

MASSAGE THERAPY BOARD

REGULAR MEETING

Friday, April 28, 2006 at 10:00 a.m.

Hearing Room Two

Toney Anaya Building - West Capitol Complex

2550 Cerrillos Road

Santa Fe, New Mexico

FINAL AGENDA

- I. CALL TO ORDER**
- II. SUPPORT STAFF INTRODUCTION**
- III. APPROVAL OF AGENDA**
- IV. APPROVAL OF MEETING MINUTES - December 2, 2005 Meeting**
- V. OLD BUSINESS**
 - A. Clarification on Statute Section 61-12C-24.B (11) - Re: "Conviction"** (AAG Valicenti)
- VI. NEW BUSINESS**
 - A. Review of Visiting Massage Therapy Instructor Application**
 - B. Request for Consideration of Expanding Act to Include Alternative Health Modalities**
 - C. Formal Invitation to Join Federation of State Massage Therapy Boards (FSMTB)**
 - D. FSMTB 2006 Annual Meeting Invitation**
 - E. FSMTB Memorandum on Delegation of Authority**
 - F. AMTA Response to Memorandum on Delegation of Authority**
 - G. Correspondence - Gilbert Rivera, LMT, RMTI**
 - H. Review of Draft Proposed Rule Changes**
- VII. STANDING AGENDA ITEMS**
 - A. Chair's Report** (K. Egenes)
 - B. Rules and Statute Committee** (K. Egenes/Q. Lopez)
 - C. Education, Exam & Licensing Compliance Committee Report** (R. Barnes)
 - D. Complaint Committee** (P. Lane)
- VIII. BOARD ADMINISTRATORS REPORT**
 - A. FY06 Budget Status Report**
 - B. 2005 Renewal Cycle - Progress Report, & Licensing Statistics**
- IX. SCHEDULE FUTURE MEETINGS**
- X. EXECUTIVE SESSION AND ACTION - Pursuant to §10-15-1.H**
 - A. Complaints**
 - 1. MT Case #04-07-21 (A, B, C, D, and E)**
 - 2. MT Case #05-07-18 (A)**
 - B. Pre-NCA and NCA Cases**
 - 1. MT Case #04-07-20 (A)**
 - 2. MT Case #04-07-20 (B)**
 - 3. MT Case #04-11-27**
 - 4. MT Case #05-06-13**

5. MT Case #05-06-14
6. MT Case #05-07-15
7. MT Case #05-07-17
8. MT Case #05-09-26
9. MT Case #06-03-10
10. MT Case #04-16-18 (B)

C. Application Review

1. Joseph Macejka - Credential Candidate via 1991 New York State Massage Exam
2. Jeanine B. Love - Credential Candidate via NCCAOM Asian BodyWork Therapy Examination
3. Wendy J. Goodman - Credential Candidate via Hawaii Massage Examination

XI. ADJOURNMENT

MASSAGE THERAPY BOARD

REGULAR MEETING

Friday, April 28, 2006 at 10:00 a.m.

Hearing Room Two

Toney Anaya Building - West Capitol Complex

2550 Cerrillos Road

Santa Fe, New Mexico

MEETING MINUTES

MEMBERS PRESENT: Kathleen Egenes, LMT, RMTI and Chair
Randy Barnes, LMT, RMTI
W. D. "Peter" Lane, LMT, RMTI
Margo Bryson, Public Member
Claudio "Quinn" Lopez, Public Member

MEMBERS ABSENT: None

STAFF PRESENT: Carmen E. Payne, Board Director
MaNina Harper, Acting Board Director Elect
Pam Barrone, BCS Compliance Liaison

OTHERS PRESENT: Mona Valicenti, Assistant Attorney General & Board Counsel
Jeannine B. Love
Talissa McCormick
Elizabeth Harris, LMT
Donald Schiff, LMT, RMTI
Mark A. Earnst, Attorney-at-Law
Connie McCoy, LMT, RMTI
Virginia Anthony-Barrow, LMT, RMTI
Dan R. Barrow, LMT, RMTI
Lisa Lastra
Cornelia Sachs
Jennifer Thomas, LMT
Linda Delker, LMT, RMTI
HarKaur Khalsa
Marian Phelps, LMT

I. CALL TO ORDER

At 10:03 a.m., the Board Chair, Kathleen Egenes, called the April 28, 2006 meeting of the New Mexico Massage Therapy Board, to order. The meeting had been properly noticed and upon a roll call it was determined that there was a quorum present to conduct business.

II. SUPPORT STAFF INTRODUCTION

Ms. Payne introduced Patricia Ortiz, who is the Board's newly hired licensing clerk. She also explained that she would be retiring effective July 31, 2006. Therefore, the Boards and Commissions Director, Kathleen O'Dea, has appointed MaNina Harper, to train with Ms. Payne so that she can take over as the acting board administrator until a permanent replacement for Ms. Payne can be hired.

III. APPROVAL OF AGENDA

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

IV. APPROVAL OF MEETING MINUTES - December 2, 2005 Meeting

Mr. Lane **MOVED** for the Board to approve the minutes of the December 2, 2005 meeting as presented. Ms. Bryson **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

V. OLD BUSINESS

A. Clarification on Statute Section 61-12C-24.B (11) - Re: "Conviction" (AAG Valicenti)

At the Board's August 29, 2006 meeting, the Complaint Committee requested clarification regarding following language in Section 61-12C-24.B (11) of the Board's statute:

"has had a license or registration to practice massage therapy revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee or registrant similar to acts described in this section. A certified copy of the record of conviction shall be conclusive evidence of the conviction;"

The Committee had commented that final disciplinary documents are not "records of conviction", but generally are called "decision and order" or may even be a "settlement agreement". At the time the Committee wondered how to reconcile this variance in terms because when the Board suspends or revokes a license the record is not a record of conviction. The Board requested, at that time, that Assistant Attorney General (AAG) Valicenti advise them.

AAG Valicenti said that the statutory reference to a "record of conviction" would be the decision and order in a disciplinary matter received from another state licensing jurisdiction, as well as a certified copy of a court order whenever someone has been found guilty of a misdemeanor or felony.

VI. NEW BUSINESS

A. Review of Visiting Massage Therapy Instructor Exemption Application

Ms. Payne explained that since the Board did not previously amend the Visiting Massage Therapy Instructor (VMTI) Exemption application rule, she had assumed that the VMTI Exemption application form did not need to be revised. Recently, however, the Board office received an inquiry regarding the form because it appeared to have conflicting information on it. In reviewing the rules to try to determine which of the statements below was correct, Ms. Payne said she found that there was no regulatory provision to authorize the limitations in the bolded statements in a, b, and c below. She said it appeared to her that without specific limitation provisions in rule the Board cannot include the limitations on the application.

- a. *Section H - (to be completed by) NM Registered MT School:* "This is to certify that, upon approval and issuance of a VMTI Exemption application, the applicant named in this application will provide training at our NM Registered Massage Therapy School and will be teaching within the requirements of the Massage Therapy Practice Act and Rules, **and the training will be limited to licensed massage therapists.**"
- b. *Section I - (to be completed by) NM Registered MT Instructor:* "This is to certify that, upon approval and issuance of a VMTI Exemption application, I will provide sponsorship to the applicant named in this application and who will be teaching within the requirements of the Massage Therapy Practice Act and Rules, **and the training will be limited to licensed massage therapists.**"
- c. *Checklist on page 7 of the Application (to be completed by the Applicant):* "As a Visiting Massage Therapy Instructor, I can only provide massage therapy instruction within the requirements of the Massage Therapy Practice Act and Rules, **and the training will not include training to students not yet licensed, unless the training is for non-credit.**"

Ms. Payne asked for a historical perspective so as to understand the Board's intent in including these statements in the application, which may have been implemented prior to this Board's appointment.

Don Schiff, LMT from Stone Circle Massage in Albuquerque, stated that he originally helped draft the Board's authorizing statute and regulations, said that his recollection was that the intent for the VMTI exemption historically has been for qualified people from out-of-state to teach massage therapy courses as part of the training program for licensure. Mr. Schiff said that if he remembered correctly, prior to the (*Part 6*) amendments promulgated by the Board in 2005, pretty much anyone could provide continuing education (CE), so VMTI exemptions weren't really needed to provide CE. However, now the VMTI exemption is necessary because the Board's rules require that every instructor teaching CE's must be registered by the Board as an independent massage therapy instructor (*see 16.7.6.10 NMAC*).

Mr. Barnes recalled that the school in the four-corners area had instructors in from Colorado and the schools in Las Cruces brought instructors in from Texas to teach portions of the massage program to the students.

AAG Valicenti noted that page 1 of the application contained a statement that training provided by a VMTI to students attending a registered massage therapy school (RMTS) for initial licensure did not qualify for credit toward the licensure requirement. This statement must assume that the VMTI would be presenting only continuing education at the school and not core curriculum courses as stated by Mr. Schiff.

Mr. Schiff said he thought the current application form does not fit the original intended purpose of the VMTI exemption, which was that if someone was going to be teaching as a regular part of a program for more than 14 days, they needed to go through the regular licensure process for a permanent license in New Mexico. It may be that people were not necessarily coming in to teach in an intensive program at a school, but that the VMTI exemption was being used to enhance the viability of CE units under previous CE rules where the Board was approving CE's for providers, which it hasn't done for quite some time. He suggested that the Board decide what its intent for the VMTI exemption is now and revise the application form to reflect that intent.

Ms. Payne asked whether the Board's intent is to limit VMTI's to teaching only in a massage therapy school because that is what the current application form does. Or are there occasions where VMTI's could teach CE's in other arenas such as the meeting room across the hall? Mr. Barnes responded that he didn't think the Board should limit VMTI's to teaching only in massage therapy schools.

Dan Barrow of NMT Associates in Albuquerque commented that he saw two things that he would like the Board to consider: (1) If a VMTI is going to be teaching as part of a school's curriculum, then it doesn't make sense to exclude students from the population they can teach; and (2) If it's a CE course then it should not be limited to being taught in a school. Those classes are typically taught in a school, but not always, and as a part of the CE portion to say explicitly that anyone other than an LMT is excluded from being able to be taught seems rather restrictive. Because often CE's designed for LMTs are often attended by PT's, OT's, DC's or MD's, or nurses. He said he didn't see any reason why a VMTI couldn't have those people as part of the population they are attending. Basically, it seems that the restrictions in the application form should be deleted from the form since there is not regulatory authority for them anyway.

Mr. Schiff said he remembered that in previous revisions of the rules, the Board was not allowing CE classes to be used as part of the curriculum for licensure, and the rules now do allow CE courses to be used toward licensure, and those CE's might be what the current form refers to. He recommended that the limitations be removed from the application form and so as not to surpass the authority given in the Massage Therapy Act or the Board's regulations.

Discussion Summary

Peter Lane summarized the discussion, saying that as long as a VMTI meets the criterion for an VMTI exemption he can be exempted for no more than fourteen (14) days, and the courses that the VMTI teaches should not be limited to only LMTs or students, but should be available to both. Furthermore, if the VMTI teaches a core class, as long as it fits the criterion for curriculum for New Mexico registered massage therapy schools, the class should also be available to LMTs.

Mr. Lopez **MOVED** for the board to authorize the deletion of the language highlighted for purposes of discussion in the VMTI application on pages 4, 5, and 7 and that the present limitations regarding licensed massage therapists and students be removed from the form. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Ms. Harper recalled that the discussion also alluded that the statement restricting the VMTI courses to being taught in a massage therapy school should also be removed, and asked the Board if it was authorizing the deletion of the limitation dealing with schools.

After discussion, AAG Valicenti advised the Board that the reference to schools on the application is in Section H of the application form, which must be completed by the school sponsoring the VMTI. So the VMTI is restricted to teaching only at the sponsoring school. After a brief discussion it was clarified that this limitation is not in the regulations. Mr. Barrow stated once again, that unless the restriction is specifically stated in the rules, it should not be stated in the application.

B. Request for Consideration of Expanding Act to Include Alternative Health Modalities

Mr. Barnes, who is a licensed massage therapist (LMT) and a registered massage therapy instructor (RMTI), as well as a naturopath, requested that the Board explore the possibility of expanding the Massage Therapy Practice Act to include other modalities of alternative health such as naturopaths, homeopaths, herbalists, energy workers, etc. The Chair moved this discussion item last on the agenda because she was advised that Kathleen O'Dea, Boards and Commissions Director, would be addressing the Board on this issue. However Ms. O'Dea had reported that she had two meetings to attend before she could come to the Massage Board meeting, but she would be done by 11:15 a.m. Ms. O'Dea sent a message that she would be over as soon as the last meeting was over.

At 11:35 a.m., Ms. O'Dea had not appeared and the Board had addressed all other agenda items and was ready to enter into Executive Session. Mr. Barnes was asked if he could speak to the issue. He reported that he had been working with Ms. O'Dea to try to obtain licensure for naturopaths during the 2005 legislative session. Mr. Barnes said that during the 2006 Legislative Session, Senator Steve Komadina introduced Senate Memorial 20, which requested a study to assess whether the law adequately protects the public's right to freely access traditional, cultural, complementary and alternative health care therapies and remedies. He said that following their unsuccessful attempt at getting the bill through in 2005, Ms. O'Dea suggested that they might be more successful if they tried to get these alternative health therapies under a "super" board such as the Massage Board.

There was some discussion as to how this might work and whether each therapy would have its own statutory and regulatory educational and other requirements, etc. Mr. Barnes stated that he would have to defer to Ms. O'Dea to answer the questions posed by the Board members and members of the audience.

Ms. O'Dea had not arrived when the Board was ready to enter into Executive Session; so further discussion on this item was **TABLED** until the Board's next meeting.

C. Formal Invitation to Join Federation of State Massage Therapy Boards (FSMTB)

The Board received a formal invitation from the Federation of State Massage Therapy Boards (FSMTB) to join the Federation and officially become a member board. The FSMTB Board of Directors has voted to waive the membership dues for this initial fiscal year, which ends on June 30, 2006.

Dues Structure

According to the FSMTB letter, the membership dues structure is as follows:

- ❖ Each member board shall pay \$500, plus \$0.40 per licensee
- ❖ The maximum annual dues shall be \$2,800.
- ❖ Dues for the upcoming year are payable by June 1 of the year and are delinquent as of August 1 of the year.
- ❖ Dues paid include the cost of travel, food, and lodging for a board's appointed delegate to attend the annual meeting.

Ms. Payne reported that the Board has 3,204 current licensees. The projected dues for the FSMTB's financial 2006-2007 year will be \$500 plus \$1,209.60 for the Board's 3,204 current licensees at \$0.40 each for a total of \$1,709.60.

Associate Membership

The FSMTB letter also stated that Associate Members do not pay dues, but are entitled to attend the FSMTB annual meeting, serve on committees, and will receive publications of the FSMTB. According to the FSMTB mailing, the following individuals are automatically Associate Members of the FSMTB:

- ❖ Every current member of a Member Board;
- ❖ Those members who have served within the past 24 months; and
- ❖ The Chief Administrative Officer or Director of the Member Board

The Chair summarized the history of the establishment of the FSMTB to date for purposes of informing members of the audience who might not be aware of its beginnings and its mission and purpose. The important thing is that the input received from other states is valuable and the output that New Mexico can share with other states is invaluable, since New Mexico is ahead of many states in licensure and regulation of massage therapists. The test that the FSMTB is working on will suitable to any state. It will be a modular type of exam so that each state can stipulate which modules are necessary for its own curriculum and licensure requirements.

Ms. Anthony-Barrow, NMT Associates, stated that the NCE has created a second test, the NCETM exam that excludes a sizeable portion of the "bodywork" portion of the exam and was told that the Board has added that exam to the Board's Examination rule (Part 10). Ms. Anthony-Barrow added that she was in favor the creation of alternative examinations if they are legally defensible and psychometrically valid.

The Board received comments from other members of the audience in support of the Board's joining the FSMTB. Following discussion and review of the materials in the FSMTB packet, Mr. Lane remarked that we want to develop consistency in licensure, education and most important of all competency that is recognized in the current allopathic model, so body workers can actually make a living doing what they like doing and what their passion is. Mr. Lane **MOVED** for the Board to join the FSMTB and become an official member. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

The Board **DIRECTED** the Board Administrator to complete the application form and submit it to the FSMTB as soon as possible.

The Board also **DIRECTED** the Board Administrator to prepare the necessary purchase order to pay the 2006-2007 FSMTB dues, which will be billed in June 2006.

D. FSMTB 2006 Annual Meeting Invitation

The Board received an announcement for the FSMTB's 2006 annual meeting to be held on Friday and Saturday, September 22-23, 2006 at the Elms Resort and Spa in Excelsior Springs, Missouri, which is just outside Kansas City.

After a brief discussion, during which it was noted that the dues to FSMTB includes the cost of travel, food and lodging for the Board's appointed delegate to attend the meeting. Ms. Payne stated that there is budget allocated for another board member and the Board's Administrator to attend the annual FSMTB meeting.

Mr. Lopez **MOVED** for the Board to authorize Chair Egenes, Ms. Bryson and Board's Director to attend the FSMTB on the Board's behalf and for Chair Egenes to act as the Board's voting delegate at the FSMTB meeting. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

The Board **DIRECTED** the Board's Director to process the out-of-state travel requests as soon as FY07 begins on July 1, 2006, to allow sufficient time for the approval process and to allow sufficient time to purchase airfare at a reasonable rate and complete other travel arrangements.

E. FSMTB Memorandum on Delegation of Authority

The FSMTB distributed a "Memorandum on the Delegation of Authority" prepared for the FSMTB by Dale J. Atkinson, FSMTB General Counsel and Executive Director of the Federation of Associations of Regulatory Boards (FARB). Attorney Atkinson's memorandum was "*intended to address... the legal implications of statutory and/or regulatory delegation of authority to private, non-governmental entities regarding criteria for licensure of massage therapists.*"

FSMTB stated in its memorandum to the state boards, "*The document, calls into question the current use of certification examinations administered by the National Certification Board for Therapeutic Massage and Bodywork. In short, legislative reliance on the private sector through the enactment of statutes which specifically name examinations and/or accrediting entities over which there is no governmental oversight or public accountability undermines the foundation of the regulatory process. In addition, such delegation of authority for determinations of mandatory criteria in licensure process is fraught with legal and practical implications. The rationale for these conclusions is contained in this document.*"

The Board briefly discussed the exam process, the issue of delegation of authority, and whether there is sufficient oversight by the board in the particular way the NCE exam is created and administered and what the prerequisites for taking the exam are. Mr. Lopez said there was extensive discussion on this subject at the public rule hearing last March and the Board was cautioned about delegating its authority where the exam is concerned. Ultimately, he said, the Board sets the standards for licensure in New Mexico.

Since AAG Valicenti had not had time to review the subject letter of this agenda item, Mr. Lopez **MOVED** for the Board to **TABLE** this item until AAG Valicenti can review the information more thoroughly and report back to the Board at the next meeting. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

F. AMTA Response to Memorandum on Delegation of Authority

The Board briefly discussed the content of the letter in items F, but AAG Valicenti had not had time to review the letters. Therefore, Mr. Lopez **MOVED** for the Board to **TABLE** this item until AAG Valicenti can review the information more thoroughly and report back to the Board at the next meeting. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

G. Correspondence - Gilbert Rivera, LMT, RMTI

The Board reviewed a letter sent presumably to state "representatives" by Gilbert Rivera, LMT and RMTI associated with Apollo College of New Mexico, and referred to the Board for response by the Governor's office. Mr. Rivera's complaints centered primarily on the NCETMB's examination process, and other issues that factual or necessarily clear. The Board also reviewed Ms. Payne's response to Mr. Rivera in which he was cordially invited to attend the Board's meetings and participate in the process, but Mr. Rivera was not present at the meeting.

Ms. Payne said she has received complaints that Apollo College is not preparing its students for the examination application or the licensure application process, which apparently has created the problems for his students that Mr. Rivera described in his letter. She offered to schedule a presentation to Apollo's graduating classes upon invitation. However, the invitation has not been forthcoming. No further action by the Board was necessary.

H. Review of Draft Proposed Rule Changes

Ms. Payne presented a discussion draft of proposed rule amendments to Part 4 and Part 11 some of which she drafted based on dialogue at previous Board meetings and some of which are for clarification purposes, and some of which are an outgrowth of questions received by the Board office.

Mr. Lopez **MOVED** to **REFER** the discussion draft of proposed rule amendments to the **RULES COMMITTEE** to review the proposals. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Mr. Schiff commented that the proposed rule amendments are extremely well written and he wanted to commend Ms. Payne on the draft. He commented that she had really gotten up to speed on the rule-making process and the language and how to construct these. He said he was devastated that she was leaving because she has gotten very good at this and it's a rare skill and she will be missed.

Mr. Barrow suggested that the Rules Committee consider an on-line collaboration as was done in the past. It was very helpful to keep everyone in the loop and to know what's going on in the process. Mr. Schiff commented that the Yahoo group still exists.

VII. STANDING AGENDA ITEMS

A. Chair's Report (K. Egenes)

The Chair's Committee

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

The Rules and Statute Committee had nothing to report. However, the Committee will meet soon to consider the changes proposed in item VI.H.

C. Education, Exam & Licensing Compliance Committee Report (R. Barnes)

The Education Committee had nothing to report.

D. Complaint Committee (P. Lane)

Mr. Lane, Chairman of the Complaint Committee stated that the Committee has met several times since the last meeting and has reviewed and investigated numerous diverse and interesting complaints, and will be covering those during Executive Session.

VIII. BOARD ADMINISTRATORS REPORT

A. FY06 Budget Status Report

Ms. Payne reported that as of April 19, 2006, the Board's operating expenses total \$102,586. There is currently \$12,768 encumbered, leaving an unencumbered balance of \$88,445 in the Board's FY06 operating budget.

Revenues

Ms. Payne reminded the Board that budgeted revenue projections for FY06 were \$203,200. As of April 18, 2006, the Board has received \$191,266 in revenues. The Board has until June 30, 2006 to receive the balance of \$11,934 to reach the revenue projections for FY06.

B. 2005 Renewal Cycle - Progress Report, & Licensing Statistics

Ms. Payne reported that of the 1042 LMTs who were sent renewal notices for the October 31, 2005 renewal, 829 (69%) have renewed. She referred the Board to a monthly licensing trends chart prepared for the period April 2004 through April 2006, noting the drop in "Active" LMTs the first of January. She stated that the Board office is gearing up for the 2006 renewal cycle.

IX. SCHEDULE FUTURE MEETINGS

The Board tentatively scheduled its next to meetings as follows:

At 10:00 a.m. on Friday, June 30, 2006 in Santa Fe, New Mexico

At 10:00 a.m. on Friday, October, 27, 2006 in Santa Fe, New Mexico

X. EXECUTIVE SESSION AND ACTION - Pursuant to §10-15-1.H

Mr. Lane **MOVED** for the Board to close the meeting in order to enter into Executive Session to discuss the items listed in the agenda items X. A, B and C, pursuant to Sections 10-15-1.H (1) and (3) of the Open Meetings Act authorizing closed sessions for matters related to issuance, suspension, revocation, and pending or threatened litigation.

Mr. Lopez **SECONDED** the motion, and upon a roll call vote, Mr. Lane, Mr. Lopez, Mr. Barnes, Ms. Bryson, and Ms. Egenes voted **AYE** to enter into Executive Session, and the motion was **PASSED** by **UNANIMOUS APPROVAL**. The recorder was turned off at 11:45 a.m.

The Board took a 20-minute recess before entering into Executive Session at 12:05 p.m..

Back in Open Session

At 1:25 p.m., the Board came out of Executive Session and the recorder was turned back on. Chair Egenes stated for the record that during Executive Session the only matters discussed were limited to the items listed in the motion to enter into Executive Session. The Chair also stated for the record that action on the items discussed was being taken in open session.

Ms. Payne reported that Mr. Willard Davis has retired and the J. J. Walker is the only hearing officer at RLD available to hear cases for the Boards and Commissions Section and she will not be able to take on any new cases. Therefore, any future disciplinary cases scheduled will have to be heard by a Board member appointed by the Board to hear the case and prepare the Findings of Fact, Conclusions of Law and recommendations from which the Board will make its decision. Another option is for the full Board, minus the Complaint Committee member to hear the case and make its decision together following the hearing.

As the Board's Complaint Committee, Mr. Lane recused himself from voting on all the Executive Session agenda items in X. A and B.

A. Complaints

1. MT Case #04-07-21 (A, B, C, D, and E)

Mr. Lopez **MOVED** for the Board to accept the Complaint Committee's recommendation to **DISMISS** MT Case #04-07-21 A, B, C, D, and E because investigation found that the advertisements are no longer being run and the publisher is out of business. Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

2. MT Case #05-07-18 (A)

Mr. Lopez **MOVED** for the Board to accept the Complaint Committee's recommendation to **DISMISS** MT Case 05-07-18 (A) because the respondent is in compliance. Ms. Bryson **SECONDED** the motion, and upon a vote the motion was **PASSED**.

B. Pre-NCA and NCA Cases

1. MT Case #04-07-20 (A)

The Respondent in MT Case #04-07-20 (A) accepted the Pre-NCA Settlement Agreement on March 31, 2006. Mr. Lopez **MOVED** for the Board to approve and execute the Pre-NCA Settlement Agreement, and if the Respondent violates the agreement it will result in further disciplinary action including, but not limited to, an Order to Show Cause. Ms. Bryson **SECONDED** the motion, and upon a vote the motion was **PASSED**.

2. MT Case #04-07-20 (B)

The Respondent in MT Case #04-07-20 (B) accepted the Pre-NCA Settlement Agreement on March 31, 2006. Mr. Lopez **MOVED** for the Board to approve and execute the Pre-NCA Settlement Agreement, and if the Respondent violates the agreement it will result in further disciplinary action including, but not limited to, an Order to Show Cause. Ms. Bryson **SECONDED** the motion, and upon a vote the motion was **PASSED**.

3. MT Case #04-11-27

Mr. Lane reported that the hearing on this case, MT #04-11-27, had to be vacated due to the hearing date having been scheduled past the time limits set forth in the Uniform Licensing Act (ULA). Mr. Lopez **MOVED** for the Board to accept the Committee's recommendation to **DISMISS** the case, **reopen** it and **reissue the Notice of Contemplated Action** as soon as possible. Ms. Bryson **SECONDED** the motion, and upon a vote the motion was **PASSED**.

Ms. Bryson **MOVED** for the Board to appoint Mr. Quinn Lopez to act as the hearing officer in this matter. Mr. Barnes **SECONDED** the motion, which was **PASSED**.

4. MT Case #05-06-13 - Default Order

Mr. Lopez **MOVED** for the Board to accept the Committee's recommendation to **APPROVE** the Default Order in MT Case #05-06-13, date it April 28, 2006 and execute it. Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

5. MT Case #05-06-14

Mr. Lopez **MOVED** for the Board to accept the Committee's recommendation to offer the Respondent a Pre-NCA Settlement Agreement to include the following stipulations:

- a. That the respondent will be allowed thirty (30) days to accept the Pre-NCA Agreement;
- b. That the respondent will Cease and Desist the violations of 16.7.2.8.A (3) NMAC, 16.7.2.8.F NMAC, and NMSA 1978, § 61-12C-24 (B) (9);
- c. That the respondent will pay a \$1,000 fine for aiding and abetting the unlicensed person in providing massage therapy services without a valid license;
- d. That the respondent will pay the \$1,000 within ninety (90) days of the receipt of the Pre-NCA Agreement;
- e. That the complaint will be referred to the Attorney General's Office for issuance of an NCA if the respondent fails to comply with the Cease and Desist Order and accept the terms of the Pre-NCA Agreement; and
- f. If the respondent violates any of the terms of the Pre-NCA Agreement, the violation will result in further disciplinary action including, but not limited to, an Order to Show Cause.

Ms. Bryson **SECONDED** the motion, and upon a vote the motion was **PASSED**.

6. MT Case #05-07-15

Mr. Lopez **MOVED** for the Board to accept the Committee's recommendation to refer MT Case #05-07-15 to the Attorney General's Office for issuance of an NCA up to and including revocation of the license for violations of the 16.7.2.8.B, C, and F NMAC and NMSA 1978, § 61-12C-24.B (1) (6), (10), and (11). Ms. Bryson **SECONDED** the motion, and upon a vote the motion was **PASSED**. Mr. Barnes abstained from voting.

7. MT Case #05-07-17

Mr. Lopez **MOVED** for the Board to accept the Committee's recommendation to offer the Respondent a Pre-NCA Settlement Agreement to include the following stipulations:

- a. That the respondent will be allowed thirty (30) days to accept the Pre-NCA Agreement;
- b. That the respondent will Cease and Desist practicing massage therapy without a valid license, which is a violation of 16.7.4.8 NMAC and NMSA 1978, § 61-12C-5 A and B;
- c. That the respondent will pay a \$1,000 fine for providing massage therapy services without a valid license;
- d. That the respondent will pay the \$1,000 within ninety (90) days of the receipt of the Pre-NCA Agreement;
- e. That the complaint will be referred to the Attorney General's Office for issuance of an NCA if the respondent fails to comply with the Cease and Desist Order and accept the terms of the Pre-NCA Agreement; and
- f. If the respondent violates any of the terms of the Pre-NCA Agreement, the violation will result in further disciplinary action including, but not limited to, an Order to Show Cause.

Ms. Bryson **SECONDED** the motion, and upon a vote the motion was **PASSED**.

8. MT Case #05-09-26

The Board accepted the Committee's recommendation to separate MT Case # 05-09-26 into (A) and (B) because there are two respondents in the complaint.

Mr. Lopez **MOVED** for the Board to accept the Committee's recommendation to offer the business owner respondent, **(A)** in MT Case #05-09-26, a Pre-NCA Settlement Agreement to include the following stipulations:

- a. That respondent (A) will be allowed thirty (30) days to accept the Pre-NCA Agreement for violations of 16.7.2.8.A (3) and 16.7.2.8.F NMAC, and NMSA 1978, § 61-12C-24 (B) (9), aiding and abetting unlicensed person(s) in the unlicensed practice of massage therapy;
- b. That respondent (A) will pay a \$1,000 fine for aiding and abetting the unlicensed person in providing massage therapy services without a valid license;
- c. That respondent (A) will pay the \$1,000 within ninety (90) days of the receipt of the Pre-NCA Agreement;
- d. That the complaint will be referred to the Attorney General's Office for issuance of an NCA if respondent (A) fails to comply with the Cease and Desist Order and accept the terms of the Pre-NCA Agreement; and
- e. If respondent (A) violates any of the terms of the Pre-NCA Agreement, the violation will result in further disciplinary action including, but not limited to, an Order to Show Cause.

Ms. Bryson **SECONDED** the motion, and upon a vote the motion was **PASSED**.

Mr. Lopez **MOVED** for the Board to accept the Committee's recommendation to offer the newly licensed therapist **(B)** in MT Case #05-09-26, a Pre-NCA Settlement Agreement to include the following stipulations:

- a. That respondent (B) will be allowed thirty (30) days to accept the Pre-NCA Agreement;

- b. That respondent (B) will pay a \$1,000 fine for knowingly providing massage therapy services without a valid license, which is a violation of 16.7.4.8 NMAC and NMSA 1978, § 61-12C-5 A and B;
- c. That respondent (B) will pay the \$1,000 within ninety (90) days of the receipt of the Pre-NCA Agreement;
- d. That the complaint will be referred to the Attorney General's Office for issuance of an NCA if respondent (B) fails to comply with the Cease and Desist Order and accept the terms of the Pre-NCA Agreement; and
- e. If respondent (B) violates any of the terms of the Pre-NCA Agreement, the violation will result in further disciplinary action including, but not limited to, an Order to Show Cause.

Ms. Bryson **SECONDED** the motion, and upon a vote the motion was **PASSED**.

9. MT Case #06-03-10

Mr. Lopez **MOVED** for the Board to accept the Committee's recommendation to offer the respondent a Pre-NCA Settlement Agreement to include the following stipulations:

- a. That the respondent will be allowed thirty (30) days to accept the Pre-NCA Agreement;
- b. That the respondent will pay a \$1,000 fine for knowingly providing massage therapy services without a valid license, which is a violation of 16.7.4.8 NMAC and § 61-12C-5 A and B;
- c. That the respondent will pay the \$1,000 within ninety (90) days of the receipt of the Pre-NCA Agreement;
- d. That the complaint will be referred to the Attorney General's Office for issuance of an NCA if the respondent fails to comply with the Cease and Desist Order and accept the terms of the Pre-NCA Agreement; and
- e. If the respondent violates any of the terms of the Pre-NCA Agreement, the violation will result in further disciplinary action including, but not limited to, an Order to Show Cause.

Ms. Bryson **SECONDED** the motion, and upon a vote the motion was **PASSED**.

The Board agreed that once the respondent has met all the terms of the Pre-NCA Agreement and paid the stipulated fine, the Board office may issue the license to the applicant/respondent providing the applicant/respondent has met all the licensure requirements.

10. MT Case #04-06-18 (B)

Mr. Lopez **MOVED** for the Board to accept the Committee's recommendation to refer the complaint to the Attorney General's Office for an issuance of an NCA. Ms. Bryson **SECONDED** the motion and upon a vote the motion was **PASSED**.

C. Application Review

1. Joseph Macejka - Credential Candidate via 1991 New York State Massage Exam

Mr. Barnes **MOVED** for the Board to accept the 1991 New York State Massage Therapy Exam in lieu of the NCETMB. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

2. Jeanine B. Love - Credential Candidate via NCCAOM Asian BodyWork Therapy Examination

Ms. Jeanine B. Love passed the National Certification Commission for Acupuncture and Oriental Medicine's (NCCAOM) Asian Bodywork Therapy Examination (ABT) and requested that the Board consider accepting this NCCAOM exam in lieu of the NCETMB exam. The Board denied the request. Ms. Bryson **MOVED** that Ms. Love be required to take the NCE exam and meet this requirement for licensure in New Mexico. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

