

MESSAGE THERAPY BOARD
Special Meeting
April 29, 2005 at 12:00 p.m.
Toney Anaya Building - West Capitol Complex
2550 Cerrillos Road - Santa Fe, New Mexico

A G E N D A

- I. CALL TO ORDER**
- II. APPROVAL OF AGENDA**
- III. EXECUTIVE SESSION - Pursuant to §10-15-1.H (1) and (3)**
 - A. Complaints**
 - MT Case #04-03-005
 - MT Case #04-04-012
 - MT Case #04-06-016
 - MT Case #04-06-017
 - MT Case #04-06-18 (A)
 - MT Case # 04-06-18 (B)
 - MT Case #04-09-22
 - MT Case #04-09-23
 - MT Case #04-10-25
 - MT Case #04-10-26
 - MT Case #04-11-27
 - MT Case #05-02-02
 - MT Case #05-02-03
 - MT Case #05-02-07
 - B. Cases Referred to the Attorney General's Office for the Issuance of NCA's**
 - MT Case #03-06-008
 - MT Case #03-03-005
- IV. BOARD ACTION FOR MATTERS CONSIDERED IN EXECUTIVE SESSION**
 - 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
 - 12. MT Case #05-02-02
 - 13. MT Case #05-02-03
 - 14. MT Case #05-02-07
 - B. Cases Referred to the Attorney General's Office for the Issuance of NCA's**
 - 1. MT Case #03-06-008
 - 2. MT Case #03-03-005
- V. ADJOURNMENT**

MASSAGE THERAPY BOARD
Special Meeting

April 29, 2005 at 12:00 p.m.
Toney Anaya Building - West Capitol Complex
2550 Cerrillos Road - Santa Fe, New Mexico

MINUTES

MEMBERS PRESENT: Kathleen Egenes, Chair
Randy Barnes, Massage Therapist
Edward Kaul, Public Member
Quinn Lopez, Public Member

STAFF PRESENT: Geraldine Mascarenas, Compliance Liaison

OTHERS PRESENT: Mona Valicenti, Assistant Attorney General

I. CALL TO ORDER

Chair Egenes called the meeting to order at 12:16 p.m. At least one member present was a public member and a quorum was established to conduct business.

II. APPROVAL OF AGENDA

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

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

Mr. Lopez **MOVED** for the Board to enter into Executive Session pursuant to Sections 10-15-1.H (1) and (3) of the Open Meetings Act to discuss the fourteen (14) cases listed under Item A and the two (2) cases listed under Item B of Agenda Item III. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Upon a roll call vote Mr. Barnes, Mr. Kaul, Mr. Lopez, and Ms. Egenes voted **AYE** to enter into Executive Session, and the motion was **PASSED** by **UNANIMOUS APPROVAL**. The time was 12:40 p.m.

IV. BOARD ACTION FOR MATTERS CONSIDERED IN EXECUTIVE SESSION

At 1:28 p.m., the Board came out of Executive Session. Chair Kathleen Egenes stated for the record that the only matters discussed in Executive Session were the matters outlined in the motion for Executive Session and the following action was taken in open session.

A. Complaints

1. MT Case #04-03-005

Mr. Lopez **MOVED** for the Board to **DISMISS** Case #04-03-005 because the allegations were unsubstantiated. Mr. Barnes **SECONDED** the motion, which was **PASSED**. Mr. Kaul abstained from voting.

2. MT Case #04-04-012

Mr. Lopez **MOVED** for the Board to **REFER** Case #04-04-12 to the Attorney General's Office for the issuance of a Notice of Contemplated Action for

violation of 61-12C-24.B(6), 16.7.2.8.C (1), 16.7.2.8.C (2) and 16.7.2.8.F (1). Mr. Barnes **SECONDED** the motion, which was **PASSED**. Mr. Kaul abstained from voting.

3. MT Case #04-06-016

Mr. Lopez **MOVED** for the Board to offer the Respondent in Case #04-04-16 a Pre-NCA Settlement to include: (1) a penalty of \$1,000, for practicing and/or offering massage therapy services without a massage therapy license issued by the Massage Therapy Board; (2) that the Respondent cease and desist practicing and/or offering massage therapy services without a massage therapy license issued by the Massage Therapy Board; and (3) that if the Respondent fails to accept the Board's Pre-NCA Settlement offer, that the complaint be referred to the Attorney General's Office for the issuance of a Notice of Contemplated Action.

Mr. Barnes **SECONDED** the motion, which was **PASSED**. Mr. Kaul abstained from voting.

4. MT Case #04-06-017

Mr. Lopez **MOVED** for the Board to offer the Respondent in Case #04-04-17 a Pre-NCA Settlement to include: (1) a penalty of \$1,000, for practicing and/or offering massage therapy services without a massage therapy license issued by the Massage Therapy Board; (2) that the Respondent cease and desist practicing and/or offering massage therapy services without a massage therapy license issued by the Massage Therapy Board; and (3) that if the Respondent fails to accept the Board's Pre-NCA Settlement offer, that the complaint be referred to the Attorney General's Office for the issuance of a Notice of Contemplated Action.

Mr. Barnes **SECONDED** the motion, which was **PASSED**. Mr. Kaul abstained from voting.

5. MT Case #04-06-18 (A)

Mr. Lopez **MOVED** for the Board to offer the Respondent in Case #04-04-18 (A) a Pre-NCA Settlement to include: (1) a penalty of \$1,000, for practicing and/or offering massage therapy services without a massage therapy license issued by the Massage Therapy Board; (2) that the Respondent cease and desist practicing and/or offering massage therapy services without a massage therapy license issued by the Massage Therapy Board; (3) that the Respondent admit to practicing massage therapy without a Massage Therapy license issued by the Massage Therapy Board; and (4) that if the Respondent fails to accept the Board's Pre-NCA Settlement offer, that the complaint be referred to the Attorney General's Office for the issuance of a Notice of Contemplated Action.

Mr. Barnes **SECONDED** the motion, which was **PASSED**. Mr. Kaul abstained from voting.

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

Mr. Lopez **MOVED** for the Board to offer the Respondent in Case #04-04-18 (B) a Pre-NCA Settlement to include: (1) a penalty of \$1,000, for practicing and/or offering massage therapy services without a massage therapy license issued by

the Massage Therapy Board; (2) that the Respondent cease and desist practicing and/or offering massage therapy services without a massage therapy license issued by the Massage Therapy Board; (3) that the Respondent admit to practicing massage therapy without a Massage Therapy license issued by the Massage Therapy Board; and (4) that if the Respondent fails to accept the Board's Pre-NCA Settlement offer, that the complaint be referred to the Attorney General's Office for the issuance of a Notice of Contemplated Action.

Mr. Barnes **SECONDED** the motion, which was **PASSED**. Mr. Kaul abstained from voting.

7. MT Case #04-09-22

Mr. Lopez **MOVED** for the Board to **DISMISS** Case #04-09-22 because the found no violation of the Board's statute or rules and regulations. Mr. Barnes **SECONDED** the motion, which was **PASSED**. Mr. Kaul abstained from voting.

8. MT Case #04-09-23

Mr. Lopez **MOVED** for the Board to **DISMISS** Case #04-09-23 because the found no violation of the Board's statute or rules and regulations. Mr. Barnes **SECONDED** the motion, which was **PASSED**. Mr. Kaul abstained from voting.

9. MT Case #04-10-25

Mr. Lopez **MOVED** for the Board to offer the Respondent and the Respondent's employer in Case # 04-10-25 a Pre-NCA Settlement to include: (1) a penalty of \$1,000 for the Respondent, for practicing massage therapy services without a Massage Therapy license issued by the Massage Therapy Board; (2) a penalty of \$1,000 for the Employer for employing, and thus aiding and abetting, the Respondent in the practice massage therapy without a massage therapy license issued by the Massage Therapy Board; and (3) that if the Respondent and the employer fail to accept the Board's Pre-NCA Settlement offer, that the matter be referred to the Attorney General's Office for the issuance of a Notice of Contemplated Action.

Mr. Barnes **SECONDED** the motion, which was **PASSED**. Mr. Kaul abstained from voting.

10. MT Case #04-10-26

Mr. Lopez **MOVED** for the Board to offer the Respondent and the Respondent's employer in Case #04-10-26 a Pre-NCA Settlement to include: (1) a penalty of \$1,000 for the Respondent, for practicing massage therapy services without a Massage Therapy license issued by the Massage Therapy Board; (2) a penalty of \$1,000 for the Employer for employing, and thus aiding and abetting, the Respondent in the practice massage therapy without a massage therapy license issued by the Massage Therapy Board; and (3) that if the Respondent and the employer fail to accept the Board's Pre-NCA Settlement offer, that the matter be referred to the Attorney General's Office for the issuance of a Notice of Contemplated Action.

Mr. Barnes **SECONDED** the motion, which was **PASSED**. Mr. Kaul abstained from voting.

11. MT Case #04-11-27

Mr. Lopez **MOVED** for the Board to offer the Respondent in Case # 04-11-27a Pre-NCA Settlement to include: (1) a penalty of \$1,000, for unprofessional conduct; and (2) that the Respondent apologize to the Complainant; and (3) that if the Respondent fails to accept the Board's Pre-NCA Settlement offer, that the matter be referred to the Attorney General's Office for the issuance of a Notice of Contemplated Action.

Mr. Kaul abstained from voting.

12. MT Case #05-02-02

Mr. Kaul **MOVED** for the Board to offer the Respondent in Case #05-02-02 a Pre-NCA Settlement to include: (1) a penalty of \$1,000, for practicing and/or offering massage therapy services without a Massage Therapy license issued by the Massage Therapy Board; (2) that the Respondent cease and desist practicing and/or offering massage therapy services without a Massage Therapy license issued by the Massage Therapy Board; and (3) that if the Respondent fails to accept the Board's Pre-NCA Settlement offer, that the complaint be referred to the Attorney General's Office for the issuance of a Notice of Contemplated Action.

Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

13. MT Case #05-02-03

Mr. Kaul **MOVED** for the Board to offer the Respondent in Case #05-02-03 a Pre-NCA Settlement to include: (1) a penalty of \$1,000, for practicing and/or offering massage therapy services without a Massage Therapy license issued by the Massage Therapy Board; (2) that the Respondent cease and desist practicing and/or offering massage therapy services without a Massage Therapy license issued by the Massage Therapy Board; (3) that the Respondent admit to practicing massage therapy without a Massage Therapy license issued by the Massage Therapy Board; and (4) that if the Respondent fails to accept the Board's Pre-NCA Settlement offer then refer the complaint to the Attorney General's Office for the issuance of a Notice of Contemplated Action.

Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

14. MT Case #05-02-07

Mr. Kaul **MOVED** for the Board to offer the Respondent in Case #05-02-07 a Pre-NCA Settlement to include: (1) a penalty of \$1,000, for practicing and/or offering massage therapy services without a Massage Therapy license issued by the Massage Therapy Board; (2) that the Respondent cease and desist practicing and/or offering massage therapy services without a Massage Therapy license issued by the Massage Therapy Board; and (3) that if the Respondent fails to accept the Board's Pre-NCA Settlement offer, that the complaint be referred to the Attorney General's Office for the issuance of a Notice of Contemplated Action.

Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

B. Cases Referred to the Attorney General's Office for the Issuance of NCA's

1. MT Case #03-06-008

Mr. Kaul **MOVED** for the Board to authorize Mr. Lopez to write a letter to David Thomson, the Litigation Division Director of the Attorney General's Office, informing Mr. Thomson that the Board disagrees with the position taken by his office that the complaint be closed without issuing a Notice of Contemplated Action; and in addition, informing Mr. Thomson that the Board strongly encourages his office to issue the Notice of Contemplated Action as previously decided by the Board.

Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

2. MT Case #03-03-005

Mr. Lopez **MOVED** for the Board to accept the Assistant Attorney General's recommendation to close Case #03-03-005. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

V. ADJOURNMENT

There being no further business before the Board, Chair Kathleen Egenes adjourned the meeting. The time was 1:17 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