

# MESSAGE THERAPY BOARD

## REGULAR MEETING

Following the Public Rule Hearing  
Thursday, March 24, 2005 at 10:00 a.m.  
Rio Grande Conference Room  
Toney Anaya Building - West Capitol Complex  
2550 Cerrillos Road - Santa Fe, New Mexico

### FINAL AGENDA

- I. CALL TO ORDER
- II. APPROVAL OF AGENDA
- III. APPROVAL OF MEETING MINUTES
  - A. November 19, 2005
  - B. January 13, 2005
- IV. NEXT MEETINGS
  - A. Tentative Schedule
    - 1. June 24, 2005, at 10 a.m. in Albuquerque
    - 2. September 23, 2005, at 10 a.m. in Santa Fe
- VI. OLD BUSINESS
  - A. Question Regarding "Teach-Out Policy" (Page 2, 11/19/05 Meeting Minutes)
  - B. Question Regarding Lab Tests (Page 3, 11/19/05 Meeting Minutes)
  - C. Question Regarding Swedish Gymnastics (Page 3, 11/19/05 Meeting Minutes)
  - D. Question Regarding MT's using PT Modalities (Page 5, 11/19/05 Meeting Minutes)
  - E. Workers Compensation Question Revisited (Page 7, 11/19/05 Meeting Minutes)
- VII. STANDING AGENDA ITEMS
  - A. Chair's Report – Legislative Issues
  - B. Rules and Statute Committee Report (K. Egenes/Q. Lopez)
  - C. Education, Exam & Licensing Compliance Committee Report (R. Barnes/E. Kaul)
  - D. Complaint Committee (P. Lane)
- VIII. DISCUSSION AND ACTION ON PROPOSED RULES
  - A. Part 1 – General Provisions
  - B. Part 3 – Fees
  - C. Part 4 – Requirements for Licensure
  - D. Part 5 – Requirements for Schools
  - E. Part 6 – Requirements for Instructors
  - F. Part 11 – Continuing Education
  - G. Part 12 – License/Registration Renewal
- IX. EXECUTIVE SESSION AND ACTION (Pursuant to § 10-15-1.H (1) and (3))
  - A. Complaints
    - 1. MT Case #04-03-005
    - 2. MT Case #04-04-012
    - 3. MT Case #04-06-016
    - 4. MT Case #04-06-017
    - 5. MT Case #04-06-18 (A)
    - 6. MT Case # 04-06-18 (B)
    - 7. MT Case #04-09-22

- 8. MT Case #04-09-23
- 9. MT Case #04-10-25
- 10. MT Case #04-10-26
- 11. MT Case #04-11-27
- B. NCA Agenda
  - 1. MT Case #03-06-008
  - 2. MT Case #03-03-005
- C. Application Review
  - 1. Jacob Burge
- X. ADJOURNMENT

## **MESSAGE THERAPY BOARD**

### **REGULAR MEETING**

Following the Public Rule Hearing  
Thursday, March 24, 2005 at 10:00 a.m.  
Rio Grande Conference Room  
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### **MEETING MINUTES**

**MEMBERS PRESENT:** Kathleen (McCafferty) Egenes, LMT and Chair  
Randy Barnes, LMT  
W. D. "Peter" Lane, LMT  
Ed Kaul, Public Member  
Claudio "Quinn" Lopez, Public Member

**STAFF PRESENT:** Carmen E. Payne, Board Director  
Anita S. Villegas, Administrative Assistant

**OTHERS PRESENT:** Mona Valicenti, Assistant Attorney General  
Robin Brazil, Court Recorder  
Donald F. Schiff, LMT  
Virginia Anthony Barrow, LMT  
Dan R. Barrow, LMT  
Darlene Stone, LMT  
Laurie Blackwood  
Lonnie Howard  
Gwynne Unrult  
Jennifer Thomas  
Linda Delker

#### **I. CALL TO ORDER**

At 2:07 p.m. the Board Chair, Kathleen Egenes, called the meeting of the New Mexico Massage Therapy Board to order. The meeting had been duly and properly noticed and upon a roll call of the Board members, it was determined that a quorum was present to conduct business.

#### **II. APPROVAL OF AGENDA**

Mr. Lane **MOVED** for the Board to approve the meeting agenda as proposed. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

#### **III. APPROVAL OF MINUTES**

##### **A. November 19, 2004**

Mr. Lane **MOVED** for the Board to approve the minutes of the November 19, 2004 meeting as presented. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

##### **B. January 13, 2005**

Mr. Lane **MOVED** for the Board to approve the minutes of the January 13, 2005 meeting as presented. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

#### **IV. NEXT MEETINGS**

The Board Chair announced the tentative schedule for the next two meetings as June 24, 2005, at 10 a.m. in Albuquerque, and September 23, 2005, at 10 a.m. in Santa Fe.

**V. OLD BUSINESS**

**A. Question Regarding “Teach-Out Policy”** (Page 2, 11/19/05 Meeting Minutes)

Mr. Lopez **MOVED** for the board to **TABLE** this question so that AAG Valicenti could obtain further clarification and guidance. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**B. Question Regarding Lab Tests** (Page 3, 11/19/05 Meeting Minutes)

Mr. Lopez **MOVED** for the board to **TABLE** this question so that AAG Valicenti could obtain further clarification and guidance. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**C. Question Regarding Swedish Gymnastics** (Page 3, 11/19/05 Meeting Minutes)

Mr. Lane **MOVED** for the board to **TABLE** this question so that Ms. Payne could obtain further clarification and guidance from Ms. Owens. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**D. Question Regarding MT’s using PT Modalities** (Page 5, 11/19/05 Meeting Minutes)

Mr. Lopez **MOVED** for the board to **TABLE** this question so that Mr. Lane could obtain further clarification and guidance from Mr. Higham. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**E. Workers Compensation Question Revisited** (Page 7, 11/19/05 Meeting Minutes)

Mr. Lopez **MOVED** for the board to **TABLE** this question so that AAG Valicenti could obtain further clarification and guidance. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**VI. STANDING AGENDA ITEMS**

**A. Chair’s Report – Legislative Issues**

The Chair commented that she had attended a Legislative Hearing on a bill sponsored by Senator Jennings of Roswell, New Mexico. The bill proposed to establish an ad-hoc committee with oversight on the promulgation of regulations related to the scopes of practice of health care professions such as chiropractors, optometrists, physical, occupational and massage therapists, etc. She said the bill was apparently introduced because of the perception that the professions are not communicating and cooperating with each other in terms of their scopes of practice. From the representation by the professions at the hearing, it appeared that there was full cooperation. The Chair said she thought the bill did not pass but would probably be resurrected again in the future.

Ms. Barrows reported that House Bill 306 – the Sunset Bill, was passed by both House and Senate and is at the Governor’s Office awaiting his signature. If signed, the new termination date for the Board will be July 1, 2015, with a wind-up date of July 1, 2016.

**B. Rules and Statute Committee Report** (K. Egenes/Q. Lopez)

The Rules and Statute Committee reserved their comments until the discussion on the proposed rules.

**C. Education, Exam & Licensing Compliance Committee Report** (R. Barnes/E. Kaul)

The Education, Exam and Licensing Compliance Committee had nothing to report.

**D. Complaint Committee** (P. Lane)

Mr. Lane stated that he would reserve his report to the Board until Executive Session.

**VII. DISCUSSION AND ACTION ON PROPOSED RULES**

The Court Recorder, Robin Brazil, recorded the complete discussion for each of the parts listed. Following is a summary of the action taken by the Board on the proposed rules.

**A. Part 1 – General Provisions**

A discussion was held regarding the comments received during the rule hearing and following further input from the Board members and the audience on *Part 1, General Provisions*, the following action was taken by the Board.

Mr. Lane **MOVED** for the Board to approve an amendment on line 35 of page 1 of Part 1, by completing the sentence, “*The student must be enrolled at a registered massage therapy school*”, with the words, “*or being trained by a registered massage therapy instructor*” after the words “*massage therapy school*”. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Mr. Lopez **MOVED** for the Board to adopt the proposed changes to *Part 1, General Provisions*, as amended. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**B. Part 3 – Fees**

A discussion was held regarding the comments received during the rule hearing and following further input from the Board members and the audience on *Part 3, Fees*, the following action was taken by the Board.

Mr. Lane **MOVED** for the Board to reduce the proposed “curriculum change review” fee for massage therapy schools from the proposed \$100 to \$50. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Mr. Lane **MOVED** for the Board to adopt the proposed changes to *Part 3, Fees*, as amended. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**C. Part 4 – Requirements for Licensure**

A discussion was held regarding the comments received during the rule hearing. Further input was received from the Board members and the audience on *Part 4, Requirements for Licensure*. The following changes were proposed during the discussion:

- q Amendment #1 on line 2 of page 3 of Part 4: Change the line to read, “*of a registered massage therapy school ~~and~~ or under the supervision of a ~~licensed~~ registered massage therapy instructor.*”
- q Amendment #2 on line 13 of page 4 of Part 4: Change the line to read, “*Continuing education (CE) or continuing education units (CEU) ~~shall NOT~~ may be accepted toward the educational requirements for licensure.*”
- q Amendment #3 on line 23 of page 4 of Part 4, Subsection A, change to read: “*~~125~~ 165 hours minimum of anatomy and physiology, to include.*”
- q Amendment #4, line 27 of page 4 to read: “*(4) ~~pathology, a minimum of forty (40) hours~~ forty hours minimum of pathology.*”
- q Amendment #5, line 32 of page 4 to read: “*C. ~~50~~ 75 hours minimum of general instruction to include.*”
- q Amendment #6, line 35 of page 4 to read: “*(3) ~~six (6)~~ thirty (30) hours minimum of professional ethics.*”
- q Amendment #7, line 35, page 2 of Part 5: delete the words, “*325-hour minimum of*” and the line to read, “*Electives may include.*”
- q Amendment #8, lines 13-16 on page 5 to read: “*~~The total number of electives may be less than 325, if the total number of hours completed in anatomy and physiology, or massage therapy, or general instruction are more than the minimum set forth in Subsections A, B, and C of 16.7.4.12 NMAC, as long as the] The total number of hours in the massage therapy program is a minimum of six hundred fifty (650) hours.~~*”
- q Amendment #9, delete the word, “*temporarily*” and change the semi-colon to a comma after the word “*process*” on line 17 of page 2.

- q Amendment #10, line 23 of page 2 to read, “to provide [~~for compensation~~] massage therapy services for compensation as defined in ...”
- q Amendment #11, lines 34 and 35 of page 2 to read, “A. Other professionals licensed in or regulated [~~in~~] by another New Mexico licensing board or agency [~~to~~] rendering [~~massage therapy type~~] services within the scope...”
- q Amendment #12 on line 32 of page 1 of Part 4: Add the words “or being trained by a registered massage therapy instructor” after the words “massage therapy school” in the clinical practicum definition.
- q Amendment #13 delete the language in provision (1), lines 4-6 of page 7 because it is repetitions of another regulation; renumber the subsequent paragraphs, and delete (6) altogether because it is also redundant.
- q Amendment #14 delete the words and punctuation “, employment information,” on line 11 of page 7.
- q Amendment #15, place a period after the word “board” on line 22 of page 7. Delete the words, “with an affidavit attesting that the applicant is no longer practicing massage therapy” from the rest of the sentence on line 22 and 23 of page 7.
- q Amendment #16, replace the word “must” with the word “shall” in line 33 of page 8.
- q Amendment #17, change lines 28 and 29 on page 9 to read as follows: “...to provide [~~immediate~~] written notification to the board of any changes in addresses, phone numbers, and practice location(s) within thirty (30) days in order that the renewal notices and other correspondence from the board will be received by the licensee...”
- q Amendment #18, delete the licensure requirement for current CPR and first aid certification on lines 1 and 2 of page 9. However, the Board stressed that CPR and first aid would remain an educational requirement for licensure in Section 16.7.4.12 NMAC.

Mr. Lane **MOVED** for the Board to adopt the proposed amendments (1 through 18) to Part 4. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Mr. Lane **MOVED** for the Board to adopt Part 4 as amended. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

#### **D. Part 5 – Requirements for Schools**

A discussion was held regarding the comments received during the rule hearing. Further input was received from the Board members and the audience on *Part 5, Requirements for Schools*. The following changes were proposed during the discussion:

- q Amendment #1 on line 33 of page 1 of Part 5: Add the words “or being trained by a registered massage therapy instructor” after the words “massage therapy school” in the clinical practicum definition
- q Amendment #2 – technical correction: The definition of massage therapy was not complete and Ms. Payne was directed to cut and paste the missing language from the definition in Part 1 to the definition in Part 5.
- q Amendment #3 – amend the course requirements in 16.7.5.8 NMAC to coincide with the educational requirements in Part 4.
- q Amendment #4 – delete the proposed definition for teaching assistant because the term is not used anywhere in Part 5.

Mr. Lopez **MOVED** for the Board to adopt the proposed amendments (1 through 4) to the proposed Part 5 rule changes. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Mr. Lane **MOVED** for the Board to adopt *Part 5, Requirements for Schools*, as amended. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

## E. Part 6 – Requirements for Instructors

### Part 1 Further Amended

During discussion related to Part 6, the Board determined that Part 1 need to be further amended. Therefore, Mr. Lane **RESCINDED** his motion to adopt Part 1, which was made in Agenda Item VII. A. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Mr. Lopez **MOVED** to include the previously proposed and adopted amendments as discussed in Agenda Item VII.A, and to further amend Part 1 by deleting the definition of “Teaching Assistant” as proposed in 16.7.1.7, Definitions. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Mr. Lane **MOVED** to **ADOPT** Part 1, General Provisions, as amended. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**

### Part 6 Discussion and Action

A discussion was held regarding the comments received during the rule hearing. Further input was received from the Board members and the audience on *Part 6, Requirements for Instructors*. The following change was proposed during the discussion:

- q Amendment #1 on line 26 of page 2 of Part 6: Change the line to read, “*during the three (3) years preceding the application for a massage therapy instructor registration.*”
- q Amendment #2 to Part 6: Add the definition of “Teaching Assistant” in a new Subsection, E, of 16.7.6.7 NMAC.
- q Amendment #3 to Part 6: Change lines 28-29 on page 6 (Subsection B of 16.7.6.12 NMAC) to read, “*The teaching assistant must be supervised by a registered massage therapy instructor who is physically present in the room.*”
- q Amendment #4 to Part 6: Change lines 26-27 on page 6 (Subsection A of 16.7.6.12 NMAC) to read, “*The teaching assistant must be a licensed massage therapist.*”
- q Amendment #5 to Part 6: Change lines 30-31 on page 6 (Subsection C of 16.7.6.12 NMAC) to read, “*Experience as a teaching assistant shall apply to the 50-hour requirement outlined in Paragraph 3 of Subsection B of 16.7.6.8 NMAC.*”
- q Amendment #6 to Part 6: Delete the proposed wording, “*Proof of*” and begin the sentence on line 1 of page 3 with, “*Documentation...*”
- q Amendment #7 to Part 6: Change lines 24-25 on page 4 to read, “(5) the signature of the registered independent massage therapy instructor.”
- q Amendment #8 to Part 6: Change lines 15-16 on page 4 to read, “*Curriculum: The registered independent massage therapy instructor shall submit a curriculum for board review and approval or disapproval, including continuing education courses.*”

Mr. Lane **MOVED** to **TABLE** the proposed changes to Section 11 of 16.7.6 NMAC entitled to “Visiting Massage Therapy Instructor Exemption”, for future review and revision. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Mr. Lopez **MOVED** to approve the proposed changes (Amendments 1 through 8) to Part 6, but excluding those proposed to Section 16.7.6.11 NMAC. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Mr. Lopez **MOVED** to adopt Part 6 as amended. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

## F. Part 11 – Continuing Education

Following a lengthy discussion on the numerous proposed changes for Continuing Education, from the Board members and the audience on *Part 11, Continuing Education*, several changes were suggested to the proposed amendments:

- q Amendment #1: Delete the proposed definitions for AMTA and ABMP in 16.7.11.7 NMAC.
- q Amendment #2: Change lines 13-14 on page 3 under Section 16.7.11.9 NMAC to read, *“B. Courses of study offered by registered massage therapy schools, registered massage therapy instructors, or by any NCBTMB category A or B provider.”*
- q Amendment #3: Change lines 1-2 on page 4 under Section 16.7.11.10 NMAC to track exactly with Amendment #2.
- q Amendment #4: Add an ethics course requirement for massage therapists using the language currently in Section 16.7.11.10.A NMAC as a new Subsection D in 16.7.11.9 NMAC and adapt it for massage therapists rather than massage therapy instructors.
- q Amendment #5: Delete the ethics course requirement for massage therapy instructors in 16.7.11.10 A and renumber the remaining provisions in 16.7.11.10.
- q Amendment #7: Add language to the ethics requirement for massage therapists that the four hours of ethics is part of the 16-hour renewal requirement.
- q Amendment #8: Increase the number of hours allowed for publishing massage therapy related articles in local, regional, or national professional journals to twelve (12) in 16.7.11.9.C (2) and 16.7.11.10. C NMAC (as renumbered in Amendment #5).

Mr. Lopez **MOVED** for the Board to approve the proposed changes (Amendments 1-8) to Part 11 as discussed. Mr. Kaul **SECONDED** the motion, a vote was taken and Mr. Barnes abstained from the vote stating he was unclear of what all the proposed changes were. The motion was **PASSED by one abstention and two ayes.**

Mr. Lopez **MOVED** to adopt Part 11 as amended. Mr Kaul **SECONDED** the motion, which was **PASSED by one abstention and two ayes**, Mr. Barnes having abstained from the vote for reasons stated above.

#### **G. Part 12 – License/Registration Renewal**

The following amendments to the Part 12 replacement rule were proposed to add clarity to the rule:

- q Amendment #1: Reword the definition of massage therapist in 16.11.12.7.K NMAC to track with the statutory definition: *“Massage therapist means a person licensed to practice in accordance with the Massage Therapy Practice Act.”*
- q Amendment #2: Revise 16.7.12.7.L NMAC to read, *“Massage therapy instructor refers to a school-based instructor or to an independent instructor who is registered by the board.”*
- q Amendment #3: Revise 16.11.12.8.A (2) NMAC to read, *“Renewal application forms shall be mailed to the last known address on file with the board for each current licensee or registrant.”*
- q Amendment #4: Revise 16.7.12.8.A (5) to read, *“The licensee or registrant shall complete the renewal application form in the manner stated on the form. The form must be submitted with the requested documentation and required fee(s) as set forth in 16.7.3 NMAC.”*
- q Amendment #5: Revise 16.7.12.8.A (6) to read, *“Incomplete renewal applications will be returned to the licensee or registrant for completion, which could result in the assessment of late penalty fees.”*
- q Amendment #6: Revise 16.7.12.8.B (4) to read, *“Massage therapy schools that have not renewed their registrations with a postmark date of December 30<sup>th</sup>, or the next business day if December 30<sup>th</sup> falls on a weekend, will automatically expire immediately and become null and void.”*
- q Amendment #7: Revise 16.7.12.9.A (1) to read, *“Massage therapists or massage therapy instructors whose licenses have been placed on inactive status may not provide the services authorized by the license or registration.”*
- q Amendment #8: Revise 16.7.12.9.B (3) to read, *“The licensee or registrant shall complete and return the completed reactivation form with the required proof of completion*

*of continuing education as set forth in 16.7.11 NMAC, along with the reactivation fee and late renewal penalty fee as set forth in 16.7.3.NMAC.”*

- q Amendment #9: Revise 16.7.12.15.A to read, “*If a massage therapist or instructor does not reactivate his/her license or registration by the end of the inactive status period, the license or registration will automatically expire without notice from the board and become null and void.*”

Mr. Lopez **MOVED** for the Board to approve the proposed changes (Amendments 1-9) as discussed. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Mr. Lopez **MOVED** for the Board to adopt *Part 12, License/Registration Renewal*, as amended. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

#### **VII. EXECUTIVE SESSION AND ACTION (Pursuant to § 10-15-1.H (1) and (3))**

Mr. Lopez **MOVED** for the Board to enter into Executive Session. However, Mr. Kaul stated that he had another meeting to attend at 6:30 p.m. and still had to drive across town to get there. This being the case, he recommended that the Board convene a special meeting to deal with the complaints listed due to the length of the day, it already being 6:00 p.m.

Mr. Barnes **MOVED** for the Board to **TABLE** Agenda Item VII. *Executive Session and Action* and reschedule a special meeting at a later date to deal with the items listed in this item. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

#### **VIII. ADJOURNMENT**

Mr. Barnes **MOVED** for the Board to adjourn the meeting. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**. The time was 6:04 p.m.

**Respectfully submitted by: Carmen E. Payne, Board Director**  
**Approved by the Board on June 24, 2005**  
**Accepted by Kathleen Egenes, Board Chair on June 24, 2005**