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**New Mexico Regulation and Licensing Department**  
**BOARDS AND COMMISSIONS DIVISION**  
**Massage Therapy Board**

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**MASSAGE THERAPY BOARD**  
**REGULAR MEETING**

**Thursday, March 5, 2009**  
**10:00 A.M.**

**Regulation & Licensing Department**  
**Santa Fe, New Mexico 87505**

**Minutes**

**1. CALL TO ORDER/ROLL CALL/INTRODUCTIONS:**

Peter Lane, Board Chair, called the meeting to order at 10:05 a.m. and a quorum was determined present.

**MEMBERS PRESENT:**

W.D. "Peter" Lane, LMT, RMTI and Chairman  
Kathleen Egenes, LMT, RMTI  
Margo Bryson, Public Member  
"C" Quinn Lopez, Esq., Public Member

**MEMBERS ABSENT: NONE**

**OTHERS PRESENT:**

Jackie Holmes, Board Administrator  
Mona Valicenti, Assistant Attorney General  
**(For others present, refer to sign-in sheet)**

**2. APPROVAL OF AGENDA:**

**MOTION** was made by Mr. LOPEZ to approve the agenda as written, **SECONDED** by Ms. Bryson. **MOTION CARRIED UNANIMOUSLY.**

**3. APPROVAL OF BOARD MINUTES:**

**MOTION** was made by Ms. Egenes to approve the minutes from August 22,, 2008 as written, **SECONDED** by Ms. Bryson. **MOTION Passed.**

**4. NEXT MEETING DATE:**

The next meeting will be held on Friday, April 3, 2009 at 10:00 am in Albuquerque, New Mexico at Regulation & Licensing Department.

**5. EXECUTIVE SESSION AND ACTION:**

**MOTION** was made by Mr. Lane to go into closed session pursuant to Section 10-15-(H) (1) of the Open Meetings Act to discuss matters related to the issuance, suspension, renewal or revocation of a license and pending or threatened litigation. Items to be discussed in executive session are as follows: The **MOTION** was **SECONDED** by Ms. Bryson.

Massage Therapy Board

**(Roll call was taken)**

**MOTION** was made by Ms. Bryson to return to open session. The matters discussed during the closed meeting were limited only to those specified in the motion. The **MOTION** was **SECONDED** by Mr. Lopez. **(Roll call was taken)**

As the chair of the complaint committee Ms. Egenes rescued herself from voting on all items discussed during executive session.

**A. Complaints:**

1) **Case #07-04-15 - MOTION** to adopt Complaint Committee's recommendation to dismiss the case on the grounds that there is insufficient evidence to support a statutory/regulatory violation was made by Mr. Lopez. **SECONDED** by Ms. Bryson. **MOTION Passed.**

2) **Case #08-07-06 - MOTION** was made by Mr. Lopez to adopt Complaint Committee's recommendation to authorize Staff to advise the Respondent to make a full refund to Complainant on the grounds that there appears to be reasonable basis to support a regulatory violation based upon the allegations in the Complaint. **SECONDED** by Ms. Bryson. **MOTION Passed.**

3) **Case #08-08-10 - Motion** was made by Ms. Bryson to adopt Complaint Committee's recommendation to dismiss the case as there was no violation of the massage therapy board's rules or law. **SECONDED** by Mr. Lopez. **MOTION Passed.**

4) **Case #08-09-12 - MOTION** was made by Ms. Bryson to adopt Complaint Committee's recommendation to dismiss the case on the matter that there is insufficient evidence to support a statutory/regulatory violation. **SECONDED** by Mr. Lopez. **MOTION Passed.**

5) **Case #08-09-13 - MOTION** was made by Ms. Bryson to adopt Complaint Committee's recommendation to dismiss the case on the matter that there is insufficient evidence to support a statutory/regulatory violation. **SECONDED** by Mr. Lopez. **MOTION Passed.**

6) **Case #08-11-14- MOTION** was made by Mr. Lopez to adopt Complaint Committee's recommendation and refer the Case to the Attorney General's Office for issuance of notice of contemplated action and prosecution. **SECONDED** by Ms. Bryson. **MOTION Passed.**

7) **Case #08-11-15 - MOTION** was made by Ms. Bryson to adopt Complaint Committee's recommendation to dismiss the case on the matter that there is insufficient evidence to support a statutory or regulatory violation. **SECONDED** by Mr. Lopez. **MOTION Passed.**

## Massage Therapy Board

8) **Case #08-11-16 – MOTION** was made by Ms. Bryson to adopt Complaint Committee's recommendation to dismiss the case as there is insufficient evidence to support a statutory/regulatory violation or establish jurisdiction. **SECONDED** by Mr. Lopez. **MOTION Passed.**

B. Bruce Allen – Request for license reinstatement

**MOTION** was made by Mr. Lopez to deny practitioner's request for license reinstatement based on the findings that the licensee's license expired in 2002. He will need to re-apply for licensure and meet the current requirements.

**SECONDED** by Ms. Bryson. **MOTION Passed.**

C. Miriam Corneli – Request for waiver of renewal late fee

**MOTION** was made by Ms. Bryson to deny licensee's request for waiver of renewal late fee and asked the board administrator to call the licensee.

D. Robin Berrie – Request for waiver of renewal late fee

**MOTION** was made by Ms. Bryson to deny licensee's request for waiver of renewal late fee and asked the board administrator to call the licensee.

**SECONDED** by Mr. Lopez. **MOTION Passed.**

### 6. OLD BUSINESS: None

### 7. NEW BUSINESS:

A. Legislation - Mr. Lane thanked the American Massage Therapy Association and the New Mexico Chapter President, Dan Barrow, his wife, Virginia Barrow and Don Schiff of Stone Circle Massage Mr. Barrow made the Board aware of the pending legislation and both he and Mr. Schiff helped Mr. Lane put together a meaningful response to the bills' sponsors and the committee members.

Mr. Lane stated that there have never been so many bills introduced in a 60 day session. The bills on the agenda could directly affect the scope of the massage therapy board and could directly affect licensure.

1) House Bill 585 – an Act relating to health care, enacting the scope of practice act; providing for a process to review the scopes of practice of certain licensed health professionals was introduced by Representative Keith Gardner.

Mr. Lane asked board members if they had any comments about HB585. Ms. Egenes stated that it seemed to her that they are after the dental people; the hygienists.

Mr. Barrow, AMTA New Mexico President, stated that his initial read of HB585 is that it probably is a good thing because it has notification to the Board of any proposed change to the scope of practice.

Don Schiff commented that the practical effect of HB585 is that it just adds another layer of administrative hearings in order to change a scope of practice. The massage therapy board is not looking to change its scope of practice, so this bill might not affect this board at this time. Mr. Schiff went on to say that this Bill might be an outgrowth of the Optometrists and Ophthalmologists battle over doing minor surgery about 2 years ago, to make it harder for some other profession to do that.

## Massage Therapy Board

Mr. Lane stated that he could very well see an opportunity for the review panel created by HB585, to infringe on the massage therapy board's given rights, through the Practice Act, to amend the Board's rules & regulations without hindrance. In other words the Board would have to refer to the Dean of UNM School of Medicine. This could be the beginning of a complete overhaul; like maybe the massage board being put under the medical board.

Mr. Lane stated that there has not been a great deal of input from RLD on the bills that pertain to massage therapy.

2) House Bill 664- An act relating to health care; enacting the unlicensed health care practice act; providing penalties. Mr. Lane stated that the issue the massage therapy board has with this bill is on page two where "bodywork, massage and massage therapy" are listed as "complimentary and alternative health care services"

Mr. Lane went on to say that as soon as he became aware of HB664, he was on the phone to Representative Ken Martinez, who is the sponsor of this legislation, and to Mimi Stewart, who offered the amendment. Mr. Lane and others bombarded the two legislators with phone calls and e-mails, and attended the judiciary committee meeting on March 4, 2009; pressing the issue that bodywork, massage and massage therapy should be stricken from the language of the bill.

Mr. Barrow and Mr. Lane reported that the language which included bodywork, massage and massage therapy has been removed from the bill as of early this morning.

Mr. Schiff reported that it was recommended in the fiscal impact report for HB664 that language from the Minnesota law be inserted in our law. He thinks that representative Stewart just took all of Minnesota's language and included it into HB664, without the intention of trying to harm the Massage Board. The difference is that Minnesota does not license massage therapists.

Mr. Barrow stated that the chief counsel for the Medical Board, GTS Khalsa, speaking on behalf of the Medical Board, stated that the Medical Board was in complete agreement with this bill, fully supported this bill, and in fact much of the language in HB664 came from the Medical Board. According to Mr. Khalsa, for years the Medical Board has been aware that these complimentary and alternative practitioners have been practicing in violation of the Medical Practices Act, and in essence committing felonies on a regular basis.

Assistant Attorney General Valicenti stated that the Attorney General's office thinks that HB664 is ridiculous. Mr. Barrow stated that he had heard the same sentiment from higher up in the AG's office.

Massage therapist, Elizabeth Harris, stated that there seems to be some sort of correlation between HB585 and HB664. They both have issues relating to the "medical" aspects of the profession. Massage therapists are not doctors, nor are they trying to be.

Mr. Schiff spoke about the social contract HB664 creates with alternative practitioners. The bill basically says to them "we know you unlicensed practitioners are out there doing something, and we're going to let you do that something as long as you do these

## Massage Therapy Board

certain things (forms of disclosure) and don't do other things (prohibited acts). If you do that we're going to leave you alone." Mr. Schiff said that the problem with this is that the regulated professions are not being protected, and also the unregulated people are not being forced to register. This could be disastrous for the state if the public starts complaining about the unlicensed practitioners. How will the state be able to find these people?

Board member, Kathleen Egenes addressed the Board. Ms. Egenes stated that the medical profession is absolutely in trouble and they do not want any "alternative" anything stepping outside of their realm. They are really going to start squeezing everybody out of what they perceive as their territory.

Mr. Lopez talked about the need to triage healthcare professionals because they are starting to grow into each other and around each other. The board needs to have some kind of proactive dialogue with RLD to assist in figuring out where one profession ends and another begins.

Mr. Lane stated that he thought a second tier of licensure for licensed medical massage therapy would give massage therapists clear boundaries. The board would take a good look at adding another tier of licensure. Mr. Lane stated that this would bring in more medically oriented bodywork that is pathology driven, and it would protect massage therapists.

Mr. Lopez stated that there needs to be a forum or some sort of entity established to discuss, study and make recommendations on the issue of adding another tier of licensure.

Mr. Lopez went on to say that as general counsel for a worker's compensation company he thinks Ms. Egenes is right on point, given the economy, given some of the proposals that are happening on the federal level that are going to significantly impact New Mexico because of its dependence on federal dollars for healthcare. There is a tremendous pressure to cost shift by doctors. If they get cut from Medicare/Medicaid reimbursement there is a huge pressure to cost shift to other systems; like Workers Compensation. The massage community should be aware that there might be a squeeze out of alternative healthcare practitioners, by doctors who will no longer get paid by Medicare/Medicaid or Worker's Compensation.

Mr. Lane stated that he saw an opportunity for massage therapists because as more general practitioners move more into specialties, because of the cuts, massage therapists may have a unique opportunity to pick up the additional work. This would really grow the massage industry.

Mr. Barrow talked about the tie between HB664 and the discussion of the future of healthcare services by pointing out that if HB664 is adopted, he sees as a serious challenge to the rationale of people who believe they need to be licensed under the Massage Therapy Practice Act. One thing that might help change that would be legislation on freedom of choice, which would state that if an insurance company pays for a specific service by any licensed practitioner in the state, they need to pay for it by any other licensed practitioner in the state that includes that service in their scope of

### Massage Therapy Board

practice. Currently in New Mexico insurance companies can choose to pay for massage therapy or soft tissue manipulation if it's done by a physical therapist or a doctor, but not by a massage therapist. Freedom of choice legislation would preclude the insurance companies from making those choices, and that would also give a real value to a massage therapy license.

Mr. Barrow went on to say that there are plenty of reasons to believe that we could be heading towards a socialized medical system on a federal level. If that happens and people are accessing most of their healthcare through a national healthcare insurance system, a kind of "Medicare for all" and Medicare for all is paying for soft tissue work, we want to make sure that licensed massage therapists in New Mexico have access to those healthcare dollars.

Ms. Egenes suggested that the investigational work be done before the Board thinks about adding another tier of licensure. She asked how the physical therapists felt about HB664.

Mr. Barrow responded by saying that the lobbyist for the physical therapists thought that the physical therapy law would not be impacted by HB664. Mr. Barrow went on to say that with the removal of the language referencing massage and synonymous terms from the bill, he agreed to an extent with the lobbyist that the massage therapy law would not be impacted. However, after listening to the judiciary committee discussing the language and particularly the issue of taking out the exemption clause and mulling it over, he realized that the exemption clause in the bill basically said that unless you do something listed in this you cannot be in violation of any other healthcare practice act.

Ms. Egenes cautioned the Chair about adding a new license for massage therapist right now, and specifically about using the term "medical". She thinks it would cause problems.

Mr. Lane stated that he is trying to explore, with those present, the options available for massage therapists to have an ongoing career and to be able to support their families. If this requires more training and education then it should be undertaken so that there will be a massage industry 10 or 20 years down the road. This may just be acquiring a certificate of some kind.

Elizabeth Harris addressed the board by saying that she thinks the language is extremely important, and what is absolutely going to affect massage therapists for many years is how massage therapists define themselves as adjunct to but separate from the medical community. She went on to say that she doesn't think it's the right time to set up another tier of licensure, particularly if it has the word "medicine" in it. It would make things too easily confused and it doesn't keep massage therapists separate which makes them vulnerable to being placed under this umbrella of HB664.

Mr. Schiff talked about the need for the Board to make sure that when they add a second tier of licensure that everyone gets brought along in the appropriate way.

## Massage Therapy Board

Bob Paper, Director of Universal Therapeutic Massage Institute in Albuquerque stated that there are other ways to combat the other professions than adding additional hours to create another tier of licensure for massage therapists.

3) House Bill 680 – Mr. Lane pointed out that by statute, massage therapy is a health care service but was not included in this bill, clarifying the meaning of receipts for the purpose of gross receipts reduction for healthcare practitioners. He spoke with Representative Tom Taylor about the fact that massage therapists were excluded from this bill. Mr. Taylor said that he would be willing to introduce a new bill next year, during the 30 day session, to include LMT's for exemption of gross receipts taxes.

B. Rule Hearing Ms. Holmes advised the Board that she scheduled the rule hearing for June 3, 2009. It will be at RLD's offices, 2550 Cerrillos Road Santa Fe, New Mexico in the Rio Grande conference room at 10:00 am. To that end, Mr. Lane assigned each board member one or more parts of the rules to work on as follows: Mr. Lopez, parts 1 and 16; Ms. Egenes, parts 2 and 14; Mr. Lane and Ms. Holmes, parts 4,5 and 6; Ms. Bryson, parts 10,11 and 12.

Much discussion was held about how the proposed rule changes would be made available to those people in the "workgroup" who might want to make some actual changes or recommendations. Ms. Holmes will be the keeper of the master document, which will be e-mailed to the workgroup after the assigned board members made changes. If any workgroup members then wanted to make any changes or recommendations, they will send their changes to Ms. Holmes who would then make those changes on the master document.

C. Attorney General Letter – Mr. Lopez recommended the letter from the attorney general's office be forwarded to the Judicial Standard Board of the State Bar.

D. AMTA applauds FSMTB - Mr. Lane reported that the American Massage Therapy Association has embraced the MBLEx.

Virginia Barrow advised the Board that she was on the national board of directors of the AMTA in the 1980's when national certification was established. It seemed like a good idea at the time to have one standard available. Many states did not have regulations at that time, now there are 42 states requiring licensure. In parenting this national certification process, the AMTA had influence over the direction for the benefit of the industry at large. The NCBTMB broke away from the AMTA and has transformed into something that is cumbersome, not easily communicated with, flawed in many ways, and have no parental oversight. In the last year or so the national certification board's behavior was astonishing. They hired lobbyists to lobby against legislation for massage therapy in different states. They rubbed the AMTA the wrong way. The AMTA's position is that one exam is better; more unified.

## 7. STANDING AGENDA ITEMS

A. Chair's report – no report

B. Continuing Education Committee – Ms. Bryson reported that the CE committee met on November 8, 2008. The committee discussed CE requirements, instructor school based & independent review of accountability, CPR & First Aid approvals and quality control. The biggest complaints about CE were that it's too expensive, take too much time and currently the requirements are 12 hours of hands on and 4 hours of ethics.

## Massage Therapy Board

- C. Rules committee – no report
- D. Complaint committee – no report

Mr. Barrow announced that last year the New Mexico chapter of the AMTA provided 6 hours of ethics CE at no charge at its annual meeting, and would again provide 6 hours of ethics of CE again this year. This year there will be a \$10.00 charge for AMTA members and a \$25.00 charge for non members. The annual meeting is on March 28, 2009 in Las Cruces.

Kelly Loy, Coordinator of Northern New Mexico College's massage therapy program announced that her school will begin offering an 8 hour ethics course this September which is only one half credit. One half credit is only \$16.00.

E. Board Administrator report - Ms. Holmes reported that the October renewal process did not go as smoothly as the staff had hoped. There were several problems with on-line renewals but ultimately staff and RLD's It unit were able to resolve them.

Body Care School of Healing Arts in Las Cruces registered with the Board as New Mexico's newest massage therapy school. Ms. Holmes asked for clarification as to whether she should approve new schools or bring the new school applications before the full board. Ms. Egenes stated that the Board used to have an education committee. The committee would review and approve the new school registrations. Perhaps when a new professional board member is appointed, the board could re-establish the education committee.

Ms. Holmes advised the board that the Boards & Commissions division has contracted with Universal Investigation Services. The massage board contributed funds toward the contract and will be able to get investigations and other services performed.

Ms. Holmes reported that she had hired a temporary employee, Sylvia Vigil, who has helped the staff tremendously.

### **10. ADJOURN:**

There being no further business, **MOTION** was made by Mr. Lopez to adjourn the meeting, **SECONDED** by Ms. Bryson. **MOTION** carried.

**SUBMITTED BY:** \_\_\_\_\_  
**Jackie Holmes, Board Administrator**

**APPROVED BY:** \_\_\_\_\_  
**W. D. Peter Lane, LMT, RMTI, Board Chair**

**DATE APPROVED:** \_\_\_\_\_