

**DEPARTMENT OF HEALTH
DIVISION OF MEDICAL QUALITY ASSURANCE
BOARD OF MASSAGE THERAPY**

**MINUTES
General Business Meeting
October 19, 2011**

**Holiday Inn & Suites
2725 Graves Road
Tallahassee, FL 32303
(850) 536-2005**

1 **Wednesday, October 19, 2011**

2 The meeting was called to order by Ms. Karen Ford, LMT, Chair, approximately 2:50 p.m. Those present for
3 all or part of the meeting included the following:

MEMBERS PRESENT:

Karen Ford, LMT, Chair
Bridget Burke-Wammack, LMT, V-Chair
Lydia Nixon, LMT
Robert Smallwood, LMT

MEMBER ABSENT:

Lisa Oliver, Consumer Member (Excused)
William Stoehs, Consumer Member

BOARD COUNSEL:

Lee Ann Gustafson, Esquire
Assistant Attorney General

STAFF PRESENT:

Anthony Jusevitch, Executive Director
Paula Mask, Program Operations Administrator

COURT REPORTER:

Accurate Stenotype Reporters, Inc.
850.878.2254

DEPARTMENT PROSECUTING ATTORNEYS:

S. J. DiConcilio, Esquire
Manshi Shah, Esquire

4 ***Please note that the meeting minutes reflect the actual order agenda items were discussed during***
5 ***the meeting and may differ from the agenda outline.***

6 ***An audio of this meeting can be found by clicking on "Agenda Materials and Audio Files" at***
7 ***http://www.doh.state.fl.us/mqa/massage/ma_meeting.html***

8 ***RULES DISCUSSION**

9 **Tab 81 64B7-24.001, F.A.C.; Definitions**

10 The board had proposed a new definition section in the board's rules; however, it was pointed out that there
11 are exceptions.

12 Mr. Smallwood stated classroom hours had been discussed in the rules workshop meeting.

1 Mr. Smallwood addressed his concerns regarding the "Drapes" definition. After discussion, it was determined
2 the definition could include clothing.

3 Mr. Smallwood asked if in the definition of "Subject" could be amended to include violations of chapters 456,
4 480, Florida Statutes, and rule 64B7, F.A.C.

5 Ms. Burke-Wammack inquired if the board could add the definition of "monitor" in the discipline section of the
6 rules.

7 Ms. Gustafson asked Ms. DiConcilio if monitor was defined in the settlement agreements and she replied in
8 the affirmative. Ms. Gustafson will incorporate this definition in this section.

9 Ms. Gustafson advised the board the definition of "biennial period" could be repealed as it is defined by
10 statute and in the department rules.

11 The "citation" definition should remain in the citation rule, 64B7-30.004, F.A.C.

12 The board discussed the definition of "establishment". Ms. Gustafson stated since establishment is defined in
13 s. 480.033(7), F.S., it is not necessary to have in rule.

14 **Action taken:** Ms. Ford moved to repeal section (2) of rule 26.002, F.A.C., since it is defined in statutes. Ms.
15 Burke-Wammack seconded the motion which carried 4/0.

16 The board then discussed the definition of "direct supervision" as defined in rule 64B7-29.001, F.A.C. It was
17 noted the term doesn't reference apprenticeship.

18 Ms. Gustafson then discussed the elements of direct and indirect supervision.

19 **Action taken:** Mr. Smallwood moved to amend subsection (4) of rule 64B7-29.001, F.A.C. Ms. Burke-
20 Wammack seconded the motion. Discussion was held. The board voted and the motion passed 4/0 for the
21 rule to read:

22 "Direct supervision" means the control, direction, and instruction, and regulation of an apprentice while the
23 supervising massage therapist is on the premises at a "qualified massage establishment" during the working
24 hours of the establishment.

25 The definition of "direct supervision" will remain in the apprenticeship rule.

26 Ms. Gustafson advised the definition of sexual activity is repetitive of section 480.0485, F.S. However, after
27 discussion it was determined to maintain the definition of rule 64B7-26.010.

28 After further discussion, the board determined not to move the definitions found in Chapter 64B7, F.A.C., or
29 to create new rule 64B7-24.001 Definitions.

30 **Tab 98 64B7-32.002, F.A.C.; Proof of Graduation**

31 **Action Taken:** After discussion, Ms. Burke-Wammack made a motion to accept the drafted language with
32 changes. Ms. Ford seconded the motion which passed 4/0. The rule will read as follows:

33 **64B7-32.002 Proof of Graduation Documentation of Graduation from a Board Approved Massage** 34 **School.**

35 ~~In order~~ To be acknowledged as a graduate of a Board approved massage school as referred to in
36 subsection 480.033(9), F.S., the Board's administrative office must receive an official transcript documenting
37 the applicant's training. Such transcript must document to the satisfaction of the Board that the applicant has

1 successfully completed a course of study in massage which met the minimum standards for training and
2 curriculum as delineated in this rule chapter. A transcript indicating passing grades in all courses, and
3 including dates of attendance, and stating the date of successful completion of the entire course of study, is
4 evidence of successful completion. If the transcript does not specifically state that the student successfully
5 completed the entire course of study, the transcript must be accompanied by a diploma or certificate of
6 completion a list of graduates sent electronically in a method designed by the Board office or an official
7 transcript which indicates that an applicant has met all educational and institutional requirements indicating
8 the start date and the date of graduation.

9 **Tab 82 64B7-24.017, F.A.C.; Board Business**

10 Action taken: Ms. Ford moved to strike subsections (2) and (3) of this rule. Ms. Burke-Wammack seconded
11 the motion which carried 4/0. The rule will read as follows:

12 **64B7-24.017 Board Business.**

13 (4) For the purposes of Section 456.011(4), F.S., the Board defines “other business involving the
14 Board” as,

15 (1)(a) All regularly scheduled meetings of Board committees, and

16 (2)(b) Whenever a board member has been requested by the State Surgeon General or the
17 Department staff to participate in a meeting or in the preparation, administration, or grading of the
18 examination.

19 (3)(c) Meetings or business at the direction or request of the Board.

20 (2) Meetings or participation by telephone do not constitute other board business.

21 (3) Documentation of requests, authorizations, or notices for meetings under the terms of this rule
22 shall be kept at the Board office.

23 **Tab 83 64B7-24.008, F.A.C.; Probable Cause Determination; Probable Cause Panel**

24 **Tab 84 64B7-30.007, F.A.C.; Probable Cause Panel (repeal)**

25 **Action Taken:** Ms. Burke-Wammack made a motion to repeal 64B7-30.007 and to maintain rule 64B7-
26 24.008. Mr. Smallwood seconded the motion which carried 4/0.

27 **Tab 85 64B7-25.0025, F.A.C.; Security and Monitoring procedures for Licensure Examination**

28 The board will not address this rule as Ms. Ford stated the board discussed examination rules during the
29 rules workshop. The board determined at that time no amendments are recommended until the board has all
30 the information regarding the examinations.

31 **Tab 86 64B7-25.004, F.A.C.; Endorsement**

32 The board had originally approved the amendments to this rule at the April 21, 2011 board meeting. Mr.
33 Jusevitch referred the board to subsection (1)(c).

34 **Action taken:** Ms. Burke-Wammack moved to amend (1)(c) to read “Holds an active” license...”. Ms. Nixon
35 seconded the motion which carried 4/0. The rule will read as follows:

36 **64B7-25.004 Endorsements.**

37 (1) The Department shall issue a license by endorsement to a person who:

38 (a) No change.

39 (b) Submits a completed application on form DH-MQA 1115, “Application For Licensure,” (Rev. 10/10),
40 adopted and incorporated by reference in Rule 64B7-25.001, F.A.C.; The form and attached instructions may

1 be obtained from the Board office at 4052 Bald Cypress Way, Bin C-6, Tallahassee, FL 32399-3265 or from
2 the web site located at http://www.doh.state.fl.us/mqa/massage/ma_lic_req; and

3 (c) Holds an active license and has practiced massage under the laws of another state, and was
4 required, in order to be so licensed, to meet standards of education or apprenticeship training substantially
5 similar to, equivalent to, or more stringent than those required for licensure by Florida law and these rules;
6 and

7 (d) Demonstrates that his or her out-of-state license was issued upon the satisfactory completion of an
8 examination comparable to the examinations approved by the Board; and

9 (e) Has no outstanding or unresolved complaints filed against his or her license ~~him or her~~ in the
10 jurisdiction of licensure; and-

11 (f) Completes a current ~~curriculum~~ course or courses from a Board approved school or a Board approved
12 continuing education provider in the following subjects: covering the Florida Statutes and rules related to
13 massage therapy.

14 1. Florida Statutes and Rules relating to massage therapy including Chapters 456 and 480 and Rule
15 64B7, F.A.C. for a minimum of ten (10) hours;

16 2. ~~(g) Completes the HIV/AIDS course required by s. 456.033 and requirement in Rule 64B7-25.0012,~~
17 F.A.C., for a minimum of three (3) hours; and

18 3. ~~(h) Completes a course relating to the Prevention of medical errors as required by Section~~
19 ~~456.013(7), F.S., for a minimum of two (2) hours.~~

20 (2) No change.

21 **Tab 87 64B7-26.002, F.A.C.; Licensure of Massage Establishments**

22 **Action taken:** Ms. Burke-Wammack moved to accept the changes as written and Mr. Smallwood seconded
23 the motion. Motion passed 4/0. The rule will read as follows:

24 **64B7-26.002 Licensure of Massage Establishments.**

25 (1) Each establishment, shall obtain a license from the Department as required by Section 480.043(1),
26 Florida Statutes, by submitting a completed form BMT3 (~~Rev. 10/10 4/08~~), Massage Establishment Licensure
27 Application, incorporated herein by reference, together with the fee set forth in Rule 64B7-27.003, F.A.C. The
28 form and the attached instructions may be obtained from the Board office at 4052 Bald Cypress Way, Bin C-
29 06, Tallahassee, Florida 32399 or from the website located at
30 http://www.doh.state.fl.us/mqa/massage/ap_business.pdf.

31 Ms. Gustafson then asked the board the following questions regarding the rules they had previously
32 approved:

33 1. Will the proposed rule amendments have an adverse impact on small businesses or will the proposed rule
34 amendments be likely to directly or indirectly increase regulatory costs to any entity including government in
35 excess of \$200,000 in the aggregate in Florida within one year after implementation of the rules?

36 **Action Taken:** Mr. Smallwood moved that the proposed rule amendments will not have the above stated
37 impact. Ms. Burke-Wammack seconded the motion which passed 4/0.

38 2. Will the rule amendments increase regulatory costs in the amount of \$1M or more in the first five years of
39 implementation and which would result in the requirement of legislative ratification of the rules?

40 **Action Taken:** Ms. Ford moved that the proposed rule amendments will not have the above stated impact.
41 Ms. Burke-Wammack seconded the motion which passed 4/0.

42 3. Are there any documents or other information relied on by the board in making these determinations other
43 than the board's expertise in the practice and regulation of massage therapy?

1 **Action Taken:** Mr. Smallwood moved there were no further documents relied on in making this
2 determination. Ms. Burke-Wammack seconded the motion which passed 4/0.

3 **Tab 88 64B7-27.001, F.A.C.; Fees**

4
5 Ms. Burke-Wammack moved to delete section (5) and (6) of the proposed draft which referenced
6 reexaminations and renumber subsections. Ms. Ford seconded the motion which passed 4/0.

7 The board by consensus determined to retain the unlicensed activity fee in this proposed draft.

8 The board discussed the delinquency and reactivation fees and that they should read \$100.

9 Ms. Ford requested Ms. Gustafson to review the rule in its entirety and bring back a draft to the board on
10 Friday.

11 **Tab 89 64B7-28.008, F.A.C.; Display of Licenses**

12 **Action taken:** Ms. Ford moved to proceed with rulemaking since this rule was previously approved at the
13 April 21, 2011 meeting, and to add an effective date of October 1, 2012. Mr. Smallwood seconded the motion
14 which carried 4/0. The rule will read as follows:

15 **64B7-28.008 Display of Licenses.**

16 (1) Each licensed practitioner shall conspicuously display a current license issued by the Department, or
17 photo copy thereof, at each location at which he or she practices. Effective on October 1, 2012, the licensee
18 must attach to the displayed license a 2 inch by 2 inch photograph of the individual whose name appears on
19 the certificate which was taken within the previous two years.

20 (2) Each apprentice shall conspicuously display his or her apprentice certificate issued by the Board
21 office, in the establishment for which it has been issued. Effective on October 1, 2012, the licensee must
22 attach to the displayed license a 2 inch by 2 inch photograph of the individual whose name appears on the
23 certificate which was taken within the previous two years.

24 (3) The owner of each massage establishment shall conspicuously display a current establishment
25 license issued by the Department on the premises.

26 Law implemented for this rule is section 456.072(1)(t), F.S.

27 Ms. Gustafson then asked the board the following questions regarding rule 64B7-28.008:

28 **1.** Will the proposed rule amendments have an adverse impact on small businesses or will the proposed rule
29 amendments be likely to directly or indirectly increase regulatory costs to any entity including government in
30 excess of \$200,000 in the aggregate in Florida within one year after implementation of the rules?

31 **Action Taken:** Mr. Smallwood moved that the proposed rule amendments will not have the above stated
32 impact. Ms. Ford seconded the motion which passed 4/0.

33 **2.** Will the rule amendments increase regulatory costs in the amount of \$1M or more in the first five years of
34 implementation and which would result in the requirement of legislative ratification of the rules?

35 **Action Taken:** Ms. Ford moved that the proposed rule amendments will not have the above stated impact.
36 Mr. Smallwood seconded the motion which passed 4/0.

37 **3.** Are there any documents or other information relied on by the board in making these determinations other
38 than the board's expertise in the practice and regulation of massage therapy and the estimated costs of
39 notifying licensees by postcard?

1 **Action Taken:** Mr. Smallwood moved there were no further documents relied on in making this
2 determination other than expertise of board staff, board counsel and department investigators. Ms. Burke-
3 Wammack seconded the motion which passed 4/0.
4
5

6 **Tab 90 64B7-28.009, F.A.C.; Continuing Education**

7 After review of this rule which is a substantial rewrite, the Chair requested Ms. Gustafson to rewrite the rule
8 and bring back a draft on Friday.
9

10
11 **Tab 91 64B7-28.0095, F.A.C.; Continuing Education for Pro Bono Services**

12 Action taken: Ms. Ford moved to approve the proposed rule. Mr. Smallwood seconded the motion which
13 carried 4/0. The rule will read as follows:

14 **64B7-28.0095 Continuing Education for Pro Bono Services.**

15 (1) Up to 6 hours of continuing education per biennium in satisfaction of the live classroom hours that
16 include instruction, demonstration and/or hands on practice in Rule paragraph 64B7-28.009(3)(a), F.A.C.,
17 may be awarded for the performance of pro bono services to the indigent, underserved populations or in
18 areas of critical need within the state where the licensee practices. The standard for determining indigence
19 shall be that recognized by the Federal Poverty income guidelines produced by the United States
20 Department of Health and Human Services.

21 (2) In order to receive credit under this rule, the licensee must receive prior approval from the Board by
22 submitting a formal request for approval on form DH-MQA 1243 "Request for Pro Bono Services (rev. 10/10),
23 which must include the following information:

24 (a) through (d) No change.

25 (3) through (4) No change.

26 (5) An affidavit of completion of preapproved services performed must be submitted on form # DH-MQA
27 1244 "Affidavit Completing Pro Bono Services"(eff. 10/10), to the Board office in order to receive continuing
28 education credit.

29 (6) The forms and any instructions, incorporated herein by reference, may be obtained from the Board of
30 Massage Therapy, ATTN: Pro Bono Services, 4052 Bald Cypress Way #C-06, Tallahassee, FL 32399-3256
31 or from the website located at <http://www.doh.state.fl.us/MQA/massage>

32 Ms. Gustafson then asked the board the following questions regarding rule 64B7-28.0095:

33 1. Will the proposed rule amendments have an adverse impact on small businesses or will the proposed rule
34 amendments be likely to directly or indirectly increase regulatory costs to any entity including government in
35 excess of \$200,000 in the aggregate in Florida within one year after implementation of the rules?

36 **Action Taken:** Ms. Burke-Wammack moved that the proposed rule amendments will not have the above
37 stated impact. Ms. Ford seconded the motion which passed 4/0.

38 2. Will the rule amendments increase regulatory costs in the amount of \$1M or more in the first five years of
39 implementation and which would result in the requirement of legislative ratification of the rules?

40 **Action Taken:** Ms. Burke-Wammack moved that the proposed rule amendments will not have the above
41 stated impact. Ms. Nixon seconded the motion which passed 4/0.

42 3. Are there any documents or other information relied on by the board in making these determinations other
43 than the board's expertise in the practice and regulation of massage therapy?

44 **Action Taken:** Ms. Burke-Wammack moved there were no further documents relied on in making this
45 determination. Ms. Nixon seconded the motion which passed 4/0.

1 **Tab 92 64B7-28.010, F.A.C.; Requirements for Board Approval of Continuing Education Programs**

2 Ms. Burke-Wammack prepared a substantial rewrite. She amended the non-refundable application fee to
3 read \$100 and in subsection (9) amended the renewal fee to \$50.

4 Mr. Smallwood reminded the board about the three (3) course requirement now for new providers and that
5 the language should be included. Also, to possibly change CE Broker to read a continuing education
6 electronic tracking system.

7 Mr. Jusevitch advised board staff will bring previous rewrites of this rule to the next meeting for review and
8 the board concurred.

9 **Tab 93 64B7-29.003, F.A.C.; Apprenticeship Training Program**

10 The Chair asked if the board wished to seek a statutory change to repeal the apprenticeship avenue for
11 licensure. Mr. Smallwood recommended postponing the response to this question for a more thorough and
12 thoughtful response. The board concurred.

13 The board by consensus, agreed to delay the discussion of this rule until the next board meeting allowing
14 Ms. Oliver the opportunity to be present since she drafted the rule.

15 **Tab 94 64B7-30.002, F.A.C.; Disciplinary Guidelines**

16 It was recommended Ms. Gustafson, Ms. DiConcilio and Mr. Jusevitch review the rule for presentation to the
17 board at its next meeting.

18 Ms. Mask advised the board Ms. Burke-Wammack had provided drafts of rules 64B7-28.001 and 64B7-
19 28.002 and they were provided as a handout. The board requested they be presented at the next meeting.

20 **The board recessed approximately 5:25 p.m. to reconvene on Thursday.**