

NEW MEXICO MASSAGE THERAPY BOARD

Regular Meeting
2550 Cerrillos Road
Hearing Room One
Santa Fe, New Mexico
August 20, 2004 at 10:00 a.m.

FINAL AGENDA

- I. CALL TO ORDER**
- II. APPROVAL OF AGENDA**
- III. PROPOSED DATE(s) & PLACE(s) OF NEXT MEETING(s)**
November 19, 2004 – Albuquerque – 10:00 a.m.
- IV. APPROVAL OF MINUTES**
 - A. April 16, 2004
 - B. July 2, 2004
- V. OLD BUSINESS – ACTION ITEMS**
 - A. Status – Health Insurance Portability & Accountability ACT (HIPAA) (Kathleen Egenes)
 - B. Los Ranchos de Albuquerque, Ordinance 84
- VI. NEW BUSINESS – ACTION ITEMS**
 - A. NCBTMB Requirements Change (Letters from Crystal Mountain, ABMP, NCBTMB, and Wanita Thompson)
 - B. Barbara Brennan Healing Science (Ruling on License Exemption Question)
 - C. Advisory Opinion Requested Re: Microdermabrasion and Synergie/Endermologie
(Letter from Melissa Hernandez, LMT 2679)
 - D. Complaint Related To Questions on National Board (Letter from Gladys M. Pechie)
 - E. Hawaii MT Licensing Examination Review For Credential Candidate
 - F. Composition of Complaint Committee (AAG Valicenti)
 - G. Question about “Shen Therapy”
- VII. FOR YOUR INFORMATION**
 - A. Response Letter From 8th Judicial District D.A.’s Office Re: Complaint Referrals
- VIII. COMMITTEE REPORT – ACTION ITEMS**
 - A. Chairman’s Report – Sunset Review
 - B. Schools & Businesses Inspection Committee
 - 1. Committee Report (Quinn Lopez)
 - C. Rules & Statute Committee (Kathleen Egenes & Quinn Lopez)
 - 1. Proposed Rules
 - D. Education, Examination & Licensing Compliance Committee (Randy Barnes & Quinn Lopez)
 - E. Complaint Committee (Peter Lane & Edward Kaul)
- IX. FINANCIAL REPORT**
 - A. FY04 Budget Status Report
 - B. FY05 Approved Operating Budget
- X. EXECUTIVE SESSION AND ACTION**
 - A. Complaints
 - 1. Case No. 02-04-04 and 03-04-006 – Jeffrey Books (Proposed Stipulated Agreement of Settlement)
 - 2. Case No. 03-03-003 (Geri Mascarenas)

3. **Case No. 02-07-08, 03-01-01 and 03-03-004 – Michel Cartegena Order (Geri Mascarenas)**
4. **Case No. 03-07-010 (Geri Mascarenas)**
5. **Case No. 03-07-011 (Geri Mascarenas)**
6. **Case No. 03-08-012 (Geri Mascarenas)**
7. **Case No. 03-09-013 (Geri Mascarenas)**
8. **Case No. 03-09-014 (Geri Mascarenas)**
9. **Case No. 03-09-015 (Geri Mascarenas)**
10. **Case No. 03-10-017 (Complaint Committee)**
11. **Case No. 03-11-018 (Complaint Committee)**
12. **Case No. 03-12-020 (Complaint Committee)**
13. **Case No. 03-12-021 (Complaint Committee)**
14. **Case No. 03-12-022 (Complaint Committee)**
15. **Case No. 03-12-023 (Complaint Committee)**
16. **Case No. 03-12-024 (Complaint Committee)**
17. **Case No. 03-12-025 (Complaint Committee)**
18. **Case No. 03-12-027 (Complaint Committee)**
19. **Case No. 03-12-028 (Complaint Committee)**
20. **Case No. 03-12-029 (Complaint Committee)**
22. **Case No. 03-12-032 (Complaint Committee)**
22. **Case No. 04-01-001 (Redacted to Board Members Not on Complaint Committee)**
23. **Case No. 04-02-002 (Complaint Committee)**
24. **Case No. 04-03-004 (Complaint Committee)**
25. **Case No. 04-03-010 (Complaint Committee)**
26. **Case No. 04-05-013 (BCS Investigator, Theresa Erickson)**
27. **Case No. 04-05-014 (BCS Investigator, James Benson)**
28. **Case No. 04-06-015 (BCS Investigator Theresa Erickson)**

B. Application Reviews

1. **Lisa DiBello – Ratify Committee’s Decision Re: New York Licensing Exam**
2. **Yarrow McKenzie**
3. **Mary Anne Lane**

XI. ADJOURNMENT

NEW MEXICO MASSAGE THERAPY BOARD

Regular Meeting
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Hearing Room One
Santa Fe, New Mexico
August 20, 2004 at 10:00 a.m.

MEETING MINUTES

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

MEMBERS ABSENT: Claudio "Quinn" Lopez, Public Member

STAFF PRESENT: Carmen E. Payne, Board Director

OTHERS PRESENT: Geraldine Mascarenas, B&C Compliance Section
Mona Valicenti, Assistant Attorney General
Raymond Begany, LMT
Dee Hyde-Begany, LMT
Donald F. Schiff, LMT, Stones Circle Massage
Virginia Anthony Barrow, LMT
Dan R. Barrow, LMT
Theresa Erickson, B&C Compliance Section

I. CALL TO ORDER

At 10:12 a.m. the Board Chair, Kathleen Egenes, called the meeting of the New Mexico Massage Therapy Board to order. A roll call was taken and there was a quorum 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. PROPOSED DATE(s) & PLACE(s) OF NEXT MEETING(s)

The Board's next meeting is scheduled at 10:00 a.m. on November 19, 2004 in Albuquerque, New Mexico.

IV. APPROVAL OF MINUTES

A. April 16, 2004

Mr. Lane **MOVED** for the Board to approve the minutes of the April 16, 2004 meeting as presented. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

B. July 2, 2004

Mr. Lane **MOVED** for the Board to approve the minutes of the July 2, 2004 meeting as presented. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

V. OLD BUSINESS – ACTION ITEMS

A. Status – Health Insurance Portability & Accountability ACT (HIPAA) (Kathleen Egenes)

Chair Egenes reported that she had been working on drafting some regulations on HIPAA requirements, but she became aware that there are several courses being taught on it, so she was recommending that this item be **tabled**. Donald Schiff cautioned the Board that the fact

that there are many courses being taught doesn't guarantee that the information being presented is accurate. The Chair agreed and said the Board would look further into the matter.

B. Los Ranchos de Albuquerque, Ordinance 84

Mr. Kaul stated that the Board had concluded at its last meeting that the Board has no authority to intervene in the matter of Los Ranchos de Albuquerque, Ordinance 84. Ms. Mascarenas stated that was correct, but when she proceeded to carry the Board's directive and write Mr. Gillmore a letter, she discovered that the ordinance, specifically Section 3, Letter B, which states that the applicant must be a "graduate of a MT school accredited by the American Massage Therapy Association (AMTA) or otherwise certified by passing the practical and written examinations of the AMTA", is in conflict with the Massage Therapy Practice Act. The AMTA no longer accredits schools or administers practical or written examinations. Ms. Mascarenas recommended that the Village of Los Ranchos de Albuquerque be sent a copy of the Massage Therapy Practice Act with a letter informing them of the inconsistency with New Mexico law and copy Mr. Gillmore, who brought the matter to the attention of the Board.

The Board **DIRECTED** Ms. Payne to follow-up with the recommendation.

VI. NEW BUSINESS – ACTION ITEMS

A. NCBTMB Requirements Change (Letters from Crystal Mountain, ABMP, NCBTMB, and Wanita Thompson)

The Board received letters from several sources regarding the requirements for candidate eligibility to sit for the National Certification Examination for Therapeutic Massage and Bodywork (NCBTMB). The Board held a lengthy discussion with members of the audience regarding this subject and agreed that the NCBTMB should have received feedback from the educational institutions and state licensing boards affected and could have been accomplished by less dictatorial means. The time frame within which NCBTMB is implementing the changes is unacceptable because of the time it takes to draft, promulgate and implement new regulations not to mention that changing a school's curriculum in such a short time is almost impossible.

The Board discussed the NCBTMB's change to its eligibility requirements for candidates wishing to take the National Certification for Therapeutic Massage and Bodywork (NCETMB) exam that will go into effect in late 2004/early 2005 and which will require a significant number of massage therapy schools, 900 stated in the materials received, to change their curriculum. The most significant changes are as follows:

- Increase from 100 to 125 hours of in-class supervised instruction in the body's systems, kinesiology, and anatomy & physiology;
- Addition of 40 hours of in-class, supervised instruction in pathology
- Increase from two hours of ethics to ten hours of in-class instruction in business and ethics with a maximum of six hours in ethics.

After a lengthy discussion regarding this topic, Mr. Kaul **MOVED** that this issue be referred to the Rules and Statute Committee and that the Committee seek input from therapists and schools across the state and report back to the Board by the next regular meeting. Mr. Lane **SECONDED** the motion, which **PASSED** by **UNANIMOUS APPROVAL**.

Question about MT Instructors teaching at community colleges:

Besides asking the Board about the NCBTMB changes, Wanita Thompson also asked the Board a question about licensed massage therapists teaching in community colleges if they are not registered massage therapy instructors. After discussion regarding Ms. Thompson's questions, the Board decided they needed more information about what *exactly* is going on in the classes and **DIRECTED** Ms. Payne to ask Ms. Thompson to elaborate on exactly what is

going on at the school. The Board told Ms. Payne to inform Ms. Thompson to contact an attorney for a legal interpretation of the statute regarding the questions she posed.

Mr. Kaul added that if Dona Ana Branch Community College intends to move formally into training massage therapists, they have to apply for registration with the Board. If Ms. Thompson files a formal complaint, the Board will address the issue and determine at that time whether the Board's statute or its regulations have been violated.

B. Barbara Brennan Healing Science (Ruling on License Exemption Question)

The Board reviewed the brief bit of information sent to the Board describing "Barbara Brennan Healing Science" with the request for a determination by the Board as to whether this "practice" is exempted from massage therapy licensure, but the Board determined they did not receive enough information to make determination. Based on AAG Valicenti's advice, Mr. Lane **MOVED** for the Board to **DIRECT** Ms. Payne to inform the inquirer to consult her own attorney for legal advice and send her a copy of the Board's statute. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

C. Advisory Opinion Requested Re: Microdermabrasion and Synergie/Endermologie (Letter from Melissa Hernandez, LMT 2679)

After discussion, the Board's attorney advised that the letter writer consult an attorney to determine whether it is legal for her to practice microdermabrasion and "synergie/endermologie" in New Mexico under either her esthetician license or her massage therapy license. Mr. Kaul **SO MOVED** and Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

D. Complaint Related To Questions on National Certification Exam (Letter from Gladys M. Pechie)

Ms. Gladys Pechie wrote the Board to complain about the NCE because she has failed it twice and was upset that she has to take the entire exam again. She also stated that she was dissatisfied with the questions on the NCE because in her opinion "many subjects included are not part neither have nothing to do in order to become a Massage Therapist." She asked the Board to consider reviewing the NCE rules and laws "in the best interests of the students".

Mr. Lane **MOVED** for the Board to send a letter to the writer, Gladys M. Pechie, and tell her that this issue has been referred to the Rules Committee. AAG Valicenti, qualified this by saying that the applicant failed the exam and by Board rule she must pass the exam as part of the requirement for licensure in New Mexico. If a candidate has a problem with the exam, there are protocols for challenging the exam with the NCBTMB. AAG Valicenti, concluded that the Board may sympathize with Ms. Pechie, but unless and until the rules are revised, the current regulations still apply. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

E. Hawaii MT Licensing Examination Review For Credential Candidate

Mr. Barnes said that the Education Committee has reviewed state examination documentation for the State of Hawaii before for credential candidates; however, the exam might have changed since then.

Mr. Barnes asked the Board to grant the Committee the authority to make the decision as to whether **an** exam meets the NCE standard and to approve or disapprove it toward New Mexico licensure. This will prevent further delays for the candidates applying by credentials. Mr. Lane **SO MOVED** and Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Therefore, the Education Committee will review the exam documentation submitted by Hawaii on behalf of a current credential candidate and notify Ms. Payne if it is acceptable, and will follow the same procedures in future.

F. Composition of Complaint Committee (AAG Valicenti)

AAG Valicenti referred to 16.7.14.10 NMAC said that since the Board is only constituted of five members, having complaint committees of two members hampers the Board's ability to take action on complaints if any one of the other members is absent. She suggested that the Board consider having "revolving" complaint committee members to review complaints with the staff "compliance officer". Mr. Kaul agreed this was a great idea, having been on the complaint committee for months and months reviewing tons of complaints; the work is very difficult and carries with it an enormous responsibility. He said AAG Valicenti's recommendation would help avoid burn-out.

There was a brief discussion about the responsibility of the Boards and Commission's Compliance Section, and Mr. Kaul said it seemed appropriate for the "compliance officer" to be appointed from the Compliance Section. The Board felt the most logical person to act as the "compliance officer" was Ms. Mascarenas, who is already working in the Compliance Section and who is familiar with the massage board and it's governing laws. Mr. Kaul added that this is an overwhelming job for appointed board members and they need a staff person who will always be available and who has a history with the Board; and Ms. Mascarenas has a great deal of experience and training and background with the Massage Board and it makes perfect sense to seek her appointment. Mr. Lane **MOVED** for the Board to communicate with the Compliance Section Manager and request that Ms. Mascarenas be assigned to the Board's Complaint Committee composed of rotating board members assigned by the Chair. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**

G. Question about "Shen Therapy"

Mr. Kaul **MOVED** for the Board to provide the same response to the inquirer as given to the person in Item VI.B above. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

The Board took a break at 11:55 a.m. and reconvened at 12:05 p.m.

VII. FOR YOUR INFORMATION

A. Response Letter From 8th Judicial District D.A.'s Office Re: Complaint Referrals

The Board reviewed a letter from the District Attorney from the 8th Judicial District sent in response to two complaints, 03-07-010 and 03-08-012, the Board forwarded to that office for action. Basically, the DA's letter to the Board stated that due to a critical lack of manpower and the fact that these cases involved non-violent misdemeanors, the cases received low priority status. Both cases had already been sent to the Compliance Section for investigation and the investigators could not corroborate the allegations, so there was nothing further the Board could do regarding the two complaints. Mr. Kaul stated that there is no action required on the letter from the D.A

VIII. COMMITTEE REPORT – ACTION ITEMS

A. Chairman's Report – Sunset Review

The Chair told what took place at the Sunset Review Committee Hearing and reported that the Sunset Committee voted to recommend the continuation of the Board.

There was a brief discussion on whether the Board plans to propose any changes to the Massage Therapy Act during the 2005 Legislative Session. There was nothing specific identified.

B. Schools & Businesses Inspection Committee

1. Committee Report (Quinn Lopez)

Mr. Lopez was not present to give a report from the Schools & Businesses Inspection Committee.

C. Rules & Statute Committee (Kathleen Egenes & Quinn Lopez)

1. Proposed Rules

The Chair stated that the Rules and Statute Committee and Ms. Mascarenas will be presenting proposed changes to the Board's Rules and Regulations at the next regular meeting.

D. Education, Examination & Licensing Compliance Committee (Randy Barnes & Quinn Lopez)

The Committee had nothing to report.

E. Complaint Committee (Peter Lane & Edward Kaul)

Mr. Lane and Mr. Kaul presented minutes of the Complaint Committee meeting held on July 14, 2004, in Santa Fe, New Mexico. There were several items of concern presented by the Committee:

- 1) The Committee believes it is critical for staff and Board's Counsel to be involved from the outset in the complaint review process on cases that are likely to go to settlement to provide input in order to arrive at a solid settlement agreement proposal.
- 2) Schools and students are not adhering to the Board's position on the clinical practicum, specifically that students cannot practice/train outside the supervision of a registered MT instructor; and the Board must address this continued problem.
- 3) The Committee recommended that final disciplinary actions taken by the Board be posted on the Board's Website.
- 4) The Committee recommended the Board ask RLD to seek an amendment to the ULA so that boards would have authority over establishments that hire or utilize unlicensed persons and are aiding and abetting unlicensed practices.
- 5) The Committee recommended the Board seek statute amendment granting the Board jurisdiction over establishments that utilize MT services.
- 6) The Committee requested a legal opinion as to the Board's authority to issue fines with cease and desist orders without having to go through the NCA process.

The need to have Ms. Mascarenas be part of the Complaint Committee was reiterated. The Chair said she would take items 4 and 5 to the Rules and Statute Committee for consideration. AAG Valicenti stated that a 2003 change to the ULA grants the boards authority over unlicensed practice; and she would investigate the last item. Mr. Lane **MOVED to DIRECT** Ms. Payne to produce and publish on the Board's Website a list of all formal disciplinary actions taken by the Board. Mr. Kaul **SECONDED** the motion, which was **PASSED by UNANIMOUS APPROVAL**.

The Chair said that Mr. Lopez will replace Mr. Kaul on the Complaint Committee after the Rules and Statute finishes its current project.

IX. FINANCIAL REPORT

A. FY04 Budget Status Report

The Board's \$226,200 FY04 approved budget has been reduced by \$147,581 in expenditures through the end of June. There is still \$7,278 encumbered leaving an unencumbered budget balance of \$71,341. However, personnel and employee benefits for the last couple of pay periods still need to be deducted from that balance. The Board received \$199,726 in revenues in FY04.

Ms. Payne reported that 767 licenses and registrations in FY04, and Board staff handled approximately 8,800 public information requests, including phone calls, walk-ins, letter and e-mail responses, etc. These are part of the statistics gathered for performance based budget requests.

B. FY05 Approved Operating Budget

The Board has received an operating budget of \$216,400 for FY05, which began July 1, 2004 and ends June 30, 2005.

X. EXECUTIVE SESSION AND ACTION

Mr. Kaul **MOVED** for the Board to enter into Executive Session to discuss licensing and disciplinary matters with the authority for closure being Section 10-15-1.H. (1) and (3). Mr. Lane **SECONDED** the motion, a roll call vote was taken and Mr. Kaul, Mr. Lane, Mr. Barnes, and Ms. Egenes voted to enter into closed session and the motion **PASSED**. The time was 12:50 p.m. and the recorder was turned off.

At 3:39 p.m. the recorder was turned back on and the Board came back into open session. The following action was taken in open session. The Complaint Committee members, Peter Lane and Ed Kaul, recused themselves from the following cases that they had reviewed: #'s 03-03-003; 03-07-010; 03-07-011; 03-08-012; 03-09-013; 03-09-014; 03-09-015; 03-10-017; 03-11-018; 03-12-020; 03-12-021; 03-12-022; 03-12-023; 03-12-024; 03-12-025; 03-12-027; 03-12-028; 03-12-029; 03-12-032; 04-01-001; 04-02-002; 04-03-004; and 04-03-010.

A. Complaints

1. **Case No. 02-04-04 and 03-04-006 – Jeffrey Books** (Proposed Stipulated Agreement of Settlement)
Mr. Kaul **MOVED** for the Board to **TABLE** action until the Special Meeting on September 3, 2004. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**
2. **Case No. 03-03-003 (Geri Mascarenas)**
The respondent a New Mexico Massage school, admitted to non-compliance at the time the complaint was filed, stating that he had informed those involved of the non-compliance and that no one was harmed. Therefore, Mr. Barnes **MOVED** for the Board to accept the recommendation of the Complaint Committee and **CLOSE** Complaint No. 03-03-003. Chair Egenes **SECONDED** the motion and upon a vote the motion was **PASSED**.
3. **Case No. 02-07-08, 03-01-01 and 03-03-004 – Michel Cartagena (Geri Mascarenas)**
Mr. Barnes **MOVED** that the Board **TABLE** these complaints so that the Board can review the hearing transcript and the Hearing Officer's Recommended Findings of Fact and Conclusions of Law, and for the Board to schedule a special meeting to be convened in Albuquerque at 10:00 on September 3, 2004 at a location to be announced later to deliberate and issue its Order. Chair Egenes **SECONDED** the motion and upon a vote the motion **PASSED** by **UNANIMOUS APPROVAL**
4. **Case No. 03-07-010 (Geri Mascarenas)**
Mr. Barnes **MOVED** that the Board issue the proposed Pre-NCA Settlement Agreement to the respondent in Case No. 03-07-010 requiring the Respondent to agree to the terms of the agreement, waive the time limitations, and comply with the agreement within 30 days of receipt; and if the respondent does not agree and sign the Agreement that the case be referred to the Attorney General's Office (AGO) for a Notice of Contemplated Action (NCA). Chair Egenes **SECONDED** the motion and upon a vote the motion was **PASSED**.
5. **Case No. 03-07-011 (Geri Mascarenas)**
Mr. Barnes **MOVED** that the Board issue the proposed **Pre-NCA Settlement Agreement** to the respondent in Case No. 03-07-011 requiring the respondent to agree to the terms of the agreement, waive the time limitations, and comply with the agreement within 30 days of receipt; and if the respondent does not agree and sign the Agreement that the case be referred to the Attorney General's Office (AGO) for a Notice of Contemplated Action (NCA). Chair Egenes **SECONDED** the motion and upon a vote the motion was **PASSED**.

6. **Case No. 03-08-012 (Geri Mascarenas)**
Mr. Barnes **MOVED** for the board to **DISMISS** this Case No. 03-08-012 because there was insufficient information in the complaint to conduct an investigation. Chair Egenes **SECONDED** the motion and upon a vote the motion was **PASSED**.
7. **Case No. 03-09-013 (Geri Mascarenas)**
Mr. Barnes **MOVED** for the Board to refer Case No. 03-09-013 to the AGO for the issuance of an **NCA** for violations including, but not limited to, unprofessional conduct. Chair Egenes **SECONDED** the motion and upon a vote the motion was **PASSED**.
8. **Case No. 03-09-014 (Geri Mascarenas)**
The Complaint Committee directed letters to the State Fair and to the Chairman of the State Fair Commission regarding unlicensed persons offering massage therapy services at the state fair. The response was basically one of lack of cooperation stating that it is not the State Fair's job to enforce the Massage Therapy Act. Mr. Barnes **MOVED** that the Board **DISMISS** Case No. 03-09-014. Chair Egenes **SECONDED** the motion and upon a vote the motion was **PASSED**.
9. **Case No. 03-09-015 (Geri Mascarenas)**
This case involved unlicensed practice of massage therapy services advertised on the Internet. The investigator was unable to locate the respondent and proceed with the investigation, so Mr. Barnes **MOVED** to accept the Committee's recommendation to **DISMISS** the complaint. The Chair **SECONDED** the motion. A vote was taken and the motion was **PASSED**.
10. **Case No. 03-10-017 (Complaint Committee)**
Case No. 03-10-017 involved the unlicensed practice using "water massage" at the Albuquerque SunPort, and the Committee recommended in the form of a **MOTION** that the Board issue a Cease and Desist (**C&D**) and fine of **\$500**. Mr. Barnes **SECONDED** the motion and the motion was **PASSED**.
11. **Case No. 03-11-018 (Complaint Committee)**
Case No. 03-11-18 turned out to be a billing dispute between the therapist and the customer. The Board has no jurisdiction over financial disputes, therefore, the Committee recommended, in the form of a **MOTION** that the Board **DISMISS** this complaint. Mr. Barnes **SECONDED** the motion, which was **PASSED**.
12. **Case No. 03-12-020 (Complaint Committee)**
The Committee sent a C&D to the respondent, an establishment, for hiring unlicensed persons to perform massage therapy services, and it was returned by the U.S. Postal Service marked "Undeliverable", so the Committee referred the case to the District Attorney (DA). The DA responded that due to "*critical lack of manpower on the law enforcement front*" and the fact that the case was of a "*non-violent misdemeanor*", "*brings forth the harsh reality that these cases will not receive high-priority enforcement.*" Due to the Board's inability to proceed with an investigation, the Committee recommended in the form of a **MOTION** to **CLOSE** the complaint. The Chair **SECONDED** the motion, which was **PASSED**.
13. **Case No. 03-12-021 (Complaint Committee)**
On April 29, 2004, the Committee sent a C&D to the respondent for unlicensed practice. The Board received updated information dated August 20, 2004, that the respondent is still engaged in the unlicensed practice of massage therapy at the establishment of the respondent in Case No. 03-12-022. Therefore, the Committee recommended in the form of a **MOTION** that **another C&D** be sent levying a **fine of \$500** on the respondent to be paid within 30-days of receipt of the C&D; and that if the respondent does not comply with

the C&D, the case is to be turned over to the AGO for an NCA, based upon the 2003 amendments to the Uniform Licensing Act (ULA). Mr. Barnes **SECONDED** the motion, which was **PASSED**.

14. Case No. 03-12-022 (Complaint Committee)

Case No. 03-12-022 was also referred to the DA along with Case No. 03-12-020, and the DA's response is stated in Item X.A.12 above. Therefore, the Committee recommended in the form of a **MOTION**, that the Board **CLOSE** Case No. 03-12-022 because it cannot investigate to confirm the allegations. The Chair **SECONDED** the motion, which was **PASSED**.

15. Case No. 03-12-023 (Complaint Committee)

A C& D was sent on April 29, 2004, and the Board received an update from the Complainant dated August 20, 2004, showing that the respondent is still engaged in the unlicensed practice of massage therapy. Therefore, the Committee recommended in the form of a **MOTION** that another **C&D** levying a **fine of \$500** to be paid within 30-days or it will be referred for NCA in accordance with the ULA. The Chair **SECONDED** the motion, which was **PASSED**.

16. Case No. 03-12-024 (Complaint Committee)

The Committee recommended in the form of a **MOTION**, that the Board **REFER** Case No. 03-12-024 which is against an establishment, to the DA because it cannot investigate to confirm the allegations. The Chair **SECONDED** the motion, which was **PASSED**.

17. Case No. 03-12-025 (Complaint Committee)

A C& D was sent on April 29, 2004, and the Board received an update from the Complainant dated August 20, 2004, stating that the respondent is still engaged in the unlicensed practice of massage therapy at the Sierra Grande Lodge and Spa based on confirmation of that fact with the desk clerk on August 18, 2004. The Board also received a letter from the respondent explaining her circumstances. The Committee recommended in the form of a **MOTION** that the Board levy a **fine of \$250** to be paid within 30-days or it will be referred for NCA in accordance with the ULA, and that the respondent be informed that the Committee had originally proposed to fine \$1,000, but was reducing the fine based on her letter of explanation. The Chair **SECONDED** the motion, which was **PASSED**.

18. Case No. 03-12-027 (Complaint Committee)

A C&D letter was mailed 4/29/04 to the respondent for unlicensed practice and unregistered massage therapy instruction. The Committee recommended in the form of a **MOTION**, that another **C&D** be sent to her along with a license application and teaching registration application forms informing her that her nursing license does not authorize her to practice massage therapy and she must be licensed in New Mexico if she wishes to practice or teach massage therapy. The Chair **SECONDED** the motion, which was **PASSED**.

19. Case No. 03-12-028 (Complaint Committee)

The Committee recommended in the form of a **MOTION** that another **C&D** letter be sent levying a **fine of \$1,000** to be paid within 30-days of receipt of the C&D, and if the respondent doesn't comply, to refer the matter to the AGO for an NCA. Mr. Barnes **SECONDED** the motion, which was **PASSED**.

20. Case No. 03-12-029 (Complaint Committee)

The Committee recommended in the form of a **MOTION** that the respondent, a former licensee, be informed that if she intends to practice massage therapy in New Mexico, she must reapply for and be approved for re-licensure in New Mexico, and Case No. 03-12-029 be **CLOSED**. The Chair **SECONDED** the motion, which was **PASSED**.

- 21. Case No. 03-12-032 (Complaint Committee)**
The respondent's temporary massage therapy license expired and the respondent continued to practice massage therapy and to bill Blue Cross/Blue Shield. The Committee recommended in the form of a **MOTION** that the respondent be offered **MEDIATION** utilizing the Alternative Dispute Resolution (ADR) services of the Regulation and Licensing Department (RLD) and that if the respondent refuses to enter into and complete mediation, that the matter be referred to the AGO for an NCA. The Chair **SECONDED** the motion, which was **PASSED**.
- 22. Case No. 04-01-001 (Redacted to Board Members Not on Complaint Committee)**
Mr. Kaul **MOVED** that Case No. 04-01-001 filed against a massage therapy school be **DISMISSED** because there did not appear to be any violations of the Board's rules and regulations or statute based on the information received in the complaint. Mr. Barnes **SECONDED** the motion, which was **PASSED**. Ms. Egenes and Mr. Lane recused themselves from action on this complaint.
- 23. Case No. 04-02-002 (Complaint Committee)**
The respondent in Case No. 04-02-002 is alleged to have billed for massage therapy while the license was on inactive status. The Committee recommended in the form of a **MOTION** that the respondent be offered **MEDIATION** utilizing the ADR services at RLD and that if the respondent refuses to enter into and complete mediation, that the matter be referred to the AGO for an NCA. The Chair **SECONDED** the motion, which was **PASSED**.
- 24. Case No. 04-03-004 (Complaint Committee)**
The respondent in Case No. 04-03-004 is alleged to have billed for massage therapy while the license was not current and valid. The Committee recommended in the form of a **MOTION** that the respondent be offered **MEDIATION** utilizing the ADR services at RLD and that if the respondent refuses to enter into and complete mediation, that the matter be referred to the AGO for an NCA. The Chair **SECONDED** the motion, which was **PASSED**.
- 25. Case No. 04-03-010 (Complaint Committee)**
The Committee determined that the complaint in Case No. 04-03-010 was a fee dispute in nature over which the Board has no jurisdiction, and that there was no violation of the board's rules and regulations. Therefore, the Committee recommended in the form of a **MOTION** that the Board **CLOSE** this case. The Chair **SECONDED** the motion, which was **PASSED**.
- 26. Case No. 04-05-013 (BCS Investigator, Theresa Erickson)**
Based on the investigation conducted by the Boards and Commission's Compliance Section's investigator, Theresa Erickson, Mr. Lane **MOVED** for the Board to refer Case No. 04-05-013 to the AGO for an **NCA**. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.
- 27. Case No. 04-05-014 (BCS Investigator, James Benson)**
Based on the investigation conducted by the Boards and Commission's Compliance Section's investigator, James Benson, Mr. Lane **MOVED** for the Board to refer Case No. 04-05-014 to the AGO for an **NCA**. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.
- 28. Case No. 04-06-015 (BCS Investigator, Theresa Erickson)**
Based on the investigation conducted by the Boards and Commission's Compliance Section's investigator, Theresa Erickson, Mr. Lane **MOVED** for the Board to refer Case No. 04-05-015 to the AGO for an **NCA**. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

B. Application Reviews

1. Lisa DiBello – Ratify Committee’s Decision Re: New York Licensing Exam

Mr. Barnes **MOVED** for the Board to **RATIFY** the licensure of Lisa DiBello as authorized by the Education Committee based on credentials from the New York Licensing Exam. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

2. Yarrow McKenzie

Mr. Lane recommended in the form of a **MOTION** that when the Ms. McKenzie completes the application requirements and pays the \$250 fine levied against her in Case No. 03-12-025, staff is authorized to issue her a massage therapy license. Mr. Kaul **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**

3. Mary Anne Lane

Mr. Kaul **MOVED** for the Board to refer this application to the Education Committee for review of the applicant’s credentials. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**

XI. ADJOURNMENT

Mr. Kaul **MOVED** for the Board to adjourn the meeting. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**. The time was 4:27 p.m.

Respectfully submitted by: Carmen E. Payne, Board Director
Approved by the Board on November 19, 2004
Accepted by the Board Chair, Kathleen Egenes on November 19, 2004