

MASSAGE THERAPY BOARD
Special Meeting
Real Estate Commission Conference Room
5200 Oakland Avenue
Albuquerque, New Mexico
September 21, 2004 at 1:30 p.m.

FINAL AGENDA

- I. CALL TO ORDER**
- II. APPROVAL OF AGENDA**
- III. EXECUTIVE SESSION AND ACTION**
 - A. Case No. 02-04-04 and 03-04-006 (Action on Proposed Stipulated Settlement Agreement)**
 - B. Case No. 02-07-08, 03-01-01 and 03-03-004 (Action on Hearing Officer's Report)**
 - C. Case No. 04-02-003 (Action on Default Order)**
- IV. ADJOURNMENT**

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September 21, 2004 at 1:30 p.m.

MEETING MINUTES

MEMBERS PRESENT: Kathleen (McCafferty) Egenes, LMT and Chair
Randy Barnes, LMT
Claudio "Quinn" Lopez, Public Member

MEMBERS ABSENT: W. D. "Peter" Lane, LMT
Ed Kaul, Public Member

STAFF PRESENT: Carmen E. Payne, Board Director

OTHERS PRESENT: Mona Valicenti, Assistant Attorney General

I. **CALL TO ORDER**

At 1:49 p.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. Lopez **MOVED** for the Board to approve the meeting agenda as proposed. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**.

III. **EXECUTIVE SESSION AND ACTION**

Mr. Lopez **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. Barnes **SECONDED** the motion, a roll call vote was taken and Mr. Barnes, Mr. Lopez and Ms. Egenes voted to enter into closed session and the motion **PASSED**. The time was 2:00 p.m. and the recorder was turned off.

The Board came back into open session at 2:37 p.m. The recorder was turned back on and the following action was taken in open session.

A. Case No. 02-04-04 and 03-04-006 – Jeffrey Books

Mr. Lopez **MOVED** for the Board to accept the Stipulated Settlement Agreement proposed by David Stevens, Assistant Attorney General and the State's Attorney, and agreed upon by the respondent, Jeffrey Books. Mr. Barnes **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**. The approved Stipulated Agreement was read into the record as follows:

"In the matter of Jeffrey V. Books, License No. 3710, Respondent. Case Nos.: 02-04-04,03-04-006 - Stipulated Agreement of Settlement:

Whereas, the State of New Mexico Massage Therapy Board (the "Board") has issued a Notice of Contemplated Action ("NCA") as a consequence of the complaints filed on April 28, 2003 and January 28, 2004, and

Whereas, Respondent is willing to resolve this matter amicably and without a hearing, and

Whereas, the Board's Administrative Prosecutor believes that settlement is appropriate and in the best interests of both the Board and Respondent, it is hereby agreed as follows:

1. Jurisdiction. The Respondent at all times relevant to these proceedings was a licensee of the Board. The Board has jurisdiction over the Respondent and the subject matter.

2. Acknowledgment of violations. The Respondent acknowledges violating the following Rules and Regulations of the State of New Mexico Massage Therapy Board: 16 NMAC 7.2.8(B)(2) (concerning sexual conduct) and 16 NMAC 7.2.8(C)(2) (concerning informed consent and draping).

3. Discipline. This Stipulated Agreement of Settlement ("Agreement") constitutes disciplinary action by the Board against the Respondent. The Board shall report to the Health Care Integrity and Protection Data Bank the violations indicated in ¶ 2, supra.

4. The Board shall take no further action against Respondent with respect to the matters in the subject NCA, and shall consider that Respondent is in good standing, provided that Respondent complies with the following:

A. Continuing education. In addition to that required for license renewal, the Respondent shall complete eight (8) hours of continuing education, pre-approved by the Board or its designee, within one (1) year of the date this Agreement is accepted by the Board, pertaining to the violations indicated in ¶ 2, supra. Respondent shall submit evidence thereof to the Chairperson of the Board.

B. Payment of fine. Respondent agrees to pay the cost of the continuing education agreed to herein. Respondent likewise agrees to pay a fine in the amount of five hundred dollars (\$500), within thirty (30) days of the Board's acceptance of this Agreement.

5. Waiver of rights.

A. Respondent has waived the time limitations set forth in the Uniform Licensing Act.

B. Respondent understands that he has a statutory right to a hearing on the charges made in the complaint against him, and that he would have the right to appeal any decision of the Board following such hearing; and he hereby waives these rights in the event the Board accepts this Agreement. In the event the Board does not accept this Agreement, the Respondent shall continue to have the right to a hearing and to appeal, and nothing contained herein shall be used against him at any such hearing or in any such appeal.

C. Respondent waives his right to assert a claim of bias or move to excuse any Board member based upon the Board member's consideration of the Agreement.

D. Respondent's waiver of any rights contained herein is made knowingly, intentionally, and voluntarily.

6. Respondent's execution of this Agreement is made knowingly, intentionally, and voluntarily.

7. Upon execution of this Agreement, Respondent releases the Board from any and all claims arising out of the Board's decision to investigate the complaint, file the Notice of Contemplated Action, and take the actions described herein.

8. Nothing contained herein is binding on the Board unless approved by it in an open meeting. Accordingly, this Agreement shall be presented to the Board at its next available meeting. If the Board agrees to the terms of this Agreement, it shall become binding upon the Board and the Respondent.

9. Failure to comply with the terms and conditions of this Agreement shall be separate and independent grounds for disciplinary action by the Board. In the event the Board accepts this Agreement and Respondent fails to comply with the provisions hereof, the Board shall have the right to take such action against Respondent as it deems appropriate under the circumstances, including revoking Respondent's license.

10. This Agreement is a settlement of Board case numbers 02-04-04 and 03-04-006, and only the specific allegations contained therein. The Board reserves the right to initiate proceedings for any other violations of the Massage Therapy Practice Act or the Rules and Regulations of the Board adopted pursuant to that act.

11. The NCA and this Agreement are public records within the meaning of the Inspection of Public Records Act, NMSA 1978, § 14-2-6(E) (1993). Other data, communications, and

information acquired by the Board relating to this matter shall be public as provided by the Massage Therapy Practice Act.

Agreed to by Respondent Jeffrey V. Books, L.M.T.; Approved as to form by attorney for respondent, J. Edward Hollington, Esq.; *Agreed to by the Administrative Prosecutor, David A. Steven Assistant Attorney General; and Agreed to and accepted by the Massage Therapy Board, Kathleen McCafferty, Chairperson.*

B. Case No. 02-07-08, 03-01-01 and 03-03-004 – Michel Cartagena

Mr. Barnes **MOVED** for the Board to accept the Hearing Officer's Findings of Fact, Conclusions of Law, and Decision and Order in the matter of Case #'s 02-07-08, 03-01-01 and 03-03-004, Michel Cartagena, Respondent, LMT #3839. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**. The Decision and Order was read into the record as follows:

"Before The Massage Therapy Board For The State Of New Mexico In The Matter Of: Michel C. Cartagena, Respondent, License No. 3839, Cases No: 02-07-08, 03-01-01 and 03-03-04.

A quorum of the board familiar with the record hereby renders the following decision and order based on the hearing, findings of fact and conclusions of law. IT IS ORDERED THAT:

- 1. Respondent's license to practice massage therapy in New Mexico is suspended for a period of six months. Within thirty days (30) of receipt of this Order, Respondent shall surrender his license to the Board in person or by Certified Mail and shall cease all activities requiring a license for said six months.*
- 2. During the period of suspension, Respondent shall attend the following courses that shall not be applied towards the Continuing Education requirements: Eight hours of Ethics;*
- 3. This action is a disciplinary action and is a public record pursuant to the Inspection of Public Records Act, and shall be reported to the Health Integrity and Protection Databank (HIPDB) and any other appropriate entities.
Respondent shall pay a fine in the amount of \$1000 per violations...*
- 4. Respondent shall pay the amount of \$2,500 as a fine for all violations the Board found against him, within sixty (60) days of the date of this Order.*
- 5. Respondent shall pay all costs of this proceeding in the amount of \$2,042.07 as shown by attached AFFIDAVIT of Geraldine Mascarenas, Board Administrator. Costs shall be paid within sixty (60) days of the date of this Order.*
- 6. Failure by respondent to comply with all the conditions listed above, within six months of the date of this Order, shall result in the automatic revocation of his license.*

Executed by Kathleen Egenes, Chair For the New Mexico State Board of Massage Therapy.

C. Case No. 04-02-003 – James Fogg (Action on Default Order)

Mr. Barnes Lopez **MOVED** for the Board to accept the Default Order to revoke the license of James Fogg, LMT #3281 in the matter of Case # 04-02-003. Mr. Lopez **SECONDED** the motion, which was **PASSED** by **UNANIMOUS APPROVAL**. The Default Order was read into the record.

"In the Matter of James Fogg, LMT #3281, Respondent, Case No. 04-02-003 - Default Order: This matter came before a quorum of the New Mexico Massage Therapy Board ("Board" on September 21, 2004, and the Board finds as follows:

- 1. A Notice of Contemplated Action (NCA) was served on Respondent in accordance with the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-33 (as amended through 2003.).*
- 2. The Board's records indicate that Respondent received the NCA.*

3. Respondent did not mail a request for hearing within the time and in the manner required by Section 61-1-4.

4. Respondent is now in default. Se Affidavit of Carmen Payne, Board Administrator, attached hereto as Exhibit 1.

It is therefore ordered that, pursuant to Section 61-1-4 (E), Respondent's license is hereby revoked. Within thirty days (30) of receipt of this Order, Respondent shall surrender his license to the Board in person or by Certified Mail and shall cease all activities requiring a Massage Therapy license. This final action is not subject to judicial review and shall be reported by the Board to all entities as required by law. This is a final order." Signed: Kathleen Egenes, Board Chair.

IV. ADJOURNMENT

There being no other business to come before the Board this day, the meeting was adjourned at 2:58 p.m.

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