

# **MESSAGE THERAPY BOARD**

## **REGULAR MEETING**

**(Following the Public Rule Hearing)  
Monday, August 29, 2005 at 10:00 a.m.  
Rio Grande Conference Room**

**Toney Anaya Building - West Capitol Complex  
2550 Cerrillos Road  
Santa Fe, New Mexico**

## **AGENDA**

- I. CALL TO ORDER**
- II. APPROVAL OF AGENDA**
- III. APPROVAL OF MEETING MINUTES**
  - A. June 24, 2005 Meeting**
- IV. DISCUSSION AND ACTION ON PROPOSED RULES**
  - A. 16.7.4 NMAC - Requirements for Licensure**
  - B. 16.7.5 NMAC - Requirements for Schools**
  - C. 16.7.10 NMAC - Examinations**
  - D. 16.7.11 NMAC - Continuing Education**
  - E. 16.7.12 NMAC - License/Registration Renewal**
- V. OLD BUSINESS**
  - A. Follow-up Report on Adopted Rules Filing**
  - B. Jurisprudence Exam Revised and Implemented**
  - C. NCETMB Follow-up on Hara Matrix School of Healing (P. Lane)**
- VI. NEW BUSINESS**
  - A. Review & Approval of MT School Application Form**
  - B. Review & Approval of MT School Curriculum Change Application Form**
  - C. Review & Approval of MTS Renewal Form**
  - D. Kris Roy, PT - Questions For The Board**
  - E. Alternative Medicine - Dr. Dale Richards**
  - F. UMTI Concerns - Transcript Reporting**
- VII. STANDING AGENDA ITEMS**
  - A. Chair's Report**
  - B. Rules and Statute Committee (K. Egenes/Q. Lopez)**
  - C. Education, Exam & Licensing Compliance Committee Report (R. Barnes)**
    - 1. Education Review - Rebecca L. Coursey, MT Applicant**
  - D. Complaint Committee (P. Lane)**
- VIII. BOARD ADMINISTRATORS REPORT**
  - A. 2005 Renewal Cycle - Progress Report**
    - 1. Statistics**
    - 2. Renewal Forms**
    - 3. Instructor Registrations Not Synchronized with MT Licenses**
    - 4. Draft Newsletter Review**

- B. FY05 Year-End Budget Status Report
- C. FY06 Budget Status Report
- D. FY07 Budget Request (7-1-2006 to 6-30-2007)

**IX. FUTURE MEETINGS**

- A. Tentative Schedule
  - 1. September 23, 2005, at 10 a.m. in Santa Fe Cancelled
  - 2. November 18, 2005, at 10 a.m. in Santa Fe

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

- A. Complaints
  - 1. MT Case #04-07-020 (A)
  - 2. MT Case #04-07-020 (B)
  - 3. MT Case #04-07-021 (A)
  - 4. MT Case #04-10-024
  - 5. MT Case #04-12-029
  - 6. MT Case #05-07-18 (C)
  - 7. MT Case #05-06-13
  - 8. MT Case #05-07-15
  - 9. MT Case #05-07-19
  - 10. MT Case #05-08-22
  - 11. MT Case #05-07-18 (A)
  - 12. MT Case #05-07-18 (B)
  
- B. NCA Cases
  - 1. MT Cases 04-06-015 and 04-05-013 - Default Order, Lanti Robinson
  - 2. MT Cases 03-06-08 and 05-05-11 - Default Order, David Haskins
  - 3. MT Case # 05-01-PRA Follow-up Report

**XI. ADJOURNMENT**

**MASSAGE THERAPY BOARD**  
**REGULAR MEETING**  
(Following the Public Rule Hearing)  
Monday, August 29, 2005 at 10:00 a.m.  
Rio Grande Conference Room

Toney Anaya Building - West Capitol Complex  
2550 Cerrillos Road  
Santa Fe, New Mexico

**MINUTES**

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

**STAFF PRESENT:** Carmen E. Payne, Board Director

**OTHERS PRESENT:** Mona Valicenti, Assistant Attorney General  
Kris Roy, PT  
Wes Jones, LMT, RMTI  
Bob Paper  
Connie McCoy, LMT, RMTI  
Don Schiff, LMT, RMTI  
Dr. Dale Lee Richard  
Virginia Anthony-Barrow, LMT, RMTI  
Dan R. Barrow, LMT, RMTI

**I. CALL TO ORDER**

At 11:54 a.m., the Board Chair, Kathleen Egenes, called the August 29, 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. Lane **MOVED** for the Board to approve the meeting agenda as presented. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**III. APPROVAL OF MEETING MINUTES**

**A. June 24, 2005 Meeting**

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

The Chair stated that because Kris Roy (Agenda Item VI.D) has to leave shortly, she would allow Ms. Roy to present her questions at this time and the Board would discuss them later on the agenda as scheduled. Ms. Roy presented her questions and then left. (See Item VI.D for questions and discussion.)

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

Mr. Lopez **MOVED** that the transcript of the last rule hearing and the transcript of the discussion and action on the rules taken during the March 24, 2005 meeting be included as Exhibit 13 in

today's rule hearing's record. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**A. 16.7.4 NMAC - Requirements for Licensure**

Referring to the comments made during the rule hearing earlier regarding the proposal to change the number of ethics hours from six to thirty, Mr. Barnes commented that not all the schools were present at the March hearing to address the issue of the increase in ethics hours.

Mr. Lane stated that he was in support of the thirty hours and gave his reasoning from the aspect of the complaints he has reviewed as the Complaints Committee Chairman.

Mr. Lopez indicated that the Board complied fully with notice requirements, allowing adequate time for the public to submit comments on the proposed changes to ensure due process. Mr. Lopez stated that the changes to Part 4 and part 5 were a result of an industry proposal during a March hearing in response to a discussion that the current six-hour ethics requirement was inadequate and lower than other States. Finally, he said, consumer protection and the public interests outweigh the administrative compliance burden on the industry. Mr. Lopez stated that the 30-hour amendment, for these reasons is fair and necessary to administer and enforce the Massage Therapy Act.

Mr. Lopez **MOVED** that an amendment be added to 16.7.4.12 NMAC as a Section G stating that the curriculum hour changes proposed would be effective on October 31, 2006. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

Mr. Lopez **MOVED** for the Board to adopt the amendments to 16.7.4 NMAC (Part 4) "Requirements for Licensure", with the addition of a new Subsection G as described with the understanding that the March 24, 2005 transcript will be included in today's public rule hearing record. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**B. 16.7.5 NMAC - Requirements for Schools**

Mr. Lopez **MOVED** for the Board to adopt the amendments to 16.7.5 NMAC (Part 5), "Requirements for School", as presented with the addition of a new Subsection E in 16.7.5.8 NMAC containing the same provision as added to Part 4. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**C. 16.7.10 NMAC - Examinations**

Mr. Lopez **MOVED** for the Board to adopt the amendments to 16.7.10 NMAC (Part 10), "Examinations", as presented. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**D. 16.7.11 NMAC - Continuing Education**

Subsequent to discussion, the following amendments to the proposed 16.7.11 NMAC changes were proposed:

Change #1: Mr. Lopez recommended that references to "semester" hours be deleted in 16.7.11.7.B of the definitions and that the definition of "academic hours" be changed to "*Academic hour*" means continuing education taken in an academic setting that is equivalent to fifteen (15) class or contact hours."

Change #2: Mr. Lopez recommended that the word "immediately" be inserted between the words "months" and "preceding" in Paragraph (1) of Subsection A and Paragraph (1) of Subsection B of 16.7.11.8 NMAC (lines 19 and 33).

Change #3: Mr. Lopez recommended moving the word "completed" in Paragraph (5) of Subsection A of 16.7.11.8 NMAC (line 25) so that the line reads, "Each licensee will maintain documentation of all completed continuing education including..."

Mr. Lopez **MOVED** for the Board to approve the above changes (1-3) to the proposed 16.7.11.8 NMAC amendments, and to adopt 16.7.11.8 NMAC as amended. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**E. 16.7.12 NMAC - License/Registration Renewal**

Mr. Lopez **MOVED** for the Board to adopt the amendments to 16.7.12 NMAC (Part 12), "License/Registration Renewal", as presented. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**V. OLD BUSINESS**

**A. Follow-up Report on Adopted Rules Filing**

Ms. Payne reported that the amendments to 16.7.4 and 16.7.5 NMAC (Parts 4 and 5) adopted by the Board at the June 24, 2005 meeting were filed at State Records Center on June 28, 2005. The amendments were published in Volume XVI, No. 13 of the *New Mexico Register* on July 15, 2005, and become effective on July 28, 2005. Ms. Payne said that the changes are included in the updated rulebook that will be mailed to licensees in the Fall.

**B. Jurisprudence Exam Revised and Implemented**

The Chair reported that the Board's Jurisprudence Exam has been totally revised and thirty additional questions have been added to it for a total of fifty questions. Ms. Payne reported that the pass rate following the implementation of the new exam has been very good because the questions are straightforward and all the answers are found in the Board's statute or regulations.

**C. NCETMB Follow-up on Hara Matrix School of Healing (P. Lane)**

Mr. Lane did not have anything to report at this time.

Ms. Payne reported that she did not find any letter templates of the type described by Mr. Lane at the last meeting in the Board's electronic files and had been too busy to draft a new letter. She asked for assistance with the draft because currently there are too many other deadlines vying for her attention. The matter was **TABLED**.

**VI. NEW BUSINESS**

**A. Review & Approval of MT School Application Form**

After review of the revised Massage Therapy School Application Form, Mr. Barnes **MOVED** for the Board to approve the form as presented. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**B. Review & Approval of MT School Curriculum Change Application Form**

After review of the revised Massage Therapy School Curriculum Change Application Form, Mr. Lopez **MOVED** for the Board to approve the form as presented. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**C. Review & Approval of MTS Renewal Form**

After review of the revised Massage Therapy School Renewal Form, Mr. Lane **MOVED** for the Board to approve the form as presented. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**D. Kris Roy, PT - Questions For The Board**

Ms. Kris Roy, who introduced herself as a Physical Therapist and nationally certified continuing education instructor, addressed the Board again (see page 12 of the June 24, 2005 meeting minutes) and posed the following questions:

- (1) As a continuing education instructor, Ms. Roy offers massage therapy instruction to licensed massage therapists. She asked if the Board would accept the CE's that she offers to meet the Board's licensure renewal requirements?
- (2) If a physical therapist is offering continuing education to massage therapists does he/she have to be licensed by the board?
- (3) What is the Board's definition of bodywork that is "non-massage, uses no oils; which is performed on a clothed client"? Do those fall under the Massage law?
- (4) Does all bodywork fall under the Massage law? Are body works that are more energetic therapies exempted from the Massage law?

Ms. Roy explained that in addition to instructing licensed massage therapists (LMT) she also instructs people who do body work that is "non-massage" and she wanted to know if they will be required to be licensed by the Board.

With the proviso that Ms. Roy not construe the following answers as legal opinions, the Board's answer to Ms. Roy's questions were as follows:

Question #1: If continuing education meets the requirements in the Board's continuing education rule, Part 11, it would meet the continuing education requirement for license renewal for the Board's licensees and registrants.

Question #2: If a non-massage therapist offers *continuing education* to massage therapists, he/she does not have to be licensed or registered by the Board. However, if he/she is teaching/instructing a massage therapy *core curriculum course* to massage therapists, then he/she *does* have to be licensed and registered by the Board.

Questions #3 and 4: If Ms. Roy (or any other instructor) teaches massage therapy/bodywork, as defined in the Massage Therapy Act and in the Board's regulation, to body workers, including those who concentrate on energy work, and those "body workers" wish to perform massage therapy/bodywork for compensation, whether or not the client is clothed or not, whether or not oils are used, they are not exempted from the requirement to be licensed by the New Mexico Massage Therapy Board. They must be licensed by the Board before they can practice any form of massage therapy or bodywork in the Massage Therapy Act's scope of practice.

The Board encouraged Ms. Roy to consult an attorney for competent legal advice based upon a review of the law in relation to specific facts and circumstances.

The Board **DIRECTED** Ms. Payne to draft a response letter to Ms. Roy for review by AAG Valicenti.

**E. Alternative Medicine - Dr. Dale Richards**

Dr. Dale Richards, who informed the Board that he was a former member and chairman of the original Massage Therapy Board, addressed the Board. Dr. Richards stated that he wrote the original Massage Therapy Practice Act and gave the history of that legislation. Dr. Richards' primary reason for addressing the Board today was to ask the Board's to support the legislative initiative for licensure of naturopaths in New Mexico, and he addressed the Board at length on this issue.

After Dr. Richards' presentation, Mr. Barnes informed him that there is already an ongoing legislative initiative to get naturopaths licensed in the State of New Mexico. He asked Dr. Richards to leave his address and phone number and he would get in touch with him later in the week so that they could join in their efforts to obtain licensure for naturopaths

The Board thanked Dr. Richards for taking the time to visit with them.

The Board took a ten-minute break.

**F. UMTI Concerns - Transcript Reporting**

Mr. Wes Jones, President of the Universal Therapeutic Massage Institute, Inc. (UTMI) wrote the Board on July 12, 2005, stating that it had come to his attention that several New Mexico Therapy schools were reporting in both clock hours and credit hours. He cited Southwest Health Career Institute, Apollo College, and Northern New Mexico Community College as the schools in question and stated that UTMI would also like the opportunity to report in both credit and clock hours.

After conversing with Ms. Payne by phone, Mr. Jones followed up with a second letter explaining that, *"If the Board approves transcripts to be reported in both credit and clock hours it has significant implication for all massage students as to the amount of PELL Grant monies they can receive from Federal Financial Aid. At 650 (clock) hours a student who is fully qualified will receive approximately \$2,420. If the State will allow schools to report in credit hours or even both, the same student would qualify for \$4,050 in grant money."*

Ms. Payne stated that she coincidentally received a transcript for an applicant from the Northern New Mexico College (NNMC), formerly Northern New Mexico Community College, and the college's new transcripts reported the hours in credit rather than clock hours. Upon her request NNMC revised the applicant's transcript to report in clock hours.

The Board reviewed a copy of Southwest Health Career Institute's (SWHCI) catalog in which the hours are reported in both credit and clock hours. However, a transcript recently received from SWHCI for an applicant reports clock hours for the curriculum.

Mr. Paper, from UTMI, asked the Board to consider allowing schools to submit transcripts in both clock and credit hours for the reasons explained by Mr. Jones in his letters to the Board. Mr. Paper added that the U.S. Department of Education (DOE) states that if the state licensing agency requires reporting in clock hours you are a clock hour school and you therefore participate in federal financial aid based on clock hour reporting, which means the students can receive only \$2,420 in PELL Grant money for the full year as opposed to the \$4,050 received by students whose schools report in credit hour. He asked the Board to provide an opinion that schools must report in both clock and credit hours to help the students out and there wouldn't be any problem with the DOE. In addition, Mr. Paper said, the DOE is going to force schools to accept transfer credits.

Mr. Barrow stated that allowing schools to report in both clock and credit hours is a great idea, but it would be better to promulgate a rule to the effect that the Board will accept transcripts with both clock and credit hours so that there is no question by the Department of Education.

Mr. Barnes remarked that his school, The Medicine Wheel, reports in both clock and credit hours on the transcript. Ms. Egenes said that she wrote the SWHCI catalog in both clock and credit hours and the transcript is reported in clock hours for the Board. There was a lengthy discussion, and none of the Board members or Ms. Payne had a problem with schools reporting in clock and credit hours, as long as the transcripts are reported in *both* the clock and credit hours.

The Board asked Mr. Paper to draft a letter to the Department of Education for Ms. Payne to finalize for Board review at the next meeting.

#### Question Regarding Instructor Trainees

Although this item was not on the agenda, Connie McCoy, from Southwest Health Career Institute, had a question for the Board related to 16.7.6.8.B (3) NMAC. She asked for clarification on what is entailed in "workshop instruction".

The Board explained that the instructor-"trainee" must be in a workshop situation in which he/she is *assisting an RMTI in teaching the workshop to students and the RMTI is physically present during the entire workshop*. There could be several assistants to the RMTI during the workshop, but the time spent by the RMTI individually with each respective instructor trainee is the only time that can be accrued by that specific instructor trainee. The workshop may or may not be in a school environment.

In other words, the Chair explained, the hours spent by the instructor-trainee directly assisting the RMTI in the workshop are accrued by the instructor trainee toward meeting the requirement to become a RMTI him or herself. The hours spent by the *students* in the workshop are accrued toward meeting their continuing education requirement for license or registration renewal.

This rule does NOT mean that an RMTI can instruct the *students* in the workshop on how to be an instructor and have the hours the students spend in the workshop accrue toward the requirement for becoming an RMTI.

## **VII. STANDING AGENDA ITEMS**

### **A. Chair's Report**

The Chair had nothing to report.

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

Mr. Lopez said that based on discussion earlier in the meeting, the Committee now has a new item to work on for the Board to review.

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

#### **1. Education Review - Rebecca L. Coursey, MT Applicant**

Mr. Barnes, the Committee Chair, reported to the Board that the Committee reviewed applicant, Rebecca Coursey's, educational background in terms of meeting the Board's educational requirements for massage therapy licensure, and she is only lacking hours in Hydrotherapy, First Aid and CPR. Once she complete those two requirements, he said, she qualifies for licensure.

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

#### **1. Questions From Committee To The Board**

Mr. Lane reported that the Committee met in early August and reviewed a number of complaints, many of which will be discussed during Executive Session later. The Committee also presented the Board with a list of questions for discussion purposes and possible action by the Board. The questions were as follows:

- 1) Why does the Board NOT require applicants to provide their social security number in the application for licensure? This would be helpful to the Complaint Committee and its investigator when conducting an investigation, which can include a background check?

Board's answer: The request for SS# has been added to all of the Board's application forms.

- 2) When a licensee is in arrears with child support and admits to it, but there is no information from the Human Services Department's Child Support Enforcement Division (CSED) affirming that the licensee (or applicant) is in arrears, does the Board have a basis to pursue non-compliance of the Parental Responsibility Act (PRA) based on the licensee's own admission?

Board's answer: The Board requires a report from Human Services CSED in order to pursue non-compliance to the PRA.

- 3) Clarification is needed regarding Section 61-12C-24.B (11). The issue is that reference is made to a license being revoked or suspended in another jurisdiction then the law goes on to state that a certified copy of the record of "conviction" shall be conclusive evidence of the "conviction". If the Board suspends or revokes a license, the record would not reflect this as a "conviction". Shouldn't the record required be the Board's "Decision and Order"?

The Committee asked the Board to give the Committee guidance on this question at the next meeting and this question was **TABLED**.

- 4) The Committee asked that the Board notify licensees/registrants in its next newsletter that the Board continues to receive complaints for failure to comply with the advertising provisions in 16.7.2.8.E (4) NMAC, including what must be included in any advertisement of massage, and that the Board has started fining licensees and registrants for non-compliance.

Board answer: An article has been included in the Board's Newsletter, which will be distributed in September.

#### Advertisement Requirements by Facilities That Employ Several LMTs

There was discussion about advertisements by business facilities that employ or contract with several LMTs and which advertise massage therapy services.

The Chair referred to Subparagraphs (a) and (b) of 16.7.2.8 E. (4) NMAC are clear as to advertising requirements. The rule requires that each licensee include in any advertisement for massage, "his/her full name as licensed with the board and license number and the designation or abbreviation as a 'licensed massage therapist; or 'LMT'; 'registered massage therapy instructor' or 'RMTI'; and 'registered massage therapy school' or 'RMTS'".

### **VIII. BOARD ADMINISTRATORS REPORT**

#### **A. 2005 Renewal Cycle - Progress Report**

##### **1. Statistics**

Ms. Payne reported that the Board office would be mailing out renewal forms to licensees and registrants scheduled for renewal on October 31, 2005. The mailing will go out no later than September 15, 2005, and will include a newsletter and a copy of the Board's Rules and Regulations with the updates that are already effective. She said that the rules adopted this morning will have to go out with the renewal licenses because they cannot be distributed until they are effective.

This year, Ms. Payne said, 1042 LMT's, 34 Independent RMTI's, 29 School-Based RMTI's and 18 Schools will be sent renewal notices at the address on file with the Board, for a total of 1,123 renewing this year.

**2. Renewal Forms**

The Board reviewed the revised and reformatted renewal forms for Massage Therapist and for Massage Therapist Instructor, including the Form A for Independent Massage Therapy Instructors.

**3. Instructor Registrations Not Synchronized with MT Licenses**

Ms. Payne reported that she conducted a database audit of the Board's licensees and registrants in preparation for the 2005 renewal cycle. As a result, she said she discovered that over the years thirty-seven RMTI's were issued registrations that do not expire in the same year as their MT licenses. She said this is potentially problematic, as the rules require an RMTI must hold a valid, current MT license.

In order to correct the problem, Ms. Payne suggested synchronizing the MTI registrations that expire in 2005 with their MT licenses that expire in 2006, and the MT licenses that expire in 2005 with their MTI registrations that expire in 2006. She proposed cutting the respective renewal fees in half since they are being renewed only for a year. Also, since the licensees and instructors have probably already accrued their CE's, the sixteen CE's will be required this year and the CE's can be prorated for the license or registration in 2006.

After the Board reviewed the draft letters prepared by Ms. Payne to accomplish this task, they were in agreement with the proposed solution.

**4. Draft Newsletter Review**

The Board reviewed the draft newsletter in their meeting packet and approved it for publication and distribution.

**B. FY05 (7/1/04 to 6/30/05) Year-End Budget Status Report**

Ms. Payne reported that the Board received a total of \$225,121.60 in revenues in FY05, broken down as follows:

Line Code	Description	Amount
164.3	Application and License Fees	\$ 48,405.00
174.3	Renewal Fees	146,236.00
214.3	Exam Fees	635.00
299.3	Curriculum Review, Verification, Duplicate License & Misc. Fees	1,775.00
319.3	Lists, Labels, and Copy Fees	1,814.00
614.3	Late Penalty Fees & Fines	12,820.00
969.3	Disciplinary Fines	12,548.00
999.8	Reimbursement for FY04 duplicate payment to GSD by ASD	889.60

The Board's FY05 approved operating budget was \$216,400. Operational expenses for FY05 totaled \$180,132.84 and are as follows:

Code/Description	Approved Budget	Expenditure	Balance
200 Personnel Services	90,700.00	86,720.39	3,979.71
211 Employee Benefits	34,800.00	33,192.70	1,607.30
351 Contractual	10,100.00	794.46	9,305.54
421 Employee In-State Travel Mileage/Fares	600.00	75.52	524.48
422 Employee In-State Travel Meals/Lodging	600.00	-0-	600.00
423 Board Member In-State Travel & Per diem	8,200.00	5,446.96	2,753.04
426 Leased Auto Maintenance/Repair	800.00	109.19	690.81
427 Leased Auto Insurance	1,000.00	-0-	1,000.00
428 Auto Lease	2,200.00	1,841.03	358.97
432 Office Equipment Maintenance/Repair	300.00	745.54	(445.54)
434 Property Insurance	100.00	100.00	-0-
441 Office Supplies	7,900.00	5,305.84	2,594.16
449 Inventory Exempt Supplies	600.00	2,624.60	(2,024.60)

456	Court Reporting	5,000.00	3,485.77	1,514.23
457	ISD Services	400.00	234.87	165.13
459	Printing Services	1,000.00	372.79	627.21
461	Postage/Mail Svc **	9,000.00	240.84	8,759.16
464	Rent of Buildings/Meeting Rooms	500.00	-0-	500.00
465	Rent of Equipment	500.00	-0-	500.00
466	Telecommunication	1,000.00	1,532.98	(532.98)
467	Membership Dues	-0-	-0-	-0-
468	Education, Training, Registration Fees	5,000.00	1,660.00	3,340.00
469	Advertising	1,200.00	1,93.47	1,006.53
479	Bank Fees for Credit Card Payments Rec'd	900.00	209.46	690.54
483	Capital Outlay - Computers	-0-	4,244.80	(4,244.80)
496	Employee Out-of-State Mileage/Fares	1,000.00	321.58	678.42
497	Employee Out-of-State Meals & Lodging	1,900.00	1,028.63	871.37
498	Board Member Out-of-State Mileage/Fares	1,500.00	1,018.04	481.96
499	Board Member Out-of-State Meals & Lodging	3,000.00	2,032.38	967.62
551	Operating Transactions (RLD Overhead Costs)	26,600.00	26,600.00	-0-
<b>TOTALS</b>		<b>216,400.00</b>	<b>180,131.84</b>	<b>36,268.16</b>

**C. FY06 (7/1/05 TO 6/30/06) Budget Status Report**

Ms. Payne reported that the Board received approval of an operating budget of \$203,800 for FY06. As of 8/22/05, the Board had expended \$1,035 and encumbered \$2,430, leaving an unencumbered budget balance of \$200,334. Revenues received as of 8/22/05 amounted to \$14,383.

**D. FY07 Budget Request (7-1-2006 to 6-30-2007)**

The Board reviewed the FY07 Budget Request and discussed the proposal. After discussion, Mr. Lopez **MOVED** for the Board to approve the budget request as presented. Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

**IX. FUTURE MEETINGS**

**A. Tentative Schedule**

**1. September 23, 2005, at 10 a.m. in Santa Fe Cancelled**

Ms. Payne explained that September, with the Respiratory Care Board in renewals and with the major mailing being prepared in preparation for the 2005 Massage Board renewal cycle, was going to be a very full month for her and Anita. She asked the Board to consider foregoing the meeting tentatively scheduled for September 23, 2005, and not meeting again until November. That would give her and Anita time, uninterrupted with meeting preparation tasks, to focus on the renewal cycle and whatever else comes up during September and October. The Board agreed to cancel the September meeting as requested.

Dan Barrow thanked the Board for canceling the meeting because it conflicted with the American Massage Therapy Association's (AMTA) national meeting, which is scheduled in Albuquerque September 21-23, 2005. He encouraged the Board members to attend the convention, which can be registered for on-line.

**2. November 18, 2005, at 10 a.m. in Santa Fe**

Mr. Lopez **MOVED** for the Board to take a lunch break and Mr. Lane **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**. The time was 2:10 p.m. The Board meeting was reconvened at 3:03 p.m.

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

Mr. Lane **MOVED** for the Board to enter into Executive Session 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 threatened litigation; and therefore to discuss complaint cases listed

under Agenda Items X. A and B. Mr. Lopez **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 3:05 p.m.

### **Back in Open Session**

At 4:40 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 matters discussed during Executive Session were the Massage complaint cases listed under Agenda Item X. A and B. The Chair also stated, for the record that action on the items discussed was being taken in open session.

Mr. Lane recused himself from further action on all the items except Item X.B.1, MT Cases 04-06-015 and 04-05-013 and Item X.B.3, MT Case #05-01-01 PRA.

### **A. Complaints**

#### **1. MT Case #04-07-020 (A)**

Mr. Lopez **MOVED** for the Board to accept the Complaint Committee's recommendation to the Board as follows:

- a) issue a Cease and Desist Order and Pre-NCA Settlement Offer to the respondent in MT Case #04-07-020 (A) whose temporary license has expired;
- b) assess the respondent a \$1,000 fine for providing massages without a license;
- c) allow the respondent thirty (30) days to accept the Pre-NCA Settlement Offer; and
- d) refer the complaint to the Attorney General's Office for issuance of a Notice of Contemplated Action (NCA) if the respondent fails to comply with the Cease and Desist Order and accept the terms of the Pre-NCA Settlement Offer.

Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

#### **2. MT Case #04-07-020 (B)**

Mr. Lopez **MOVED** for the Board to accept the Complaint Committee's recommendation to the Board as follows:

- a) issue a Cease and Desist Order and Pre-NCA Settlement Offer to the respondent, a registered massage therapy school in MT Case #04-07-020 (B);
- b) assess the respondent a \$1,000 fine for aiding and abetting the unlicensed person in MT Case #04-07-020 (A) in providing massages without a license;
- c) allow the respondent thirty (30) days to accept the Pre-NCA Settlement Offer; and
- d) refer the complaint 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.

Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

#### **3. MT Case #04-07-021 (A)**

Mr. Lopez **MOVED** for the Board to accept the Complaint Committee's recommendation to offer the unlicensed respondent a Pre-NCA Settlement Offer specifying:

- a) that the unlicensed person cease and desist providing unlicensed massage services, unless the services are within the scope of practice of her license and profession as a New Mexico licensed registered nurse, if she is licensed as such, and that the Nursing Board certify that the professional scope of the respondent's license under the Nursing Practice Act, §61-3-1 et.seq., authorizes the respondent to perform the "colonic, shower, hot tub and massage" advertised by the respondent;

- b) that the unlicensed respondent pay a civil administrative penalty fee of \$1,000 within thirty (30) days from the date the Pre-NCA Settlement Offer is sent to the respondent, unless the Board receives, within the thirty (30) days, certification from the Nursing Board as outlined in item (a) above;
- c) that an information letter be sent to the advertising median citing the requirements of 16.7.2.8.E (4) NMAC, as it pertains to advertising of massage therapy services and requesting that they, the advertising media officials, cooperate with the Massage Therapy Board to require advertisers of massage therapy services to comply with the 16.7.2.8.E (4) NMAC;
- d) that if the respondent does not accept the terms of the Pre-NCA Settlement Offer, the complaint be referred to the Attorney General's Office for issuance of an NCA for violations of § 61-12C-27 with authority from § 61-1-3.2.A and B NMSA 1978; and
- e) that an RLD hearing officer be appointed to hear the matter as provided in §61-1-7 of the Uniform Licensing Act.

Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

**4. MT Case #04-10-024**

Mr. Lopez **MOVED** for the Board to accept the Complaint Committee's recommendation to **DISMISS** MT Case #04-10-024 because the complaint against the LMT was unfounded. Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

**5. MT Case #04-12-029**

Mr. Lopez **MOVED** for the Board to accept the Complaint Committee's recommendation to **DISMISS** MT Case #04-12-029 because there was no evidence that any of the Board's Rules and Regulations or statutory provisions were violated by the Respondent and the Board can only take disciplinary action for violation of said laws. Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

**6. MT Case #05-07-18 (C)**

Mr. Lopez **MOVED** for the Board to accept the Complaint Committee's recommendation to **DISMISS** MT Case #04-07-18 because the complaint against the LMT was that she was not licensed, but upon investigation, it was determined that the respondent held a current MT license. Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

**7. MT Case #05-06-13**

Mr. Lopez **MOVED** for the Board to accept the Complaint Committee's recommendation to refer MT Case #05-06-13 to the Attorney General's Office **for issuance of an NCA** for practicing massage therapy with a license that expired in 1998, and for gross professional misconduct. Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

**8. MT Case #05-07-15**

Mr. Lopez **MOVED** for the Board to **TABLE** MT Case #05-07-15 pending action by the Texas regulatory board. Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

**9. MT Case #05-07-19**

Mr. Lopez **MOVED** for the Board to accept the Complaint Committee's recommendation to offer the unlicensed respondent a Pre-NCA Settlement Offer specifying:

- a) that the unlicensed person cease and desist providing unlicensed massage services, unless the services are within the scope of practice of her license and profession as a New Mexico licensed registered nurse, if she is licensed as such, and that the Nursing Board certify that the professional scope of the respondent's license under the Nursing Practice Act, §61-3-1 et.seq., authorizes the respondent to perform massage therapy and advertise that she is a "massage therapist" as advertised by the respondent;
- b) that the unlicensed respondent pay a civil administrative penalty fee of \$1,000 within thirty (30) days from the date the Pre-NCA Settlement Offer is sent to the respondent, unless the Board receives, within the thirty (30) days, certification from the Nursing Board as outlined in item (a) above;
- c) that if the respondent does not accept the terms of the Pre-NCA Settlement Offer, the complaint be referred to the Attorney General's Office for issuance of an NCA for violations of § 61-12C-27 with authority from § 61-1-3.2.A and B NMSA 1978; and
- d) that an RLD hearing officer be appointed to hear the matter as provided in §61-1-7 of the Uniform Licensing Act.

Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

**10. MT Case #05-08-22**

Mr. Lopez **MOVED** for the Board to **TABLE** MT Case 05-08-22 pending further investigation. Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

**11. MT Case #05-07-18 (A)**

Mr. Lopez **MOVED** for the Board to accept the Complaint Committee's recommendation as follows:

- a) issue a Cease and Desist Order and Pre-NCA Settlement Offer to the respondent in MT Case #, a person whose MT license who did not renew on 10/31/04 and is on inactive status, and who is practicing without a current license according to recent classified advertisements in "The Alibi";
- b) assess the respondent a \$1,000 fine for practicing massage therapy without a license;
- c) allow the respondent thirty (30) days to accept the Pre-NCA Settlement Offer;
- d) refer the complaint 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) appoint an RLD hearing officer be appointed to hear the matter as provided in §61-1-7 of the Uniform Licensing Act.

Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

**12. MT Case #05-07-18 (B)**

Mr. Lopez **MOVED** for the Board to accept the Complaint Committee's recommendation as follows:

- a) issue a Cease and Desist Order and Pre-NCA Settlement Offer to the respondent in MT Case #, a person whose MT license who did not renew on 10/31/04 and is on inactive status, and who is practicing without a current license according to recent classified advertisements in "The Alibi";
- b) assess the respondent a \$1,000 fine for practicing massage therapy without a license;
- c) allow the respondent thirty (30) days to accept the Pre-NCA Settlement Offer;

- d) refer the complaint 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) appoint an RLD hearing officer be appointed to hear the matter as provided in §61-1-7 of the Uniform Licensing Act.

Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

#### **B. NCA Cases**

##### **1. MT Cases 04-06-015 and 04-05-013 - Default Order, Lanti Robinson**

Mr. Lopez **MOVED** for the Board to issue a Default Order revoking the respondent, Lanti Robinson's massage therapy license for a five (5) year period and to impose a \$2,000 fine on Mr. Robinson. Mr. Barnes **SECONDED** the motion, and upon a vote, the motion was **PASSED** by **UNANIMOUS APPROVAL**.

##### **2. MT Cases 03-06-08 and 05-05-11 - Default Order, David Haskins**

Mr. Lopez **MOVED** for the Board to accept the Default Order revoking the respondent, David Haskin's, massage therapy license and reflecting that the respondent is no longer eligible for massage therapy licensure in the State of New Mexico. Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED**.

##### **3. MT Case # 05-01-PRA Follow-up Report**

Mr. Lopez **MOVED** for the Board to **RESCIND** the Board's action for referral for an NCA taken at the Board's June 24, 2005, meeting because the Board has received a Certificate of Compliance with the Parental Responsibility Act. Mr. Barnes **SECONDED** the motion, and upon a vote the motion was **PASSED** by **UNANIMOUS APPROVAL**.

#### **XI. ADJOURNMENT**

There being no other business to come before the Board, Mr. Lopez **MOVED** for the Board to adjourn the meeting. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**. The time was 4:47 p.m.

**Respectfully submitted by: Carmen E. Payne, Board Director**

**Approved by the Board on December 2, 2005**

**Signed by Kathleen Egenes, LMT, RMTI and Board Chair on December 2, 2005**