

MASSAGE THERAPY BOARD

Livestock Board
300 San Mateo NE, Suite 1000
Albuquerque, New Mexico
October 24, 2003 – 10:00 a.m.

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(Locations may change based on meeting location availability)

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MASSAGE THERAPY BOARD

Livestock Board
300 San Mateo NE, Suite 1000
Albuquerque, New Mexico
October 24, 2003 – 10:00 a.m.

MINUTES

MEMBERS PRESENT:

Kathleen McCafferty, Chair
Randy Barnes, Vice Chair
W.D."Peter" Lane
Edward Kaul
Quinn Lopez

OTHERS PRESENT:

Geraldine Mascarenas, Program Manager
Mona Valicenti, Assistant AG, Civil

GUESTS:

See Attached Sign-in Sheet **(Attachment 1)**

CALL TO ORDER

Kathleen McCafferty called the meeting to order at 10:25a.m. A quorum was present with at least one member being a public member.

APPROVAL OF AGENDA

MOTION was made by Randy Barnes, SECONDED by Peter Lane, to accept the agenda as presented. MOTION CARRIED UNANIMOUSLY.

PROPOSED DATE(s) & PLACE(s) OF NEXT MEETING(s)

December 18, 2003 – Massage Therapy Board Orientation – Santa Fe 10:00 a.m.
December 19, 2003 – Santa Fe – 10:00 a.m.

(Locations may change based on meeting location availability)

NEW BUSINESS – ACTION ITEMS

A. Minutes of 06/13/03

MOTION was made by Peter Lane, SECONDED by Randy Barnes, to accept the minutes of June 13, 2003 as presented. MOTION CARRIED UNANIMOUSLY.

B. Minutes of 07/14/03

MOTION was made by Peter Lane, SECONDED by Quinn Lopez, to accept the minutes of July 14, 2003 as presented. MOTION CARRIED UNANIMOUSLY.

C. Health Insurance Portability & Accountability Act (HIPAA) Requirements (Kathleen McCafferty) **(Attachment 2)**

Chair Kathleen McCafferty presented a draft notice and forms which describes how medical information about a client may be used and disclosed and how the client can get access to the information, which is required for all health care records as required under the Health Insurance Portability & Accountability Act of 1996 (HIPAA).

Chair Kathleen McCafferty stated that she provided the draft notice and forms to Susan Barnes with The Medicine Wheel in Farmington for her review and comments.

It was the consensus of the Board that the Board can be used as the funneling agency to get the notice and forms sent out to the schools and to interested persons, however that the Board was not endorsing the notice and forms, and that the Board was not certifying the completeness and/or accuracy of the information contained in the notice and forms.

D. Massage Therapy Licensure Required?

1. **Shirodhara (Attachment 3)**
2. **Energy Healing (Attachment 4)**

Geraldine Mascarenas stated that when she receives calls inquiring if certain modalities require licensure that she refers the callers to the scope of practice of massage therapy found in Section 61-12C-3.E of the Massage Therapy Practice Act and 16.7.1.7.E NMAC of the Massage Therapy Rules. However, as the callers elaborate on what the practice entails it appears that the practice may fall within the scope of practice of massage therapy.

It was the consensus of the Board to have Ms. Mascarenas draft a standard letter on the Board's position which is to be sent out when the Board receives inquiries as to whether or not certain modalities fall within the scope of practice of massage therapy, and if a license is required. The letter is to be approved by the Board then sent to the requestors covered herein and to future requestors.

E. Clarification Requested Regarding:

1. **Instructor Standards (Attachment 5)**

Michael White with Apollo College requested clarification regarding the requirements and standards outlined for Instructors in 16.7.6 NMAC, specifically the requirements on how a person who is applying for a Massage Therapy Instructor registration may obtain the 50 hours of instructional experience of professional teaching or workshop instruction required in 16.7.6.8.B(3) NMAC.

Mr. White stated that his main instructor had walked out leaving Apollo College without a Registered Massage Therapy Instructor.

Geraldine Mascarenas stated that a similar situation occurred at another massage therapy school and that she worked closely with the school to quickly get someone registered.

It was the consensus of the Board that a Registered Massage Therapy Instructor needs to be physically present and in control of persons who are working toward becoming a registered massage therapy instructor, and obtaining the hours required under 16.7.6.8.B(3) NMAC.

It was also the consensus of the Board to have the Rules & Statute Committee draft rules establishing the standards that massage therapy schools must adhere to regarding persons who are working toward becoming a registered massage therapy instructor, and obtaining the hours required in 16.7.6.8.B(3) NMAC.

2. **General Public (Attachment 6)**
3. **Clinical Practicum (Attachment 7)**

Ellen Trabka with Northern New Mexico Community College requested clarification regarding family and friends who receive massage as part of the Clinical Practicum training provided within the massage therapy program. Ms. Trabka asked if family and friends are considered part of the general public.

Quinn Lopez stated that the general letter sent to the registered massage therapy schools in July 2003 regarding massage therapy training being provided outside the massage therapy school's supervision was meant to only restrict unsupervised massage therapy services (training).

It was the consensus of the Board that the Clinical Practicum does not exclude students from rendering massage therapy services to family and friends, as long as the training complies with the requirements outlined for Clinical Practicum.

Lonnie Howard with The Scherer Institute stated that her request for clarification was addressed within the request submitted by Ellen Trabka, and that she did not have anything else to add.

F. Parental Supervision During Massage Therapy for Minors (Attachment 8)

Wanita Thompson with Mesilla Valley School of Therapeutic Arts submitted a letter requesting that the Board consider establishing standards for minors receiving massage therapy services, requiring that an adult parent or family member be in the room while the Massage Therapist is providing massage therapy services to the minor.

It was the consensus of the Board that at this time the Board does not want to consider establishing standards which may cause unintentional or uninformed restrictions.

MOTION was made by Edward Kaul, SECONDED by Peter Lane, to have Ms. Mascarenas draft a notice outlining the Board's position regarding massage therapy services provided to minors. The notice is to be approved by the Board then sent to all Licensed Massage Therapists and Registered Massage Therapy Schools. MOTION CARRIED UNANIMOUSLY.

G. Reasonable Documentation Where High School Diploma was not Issued (Attachment 9)

Darleen Stone with Body Dynamics School of Massage Therapy provided an excerpt from the 2003 Accreditation Manual which provides for an alternative method for reasonable documentation in case a high school diploma was not issued, or is otherwise unavailable.

MOTION was made by Peter Lane, SECONDED by Randy Barnes, to have Assistant Attorney General Mona Valicenti research the other educational provisions available to the Board. MOTION CARRIED UNANIMOUSLY.

OLD BUSINESS – ACTION ITEMS

A. Chiropractors Who Utilize Unlicensed Persons to Perform Massage Therapy Services (Addressed: 6/03) (Attachment 10)

Geraldine Mascarenas stated that the letter was sent out to all Chiropractors and that she had received a few inquiries. Geraldine Mascarenas stated that the letter was also posted on the Board's website.

No action was required.

B. International Institute of Chinese Medicine Regarding Expired Registration (Addressed: 3/03) (Attachment 11)

Randy Barnes stated that the Medicine Wheel had fulfilled its agreement with the International Institute of Chinese Medicine.

MOTION was made by Edward Kaul, SECONDED by Peter Lane, to move this matter into Executive Session. MOTION CARRIED UNANIMOUSLY.

C. Consumer-Based Frequently Asked Questions and Answers (Tabled: June 03)

Chair Kathleen McCafferty stated that she is still working on this task, and therefore tabled this item until the next Board meeting.

FOR YOUR INFORMATION

A. Associated Bodywork & Massage Professionals (ABMP) – Enhancement of the Education Offered to Massage Therapy Students (Attachment 12)

The ABMP submitted a letter questioning 61-12C-5.1.B of the Massage Therapy Practice Act; specifically stating that in the past schools across the state encouraged their students to practice on friends and family as part of the practical homework, and that the schools are now being informed by the Board that this is not in compliance with the requirements.

ABMP asked for the steps necessary to amend the regulations to allow students to practice on family and friends as part of the practical homework required by schools.

Geraldine Mascarenas, in a letter dated August 20, 2003, first informed ABMP of the Board's position which was outlined in a letter sent to all schools dated July 2003, then she informed ABMP that changes to the statute would be necessary, because the requirements outlined for students is addressed in statute.

No Board action was required.

B. David Stevens – Assigned Assistant Attorney General (Attachment 13)

The Board thanked Chair Kathleen McCafferty for requesting from Attorney General Patricia Madrid that she consider allowing David Stevens to continue to serve as the Board's Litigation Attorney.

David Thompon, Litigation Division Director, agreed to have David Stevens continue to serve as the Board's Litigation Attorney.

No Board action was required.

C. News from the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB) (Attachment 14)

The NCBTMB reported that it will now be offering an advanced practice certification in massage therapy, the National Certification in Therapeutic Massage-Advanced (NCTM-A).

The NCBTMP also reported that Kentucky and Arizona have enacted state-wide legislation for the practice of massage therapy.

No Board action was required.

COMMITTEE REPORT – ACTION ITEMS

A. Schools & Businesses Inspection Committee

Geraldine Mascarenas reported that she received approval for a Compliance Officer position which is expected to be in place in December or January; and that this person will be responsible for working with the Schools & Businesses Inspection Committee to develop rules, procedures and forms.

No Board action was required.

B. Rules & Statute Committee (Attachment 15)

Quinn Lopez reported that the Rules and Statute Committee met on August 29, 2003. The Rules and Statute Committee presented it's recommendations outlined in Attachment 14.

MOTION was made by Edward Kaul, SECONDED by Peter Lane, to accept the Rules and Statute Committee report as submitted. MOTION CARRIED UNANIMOUSLY.

It was the consensus of the Board to add the following Complaint Committee's referral to the Rules & Statute Committee:

1. Clarify 61-12C-3.E, 61-12C-5.A, and B, to ensure that when reading all sections together that they flow, that "each part should be construed in connection with every other part so as to produce a harmonious whole" (Uniform Statute & Rule Construction Act), which should reference back to the purpose outlined in 61-12C-2.
2. Establish parameters for Assistant Massage Therapy Instructors, through the standards required for Massage Therapy Schools.

C. Education, Examination & Licensing Compliance Committee

1. **Victoria Magown – Request Approval of Courses Under 16.7.5.8.B(4)(k) NMAC**

MOTION was made by Peter Lane, SECONDED by Randy Barnes, to accept the following courses and hours under 16.7.5.8.B(4)(k) NMAC:

Exercise – 4 Semesters
Pre-Sport Conditioning – 4 Semesters
Modern Dance – 4 Semesters
Mime – 2 Semesters

And to accept the schools statement that the school is/was licensed by the Department of Education Commonwealth of Massachusetts, and that it is/was a member of the National Association Health Career Schools.

MOTION CARRIED UNANIMOUSLY.

D. Complaints Committee

The Complaints Committee stated that it would present its report in Executive Session.

EXECUTIVE SESSION pursuant to § 10-15-1.H (1) and (3) of the Open Meetings Act

MOTION was made by Quinn Lopez, SECONDED by Peter Lane to enter into Executive Session pursuant to Sections 10-15-1.H (1) and (3) of the Open Meetings Act, to discuss: (1) Complaints; (2) Matters Related to the Issuance, Suspension, Renewal, or Revocation of Licenses; and (3) Pending or Threatened Litigation.

The vote was: Quinn Lopez, yes; Peter Lane, yes; Randy Barnes, yes; Edward Kaul, yes; and Kathleen McCafferty, yes.

MOTION CARRIED UNANIMOUSLY.

MOTION was made by Peter Lane, SECONDED by Quinn Lopez, to reconvene back into Regular Session.

The vote was: Quinn Lopez, yes; Peter Lane, yes; Randy Barnes, yes; Edward Kaul, yes; and Kathleen McCafferty, yes.

Chair, Kathleen McCafferty stated for the record that those items discussed in Executive Session were limited to the items listed in the motion for Executive Session.

EXECUTIVE SESSION – ACTION ITEMS

A. Complaints

02-09-013 – MOTION was made by Edward Kaul, SECONDED by Quinn Lopez, to dismiss the complaint because the Complainant failed to substantiate the allegations. MOTION CARRIED UNANIMOUSLY.

03-07-010 and 03-07-011 – MOTION was made by Peter Lane, SECONDED by Randy Barnes, to table the complaints. MOTION CARRIED UNANIMOUSLY.

03-08-012 – MOTION was made by Edward Kaul, SECONDED by Peter Lane to refer the complaint to the District Attorney's Office for violation of 61-12C-27.A, B, and C. MOTION CARRIED UNANIMOUSLY.

03-09-013 – MOTION was made by Edward Kaul, SECONDED by Peter Lane, to table the complaint. MOTION CARRIED UNANIMOUSLY.

03-09-014 – MOTION was made by Peter Lane, SECONDED by Randy Barnes, to send the sponsor/business a cease and desist notice. MOTION CARRIED UNANIMOUSLY.

03-09-015 – MOTION was made by Edward Kaul, SECONDED by Peter Lane, to have the investigator hand-deliver a cease and desist notice to both the employer and the unlicensed person, and to have MIS locate the author of the e-mailer impersonating the Board Office. MOTION CARRIED UNANIMOUSLY.

B. Matters Related to the Issuance, Suspension, Renewal, or Revocation of Licenses

International Institute of Chinese Medicine – It was the consensus of the Board that this matter has been resolved, and the school is no longer operating.

Pablo Falcon and White Mountain School of Applied Healing – MOTION was made by Randy Barnes, SECONDED by Edward Kaul, to close the matter, stating that it is a criminal matter being handled by the District Attorney's Office, and that the Board addressed and has provided closure to the matter that was within its jurisdiction, which were the impending students, and that the school is no longer in operation. MOTION CARRIED UNANIMOUSLY.

Gilbert Rivera – MOTION was made by Peter Lane, SECONDED by Edward Kaul, to table the application of registration as a Massage Therapy Instructor. MOTION CARRIED UNANIMOUSLY.

Andrew Ortega – MOTION was made by Edward Kaul, SECONDED by Randy Barnes, to offer the applicant mediation, and if he does not accept mediation to refer the matter to the Attorney General's Office for the issuance of a Notice of Contemplated Action. MOTION CARRIED UNANIMOUSLY.

Lorenzo Sandoval – MOTION was made by Peter Lane, SECONDED by Edward Kaul, to investigate for unlicensed practices. MOTION CARRIED UNANIMOUSLY.

Christopher Woodall – MOTION was made by Peter Lane, SECONDED by Randy Barnes to refer the matter to the Attorney General's Office for the issuance of a Notice of Contemplated Action. MOTION CARRIED UNANIMOUSLY.

C. Pending or Threatened Litigation

There was nothing to report.

D. Updates

There was nothing to report.

ADJOURNMENT

There being no further business before the Board, MOTION was made by Peter Lane, SECONDED by Randy Barnes, to adjourn the meeting.

Submitted by Geraldine Mascarenas, Program Manager
Approved by the Board on January 29, 2004
Accepted by the Board Chair, Kathleen McCafferty on January 29, 2004