMENT

NEW MEXICO MASSAGE THERAPY BOARD

Regulation & Licensing Department
725 Saint Michael's Drive, Santa Fe, NM
February 9, 2001 – 10:00a.m.

Minutes

MEMBERS PRESENT: Sharon D. White, Chair
David Lang, Massage Therapist
W.D. 'Peter' Lane, Massage Therapist
Gene V. Henley, Public Member

MEMBERS ABSENT: Larry C. Suzuki, Public Member

OTHERS PRESENT: Geraldine Mascarenas, Administrator
Juanita Vigil, Administrative Assistant
Patrick Simpson, Attorney

GUESTS: See Attached Sign-in Sheet (Attachment 1)

CALL TO ORDER

Chair Sharon White called the meeting to order at 10:06 a.m. A quorum was present with at least one member being a public member.

APPROVAL OF AGENDA

MOTION was made by David Lang, SECONDED by Gene Henley Suzuki, to accept the agenda as presented. MOTION CARRIED UNANIMOUSLY.

NEXT BOARD MEETING DATE AND PLACE

A. **The Board scheduled its next meeting(s) as follows:**

April 5, 2001-Las Cruces–10:00 a.m.

B. **Strategic Plan Meeting**

Due to conflicting schedules, it was decided by the Board that between now and the next scheduled Board Meeting that ideas be passed to one another and presented at the next meeting.

NEW BUSINESS

A. Introduction of New Board Members

Chair Sharon White introduced the two new Board Members, Gene V. Henley, who replaces Daniel Hill and W. D. 'Peter' Lane, who replaces Mary Roemer.

Gene V. Henley, and W.D. 'Peter' Lane gave a brief introduction of themselves.

B. Minutes of 12/08/00 (Attachment 2)

MOTION was made by David Lang, SECONDED by Peter Lane, to approve the minutes of 12/08/00 as presented. MOTION CARRIED UNANIMOUSLY.

C. Open Meeting Notice- Resolution No. 1 (Attachment 3)

Geraldine Mascarenas stated that this item was put on the agenda for the Board's review, and also stated that the resolution needs to be reviewed and adopted by the Board annually.

MOTION was made by David Lang, SECONDED by Sharon White to accept the Open Meeting Notice - Resolution No. 1 as presented. MOTION CARRIED UNANIMOUSLY

D. Code of Conduct- Resolution No. 2 (Attachment 4)

David Lang read the Code of Conduct – Resolution No. 2. Chair Sharon White asked if anyone had discussion or questions.

Gene Henley suggested the Board look at item Q, stating that he felt that it was suggesting that a Board Member could accept a gift, favor or loan from anyone who does not have business pending before the Board. Pat Simpson stated that in his opinion item Q was sort of an exclamation to item P. Pat Simpson also stated if the Board wanted to look at the Code of Conduct a little closer and wanted to amend items P and Q to put them together the Board does have the discretion to do so. After a short discussion it was decided by the Board to leave it as presented.

MOTION was made by Peter Lane, SECONDED by David Lang, to accept the Code of Conduct – Resolution No.2 as presented. MOTION CARRIED UNANIMOUSLY.

E. Parental Responsibility Act- Delegating Authority (Attachment 5)

Geraldine Mascarenas stated that the Board of Thanatopractice has delegated the authority to the Board office to request issuance of a Notice of Contemplated Action to licensees or applicants for licensure who have failed to comply with the Parental Responsibility Act, whose name appears on the certified list issued by the New Mexico Department of Human Services.

Geraldine Mascarenas explained that with the authority delegation, the Board office would not have to present every matter to the Board to vote on referring the matter to the Attorney General's Office for the issuance of a Notice of Contemplated Action, therefore, expediting the process.

Gene Henley also stated that this authority keeps the Board in compliance with the Parental Responsibility Act, which requires the Board to refer those names for disposition as quickly as possible once they are in non-compliance with the act.

MOTION was made by David Lang, SECONDED by Gene Henley, to schedule for Rule Hearing the proposed "Parental Responsibility Act Delegating Authority" Rule as presented by Geraldine Mascarenas. MOTION CARRIED UNANIMOUSLY.

F. Request Meeting With Boards Whose Scope Of Practice Overlap, Including: Chiropractic, Acupuncture, Physical Therapy, Athletic Trainer, and Barber/Cosmetology (David Lang)

David Lang stated that he is interested in setting up a meeting with Boards that overlap in scopes of practices to: (1) establish a continuous dialog in recognizing and respecting each Board's scopes of practices; and (2) to work on establishing a means to communicate and work together when dealing with complaints that cross professions, by ensuring that the Board's involved work together at resolving complaints in the best interest of the public including streamlining the process by sharing resources/information when possible and practical.

David Lang asked that this matter be discussed further at the next Board meeting.

G. Attorney General Opinion/Advise Requested:

(1) Does the Board have the authority to waive fees without having to amend the fee schedule rule? (Larry Suzuki)

Patrick Simpson stated that the Massage Therapy Practice Act requires that the Board adopt rules establishing the fee structure, which means that

the fees need to be paid according to the established rules. Patrick Simpson also stated that implicit in the Act that there is a certain amount of flexibility that the Board has to waive fees in individual circumstances. He also stated that the Board needs to take into consideration that every example that has been isolated in the past becomes a generalization for the regulated community, and if the Board is going to grant a waiver on a fee in one circumstance that it is a clear probability that a similar circumstance will be presented to the Board at another time. Patrick Simpson stated that in order to avoid this from happening that the Board needs to adhere to the established rules, but at the same time have the flexibility in respect to considering individual circumstances.

Gene Henley stated that with these types of issues the Board needs to have as much latitude as possible but at the same time recognizing that it needs to be applied sparingly.

(2) To what extent does the Board have jurisdiction over schools? (David Lang)

David Lang asked that this matter be deferred until the next Board meeting, stating that he needs to provide more specifics in order for the attorney to be able to advise the Board.

H. National Alliance of State Massage Therapy Boards (NASMTB) Symposium (Attachment 6)

Geraldine Mascarenas stated that the NASMTB would provide a means to better communicate with other Boards dealing with common issues, stating that due to insufficient budget in the out-of-state travel category and the short notice provided by NASMTB that she was unable to secure the necessary budget needed to send Board members and/or staff to the upcoming symposium.

Geraldine Mascarenas also stated that she had communicated with the representative of the NASMTB expressing that the Board would like to be informed on any future activities, and that the Board is interested in attending future symposiums.

Sharon White expressed concern that if the budget projections reflect a surplus of over \$30,000 through the end of the fiscal year why there is no easy way to move budget into the out-of-state travel category. David Lang also shared the same concern.

OLD BUSINESS

A. Attorney General Opinion/Advice Requested:

- (1) **Healthcare Integrity and Protection Data Bank (HIPDB) Is the Board required to report adverse action under the Health Insurance Portability and Accountability Act of 1996, Section 221(a), Public Law 104-191? Advice requested from Assistant Attorney General.**

Assistant Attorney General Patrick Simpson advised that the Massage Therapy Board does need to report adverse action to the HIPDB.

- (2) **Are Cease & Desist Generic Letters Acceptable to Send to Alleged Violators of the Massage Therapy Practice Act/Rules?**

Assistant Attorney General Patrick Simpson advised that the Cease and Desist letters are acceptable to send out. He suggested that a due date in which to respond be included in the letter, and that they be sent certified.

B. FAQ's – Consumer Protection (Attachment 7)

Geraldine Mascarenas reported that Sharon White had provided consumer oriented questions and answers asked for at the last Board meeting.

Sharon White stated that Geraldine Mascarenas had suggested using laymen's terms/definitions.

Gene Henley asked the Board Attorney, Patrick Simpson, if there is anything that defines what the Board can and cannot put on the website, he expressed concern that if laymen's terms/definitions are posted that people may rely on these terms/definitions as legal guidelines, and therefore there may be some problems.

Patrick Simpson suggested using the legal term/definition then give the laymen's term/definition, something to the effect of: "This is what the Statute says, This is what it means", he also suggested posting a legal disclaimer on the website.

Gene Henley suggested that because the regulated community is all working under the same terms/definitions that if the Board agrees on laymen's terms/definitions that the public be provided with notice so that interested persons have an opportunity to testify in support of or opposition to the proposal.

C. Cash Balance Committee – Fee Reduction Plan (Attachment 8)

Geraldine Mascarenas stated that the Board has such a healthy/high cash balance because: (1) the Board has continued to function without the intended/needed staff for the past few years; and (2) with the lack of sufficient staff many of the Board's goals have come through.

Geraldine Mascarenas stated that the fees that are being considered to be reduced or eliminated that she has taken the position that they are burdensome and time-consuming in assessing, collecting and depositing, further stating such fees do not promote "Good Customer Service".

Gene Henley stated that after reviewing the action plan for reducing fees that he feels the needs of the Board would be met with the proposed fee structure. Mr. Henley further stated that as a public member he fully supports reducing fees, he however expressed concern with the late renewal fee, stating that he feels the fee should not be reduced that it should instead be raised, because this serves as an incentive to get licensees to turn in their renewals on time.

D. Proposed Rules (Attachment 9)

Geraldine Mascarenas informed the Board that if the Board is considering increasing the late renewal fee, it needs to be changed on the proposed rules, which will be presented at the rules hearing.

It was the consensus of the Board to change the proposed late renewal fee from the current fee of \$50.00 to \$75.00, and that this amendment is to be included in the proposed rules scheduled for the next Rule Hearing.

MOTION was made by Sharon White, SECONDED by David Lang to accept the proposed rules and the Parental Responsibility Delegation for Rule Hearing. MOTION CARRIED UNANIMOUSLY

FOR YOUR INFORMATION

A. Memorandum to Schools Dated January 19, 2001 (Attachment 10)

This was provided for informational purposes only. There was no discussion.

B. Budget Status Report (dated: 2/2/01) (Attachment 11)

This was provided for informational purposes only.

David Lang suggested that a Budget Committee be established to ensure that the Board's goals established in the Strategic Plan, when approved by the Board, are included in future budget requests.

C. Attorney General Opinion Requested-Degree Granting Programs

Assistant Attorney General, Patrick Simpson, stated he would look into this item and report back to the Board.

D. SB329- Enacting the Alternative Health Care Client Bill of Rights Act (Attachment 12)

Geraldine Mascarenas stated that she understands the proposed bill to mean, as it pertains to massage therapy, that a person may choose to use the title of "Alternative Health Care Practitioner" and therefore would not be required to be licensed under the Massage Therapy Practice Act, that person would instead fall under the Alternative Health Care Client Bill of Rights Act. Geraldine Mascarenas further stated that this would open the door for persons to go out and practice without any minimum educational and testing requirements, as long as they adhere to the disclosures required in the new Act.

Darlene Stone with Body Dynamics School of Massage Therapy suggested that the Board take a very firm stance to kill the bill before it gets any further. Darlene Stone stated that she understands the proposed bill to mean that it includes ALL health care providers, therefore defeating the purpose of the Board, stating that the Board has worked hard to establish standards.

Gene Henley expressed that it was too early in the session for the Board to take any kind of position, he suggested to instead gather as much information as possible by having Geraldine communicate with other Boards inquiring what their position is, then at that time if there are enough people who feel the bill would adversely impact them or their boards then make a statement or take a position.

COMMITTEE REPORT/BOARD ACTION

A. Inspection of Schools and Businesses (David Lang)

David Lang stated that he is currently working on an inspection report checklist, and that he is soliciting ideas and feedback from professionals.

**B. Rules Committee (Larry Suzuki)
(1) General Area of Competency for Initial Licensure**

This item was tabled.

C. Communications

Sharon White stated she had not yet assigned anyone to this committee.

Geraldine Mascarenas gave a brief explanation of what the Communications Committee entails, stating that there usually is a spokesperson or point of contact that all communications to the public or media are funneled through.

D. Education & Licensing & Examination Compliance (Sharon White)

Sharon White stated that the only thing she had on this item was that she was working on getting a header to be placed in the Yellow Pages of US West Dex, stating that all Massage Therapists need to be licensed.

Geraldine Mascarenas referred the Board back to the wording that Mary Roemer presented to the Board back on August 3, 2000, and recommended, if the Board agrees on the wording, that an immediate interim solution in getting the message out to consumers that "licensure for the practice of massage therapy is required in New Mexico" that it be posted in the Board's main page of the website. Gene Henley was in support of the recommendation.

E. Breast Massage (Sharon White)

Sharon White stated that there was no report.

F. Complaints (David Lang)

David Lang stated that the Complaint Committee is up-to-date on complaints, further stating that now that Assistant Attorney General, Patrick Simpson, has advised the Board that the Cease and Desist letters are "ok" to send out that the Committee will now start sending out 1st and 2nd non-compliance letters.

David Lang stated that he attributes the lack of complaints being filed to the fact that the complaint process requires complaints to be notarized.

Sharon White stated that she is aware of complaints being filed dealing with violation of the advertising requirements outlined in the Massage Therapy Practice Act and Rules, specifically one that she filed, whereby no action was taken because it was not notarized.

Geraldine Mascarenas reminded the Board that the Board Office and the Complaint Committee have been pro-active in handling/addressing complaints (notarized and not notarized) which deal with violation of the advertising requirements outlined in the Massage Therapy Practice Act and Rules, and this was done as a reminder during the last renewal when

renewals were mailed out, which outlined the advertising requirements, and in December 2000 when a newsletter was sent to all licensees, reminding them of the advertising requirements.

Geraldine Mascarenas stated that many complaints submitted to the Board Office do not provide sufficient information, including failing to provide the name of the respondent or only provides the first name, failing to provide the address and/or phone number of the respondent, failing to state what the complainant is complaining about, and/or what violation being alleged.

G. Statute - Exemptions (David Lang) (Attachment 13)

David Lang stated that Representative Rick Miera was sponsoring HB393.

Sharon White appointed Gene Henley to take over the Statute's Committee. Gene Henley accepted the appointment.

BOARD MEETING DATE(S) AND PLACE(S)

The Board scheduled its next Board Meeting for April 5, 2001, in Las Cruces, starting at 10:00 a.m.

The Board took a lunch break at 1:15 p.m., and returned back at 2:30 p.m.

EXECUTIVE SESSION pursuant to § 10-15-1.H (1) and (3) (Attachment14)

MOTION was made by Sharon White, SECONDED by David Lang to enter into Executive Session at 2:32 p.m., to discuss complaints, matters related to the issuance, suspension, renewal, or revocation of licenses, pending or threatened litigation.

The vote was Sharon White, yes; David Lang, yes; W.D 'Peter' Lane, yes; and Gene Henley, yes.

THE MOTION CARRIED UNANIMOUSLY.

BOARD ACTION ON EXECUTIVE SESSION ITEMS

The Board reconvened back into Regular Session at 2:50 p.m.

Chair Sharon White stated for the record that those items discussed in Executive Session were limited to the items listed in the motion for Executive Session.

MOTION was made by Chair Sharon White, SECONDED by David Lang to refer the matter of **Pamela Campos (License No. 1329)** to the Attorney

General's Office for the issuance of a Notice of Contemplated Action.
MOTION CARRIED UNANIMOUSLY.

Chair Sharon White asked Geraldine Mascarenas to send **Kelly Smith (License No. 3538)** a certified letter asking him to appear before the Board at the next scheduled meeting to explain why he failed to comply with the Settlement Agreement he entered into with the Board on June 30, 2000.

ADJOURNMENT

There being no further business before the Board, MOTION was made by Sharon White, SECONDED by David Lang, to adjourn the meeting.

The meeting was adjourned at 3:40 p.m.

SUBMITTED BY:

Geraldine Mascarenas, Administrator

Date

APPROVED ON BEHALF OF THE BOARD BY:

Sharon D. White, Chair

Date