

MASSAGE THERAPY BOARD

Chamber of Commerce
1139 Paseo Del Pueblo Sur, Taos
October 26, 2001 – 10:00a.m.

AGENDA

CALL TO ORDER

APPROVAL OF AGENDA

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

February 15, 2002 – Santa Fe – 10:00a.m.
May 17, 2002 – Albuquerque – 10:00a.m.
August 16, 2002 – Albuquerque – 10:00a.m.
November 15, 2002 – Santa Fe – 10:00a.m.

NEW BUSINESS

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OLD BUSINESS

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B. FAQ's – Consumer Protection ----- Page 4

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(1) Appoint New Committee Chair

B. Rules Committee (Larry Suzuki) ----- Page 5
(1) General Area of competency for examination for Initial Licensure
(2) Visiting Massage Therapy Instructors
(3) Professional Conduct - Schools

C. Education & Licensing & Examination Compliance Committee
(Sharon White) ----- Page 5

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(1) FY2002 Operating Budget Status (July 1, 2001 - June 30, 2002)
(a) B&C Server
(2) FY2003 Budget Request (July 1, 2002 - June 30, 2003)
(a) Budget Submitted by Program Manager on Behalf of
Board
(b) Budget Submitted by Department
(c) Memo from DFA Dated August 29, 2001
(d) Memo from the Office of the Governor Dated September
26, 2001

(e) Memo from RLD Dated October 5, 2001

EXECUTIVE SESSION pursuant to § 10-15-1.H (1) and (3)

- A. Complaints
- B. Matters Related to the Issuance, Suspension, Renewal, or Revocation of Licenses
- C. Pending or Threatened Litigation

BOARD ACTION ON EXECUTIVE SESSION ITEMS

- A. Complaints
- B. Matters Related to the Issuance, Suspension, Renewal, or Revocation of Licenses
- C. Pending or Threatened Litigation

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MASSAGE THERAPY BOARD

Chamber of Commerce
1139 Paseo Del Pueblo Sur, Taos
October 26, 2001 – 10:00a.m.

MINUTES

MEMBERS PRESENT: Sharon D. White, Chair
Gene V. Henley, Public Member
W.D. 'Peter' Lane, Massage Therapist
Larry C. Suzuki, Public Member

OTHERS PRESENT: Geraldine Mascarenas, Administrator
Patrick Simpson, Assistant AG

GUESTS: See Attached Sign-in Sheet (Attachment 1)

CALL TO ORDER

Chair Sharon White called the meeting to order at 10:10a.m. A quorum was present with at least one member being a public member.

APPROVAL OF AGENDA

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

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

It was the consensus of the Board to schedule it's next regular board meetings as follows:

February 15, 2002 – Santa Fe – 10:00a.m.
May 17, 2002 – Albuquerque – 10:00a.m.
August 16, 2002 – Albuquerque – 10:00a.m.
November 15, 2002 – Santa Fe – 10:00a.m.

NEW BUSINESS

A. Minutes of 08/10/01

MOTION was made by Gene Henley, SECONDED by Peter Lane, to approve the minutes of August 10, 2001 with the following corrections:

Under New Business, F, (2), second line, add "if" before "and";
Under Committee Report/Board Action, C, first paragraph, after "courses to" add "be", and change "accept" to "accepted"; and in the second paragraph, after "White" add ",".

OLD BUSINESS

A. Alternative Dispute Resolution (Attachment 2)

Geraldine Mascarenas presented the current status of the Alternative Dispute Resolution (ADR) process; she reported that it appears that the Board of Psychology Examiners will be the first Board to refer a case through the ADR process.

Geraldine Mascarenas stated that the Board would designate one Board Member to mediate on behalf of the Board and that the Board would set the perimeters on what the Board will accept to resolve the complaint.

Gene Henley expressed that ADR is another layer that would require the Board Member who is designated to resolve a case through the ADR process to recuse himself/herself if the case is not settled and therefore goes through the NCA process.

Assistant Attorney General Patrick Simpson stated that the Board will have discretion on the cases that the Board may want to consider referral to ADR, further stating that the Board may not want to refer a serious case to ADR.

B. FAQ's – Consumer Protection

Geraldine Mascarenas is to compile the list of questions and answers that the Board has considered and forward to Sharon White to finalize for the Board's consideration.

COMMITTEE, ATTORNEY, AND PROGRAM MANAGER REPORTS & BOARD ACTION

A. Inspections of Schools and Businesses Committee (1) Appoint New Committee Chair

Chair Sharon White expressed frustration that the Board's expansion request, which included budget to conduct inspection of massage therapy schools and businesses, had been turned down. Chair Sharon White therefore questioned the need for such a committee if the funds are not available.

Geraldine Mascarenas stated that it is up to the Board to decide whether to retain or eliminate the committee. She stated that the inspection process tends to be quite involved and that the Board needs to first develop and approve the inspection procedures and form prior to even considering contracting and/or conducting inspections.

Gene Henley offered to draft a letter for Chair Sharon White's signature requesting consideration in the legislative package to give the Board latitude with its cash reserves.

Chair Sharon White appointed Peter Lane and Gene Henley to serve on the committee.

B. Rules Committee (Larry Suzuki)

- (1) General Area of competency for examination for Initial Licensure**
- (2) Visiting Massage Therapy Instructors**
- (3) Professional Conduct - Schools**

Larry Suzuki requested that this matter be deferred until the next Board Meeting because he has been out of state quite a bit and therefore has been unable to work on proposed rules.

Larry Suzuki stated that he needed additional information on the above areas that he is to work on drafting rules.

Chair Sharon White gave an example of a massage therapy school that has a failure rate of 95% on the National Certification Examination for Therapeutic Massage and Bodywork.

Gene Henley recommended that the Board post the success rate of the National Certification Examination for Therapeutic Massage and Bodywork on the Board's website.

Gene Henley suggested that the Board review what is being ask for in defining the general area of competency for examination for initial licensure and what is currently being required of the National Certification Examination for Therapeutic Massage and Bodywork, and determine what deficiencies, if any, exists, and if the Board has the financial resources in FY03 then the Board needs to carry forward the recommendations.

C. Education & Licensing & Examination Compliance Committee (Sharon White)

Chair Sharon White stated that she had nothing to report.

D. Breast Massage Committee (Sharon White) (Attachment 3)

Chair Sharon White reported that she attended an eight (8) hour Breast Massage training the week of October 15, 2001, which to her knowledge no other significant training had ever been offered for Breast Massage.

Chair Sharon White stated that the Board needs to establish standards for massage therapists who work on breasts because there is potential for abuse.

Donald Schiff, licensed Massage Therapist (#8), stated that the Massage Therapy Rules already provide safeguards, specifically Part 2, Paragraph 16.7.2.8.A (1), where it states that "each licensee will limit practice and instruction to the areas of competence in which proficiency has been gained through education, training, and/or experience and refer clients to other health professionals when appropriate."

Gene Henley stated that if the issue is "ethics" then there is already a rule in place that will address the issue that if a massage therapist is not competent in the area of practice that he/she is practicing then he/she is in violation of the competency rule, and therefore a new rule is not needed.

Chair Sharon White stated that informed consent needs to be added to provide protection.

Chair Sharon White stated that it was discussed in the training that breast massage is part of the intake form, which provides that the breasts are not worked on during the first visit, and that a brochure is provided to the client to read, further stating that each time a client receives breast massage that informed consent must be obtained.

Chair Sharon White stated that obtaining informed consent is intended to protect both the client and the massage therapist.

Larry Suzuki stated that the Board needs to be proactive by sending a newsletter to the licensees letting them know that this is an issue, and reminding licensees to obtain informed consent prior to providing massage therapy services.

Peter Lane suggested that a reminder be sent with the license renewals informing licensees that they need to stay current with the rules, a one page summary of some of the issues that have come before the Board, further stating that this would not be costly to the Board.

Chair Sharon White recommended that the Board require informed consent for breast massage.

Gene Henley agreed with the suggestion offered by Peter Lane.

Larry Suzuki suggested that when sending a reminder to licensees that it is done as a group effort instead of assigning the task to a committee.

Chair Sharon White stated that a complete draft of the information that the Board wants to send out to licensees needs to be done by the next Board meeting in February.

Gene Henley stated that he does not see the need for more rules, that education is the best approach.

Sharon White stated that the standards in New Mexico need to be raised to National standards.

Larry Suzuki stated that he is in favor of education first, and that the Board needs a measurement tool to find out whether or not it was worth the time and effort to do the particular task.

Peter Lane stated that he is in favor of the education process with the ability to measure response, asking licensees what issues concern them, which will provide interaction, and that it also be posted on the Board's website. Further stating that this will help the Board determine if changes to the rules are necessary

The Board took no action.

E. Complaints Committee
(1) Appoint New Committee Chair

Chair Sharon White appointed Peter Lane to serve on the committee as chair.

Geraldine Mascarenas stated that she has a tickler system, which requires action from her office or from the Complaint Committee within 15 days from the date of receipt of a complaint, respondent's response, investigative report, etc. She stated that complaints are then referred to the Board on a timelier basis.

(2) Unlicensed Practices Referred to the District Attorney's Office

Geraldine Mascarenas reported that the Board had voted at its July 19, 2001 Board meeting to refer a case dealing with massage therapy unlicensed practices and possible fraud to the District Attorney's Office, and that the case was referred to the DA's office on May 11, 2001, however no communication has been disseminated from the District Attorney's Office since the referral was made, other than a call made from Sarapio Jaramillo, Assistant District Attorney, who informed Ms. Mascarenas that he had spoken with Assistant Attorney General, Patrick Simpson, and that Mr. Simpson had agreed to refer the matter back to the Board.

Mr. Simpson stated that there has been no communication between himself and Mr. Jaramillo.

Assistant Attorney General, Patrick Simpson, stated that the Board has the power to authorize him to enjoin people who practice massage therapy without a license. However, it requires building a fact pattern to determine that unlicensed massage therapy practices exist, which requires utilizing the services of an investigator to determine if these people are actually practicing massage therapy as defined in the statute without a license. Then the Board, through Mr. Simpson, has to file for injunctive relief with the District Court. When the order is issued the Board, through its investigator, has to determine that unlicensed massage therapy services continue in violation of the injunction, then the Board, through Mr. Simpson, has to go back to the judge to ask for sanctions, monetary or contempt.

Chair Sharon White asked if she is able to obtain proof, such as a business card, which supports massage therapy services being offered by an unlicensed person, and request for injunctive relief if the District Attorney's Office is not doing anything about unlicensed massage therapy practices.

Assistant Attorney General, Patrick Simpson, stated that the Board needs to get someone who has actually **received** massage therapy services from an unlicensed person, who can testify, and then the Board needs to have someone watch that person after the injunction has been issued. At that time the Board will have to go back into District Court and have those persons who have received massage therapy services from that person after the injunction has been issued testify that they received massage therapy services from the unlicensed person, which would be in violation of the prior order.

Assistant Attorney General, Patrick Simpson, stated that massage therapists can serve as investigators to help clean up the profession. He further stated that they will

have to testify in court, which may require testifying more than one time and traveling great distances.

Peter Lane suggested educating the unlicensed persons to the benefits of licensure.

Peter Lane requested that the Board collectively come up with ideas on how to approach the issue of unlicensed persons practicing massage therapy, and that this subject matter be revisited.

F. Statute Committee (Gene Henley)

Gene Henley asked if the Board still wants to pursue legislation similar to that of the Real Estate Commission, specifically obtaining jurisdiction over unlicensed practices of massage therapy services, and any other statute amendment that the Board agrees on.

It was the consensus of the Board to pursue legislation in 2003.

Geraldine Mascarenas informed the Board that there is a group that has made application through the Sunrise Act process for licensure of the practice of Naprapathy. Further stating that last year an attempt was made to introduce a bill during the legislative session, however because the group had not made application as is required under the Sunrise Act the bill was not introduced.

Geraldine Mascarenas stated that she would provide the Board with a copy of the Sunrise Act application that was submitted that includes a description of their scope of practice.

G. Attorney:

(1) ASSAAA's Continuing Legal Education Course in Professional Regulatory Law

Assistant Attorney General, Patrick Simpson provided the following report on the training he received at the ASSAAA's Continuing Legal Education Course in Professional Regulatory Law:

- (1) Expert Witness - there should never be two (2) expert witnesses, because inevitable they will disagree, which basically causes each of their testimony to cancel out each other;
- (2) Diversion Program - is any kind of mandatory set of requirements that the Board wants the licensee to take rather than having their license revoked or suspended, such as a psychological evaluation, supervised practice, community service, etc. Diversion programs needs to define time limits and define consequences, which is something to look for when entering into a settlement agreement;
- (3) Sexual Misconduct – too often Boards decide that sexual misconduct is not practice related; also it becomes a “he said, she said” situation, and Boards tend to empathize with the perpetrator, when the Board decides that a violation has occurred. The punishment needs to be consistent with the violation, which is not always the case because the Board is

empathetic to the perpetrator. When listening to the evidence the Board should not worry about the consequences because then the Board member forgets the quantities of the evidence;

- (4) E-Practice – e-practice businesses have not succeeded because most of the people that access e-practice tend to be on the edge, borderline personalities, and one cannot do proper intake or assessment and follow up cannot be guaranteed; and
- (5) Advertising – when establishing rules about advertising the Board can guard against fraud and against unreasonable pursuit of people in need of care, but no matter how in good faith the Board approaches a problem if someone is able to convince a court that the Board has over reached than the Board will have to go back to the drawing board.

H. Program Manager: (Attachment 4)

(1) FY2002 Operating Budget Status (July 1, 2001 - June 30, 2002)

(a) B&C Server

MOTION was made by Chair Sharon White, SECONDED by Peter Lane, that Geraldine Mascarenas write to Jeff Varela, stating that at this time the Board is not in a position to help purchase the server requested. MOTION CARRIED UNANIMOUSLY.

MOTION was made by Chair Sharon White, SECONDED by Peter Lane, to inquire when the Board should expect to receive a replacement personal computer for the computer that was taken by MIS to house the financial system because the Board is in need of the computer. MOTION CARRIED UNANIMOUSLY.

(2) FY2003 Budget Request (July 1, 2002 - June 30, 2003)

- (a) Budget Submitted by Program Manager on Behalf of Board**
- (b) Budget Submitted by Department**
- (c) Memo from DFA Dated August 29, 2001**
- (d) Memo from the Office of the Governor Dated September 26, 2001**
- (e) Memo from RLD Dated October 5, 2001**

Geraldine Mascarenas reported that she had submitted the Board's expansion request that was agreed to by the Board back in August; however a flat budget was directed and therefore there will be no expansion request on behalf of the Board during the 2002 Legislative Session.

EXECUTIVE SESSION pursuant to § 10-15-1.H (1) and (3)

A. Complaints

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

C. Pending or Threatened Litigation

BOARD ACTION ON EXECUTIVE SESSION ITEMS

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ADJOURNMENT

There being no further business before the Board, Chair Sharon White adjourned the meeting at 3:30p.m.

SUBMITTED BY:

Geraldine Mascarenas, Program Manager

Date

APPROVED ON BEHALF OF THE BOARD BY:

Sharon D. White, Chair

Date