

MASSAGE THERAPY BOARD

REGULAR MEETING

**Friday, June 24, 2005 at 10:00 a.m.
Auditorium B at Women's Hospital
4701 Montgomery Blvd., N.E.
Albuquerque, New Mexico**

FINAL AGENDA

- I. CALL TO ORDER**
- II. APPROVAL OF AGENDA**
- III. BOARD MEMBER RESIGNATION**
- IV. APPROVAL OF MEETING MINUTES**
 - A. March 3, 2005 Special Meeting**
 - B. March 24, 2005 Regular Meeting**
 - C. April 29, 2005 Special Meeting**
 - D. May 20, 2005 Special Meeting**
- V. NEXT MEETINGS**
 - A. Tentative Schedule**
 - 1. September 23, 2005, at 10 a.m. in Santa Fe**
 - 2. To Be Announced**
- VI. OLD BUSINESS**
 - A. Question Regarding "Teach-Out Policy" (P. 2, 11/19/05 and P. 4, 3/24/05 Mtg. Minutes)**
 - B. Question Regarding Lab Tests (P. 3, 11/19/05 and P. 4, 3/24/05 Mtg. Minutes)**
 - C. Question Regarding MT's Using PT Modalities (P. 5, 11/19/05 and P. 4, 3/24/05 Mtg. Minutes)**
 - D. Question Regarding Workers Compensation (P. 8, 11/19/05 and P. 4, 3/24/05 Mtg. Minutes)**
 - E. Follow-up Report on Adopted Rules Filing**
 - F. Part 4 and Part 5 Proposed Rule Adoption Issue**
- VII. NEW BUSINESS**
 - A. Review and Approve Updated Forms Following Rule Changes**
 - B. Jurisprudence Exam Revision Needed Following Rule Changes**
 - C. AMTA Position Statement on "Medical Massage" Term**
 - D. E-mail Question Regarding "Massage Beds"**
 - E. Hara Matrix School of Healing – Santa Fe, NM**
 - F. Request Authority to Issue Standard C&D Letters**
 - G. Request Authority to Refer Complaints for Investigation to Compliance Section**
 - H. Request Authority to Appoint RLD Hearing Officer for Disciplinary Hearings**
 - I. FSMB "Sexual Boundary Violations" Seminar for Regulatory Boards**
 - J. Annual Adoption of Open Meetings Resolution**
 - K. Annual Adoption of the Board Member Code of Conduct**
 - L. Annual Election of Officers**
- VIII. STANDING AGENDA ITEMS**
 - A. Chair's Report – ABMP/State Leaders MT Exam Discussion Meeting in Denver**
 - B. Rules and Statute Committee (K. Egenes/Q. Lopez)**
 - C. Education, Exam & Licensing Compliance Committee Report (R. Barnes)**
 - D. Complaint Committee (P. Lane)**

- IX. **BOARD ADMINISTRATORS REPORT**
 - A. **CE Audit Progress**
 - B. **FY05 Budget Status Report and License Statistics**
 - C. **FY06 Approved Operating Budget**
 - D. **AIM-HI Initiatives**

- X. **EXECUTIVE SESSION AND ACTION - Pursuant to §10-15-1.H (1) and (3)**
 - A. **MT Case #05-01-01-PRA**

- XI. **ADJOURNMENT**

MASSAGE THERAPY BOARD

REGULAR MEETING

Friday, June 24, 2005 at 10:00 a.m.
Auditorium B at Women's Hospital
4701 Montgomery Blvd., N.E.
Albuquerque, New Mexico

MEETING MINUTES

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

STAFF PRESENT: Carmen E. Payne, Board Director

OTHERS PRESENT: Mona Valicenti, Assistant Attorney General
Linda Delker, LMT, Crystal Mountain Massage
Jennifer Thomas, LMT, Crystal Mountain Massage
Kris Roy, PT

I. CALL TO ORDER

At 10:02 a.m. the Board Chair, Kathleen Egenes, called the June 24, 2005 meeting of the New Mexico Massage Therapy Board to order. The meeting had been properly noticed and there was a quorum present to conduct business.

II. APPROVAL OF AGENDA

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

III. BOARD MEMBER RESIGNATION

Chair Egenes announced that the Board received a copy of a letter dated May 3, 2005 from Edward J. Kaul to Governor Bill Richardson in which Mr. Kaul submitted his resignation as a public member of the Board effective "immediately". Therefore, she said, the Board has a vacancy that hopefully will be filled soon.

The Board **DIRECTED** Ms. Payne to prepare a certificate of appreciation or make arrangements to purchase a plaque for Mr. Kaul as a token of its appreciation for being an exemplary public member.

IV. APPROVAL OF MEETING MINUTES

A. March 3, 2005 Special Meeting

Mr. Lane **MOVED** for the Board to approve the minutes of the Board's Special Meeting convened on March 3, 2005, as presented. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

B. March 24, 2005 Regular Meeting

Mr. Lane **MOVED** for the Board to approve the minutes of the March 24, 2005 regular meeting as presented. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

C. April 29, 2005 Special Meeting

Mr. Lane **MOVED** for the Board to approve the minutes of the Board's Special Meeting convened on April 29, 2005, as presented. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**

D. May 20, 2005 Special Meeting

Mr. Lane **MOVED** for the Board to approve the minutes of the Board's Special Meeting convened on May 20, 2005, as presented. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**

V. NEXT MEETINGS

A. Tentative Schedule

1. **September 23, 2005, at 10:00 a.m. in Santa Fe**
2. **November 18, 2005, at 10:00 a.m. in Santa Fe**

VI. OLD BUSINESS

A. Question Regarding "Teach-Out Policy" (P. 2, 11/19/05 and P. 4, 3/24/05 Mtg. Minutes)

AAG Valicenti reported that the Massage Therapy Act states in Section 61-12C-5 that "*persons shall not maintain, manage or operate a massage therapy school offering education, instruction or training in massage therapy unless the school is a registered massage therapy school.*"

Section 61-12C-8.A, AAG Valicenti said, grants the Board the power to "*adopt and file, in accordance with the State Rules Act, rules necessary to carry out the provisions of the Massage Therapy Practice Act, in accordance with the provisions of the Uniform Licensing Act*", and Section 61-12C-8.C provides "*for the issuance of licenses or registrations to applicants who meet the requirements of the Massage Therapy Practice Act.*"

AAG Valicenti continued, citing Section 61-12C-10.A, which states, "*The Board shall establish by rule procedures for the registration of massage therapy schools and shall register massage therapy schools that meet the requirements of the Massage Therapy Practice Act and rules adopted by the Board pursuant to that act.*"

AAG Valicenti concluded that based on the statute provision cited, the Board has jurisdiction to promulgate rules that would allow for a teach-out agreement as part of the necessary requirements or prerequisites for registration of the schools. A "teach-out" agreement is defined as a written agreement between institutions that provides for the equitable treatment of students if one of those institutions stops offering an educational program before all students enrolled in that program have completed the program. If the Board deems it necessary for schools to have such a teach-out agreement to protect the students, the Board may very well do so. However, she added, enforcement could be a problem due to staffing shortage.

B. Question Regarding Lab Tests (P. 3, 11/19/05 and P. 4, 3/24/05 Mtg. Minutes)

The question presented to the Board at its March 24, 2005 meeting was whether massage therapists are authorized to order lab tests for their clients, and AAG Valicenti agreed at that time to research the issue.

AAG Valicenti advised that licensed massage therapists couldn't order lab tests. She said that Section 61-12C-3 of the Massage Therapy Act section 61-12C-3 specifically states, "*Massage Therapy does not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic, physical therapy, occupational therapy, acupuncture or podiatry is required by law.*" AAG Valicenti added that since LMTs are not allowed to diagnose or treat an illness, there would be no point in ordering lab tests. They do not have the authority by statute nor are they qualified

to interpret the results of lab tests, whereas other health care professionals may have the authority to diagnose and treat illness and are qualified to interpret lab tests.

C. Question Regarding MT's Using PT Modalities (P. 5, 11/19/05 and P. 4, 3/24/05 Mtg. Minutes)

Mr. Lane reported that he contacted David Higham regarding Mr. Higham's inquiry about massage therapists using physical therapist (PT) modalities. Mr. Higham initially questioned the alleged practice of physical therapy modalities by massage therapists. He said he learned that Mr. Higham is a chief physical therapist for the Triad Hospital Corporation, a national corporation owning and operating a variety of hospitals throughout the United States. Mr. Higham has been practicing PT at the Carlsbad facility.

Mr. Lane also reported that he contacted Darrel Thompson, Mr. Higham's superior who operates the Triad Hospital in Roswell, New Mexico. He said further investigation revealed that this issue was and is a turf battle and an attempt to control the practice of a licensed massage therapist who is still employed at the hospital in Roswell.

Mr. Lane continued saying that one issue revolved around the use of hot and cold packs and whether or not the massage therapist was authorized to apply hot and cold packs without Mr. Thompson's approval. Mr. Lane said he assured Mr. Thompson that it is, in fact, within the massage therapist's scope to use hot and cold packs as stated in the Massage Therapy Act and in CPT Code 97010. The other issue revolved around the application of an E-stim unit to the patient.

Mr. Lane added that he and Mr. Thompson had a brief discussion on massage therapy procedures that could be perceived as being PT procedures. The point of reference, the bottom line, is that MT procedures are soft tissue manipulation and PT procedures, in many cases, also obviously manipulate soft tissue. So inevitably there will be some crossover or overlap of the professions.

Mr. Lane concluded that it would appear that Mr. Higham's and Mr. Thompson's questions and objections are unfounded. Mr. Lane said he told Mr. Thompson that he would send him the latest copy of the Massage Therapy Practice Act. The Board **DIRECTED** Ms. Payne to complete this task.

D. Question Regarding Workman's Compensation (P. 8, 11/19/05 and P. 4, 3/24/05 Mtg. Minutes)

AAG Valicenti advised that the issue of some spas passing on the cost of workman's compensation insurance to massage therapists whom they perceive to be independent contractors is an economic issue that the board has no authority to get involved with. She said these economic issues are beyond the Board's jurisdiction, and she would be leery of the Board getting involved in advising any LMT regarding compensation. She advised that if a massage therapist asks the Board a question relating to workman's compensation, the Board could refer the therapist to the Workman's Compensation Administration (WCA).

Mr. Lopez said he thought the issue was whether or not the board has a duty to provide LMTs with the opinion provided by the WCA either via the Board's Website or other method. Mr. Lopez stated that the Board shouldn't need authority to pass on information from another agency to the Board's licensees.

AAG Valicenti agreed with Mr. Lopez' statement, but added that she felt uncomfortable getting involved in employer /employee issues. After discussion, the Board decided it would be all right to pass on the WCA information and appointed Mr. Lopez to prepare a news item on the WCA opinion to be published on the Board's Website and whatever other means possible.

E. Follow-up Report on Adopted Rules Filing

Ms. Payne reported that the amendments to Parts 1, 3, 6 and 11 and the replacement rule for Part 12 that the Board adopted at the March 24, 2005 meeting were filed at State Records Center on May 23, 2005. The amendments and the replacement rule were published in Volume XVI, No. 11 of the *New Mexico Register* on June 15, 2005, and become effective today, June 24, 2005. Ms. Payne said that she plans to mail an updated rulebook to licensees around the first of September when the 2005 renewal notices will be mailed.

Question Regarding LMT Ethics Requirement

Ms. Payne said the question has come up as to whether the ethics CE requirement for LMTs will be required this renewal cycle or next. After discussion, the Board agreed that there has not been sufficient notice to licensees to require the ethics course for LMTs this year. Therefore, that requirement will be enforced for the 2006 renewal cycle.

F. Part 4 and Part 5 Proposed Rule Adoption Issue

Ms. Payne said that she did not file Part 4 and Part 5 because changes made by the Board to the proposed school curriculum requirement in those rules during the Board meeting in March were questioned as having been substantive changes made without proper notice and hearing, as required by law. Therefore, after consulting with AAG Valicenti about these concerns, she and AAG Valicenti agreed that it would be wise to bring this issue back to the Board.

Following are the proposed changes to both Part 4 and Part 5 that were challenged.

1. The proposal of 125 hours minimum anatomy & physiology was changed to 165 hours minimum.
2. The proposal of 50 hours minimum of general instruction was changed to 75 hours minimum.
3. The proposal of 6 hours minimum of professional ethics was changed to 30 hours minimum.

Ms. Payne recommended that the Board rescind the adoption of those specific changes and move for adoption of Part 4 and 5 with the hours originally proposed and published for hearing for anatomy and physiology, general instruction, and ethics in 16.7.4.12 NMAC and 16.7.5.8 NMAC.

After a lengthy discussion, Mr. Lane **MOVED** for the Board to rescind the adoption of the changes to 16.7.4.12 and 16.7.5.8 NMAC as stated by Ms. Payne and adopt Part 4 and Part 5 with the hours originally proposed and as otherwise amended during the meeting on March 24, 2005. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**

The Board **DIRECTED** Ms. Payne to file Part 4 and Part 5 immediately and to stipulate July 28, 2005, as the effective date.

VII. NEW BUSINESS

A. Review and Approve Updated Forms Following Rule Changes

The Board reviewed various applications and other forms revised by Ms. Payne to reflect the recently adopted rule changes. The Chair commented that the revised forms have been streamlined tremendously and are greatly improved. Following a minor suggestion by Mr. Lopez to amend the "Change of Name" form, the Board approved the forms for distribution.

B. Jurisprudence Exam Revision Needed Following Rule Changes

The Chair explained that the Board's open-book jurisprudence exam, which is for the purpose of ensuring that licensees are acquainted with the Board's regulations and statute,

has to be revised now that the rules have been amended. The Chair asked the Board if they had responded to Ms. Payne's recent e-mail solicitation to the Board and AAG Valicenti for new exam questions. Mr. Lane said he submitted a list of questions to Ms. Payne and explained that the questions he developed were prompted by the types of complaints the Complaint Committee has been faced with the last year-and-a-half.

After a lengthy discussion regarding licensure requirements and exam development, the Board members and AAG Valicenti agreed to send their questions to Ms. Payne by July 1st. The Board **DIRECTED** Ms. Payne to e-mail the exam to the Board for review when the questions have been compiled, and upon approval, for the exam to be released for distribution to applicants.

C. AMTA Position Statement on "Medical Massage" Term

The Board received a letter from the American Massage Therapy Association (AMTA) stating that recently some regulatory bodies have proposed "*special credentials for those who practice what has been termed 'medical massage'*". AMTA stated that since there is "*no agreement in the MT profession on a definition of the term 'medical massage'*" that can "*only be determined when stakeholders in the MT profession, the medical professions, credentialing bodies and regulatory bodies have provided input into a definition of the term*" that the "*AMTA believes it would be premature for a state regulatory board, state legislature or municipal body to make decisions regarding special credentials for what might be designated 'medical massage' until all stakeholders have an opportunity to define the term. Neither educational standards nor a scope of practice could be determined without such a definition.*"

Mr. Barnes remarked that there is no real definition and everyone he has talked to has a different definition for "medical massage".

Mr. Lane said he somewhat understands the AMTA to be saying, "Who are you to define what medical massage is without having a public national input into the definition of the term." The question, he said, is how do we develop a national forum to come up with the definition? On the other hand, the New Mexico Board has every legal right to improve the educational standards and to raise the bar of professionalism in bodywork in New Mexico. One way to do that, he added, is to require more education and medical training.

Chairman Egenes stated that this topic relates to the report in Agenda Item VIII. A, so she said she would make her report at this time. (See Item VIII.A.)

D. E-mail Question Regarding "Massage Beds"

The Board received an e-mail inquiry asking if persons or companies using thermal massage beds with rollers that roll along the back are required to obtain a massage therapy license. AAG Valicenti read the scope of practice from the Massage Therapy Act, and advised that if the person/company is offering massages "for compensation" it would require a massage therapy license.

After discussion, the Board determined that the person would need a license and **DIRECTED** Ms. Payne to advise the inquirer of the legal requirements for licensure.

E. Hara Matrix School of Healing – Santa Fe, NM

The Board received a copy of a letter sent to the Boards and Commissions Compliance Section by Colette Martin, Executive Director of the *Hara Matrix School of Healing* located in Santa Fe, New Mexico. Ms. Martin appears to be arguing that the school does not come under the jurisdiction of the Massage or the Acupuncture Boards. However, in reading the letter, Mr. Lopez said portions of the letter contradict other portions of the letter.

After discussion, the Board agreed that anytime a school is providing massage therapy instruction to massage therapists, whether in a course of study or as continuing education, which is admitted in the letter, it falls under the Board's jurisdiction.

Chair Egenes referred to the following statement in the letter on the examples of continuing education offered to massage therapists: "*Five Element Theory, Aromatherapy, Chakra Healing, Ayurveda, Dreambody Work and literally hundreds of others that do not involve the treatment of soft tissue as defined*" [in the Massage Therapy Act]. Chair Egenes challenged that statement saying that the minute you do Five Element or Chakra you're changing soft tissue, and in the Five Element you're actually doing soft tissue work. So, she said, they are teaching massage therapy and at the very least, and according to the Board's regulations, the Massage Therapy Board should license the instructors.

Ms. Martin did not enclose a list of the courses the school provides or substantive description of what they are doing in the classes, so the question is still whether the school is subject to the jurisdiction of the Board. After discussion, Mr. Lane offered to contact the NCETMB and verify the statements made in the letter.

Mr. Lopez said that Ms. Martin is just giving the Board her own conclusions without providing the factual information about the school's courses. He asked if the Board has a template letter to the effect that "based on the information provided (i.e. we have insufficient information) we cannot say whether or not you are subject to our jurisdiction. We recommend that you seek legal counsel to review the Board's Statute and Regulations and to advise you as to whether you are subject to the authority of the Board. This letter in no way a legal opinion whether you fall under our jurisdiction..." In any case, he said, it is important that the Board respond to Ms. Martin.

Mr. Lane said he was pretty certain that Ms. Mascarenas already has a template letter similar to that suggested by Mr. Lopez. Mr. Lane **MOVED** for the Board to send a letter to the school after AAG Valicenti and Mr. Lopez have reviewed it. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

F. Request Authority to Issue Standard C&D Letters

Ms. Payne explained that Geri Mascarenas, the Board's Compliance Officer, requested that the Board grant the Compliance Officer and Board staff to blanket authority to issue Cease and Desist letters to people who are reported to be practicing without a license. The Compliance Officer can then receive a response to the Cease and Desist and have it ready for review by the Complaint Committee and this will speed up the process.

After discussion, Mr. Lopez **MOVED** for the Board to grant the Compliance Officer blanket authority to issue Cease and Desist letters as requested. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

G. Request Authority to Refer Complaints for Investigation to Compliance Section

In order to streamline the complaint process, the Board's Compliance Officer, Geri Mascarenas, requested that the Board grant the Compliance Officer the blanket authority to assign complaints to the Board's Complaint Investigator for investigation. After a brief discussion on procedure and determining that after the investigation is completed, the complaint will be submitted to the Board's Complaint Committee for review and recommendation, Mr. Lane **MOVED** for the Board to grant the Compliance Officer's request. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

H. Request Authority to Appoint RLD Hearing Officer for Disciplinary Hearings

In order to streamline the disciplinary hearing process, the Board's Compliance Officer, Geri Mascarenas, requested that the Board grant the the Board's Director blanket authority to appoint a Regulation and Licensing Department (RLD) hearing officer to hear cases referred

to the Attorney General's Office for Notice of Contemplated Action (NCA), and for the Board to authorize the Board's Director to sign the appointment document.

After discussion, AAG Valicenti advised that this was an administrative matter and was not usurping the Board's authority because the Board has already recommended the NCA and will ultimately make a decision on the Hearing Officer's recommendations. Mr. Lane **MOVED** for the Board to grant the Compliance Officer's request as stated in the previous paragraph. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

I. FSMB "Sexual Boundary Violations" Seminar for Regulatory Boards

The Board received an invitation to attend a one-day seminar entitled "*Sexual Boundary Violations – a National Meeting for Regulatory Board Members*", that will be held in Atlanta, Georgia on July 22, 2005. Ms. Payne recommended that the Board's Complaint Committee Member, Mr. Lane, or the Board's Compliance Officer, Ms. Mascarenas, attend if possible. Mr. Lane said he had a previous commitment and would be unable to attend. He deferred to Ms. Mascarenas if her schedule allows.

Ms. Payne advised the Board that the Department of Finance and Administration has issued a policy that in-state and out-of state travel will be limited to \$1,500 a year per board member. If the Board continues meeting as often as it has this past fiscal year – 10 times already – this could be problematic for board members who have long distances to travel and also travel out-of-state. However, she said that after expressing concern over this issue, she learned that if Mr. Jaramillo, RLD's Superintendent, signs off on any travel over the \$1,500, DFA will pay it. If necessary, Ms. Payne added, she is prepared to write letters of justification to get travel approved.

Mr. Lane **MOVED** for the Board to send Ms. Mascarenas to the seminar if she is available. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

J. Annual Adoption of Open Meetings Resolution

AAG Valicenti stated that the provisions of the Open Meetings Act require that the Board annually adopt an Open Meetings Resolution. After review, Mr. Lopez **MOVED** for the Board to adopt the Open Meetings Resolution as presented. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

K. Annual Adoption of Board Member Code of Conduct

AAG Valicenti told the Board that the provisions of the Governmental Conduct Act require that each individual serving in the capacity of board or commission member must regularly review and sign the Board Member Code of Conduct. After review and signature of the document by all members present, Mr. Barnes **MOVED** for the Board to adopt the Board Member Code of Conduct as presented. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

L. Annual Election of Officers

Mr. Barnes nominated Ms. Egenes to continue as Board Chair and **MOVED** that nominations cease. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

VIII. STANDING AGENDA ITEMS

A. Chair's Report – ABMP/State Leaders MT Exam Discussion Meeting in Denver

Chair Egenes reported that she attended a "Licensing Examination" discussion meeting organized by the Associated Bodywork & Massage Professionals (AMTA). In attendance were representatives of the state licensing boards of Alabama, Oregon, Iowa, New Hampshire, Florida and New Mexico; and massage therapy and bodywork educators from Michigan, Arizona, California, North Carolina, and Tennessee. The two primary reasons that the meeting was initiated was (1) to discuss the potential formation of an alliance of

federation of state massage boards, and (2) to discuss the potential development of a new entry-level massage therapy examination.

Based on minutes of the meeting received by the Board, discussion topics included previous attempts to create an alliance; licensure; board functions; defining massage; state licensing; qualifications for licensure; creating competition; a new consortium; choosing a name for the new consortium; membership in the new consortium; the role of boards; a new exam; nominations; and scheduling of the next meeting.

Chair Egenes reported that as a result of the meeting, a new alliance called the "Federation of State Massage Therapy Boards" was established and an interim board was elected, of which she is a member. She said that her assigned task is to coordinate the development of a job analysis requirements questionnaire, and she has been working on that. She said she would send her work product to Mr. Lane for review soon.

The Board received an invitation to the next meeting of the Federation of State Massage Therapy Boards to be held September 21-22, 2005, at the Hyatt in Albuquerque, New Mexico in conjunction with the national convention. Mr. Barnes **MOVED** for the Board to send Mr. Lane to the meeting, as the Board's representative, since Ms. Egenes is already a member of the Federation's Board. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

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

The Board **DIRECTED** Ms. Payne to prepare for another rule hearing to amend the Part 4 and Part 5 to include the curriculum hour changes proposed at the March 24, 2005 meeting. Ms. Payne said she would include proposed amendments for Part 10 and any others necessary to operate effectively.

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

The Committee had nothing to report.

D. Complaint Committee (P. Lane)

Committee Chair Lane said he was happy to report that the number of complaints has significantly reduced. He and the Compliance Officer have been working on some cases but there is nothing else to report at this time.

IX. BOARD ADMINISTRATORS REPORT

A. CE Audit Progress

Ms. Payne reported that on April 11, 2005, a notice of continuing education audit was mailed to 140 licensees with a May 31, 2005 deadline for compliance. Nearly seventy licensees responded to the first notice. On June 14, 2005, a second notice was mailed by certified mail return receipt requested to those licensees who did not comply with the first deadline. The second notice had a deadline of July 15, 2005 for compliance, an assessment of a \$150 administrative fee, and notice that the renewed license status had been changed to "inactive" and requesting surrender of the renewed license because of non-compliance, as had been the previous Board administrator's policy.

Ms. Payne reported that the second notice was mailed to the same address as the first notice, but amazingly many of these people swore they never received the first notice and objected strongly, and in some cases, in a very unprofessional manner, to paying the administrative fee. The Board agreed with Ms. Payne that it was extremely difficult to believe that the post office failed to deliver the first notice to so many of these people when the addresses hadn't changed.

Ms. Payne said that since the first notice was not mailed by certified mail, there was no way to prove that the first notice had been delivered. Therefore, she decided to require the

protesters to submit their continuing education proofs with a notarized affidavit swearing that they did not receive the first notice and requesting a waiver of the administrative fee so that there would be a paper trail for audit purposes.

Ms. Payne stated that now that she is familiar with the audit process, as it has been handled in the past, she is going to change the process to eliminate all the extra mailings, the extra staff time and costs associated with certified mail, and the headache of having to follow-up with additional phone calls, correspondence, etc, and finally to initiate disciplinary actions against those who fail to comply after all. She said in future, she will use two colors of paper for each license type, have a staff person insert the "audit" colored paper randomly so that approximately 10% of the licensees will receive their renewal notice on the "audit" colored paper and will have to submit the proofs of CE completion with their license renewal application and renewal fee.

Audited licensees who don't comply with the requirements will not be eligible for renewal, period! She added that this is the way her other boards conduct the audit process and it's less costly in terms of time and postage, and is much more efficient and effective. The Board agreed that Ms. Payne's plans for future audits make more sense and gave her the go-ahead to initiate the new audit process.

B. FY05 Budget Status Report and License Statistics

Ms. Payne reported that as of June 14, 2005, the Board's approved operating budget of \$216,400 for FY05 has been reduced by \$155,888 in expenditures. There is still \$7,979 in encumbrances, leaving an unencumbered budget balance of \$52,333. Ms. Payne said she has not received the final expenses for personnel services and employee benefits, so the final year-end figures are still not available. However, she said she anticipated there would be some budget savings to revert back to the Board's cash fund balance.

The Board inquired about what is paid out of the various categories and line items in the budget and recommended that the entire available budget be spent if at all possible. Ms. Payne said she spent as much as possible and it is now too late to spend the remaining budget.

Ms. Payne also reported that as of June 14, 2005, the Board has received \$215,391 in revenues and reviewed the various revenue codes with the Board. She noted that when the FY05 budget was requested, the revenue projection was \$193,000. Actual receipts have exceeded the projection by \$22,400 already. Hopefully, she said, this will be advantageous when she requests an FTE (full time employee) expansion in the FY07 budget.

License statistics as of June 14, 2005:

2,626	LMT	76	RMTI – Independent
17	MT Schools	99	RMTI – School Based
146	Temporary LMT	305	Pending Applicants
585	Inactives		
198	Withdrawn Applications (Incomplete/over a year old)		

C. FY06 Approved Operating Budget

Ms. Payne explained that the Board requested \$255,400, including an FTE Expansion for FY06, but the Expansion request was denied presumably because the Department of Finance and Administration (DFA) had a problem with the fact that the projected revenues were \$52,200 less than the budget request (with the Expansion), regardless of the fact that the cash fund balance was projected at \$401,400 at the end of FY05. The legislature subsequently approved DFA's recommendation of \$203,800 as the Board's FY06 operating budget.

\$117,100 of the FY06 budget is allocated to Personnel and Employee Benefits; \$12,000 to Contractual Services; \$45,300 for Other Operating Expenses; and \$29,400 for Overhead to RLD (Other Financing Uses).

Ms. Payne suggested that the Board consider using some of the Contractual Services to produce public information brochures related to "contraindications to massage". This would be in keeping with the Department's goals for front-end regulation. The Chair also suggested that the Board sponsor a couple of courses on Ethics for licensees to use toward their CE requirement. They asked Ms. Payne to check with Ms. Mascarenas and find out how far she got with planning an Ethics course when she was the Board Director.

The Chair appointed Mr. Lopez to work with Ms. Payne on the FY07 budget request.

D. AIM-HI Initiatives

The Board reviewed the AIM-HI Initiatives submitted on the Board's behalf to the RLD Superintendent recently. The report answered how the Board plans to (1) increase operational efficiencies; (2) maximize customer service (3) heighten licensee and customer awareness of the massage therapy practice standards and consumer rights and redress, and (4) improve staff confidence, competence and morale.

Newsletter Planned

Ms. Payne said she would like to send out a newsletter to all licensees with the 2005 renewals. After discussion, the Board suggested an article dealing with frequently asked questions and decided that the following articles would be prepared and submitted to Ms. Payne for inclusion in the newsletter:

Kathleen Egenes	Article on the "Federation of Massage Boards"
Peter Lane	Article on "Medical Massage"
Quinn Lopez	Article on "Workmans Comp"

Physical Therapist Questions

Before entering into Executive Session, Chair Egenes asked Kris Roy, who identified herself as a physical therapist, if she had anything she wanted to ask the Board. Ms. Roy stated that she had two questions:

(1) She works for a company that provides continuing education to persons, some of whom are massage therapists receiving instruction to meet the Board's requirement for their instructor registration, and she wondered if the continuing education they received from her would still be applicable and accepted by the Board as it has been in the past; and

(2) The company also employs cranial therapists, traeger, and movement practitioners, and she wanted to know if the Massage Therapy Board must license them in order for them to provide instruction to licensed massage therapists. She said she heard the Board was considering rule changes and she was concerned whether the Board would continue to approve their courses of continuing education for massage therapists.

The Board told her nothing has changed. She was also told that if she wants the Board to address her questions specifically she must request that Ms. Payne include her on the Board's next meeting agenda.

X. EXECUTIVE SESSION AND ACTION - 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 MT Case #05-01-01-PRA. Mr. Barnes **SECONDED** the motion, and upon a roll call vote, Mr. Lane, Mr. Barnes, Mr. Lopez, and Ms. Egenes voted **AYE** to enter into Executive Session, and the motion was **PASSED** by **UNANIMOUS APPROVAL**. The recorder was turned off at 12:10 p.m.

At 12:22 p.m., the Board came out of Executive Session and the recorder was turned back on. Chair Egenes stated for the record that the only matter discussed in Executive Session was MT Case #05-01-01 PRA. The following action was taken in open session.

A. MT Case #05-01-01-PRA

Mr. Lane **MOVED** for the Board to refer MT Case #05-01-01 PRA to the Attorney General's Office for a Notice of Contemplated Action for violation of the Parental Responsibility Act and that the Board authorize the appointment of an RLD Hearing Officer for the hearing, should there be one. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

XI. ADJOURNMENT

There being no other business to come before the Board, Mr. Barnes **MOVED** for the Board to adjourn the meeting. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**. The time was 12:27 p.m.

Respectfully submitted by: Carmen E. Payne, Board Director

Approved by the Board on August 29, 2005

Accepted by: Kathleen Egenes, LMT, RMTI and Board Chair, on August 29, 2005