

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

MINUTES  
GENERAL BUSINESS MEETING  
October 20-21, 2011

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

1 **Thursday, October 20, 2011**

2 The meeting was called to order by Ms. Karen Ford, LMT, Chair, approximately 9:00 a.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  
William Stoehs, Consumer Member

**MEMBER ABSENT:**

Lisa Oliver, Consumer Member (Excused)

**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 **DISCIPLINARY PROCEEDINGS**

7 **Settlement Agreements**

8 Settlement agreement cases, tabs 1, 4, 5, 6, 7, 8, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24 and 26 listed  
9 below, were voted on en masse.

10 The respondents were not present nor represented by counsel unless noted under the appropriate tab. Ms.  
11 DiConcilio and Ms. Shah represented the Department and presented the cases to the Board, clarifying actual  
12 costs in each of the cases. Mr. Stoehs was recused due to participation on the probable cause panel.

13 **Tab 1 CRISTINE E. DRAKE, LMT, CASE # 2010-20334**

**PCP: Haynes & Stoehs**

- 14 • Reprimand  
15 • Pay \$ 250 fine within 180 days of the filed final order  
16 • Pay \$ 416.10 costs within 180 days of the filed final order

- 1 **Tab 4 MASSAGE FOR FITNESS, INC., CASE # 2010-22912** **PCP: Haynes & Stoehs**  
2 • Reprimand  
3 • Pay \$ 250 fine within 30 days of the filed final order  
4 • Pay \$ 198.35 costs within 30 days of the filed final order
- 5 **Tab 5 AIMEE MARIE MOWERY, LMT, CASE # 2010-18314** **PCP: Haynes & Stoehs**  
6 • Reprimand  
7 • Pay \$ 150 fine within 180 days of the filed final order  
8 • Pay \$ 470.20 costs within 180 days of the filed final order
- 9 **Tab 6 BEACHES DAY SPA, CASE # 2010-14491** **PCP: Haynes & Stoehs**  
10 • Reprimand  
11 • Pay \$ 1,250 fine within 90 days of the filed final order  
12 • Pay \$ 695.46 costs within 90 days of the filed final order
- 13 **Tab 7 GLAISTER ANTHONY NOTICE, LMT, CASE # 2010-13157** **PCP: Haynes & Stoehs**  
14 • Reprimand  
15 • Pay \$ 200 fine within 30 days of the filed final order  
16 • Pay \$ 376.80 costs within 30 days of the filed final order
- 17 **Tab 8 NATURAL HEALING ARTS MEDICAL CENTER, INC., CASE # 2010-17052**  
18 **PCP: Haynes & Stoehs**  
19 • Reprimand  
20 • Pay \$ 1,000 fine within 90 days of the filed final order  
21 • Pay \$ 1,579.86 costs within 90 days of the filed final order
- 22 **Tab 10 MICHELE KRATOCHVIL, LMT, CASE # 2010-17030** **PCP: Haynes & Stoehs**  
23 • Reprimand  
24 • Pay \$ 800 fine within 90 days of the filed final order  
25 • Pay \$ 421.92 costs within 90 days of the filed final order
- 26 **Tab 11 ANDREA L. CROYLE, LMT, CASE # 2010-19161** **PCP: Haynes & Stoehs**  
27 • Reprimand  
28 • Pay \$ 150 fine within 30 days of the filed final order  
29 • Pay \$ 1,042.39 costs within 30 days of the filed final order
- 30 **Tab 12 DAWN M. CROSBY, LMT, CASE # 2010-14303** **PCP: Harrison & Stoehs**  
31 • Reprimand  
32 • Pay \$ 200 fine within 90 days of the filed final order  
33 • Pay \$ 538.42 costs within 90 days of the filed final order
- 34 **Tab 13 TIPSY SALON SPA & LOUNGE, CASE # 2010-22465** **PCP: Haynes & Stoehs**  
35 • Reprimand; Suspension until all fines and costs are paid in case #2010-14207 (\$250  
36 Fine and \$122 costs)  
37 • Pay \$ 250 fine within 30 days of the filed final order  
38 • Pay \$ 310.29 costs within 30 days of the filed final order
- 39 **Tab 16 BECKY L. SPICER, LMT, CASE # 2010-14530** **PCP: Haynes & Stoehs**  
40 • Reprimand  
41 • Pay \$ 400 fine within 30 days of the filed final order  
42 • Pay \$ 308.76 costs within 30 days of the filed final order

1 **Tab 17 CORRIE L. WICKLAND, LMT, CASE # 2010-23818** **PCP: Haynes & Stoehs**  
2 • Reprimand  
3 • Pay \$ 675 fine within 365 days of the filed final order  
4 • Pay \$ 428.16 costs within 365 days of the filed final order

5 **Tab 18 MARLO A. WIESE, LMT, CASE # 2010-14527** **PCP: Haynes & Stoehs**  
6 • Reprimand  
7 • Pay \$ 350 fine within 365 days of the filed final order  
8 • Pay \$ 354.10 costs within 365 days of the filed final order

9 **Tab 19 ALEXANDRA GISETTI, LMT, CASE # 2010-14528** **PCP: Haynes & Stoehs**  
10 • Reprimand  
11 • Pay \$ 100 fine within 365 days of the filed final order  
12 • Pay \$ 353.39 costs within 365 days of the filed final order

13 **Tab 20 TAMMY E. OVERTON, LMT, CASE # 2010-23809** **PCP: Haynes & Stoehs**  
14 • Reprimand  
15 • Pay \$ 100 fine within 365 days of the filed final order  
16 • Pay \$ 442.18 costs within 365 days of the filed final order

17 **Tab 23 MARCIA CECILIA MONTERO, LMT, CASE # 2010-22945** **PCP: Haynes & Stoehs**  
18 • Reprimand  
19 • Pay \$ 325 fine within 365 days of the filed final order  
20 • Pay \$ 436.33 costs within 365 days of the filed final order

21 **Tab 24 VALERIE ANN SHUSS, LMT, CASE # 2010-23825** **PCP: Haynes & Stoehs**  
22 • Reprimand  
23 • Pay \$ 625 fine within 365 days of the filed final order  
24 • Pay \$ 434.95 costs within 365 days of the filed final order

25 **Tab 26 DARYL J. RUSSELL, LMT, CASE # 2011-01427** **PCP: Harrison & Stoehs**  
26 • Counts I, II, and III of the Administrative Complaint are dismissed  
27 • Pay \$ 250 fine within 365 days of the filed final order  
28 • Pay \$ 2,264.21 costs within 365 days of the filed final order

29 **Action Taken:** Mr. Smallwood moved to accept the Settlement Agreements as presented for the above  
30 listed tabs. Ms. Nixon seconded the motion, which passed 4/0.

31 **Tab 2 SOUTHSIDE SPA AND TAN, LLC, CASE # 2010-16858** **PCP: Harrison & Stoehs**

32 Respondent was not present nor represented by counsel. Ms. DiConcilio represented the department. Mr.  
33 Stoehs was recused due to participation on the probable cause panel.

34 The department filed an administrative complaint alleging a violation of sections 480.046(1)(o), F.S., and rule  
35 64B7-26.010(1), (2), (3) & (4), F.A.C. Ms. DiConcilio presented the recommended settlement agreement:

36 • Reprimand  
37 • Pay \$1,250 fine within 90 days of the filed final order  
38 • Pay \$1,389 costs within 90 days of the filed final order  
39 • Probation – 1 year

- 1                                   o DOH make 4 unannounced inspections, once each quarter and pay \$100 for  
2                                   each quarterly probation inspection

3 **Action Taken:** Mr. Smallwood moved to approve the Settlement Agreement as presented. Ms. Ford  
4 seconded the motion, which passed 3/1 with Ms. Burke-Wammack opposing the motion.

5 **Tab 3 CHAE I. JEONG, LMT, CASE # 2010-13126                                   PCP: Haynes & Stoehs**

6 Respondent was not present nor represented by counsel. Ms. DiConcilio represented the department. Mr.  
7 Stoehs was recused due to participation on the probable cause panel.

8 **Action Taken:** Ms. Burke-Wammack moved to return the case to the probable cause panel for an amended  
9 administrative complaint. Mr. Smallwood seconded the motion which carried 3/1.

10 **Tab 9 ENRIQUE VELA-LOPEZ, LMT, CASE # 2007-10284                                   PCP: Harrison & Stoehs**

11 Respondent was not present nor represented by his counsel, Jerry Wilson foster, Esq.. Ms. DiConcilio  
12 represented the department.

13 The department filed an administrative complaint alleging violations of 480.046(1)(o), 456.072(1)(a) and  
14 480.046(1)(i), F.S.

15 **Action taken:** Ms. Burke-Wammack moved to reject the settlement agreement and offered a counter-  
16 agreement to reflect:

- 17                                   • Revocation  
18                                   • Pay \$ 1,500 fine within 90 days of the filed final order  
19                                   • Pay \$ 3,899.96 costs within 90 days of the filed final order

20 Mr. Smallwood seconded the motion which carried 4/0. Mr. Stoehs was recused due to participation on the  
21 probable cause panel.

22 **Tab 14 JOHN LEHMANN, LMT, CASE # 2010-13948                                   PCP: Haynes & Stoehs**

- 23                                   • Reprimand  
24                                   • Pay \$ 200 fine within 30 days of the filed final order  
25                                   • Pay \$ 1,241.27 costs within 30 days of the filed final order

26 **Action Taken:** Mr. Smallwood moved to accept the settlement agreement. Ms. Nixon seconded the motion  
27 which carried 4/0. Mr. Stoehs was recused due to participation on the probable cause panel.

28 **Additional Action Taken:** Ms. Ford moved to refer for further investigation for fraudulent billing. Ms. Burke-  
29 Wammack seconded the motion which carried 4/0.

30 **Tab 15 FAITH PECHTER D/B/A SALON W AND SPA ESSENTIALS, CASE # 2010-13854                                   PCP: Haynes & Stoehs**

- 31                                   • Reprimand  
32                                   • Pay \$ 250 fine within 90 days of the filed final order  
33                                   • Pay \$ 833.34 costs within 90 days of the filed final order  
34

35 **Action Taken:** Mr. Smallwood moved to accept the settlement agreement. Ms. Nixon seconded the motion  
36 which carried 4/0. Mr. Stoehs was recused due to participation on the probable cause panel.

1 **Tab 21 PAMELA M. LAURIA, LMT, CASE # 2010-16918** **PCP: Harrison & Stoehs**

- 2
- 3 • Reprimand
  - 4 • Pay \$ 450 fine within 180 days of the filed final order
  - 5 • Pay \$ 951 costs within 180 days of the filed final order

6 **Action Taken:** Ms. Burke-Wammack moved to accept the settlement agreement. Ms. Nixon seconded the motion which carried 4/0. Mr. Stoehs was recused due to participation on the probable cause panel.

7 **Tab 22 AJA HEALTH SPA, CASE # 2010-20571** **PCP: Haynes & Stoehs**

8 Respondent, Barry Akins, was present along with his counsel, William Rusty Huseman, Esq. Both were  
9 sworn in by the court reporter. Ms. Shah presented the case to the board.

10 After testimony by the respondent and counsel and discussion by the board, the following action was taken:

11 **Action taken:** Mr. Smallwood moved to accept the settlement agreement.

- 12
- 13 • Reprimand
  - 14 • Pay \$ 2,500 fine within 365 days of the filed final order
  - 15 • Pay \$ 842.56 costs within 365 days of the filed final order
  - 16 • Probation – 1 year
    - 17 ○ 4 unannounced inspections at \$100 per inspection
    - 18 ○ If respondent sells, closes the establishment, or otherwise transfers title and/or
    - 19 ownership of Respondent to another party prior to termination of probation, then
    - 20 Barry Akins, may not be granted another massage establishment license in
    - 21 Florida.

21 Ms. Nixon seconded the motion which carried 3/1 with Ms. Burke-Wammack opposing the motion.

22 *(Break)*

23 **Tab 25 MARLENE MORALES, LMT, CASE # 2010-18519** **PCP: Harrison & Stoehs**

- 24
- 25 • Reprimand
  - 26 • Pay \$ 250 fine within 365 days of the filed final order
  - 27 • Pay \$ 209.51 costs within 365days of the filed final order

28 **Action Taken:** Ms. Burke-Wammack moved to accept the settlement agreement. Mr. Smallwood seconded the motion which carried 4/0. Mr. Stoehs was recused due to participation on the probable cause panel.

29 *(Agenda out of order)*

30 **INFORMATIONAL**

31 **PRN Presentation – Dr. Judy Rivenbark, Medical Director**

32 Dr. Rivenbark gave a brief description of the PRN program.

1 **DISCIPLINARY PROCEEDINGS (CONTINUED)**

2 **Voluntary Relinquishments**

3 Voluntary Relinquishment cases, tabs 27, 35, 36 and 39 listed below, were voted on en masse.

4 Respondents were not present nor represented by counsel. Ms. DiConcilio and Ms. Shah represented the  
5 Department. Mr. Stoehs was recused due to participation on the probable cause panel.

6	<b>Tab 27 SHANNON G. LUTHER, LMT, CASE # 2010-18852</b>	<b>PCP: Haynes &amp; Stoehs</b>
7	<b>Tab 35 FLORIDA SUN &amp; SPA, CASE # 2008-07166</b>	<b>PCP: Harrison &amp; Stoehs</b>
8	<b>Tab 36 BAYMEADOW CARER, INC., CASE # 2010-05132</b>	<b>PCP: Haynes &amp; Stoehs</b>
9	<b>Tab 39 EDWARD P. BALAN, LMT, CASE # 2010-16322</b>	<b>PCP: Haynes &amp; Stoehs</b>

10 **Action Taken:** Mr. Smallwood moved to accept the voluntary relinquishment of licensure for the above listed  
11 tabs. Ms. Burke-Wammack seconded the motion which passed 4/0.

12 Voluntary Relinquishment cases, tabs 28, 29, 30, 31, 32, 33, 34, 37 and 38 listed below, were voted on en  
13 masse.

14 Respondents were not present nor represented by counsel. Ms. DiConcilio and Ms. Shah represented the  
15 Department.

16	<b>Tab 28 WHITFIELD CHIROPRACTIC &amp; MASSAGE CLINIC, LLC, CASE # 2011-08120</b>	<b>PCP: Waived</b>
17	<b>Tab 29 TIMOTHY P. WOODBURY, LMT, CASE # 2011-06528</b>	<b>PCP: Waived</b>
18	<b>Tab 30 HEALTH RELAXATION SERVICE CORP, DBA, TOKYO SPA, CASE # 2011-06725</b>	<b>PCP: Waived</b>
19	<b>Tab 31 WELLNESS CENTER OF TAMPA, INC., CASE # 2011-08121</b>	<b>PCP: Waived</b>
20	<b>Tab 32 ISLAND THERAPY, LLC, CASE # 2011-09259</b>	<b>PCP: Waived</b>
21	<b>Tab 33 LAURIE LAFLEUR ECKEL, LMT, CASE # 2011-06976</b>	<b>PCP: Waived</b>
22	<b>Tab 34 MARIA D. VALENCIA, LMT, CASE # 2011-05241</b>	<b>PCP: Waived</b>
23	<b>Tab 37 TOTALLY NAILS, HAIR &amp; TANNING, INC., CASE # 2011-06469</b>	<b>PCP: Waived</b>
24	<b>Tab 38 FAITH ANN SWIFT, LMT, CASE # 2011-02001</b>	<b>PCP: Waived</b>

25 **Action Taken:** Ms. Burke-Wammack moved to accept the voluntary relinquishment of licensure for the  
26 above listed cases. Mr. Stoehs seconded the motion which passed 5/0.

27 **Determination of Waiver**

28 **Tab 40 DAYRON ESCOBAR, LMT, CASE # 2010-20538** **PCP: Harrison & Stoehs**

29 Respondent was not present, nor represented by counsel. Ms. DiConcilio represented the department and  
30 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
31 Stoehs was recused due to participation on the probable cause panel.

32 The department filed an administrative complaint alleging a violation of sections 480.046(1)(o),  
33 456.072(1)(v), 456.063(1), 480.046(1)(h), and 480.0485, F.S., and rule 64B7-26.010(1), (3) and (4), F.A.C.

34 Ms. Burke-Wammack moved to find that the respondent was properly served and waived their rights to a  
35 hearing as to the material issues of fact by not filing a response. Mr. Smallwood seconded the motion which  
36 carried 4/0.

1 Ms. Nixon moved to adopt the material facts as alleged in the administrative complaint are not in dispute and  
2 to adopt the allegations of fact and law in the administrative complaint as the Board's conclusions of fact and  
3 law in this proceeding; and to adopt the materials and any addendum materials into evidence in this  
4 proceeding. Ms. Burke-Wammack seconded the motion which carried 4/0.

5 **Action Taken:** After discussion Mr. Smallwood moved to IMPOSE the following penalty:

- 6 • Reprimand; revocation
- 7 • Pay \$ 5,500 fine within 90 days of the filed final order
- 8 • Pay \$ 3,327.37 costs within 90 days of the filed final order

9 Ms. Nixon seconded the motion, which passed 4/0.

10 **Tab 41 ORIENTAL MASSAGE CENTER, CASE # 2010-18525** **PCP: Harrison & Stoehs**

11 Respondent was not present, nor represented by counsel. Ms. DiConcilio represented the department and  
12 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
13 Stoehs was recused due to participation on the probable cause panel.

14 The department filed an administrative complaint alleging a violation of sections 480.046(1)(o) and  
15 456.072(1)(q), F.S.

16 Ms. Burke-Wammack moved to find that the respondent was properly served and waived their rights to a  
17 hearing as to the material issues of fact by not filing a response. Mr. Smallwood seconded the motion which  
18 carried 4/0.

19 Ms. Burke-Wammack moved to adopt the material facts as alleged in the administrative complaint are not in  
20 dispute and to adopt the allegations of fact and law in the administrative complaint as the Board's  
21 conclusions of fact and law in this proceeding; and to adopt the materials and any addendum materials into  
22 evidence in this proceeding. Ms. Nixon seconded the motion which carried 4/0.

23 **Action Taken:** After discussion Ms. Burke-Wammack moved to IMPOSE the following penalty:

- 24 • Reprimand; revocation
- 25 • Pay \$250 fine within 30 days of the filed final order
- 26 • Pay \$416.57 costs within 30 days of the filed final order

27 Ms. Nixon seconded the motion, which passed 4/0.

28 **Tab 42 NEREIDA A. MONTEJO, LMT, CASE # 2010-18814** **PCP: Harrison & Stoehs**

29 Respondent was not present nor represented by counsel. Ms. DiConcilio represented the department and  
30 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
31 Stoehs was recused due to participation on the probable cause panel.

32 The department filed an administrative complaint alleging a violation of sections 480.046(1)(o) and  
33 456.072.(1)(q), F.S.

34 Mr. Smallwood moved to find that the respondent was properly served and waived their rights to a hearing as  
35 to the material issues of fact by not filing a response. Ms. Burke-Wammack seconded the motion which  
36 carried 4/0.

37 Ms. Burke-Wammack moved to adopt the material facts as alleged in the administrative complaint are not in  
38 dispute and to adopt the allegations of fact and law in the administrative complaint as the Board's

1 conclusions of fact and law in this proceeding; and to adopt the materials and any addendum materials into  
2 evidence in this proceeding. Mr. Smallwood seconded the motion which carried 4/0.

3 **Action Taken:** After discussion Ms. Burke-Wammack moved to IMPOSE the following penalty:

- 4 • Reprimand; suspension until pays fine and cost imposed in Case # 2010-08876 and
- 5 demonstrates compliance with each and every term of the final order in that case
- 6 • Pay \$250 fine within 60 days of the filed final order
- 7 • Pay \$394 costs within 60 days of the filed final order

8 Ms. Ford seconded the motion, which passed 4/0.

9 **Tab 43 WHITE SANDS SPA, CASE # 2010-05041**

**PCP: Harrison & Stoehs**

10 Respondent was not present nor represented by counsel. Ms. DiConcilio represented the department and  
11 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
12 Stoehs was recused due to participation on the probable cause panel.

13 The department filed an administrative complaint alleging a violation of sections 480.046(1)(o), 480.0485 and  
14 456.063(1), F.S., and rule 64B7-26.010(1), (2), (3) and (4), F.A.C.

15 Ms. Burke-Wammack moved to find that the respondent was properly served and waived their rights to a  
16 hearing as to the material issues of fact by not filing a response. Ms. Nixon seconded the motion which  
17 carried 4/0.

18 Ms. Burke-Wammack moved to adopt the material facts as alleged in the administrative complaint are not in  
19 dispute and to adopt the allegations of fact and law in the administrative complaint as the Board's  
20 conclusions of fact and law in this proceeding; and to adopt the materials and any addendum materials into  
21 evidence in this proceeding. Ms. Nixon seconded the motion which carried 4/0.

22 **Action Taken:** After discussion Ms. Burke-Wammack moved to IMPOSE the following penalty:

- 23 • Reprimand
- 24 • Pay \$2,500 fine within 30 days of the filed final order
- 25 • Pay \$2,082.51 costs within 30 days of the filed final order
- 26 • Owners of establishment, Bridget Montano and Lisa Hankins, are prohibited from  
27 holding a massage establishment license in the future

28 Mr. Smallwood seconded the motion, which passed 4/0.

29 **Tab 44 THERESA M. CIPOLLONI, CASE # 2010-17392**

**PCP: Haynes & Stoehs**

30 Respondent was not present nor represented by counsel. Ms. DiConcilio represented the department and  
31 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
32 Stoehs was recused due to participation on the probable cause panel.

33 The department filed an administrative complaint alleging a violation of sections 480.046(1)(n),  
34 480.046(1)(o), 480.047(1)(b) and 480.0465, F.S., and rule 64B7-26.010(1), (2), (3) and (4), F.A.C. It was  
35 noted for the record in the body of paragraph 17 in the Administrative Complaint, a reference was made to s.  
36 480.043(b) when it should have read s. 480.043(6).

37 Mr. Smallwood moved to find that the respondent was properly served and waived their rights to a hearing as  
38 to the material issues of fact by not filing a response. Ms. Burke-Wammack seconded the motion which  
39 carried 4/0.

1 Mr. Smallwood moved to adopt the material facts as alleged in the administrative complaint are not in dispute  
2 and to adopt the allegations of fact and law in the administrative complaint as the Board's conclusions of fact  
3 and law in this proceeding; and to adopt the materials and any addendum materials into evidence in this  
4 proceeding. Ms. Burke-Wammack seconded the motion which carried 4/0.

5 **Action Taken:** After discussion Mr. Smallwood moved to IMPOSE the following penalty:

- 6 • Reprimand
- 7 • Pay \$1,050.00 fine within 30 days of the filed final order
- 8 • Pay \$506.21 costs within 30 days of the filed final order

9 Ms. Ford seconded the motion, which passed 4/0.

10 *(Agenda moved out of order)*

11 **Informal Hearings**

12 **Tab 56 REBEKAH LYNN BARBER-BRENNAN, LMT, CASE # 2010-14531 PCP: Haynes & Stoehs**

13 Respondent was present and was duly sworn in by the court reporter. Respondent was not represented by  
14 counsel. Ms. DiConcilio represented the Department and presented the case to the Board. Mr. Stoehs was  
15 recused due to participation on the probable cause panel.

16 The Department filed an administrative complaint alleging a violation of section 480.046(1)(n), F.S.

17 Mr. Smallwood moved to adopt the material facts as alleged in the Administrative Complaint are not in  
18 dispute and to adopt the allegations of fact in the administrative complaint as the Board's conclusions of fact  
19 in this proceeding. Ms. Burke-Wammack seconded the motion which carried 4/0.

20 Respondent addressed the Board and gave an account of the events surrounding the material facts of the  
21 complaint.

22 Mr. Smallwood moved to adopt the allegations of law in the administrative complaint as the Board's  
23 conclusions of law in this proceeding, and to adopt the case materials and any materials in the addendum  
24 into evidence as a part of the record in this proceeding. Ms. Nixon seconded the motion which passed 4/0.

25 **Action Taken:** After lengthy discussion, Ms. Burke-Wammack moved to IMPOSE the following penalty:

- 26 • Reprimand
- 27 • Pay \$400 fine within 180 days of the filed final order
- 28 • Pay \$ 453.80 costs within 180days of the filed final order

29 Motion was seconded and passed 4/0.

30 **Tab 57 JOLENE M. MCDUFFIE, LMT, CASE # 2010-16960 PCP: Haynes & Stoehs**

31 Respondent was present and was duly sworn in by the court reporter. Respondent was not represented by  
32 counsel. Ms. DiConcilio represented the Department and presented the case to the Board. Mr. Stoehs was  
33 recused due to participation on the probable cause panel. For the record, Ms. Ford made note she was the  
34 complainant in this case and stated she could give an unbiased opinion in this case. The respondent had no  
35 objection.

1 The Department filed an administrative complaint alleging a violation of sections 480.046(1)(n),  
2 480.046(1)(o) and 480.047(1)(b), F.S.

3 Ms. Burke-Wammack moved to adopt the material facts as alleged in the Administrative Complaint are not in  
4 dispute and to adopt the allegations of fact in the administrative complaint as the Board's conclusions of fact  
5 in this proceeding. Ms. Nixon seconded the motion which carried 4/0.

6 Respondent addressed the Board and gave an account of the events surrounding the material facts of the  
7 complaint.

8 Ms. Burke-Wammack moved to adopt the allegations of law in the administrative complaint as the Board's  
9 conclusions of law in this proceeding, and to adopt the case materials and any materials in the addendum  
10 into evidence as a part of the record in this proceeding. Mr. Smallwood seconded the motion which passed  
11 4/0.

12 The board discussed the following penalty: Reprimand, pay \$400 fine and \$1,069.14 costs within one year.

13 **Actions Taken:** Ms. Burke-Wammack moved to reconsider the findings of adopting the facts based on new  
14 evidence presented by the respondent. Mr. Smallwood seconded the motion which carried 4/0.

15 Ms. Burke-Wammack moved to reject the conclusions of law which was seconded by Ms. Nixon and carried  
16 4/0.

17 **Final Action Taken:** After having heard testimony of respondent and argument of department counsel, Mr.  
18 Smallwood moved to DISMISS the administrative complaint. Ms. Burke-Wammack seconded and carried  
19 4/0.

20 *(Break for lunch)*

21 *(Returned to Determination of Waivers)*

22 **Tab 45 HEALTHQUEST FITNESS & THERAPY, INC., CASE # 2011-00133 PCP: Haynes & Stoehs**

23 Respondent was not present nor represented by counsel. Ms. DiConcilio represented the department and  
24 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
25 Stoehs was recused due to participation on the probable cause panel.

26 The department filed an administrative complaint alleging a violation of sections 480.046(1)(o) and  
27 456.072(1)(q), F.S.

28 Mr. Smallwood moved to find that the respondent was properly served and waived their rights to a hearing as  
29 to the material issues of fact by not filing a response. Ms. Nixon seconded the motion which carried 4/0.

30 Ms. Burke-Wammack moved to adopt the material facts as alleged in the administrative complaint are not in  
31 dispute and to adopt the allegations of fact and law in the administrative complaint as the Board's  
32 conclusions of fact and law in this proceeding; and to adopt the materials and any addendum materials into  
33 evidence in this proceeding. Ms. Nixon seconded the motion which carried 4/0.

34 **Action Taken:** After discussion Ms. Burke-Wammack moved to IMPOSE the following penalty:  
35 • Reprimand; suspension until respondent pays all fines and costs in this case and case #  
36 2010-14772.  
37 • Pay \$250 fine  
38 • Pay \$275.35 costs

1 Ms. Nixon seconded the motion which carried 4/0.

2 **Tab 46 BELLA SPA & SALON, LLC, CASE # 2011-00140**

**PCP: Haynes & Stoehs**

3 Respondent was not present nor represented by counsel. Ms. DiConcilio represented the department and  
4 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
5 Stoehs was recused due to participation on the probable cause panel.

6 The department filed an administrative complaint alleging a violation of sections 480.046(1)(o), and  
7 456.072(1)(q), F.S.

8 Ms. Burke-Wammack moved to find that the respondent was properly served and waived their rights to a  
9 hearing as to the material issues of fact by not filing a response. Mr. Smallwood seconded the motion which  
10 carried 4/0.

11 Ms. Burke-Wammack moved to adopt the material facts as alleged in the administrative complaint are not in  
12 dispute and to adopt the allegations of fact and law in the administrative complaint as the Board's  
13 conclusions of fact and law in this proceeding; and to adopt the materials and any addendum materials into  
14 evidence in this proceeding. Ms. Nixon seconded the motion which carried 4/0.

15 **Action Taken:** After discussion Mr. Smallwood moved to IMPOSE the following penalty:

- 16 • Reprimand; revocation based on previous discipline and the length of time since the
- 17 previous final order was entered with no contact from or attempt by respondent to
- 18 comply with that order
- 19 • Pay \$1,000 fine within 30 days of the filed final order
- 20 • Pay \$241.88 costs within 30 days of the filed final order

21 Ms. Nixon seconded the motion which carried 4/0.

22 **Tab 47 NATALIE TELFAIR, LMT, CASE # 2010-21367**

**PCP: Harrison & Stoehs**

23 Respondent was not present nor represented by counsel. Ms. DiConcilio represented the department and  
24 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
25 Stoehs was recused due to participation on the probable cause panel.

26 The department filed an administrative complaint alleging a violation of sections 480.046(1)(n), F.S.

27 Ms. Burke-Wammack moved to find that the respondent was properly served and waived their rights to a  
28 hearing as to the material issues of fact by not filing a response. Ms. Nixon seconded the motion which  
29 carried 4/0.

30 Ms. Nixon moved to adopt the material facts as alleged in the administrative complaint are not in dispute and  
31 to adopt the allegations of fact and law in the administrative complaint as the Board's conclusions of fact and  
32 law in this proceeding; and to adopt the materials and any addendum materials into evidence in this  
33 proceeding. Mr. Smallwood seconded the motion which carried 4/0.

34 **Action Taken:** After discussion Ms. Burke-Wammack moved to IMPOSE the following penalty:

- 35 • Reprimand
- 36 • Pay \$250 fine within 90 days of the filed final order
- 37 • Pay \$698.21 costs within 90 days of the filed final order

1 Ms. Ford seconded the motion which carried 4/0.

2 **Tab 48 LORI ELIZABETH HOOVER, LMT, CASE # 2010-16169** **PCP: Harrison & Stoehs**

3 Respondent was not present, nor represented by counsel. Ms. DiConcilio represented the department and  
4 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
5 Stoehs was recused due to participation on the probable cause panel.

6 The department filed an administrative complaint alleging a violation of sections 480.046(1)(c), 480.046(1)(o)  
7 and 456.072(1)(x), F.S.

8 Ms. Burke-Wammack moved to find that the respondent was properly served and waived their rights to a  
9 hearing as to the material issues of fact by not filing a response. Ms. Nixon seconded the motion which  
10 carried 4/0.

11 Mr. Smallwood moved to adopt the material facts as alleged in the administrative complaint are not in dispute  
12 and to adopt the allegations of fact and law in the administrative complaint as the Board's conclusions of fact  
13 and law in this proceeding; and to adopt the materials and any addendum materials into evidence in this  
14 proceeding. Ms. Ford seconded the motion which carried 4/0.

15 **Action Taken:** After discussion Ms. Ford moved to IMPOSE the following penalty:

- 16 • Reprimand; revocation based on violation of s. 456.0635, F.S.
- 17 • Pay \$750 fine within 30 days of the filed final order
- 18 • Pay \$1,765.45 costs within 30 days of the filed final order

19 Ms. Nixon seconded the motion which carried 4/0.

20 **Tab 49 SUSAN M. WORSKE, LMT, CASE # 2010-18626** **PCP: Harrison & Stoehs**

21 Respondent was not present nor represented by counsel. Ms. Shah represented the department and  
22 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
23 Stoehs was recused due to participation on the probable cause panel.

24 The department filed an administrative complaint alleging a violation of section 480.046(1)(k), F.S.

25 Ms. Nixon moved to find that the respondent was properly served and waived their rights to a hearing as to  
26 the material issues of fact by not filing a response. Mr. Stoehs seconded the motion which carried 4/0.

27 Ms. Nixon moved to adopt the material facts as alleged in the administrative complaint are not in dispute and  
28 to adopt the allegations of fact as the Board's conclusions of fact in this proceeding. Mr. Smallwood  
29 seconded the motion which carried 4/0.

30 Ms. Burke-Wammack moved to adopt the allegations of law in the administrative complaint as the Board's  
31 conclusions of law in this proceeding. Ms. Nixon seconded the motion which carried 4/0.

32 Ms. Ford moved to adopt the materials and any addendum materials into evidence in this proceeding. Ms.  
33 Burke-Wammack seconded the motion which carried 4/0.

34 **Action Taken:** After discussion Mr. Smallwood moved to IMPOSE the following penalty:

- 35 • Reprimand; revocation
- 36 • Pay \$250 fine within 30 days of the filed final order

1 Motion was seconded by Ms. Burke-Wammack and carried 4/0.

2 Ms. Ford moved to impose the respondent to pay investigative costs of \$389.53 within 30 days. Ms. Burke-  
3 Wammack seconded the motion and carried 4/0.

4 **Tab 50 PALM TREE PLACE, CASE # 2010-05039**

**PCP: Haynes & Stoehs**

5 Respondent was not present nor represented by counsel. Ms. Shah represented the department and  
6 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
7 Stoehs was recused due to participation on the probable cause panel.

8 The department filed an administrative complaint alleging a violation of sections 480.046(1)(o), 480.046(1)(j)  
9 and 480.047(1)(c), F.S., and rule 64B7-26.010(1), (2) and (4), F.A.C.

10 Ms. Ford moved to find that the respondent was properly served and waived their rights to a hearing as to  
11 the material issues of fact by not filing a response. Ms. Burke-Wammack seconded the motion which carried  
12 4/0.

13 Ms. Burke-Wammack moved to adopt the material facts as alleged in the administrative complaint are not in  
14 dispute and to adopt the allegations of fact as the Board's conclusions of fact in this proceeding. Ms. Nixon  
15 seconded the motion which carried 4/0.

16 Ms. Burke-Wammack moved to adopt the allegations of law in the administrative complaint as the Board's  
17 conclusions of law in this proceeding. Ms. Ford seconded the motion which carried 4/0.

18 Ms. Burke-Wammack moved to adopt the materials and any addendum materials into evidence in this  
19 proceeding. Ms. Ford seconded the motion which carried 4/0.

20 **Action Taken:** After discussion Ms. Burke-Wammack moved to IMPOSE the following penalty:

- 21 • Reprimand; revocation and the owner, Thomas Thompson, III, is prohibited from holding
- 22 a massage establishment license in the future
- 23 • Pay \$3,250 fine within 30 days of the filed final order

24 Ms. Nixon seconded the motion which carried 4/0.

25 Mr. Smallwood moved to impose the respondent to pay investigative costs of \$1,197.40 within 30 days of the  
26 filed final order. Ms. Burke-Wammack seconded the motion and carried 4/0.

27 **Tab 51 TIMOTHY H. CAGLE, LMT, CASE # 2010-18509**

**PCP: Harrison & Stoehs**

28 Respondent was not present, nor represented by counsel. Ms. Shah represented the department and  
29 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
30 Stoehs was recused due to participation on the probable cause panel.

31 The department filed an administrative complaint alleging a violation of sections 480.046(1)(k), F.S.

32 Mr. Smallwood moved to find that the respondent was properly served and waived their rights to a hearing as  
33 to the material issues of fact by not filing a response. Ms. Burke-Wammack seconded the motion which  
34 carried 4/0.

35 Ms. Ford moved to adopt the material facts as alleged in the administrative complaint are not in dispute and  
36 to adopt the allegations of fact as the Board's conclusions of fact in this proceeding. Ms. Nixon seconded the  
37 motion which carried 4/0.

1 Mr. Smallwood moved to adopt the allegations of law in the administrative complaint as the Board's  
2 conclusions of law in this proceeding. Ms. Burke-Wammack seconded the motion which carried 4/0.

3 Ms. Burke-Wammack moved to adopt the materials and any addendum materials into evidence in this  
4 proceeding. Ms. Ford seconded the motion which carried 4/0.

5 **Action Taken:** After discussion Mr. Smallwood moved to IMPOSE the following penalty:

- 6 • Reprimand; revocation
- 7 • Pay \$250 fine within 30 days of the filed final order

8 Ms. Burke-Wammack seconded the motion which carried 4/0.

9 Ms. Burke-Wammack moved to impose the respondent to pay investigative costs of \$243.33 within 30 days  
10 of the filed final order. Ms. Nixon seconded the motion and carried 4/0.

11 **Tab 52 WOODROW E. LEWIS, LMT, CASE # 2010-18817**

**PCP: Harrison & Stoehs**

12 Respondent was not present nor represented by counsel. Ms. Shah represented the department and  
13 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
14 Stoehs was recused due to participation on the probable cause panel.

15 The department filed an administrative complaint alleging a violation of sections 480.046(1)(o) and  
16 456.072(1)(q) F.S.

17 Ms. Nixon moved to find that the respondent was properly served and waived their rights to a hearing as to  
18 the material issues of fact by not filing a response. Ms. Burke-Wammack seconded the motion which carried  
19 4/0.

20 Ms. Nixon moved to adopt the material facts as alleged in the administrative complaint are not in dispute and  
21 to adopt the allegations of fact as the Board's conclusions of fact in this proceeding. Ms. Burke-Wammack  
22 seconded the motion which carried 4/0.

23 Mr. Smallwood moved to adopt the allegations of law in the administrative complaint as the Board's  
24 conclusions of law in this proceeding. Ms. Nixon seconded the motion which carried 4/0.

25 Ms. Nixon moved to adopt the materials and any addendum materials into evidence in this proceeding. Mr.  
26 Smallwood seconded the motion which carried 4/0.

27 **Action Taken:** Motion was made, seconded and carried 4/0 to IMPOSE the following penalty:

- 28 • Reprimand; suspension until respondent pays all fines and costs in this case and case #  
29 2010-08874
- 30 • Pay \$250 fine

31 Ms. Ford moved to impose the respondent to pay investigative costs of \$259.16 within 30 days of the filed  
32 final order. Ms. Nixon seconded the motion and carried 4/0.

33 **Tab 53 IVANSKA LAUREANO-TATE, LMT, CASE # 2010-18462**

**PCP: Harrison & Stoehs**

34 Respondent was not present, nor represented by counsel. Ms. Shah represented the department and  
35 presented the case to the Board and advised the respondent had waived the right to a formal hearing. Mr.  
36 Stoehs was recused due to participation on the probable cause panel.



- 1 h. actual knowledge pertaining to violation
- 2 i. repetitive conduct
- 3 • Pay \$10,000 fine within 30 days of the filed final order

4 Ms. Burke-Wammack moved to impose the respondent to pay investigative costs of \$3,866.38 within 30  
5 days of the filed final order. Mr. Smallwood seconded the motion and carried 4/0.

## 6 **Informal Hearings**

### 7 **Tab 55 SPINAL HEALTH PERFORMANCE, INC., CASE # 2010-17156 PCP: Haynes & Stoehs**

8 Respondent was not present nor his counsel, Mark Kairalla, Esq. Ms. DiConcilio represented the Department  
9 and presented the case to the Board. Mr. Stoehs was recused due to participation on the probable cause  
10 panel.

11 The Department filed an administrative complaint alleging a violation of sections 480.046(1)(e), 480.046(1)(j),  
12 480.046(1)(o) and 480.047(1)(c) F.S.

13 Ms. Burke-Wammack moved to adopt the material facts as alleged in the Administrative Complaint are not in  
14 dispute and to adopt the allegations of fact in the administrative complaint as the Board's conclusions of fact  
15 in this proceeding, and to adopt the allegations of law in the administrative complaint as the Board's  
16 conclusions of law in this proceeding, and to adopt the case materials and any materials in the addendum  
17 into evidence as a part of the record in this proceeding. Ms. Nixon seconded the motion which passed 4/0.

18 **Action Taken:** Ms. Burke-Wammack made a motion for licensee to pay \$2250 fine and \$670.27 within 90  
19 days and be reprimanded. Motion failed for lack of a second.

20 **Action Taken:** Ms. Burke-Wammack made a motion to accept the Department's recommendation of \$1,250  
21 fine, \$670.27 costs and a reprimand. Ms. Nixon seconded the motion which failed 2/2 with Ms. Ford and Mr.  
22 Smallwood opposing the motion.

23 **Final Action Taken:** After lengthy discussion, Mr. Smallwood moved to IMPOSE the following penalty:

- 24 • Pay \$1,250 fine within 90 days or 1 year of the filed final order
- 25 • Pay \$670.27 costs within 90 days of the filed final order
- 26 • Reprimand
- 27 • Probation – 1 year
  - 28 ○ DOH make 4 unannounced inspections, once each quarter and pay \$100 for
  - 29 each quarterly probation inspection
- 30 • Respondent submit license numbers of massage therapists hired during period of
- 31 probation

32 Ms. Ford seconded the motion which passed 3/1 with Ms. Burke-Wammack opposing the motion.

## 33 **Recommended Order**

### 34 **Tab 58 GIUSEPPE CHIARIZIA, LMT, CASE # 2008-22238** **PCP: Haynes & Harrison**

35 Mr. Chiarizia was not present nor represented by counsel. The Department was represented by S. J.  
36 Diconcilio, Esq., Assistant General Counsel. Ms. Gustafson explained the Recommended Order was before  
37 the Board for final action and explained the process for reviewing the Recommended Order.

1 Ms. Diconcilio presented the case to the Board for final action in consideration of the DOAH recommended  
2 order. The department filed a three (3) count administrative complaint alleging a violation of sections  
3 480.046(1)(o), 456.072(1)(v), 456.063(1), 480.0485 and 480.046(1)(h), F.S., and rules 64B7-26.010(1) and  
4 (3), and 64B7-30.001(5), F.A.C.

5 **Action Taken:** Mr. Smallwood moved to adopt the Administrative Law Judge's findings of fact as the Board's  
6 findings of fact and to adopt the Administrative Law Judge's conclusions of law as the Board's conclusions of  
7 law in this proceeding. Ms. Burke-Wammack seconded the motion which carried unanimously 5/0.

8 **Action Taken:** Ms. Burke-Wammack moved that the Administrative Law Judge's and the Board's findings of  
9 fact and conclusions of law, support a finding that the respondent violated the aforementioned statutes by  
10 engaging in prohibited sexual misconduct. Ms. Nixon seconded the motion which carried 5/0

11 **Action Taken:** Mr. Smallwood moved to adopt the case materials and any materials in the addendum into  
12 evidence as a part of the record in this proceeding. Ms. Nixon seconded the motion which carried  
13 unanimously 5/0.

14 Ms. DiConcilio advised the Administrative Law Judge recommended entering a final order finding respondent  
15 guilty of violating sections 456.063(1); 456.072(1)(v); 480.046(1)(h) and (o); and 480.0485, F.S., and Florida  
16 Administrative Code Rule 64B7-26.010; finding respondent not guilty of violating rule 64B7-30.001(5); and  
17 imposing a fine of \$1,000 and revoking his license to practice massage therapy. The Department  
18 recommended the Board accept the recommended penalty as submitted by the Administrative Law Judge  
19 and be adopted by the Board.

20 **Action Taken:** Ms. Ford moved to adopt the penalty of revocation and \$1,000 fine payable within 365 days  
21 as recommended by the Administrative Law Judge. Mr. Stoehs seconded the motion which carried  
22 unanimously 5/0.

23 Ms. DiConcilio stated the costs are \$19,273.99 in this disciplinary proceeding and recommended the costs  
24 be paid within 365 days.

25 **Action Taken:** Ms. Ford moved to require respondent to pay the total costs of \$19,273.99 within 365 days.  
26 Ms. Nixon seconded the motion which carried unanimously 5/0.

## 27 **PROSECUTOR'S REPORT**

28 **Tab 75 Year Old Case Report as of September 22, 2011**

**(Addendum; New Item)**

29 <b><u>Year</u></b>	<b><u># of Cases</u></b>
30 2007	5
31 2008	10
32 2009	13
33 2010	77

34 ***(Agenda moved out of order)***

1 **\*REVIEW AND APPROVAL OF MINUTES**

2 **Tab 71 July 11, 2011, General Business Conference Call**

3 Mr. Smallwood made a motion to approve the minutes. Ms. Burke-Wammack seconded the motion which  
4 carried unanimously 5/0.

5 **Tab 72 July 28-29, 2011, General Business Meeting**

6 Mr. Smallwood made a motion to approve the minutes which was seconded by Ms. Burke-Wammack and  
7 carried unanimously 5/0.

8 **Tab 73 September 12, 2011, General Business Conference Call**

9 Motion was made to approve the minutes with the following correction:

- 10 • Page 6, tab 3, line 14: Correct to read: "Mr. Flecha was not present at the meeting."

11 Motion seconded and was carried unanimously 5/0.

12 **Executive Director's Report – Anthony Jusevitch**

13 **Tab 78 Ratification of Licensure - Massage Therapists 6/29/2011 to 9/23/2011**

14 **Action taken:** Mr. Smallwood moved to ratify the approved massage therapist licensure list. Ms. Nixon  
15 seconded the motion which carried unanimously 5/0.

16 Mr. Jusevitch discussed apprenticeships with the board to determine if this was an effective avenue of  
17 licensure due to the low number of apprentices who go on to become licensed. It was the consensus of the  
18 board to eliminate this avenue of education for licensure as a massage therapist.

19 Mr. Jusevitch also addressed addendums to the agenda and advised he is researching a more efficient way  
20 of providing the addendums to the members.

21 **Vice Chair Report – Bridget Burke-Wammack**

22 No report.

23 **Rules Liaison Report – Bridget Burke-Wammack**

24 Will give report on Friday.

25 **Probable Cause Panel Report – William Stoehs**

- 26 • On September 22 a Special PCP found Probable Cause in one case  
27 • On October 11 the Probable Cause Panel found on the following:

- 1 Reconsiderations  
2 15 cases - Reconsiderations were granted
- 3 Administrative Complaints  
4 44 cases - Probable cause was found
- 5 Closing Orders  
6 21 cases – Dismissed
- 7 Letters of Guidance  
8 10 cases – Letters of Guidance issued  
9 3 cases – Tabled for Administrative Complaints

10 **Continuing Education Liaison Report – Bob Smallwood**

11 **Tab 79 Approved CE Providers: 6/29/2011 to 9/23/2011 (Addendum; New Item)**

12 **Action taken:** Ms. Ford moved to ratify the continuing education providers. Ms. Burke-Wammack seconded  
13 the motion which carried unanimously 5/0.

14 **Tab 80 Approved Pro Bono Requests: 6/29/2011 to 9/23/2011 (Addendum; New Item)**

15 **Action Taken:** Ms. Ford moved to ratify the pro bono requests. Ms. Burke-Wammack seconded the motion  
16 which carried unanimously 5/0.

17 **School Liaison Report - Bob Smallwood**

18 **Tab 97 Approved Schools: 6/29/2011 to 9/23/2011 (2<sup>nd</sup> Addendum; New Item)**

19 **Action Taken:** Ms. Burke-Wammack made a motion to ratify the list of approved schools as presented. Ms.  
20 Nixon seconded the motion which carried unanimously 5/0.

21 **Colon Hydrotherapy Liaison Report**

22 No report.

23 Ms. Ford advised the board Mr. Stoehs' last meeting will be the January 2012 meeting. She inquired if Ms.  
24 Nixon and Ms. Burke-Wammack would share alternate meetings of the probable cause panel. They will  
25 advise the chair at a later date.

26 **OLD BUSINESS**

27 **Discussion regarding standard time for General Business Conference Calls**

28 Consensus of the board to have 2012 conference calls will be on Tuesdays at 9:00 a.m. Ms. Mask will email  
29 schedule.

30 **Budget Liaison Report – Lisa Oliver (absent) – Anthony Jusevitch**

1 **Tab 74 Board of Massage Therapy Cash Balance Report for 9 months ending March 31, 2011**

2 Mr. Jusevitch advised there are 3 different reports which all go to the budget liaison.

- 3     • Expenditures by Function Report  
4     • Allocation to Board by Source Organization and Category  
5     • Total Expenditures (Direct and Allocated)

6 The board requested to have all the reports on the agenda.

7 **Unlicensed Activity Report – Lydia Nixon**

8 No report.

9 The board recessed approximately 4:40 p.m. to reconvene on Friday.

1 **FRIDAY, October 21, 2011**

2 The meeting was called to order by Ms. Karen Ford, LMT, Chair, approximately 9:00 a.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  
William Stoehs, Consumer Member

**STAFF PRESENT:**

Anthony Jusevitch, Executive Director  
Paula Mask, Program Operations Administrator

**COURT REPORTER:**

Accurate Stenotype Reporters, Inc.  
850.878.2254

**MEMBER ABSENT:**

Lisa Oliver, Consumer Member (Excused)

**DEPARTMENT PROSECUTING ATTORNEYS:**

S. J. DiConcilio, Esquire  
Manshi Shah, Esquire

**BOARD COUNSEL:**

Lee Ann Gustafson, Esquire  
Assistant Attorney General

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 **ADMINISTRATIVE PROCEEDINGS**

7 **Massage Therapist Applicants**

8 **Tab 61 Joycelyn Harrison - Exam – REQUIRED Appearance**

9 Applicant was present without counsel.

10 At the July 2011 board meeting, the board requested Ms. Harrison to appear before the board at one of its  
11 next two meetings.

12 **Action Taken:** After discussion, Ms. Burke-Wammack moved to grant the license unencumbered which was  
13 seconded by Ms. Nixon and carried 5/0.

14 **Tab 66 Julio Pelayo - endorsement**

15 Applicant was present with counsel, Rev. James T. Golden, Esq.

16 Applicant and counsel addressed the board.

17 **Action Taken:** After a lengthy discussion, Ms. Ford moved to grant the license unencumbered. Mr. Stoehs  
18 seconded the motion which failed with Mr. Stoehs in favor of the motion.

19 Additional discussion was held. The board determined the applicant entered a plea to and had adjudication  
20 withheld on a charge of possession of cocaine in violation of Chapter 893, F.S. The applicant completed his  
21 sentence on March 17, 2008. Section 456.0635, F.S. (2009), states a person who has been convicted of or

1 entered a plea to a felony violation of chapter 893, F.S., is ineligible for licensure in Florida until 15 years  
2 after the completion of the imposed sentence.

3 **Action Taken:** Mr. Smallwood moved to deny licensure based on his ineligibility for licensure under s.  
4 456.0635, F.S. Ms. Burke-Wammack seconded the motion which passed 4/1 with Mr. Stoehs opposing the  
5 motion.

6 **Tab 59 Pichai Chudhabuddhi - exam**

7 Applicant was not present nor represented by counsel.

8 **Action Taken:** Ms. Nixon moved to grant the license unencumbered. Ms. Burke-Wammack seconded the  
9 motion, which passed 5/0.

10 **Tab 60 Rachel Cunard - exam**

11 Applicant was not present nor represented by counsel.

12 **Action Taken:** Ms. Burke-Wammack moved to grant the license unencumbered. Ms. Burke-Wammack  
13 seconded the motion, which passed 5/0.

14 **Tab 62 Stacy Gillingham – exam**

15 Applicant was not present nor represented by counsel.

16 **Action Taken:** Ms. Burke-Wammack moved to grant the license with the following conditions: 1) license be  
17 placed on probation for a term to run concurrent with the probation imposed by the Court; 2) applicant submit  
18 written documentation that her court-ordered probation has been terminated; and 3) delegated authority to  
19 the Executive Director to approve the documentation and terminate the probation on the applicant's license.  
20 Motion seconded by Ms. Nixon and passed unanimously 5/0.

21 **Tab 63 Jennifer Templeton - exam**

22 Applicant was not present nor represented by counsel.

23 **Action Taken:** Ms. Burke-Wammack moved to require a personal appearance at one of the two next board  
24 meetings. Ms. Ford seconded the motion which carried unanimously 5/0.

25 **Tab 96 Barbara Anne Conrad – endorsement**

26 Applicant was not present nor represented by counsel.

27 **Action Taken:** After discussion, Mr. Smallwood moved to grant the license unencumbered. Ms. Burke-  
28 Wammack seconded the motion, which passed unanimously 5/0.

1 **Section 456.0635, F.S. Applicants**

2 **Tab 64 Naomi Forseth - exam**

3 Applicant was not present nor represented by counsel.

4 **ACTION TAKEN:** After discussion, Ms. Burke-Wammack moved to deny the application based on applicant  
5 is ineligible for licensure pursuant to section 456.0635, F.S., and to allow withdrawal of her application. Ms.  
6 Nixon seconded the motion, which passed unanimously 5/0.

7 **Tab 67 Nydia Triana - exam**

8 Applicant was not present nor represented by counsel

9 **ACTION TAKEN:** After discussion, Mr. Smallwood moved to deny the application based on the applicant's  
10 criminal history which revealed she was convicted of a felony under Chapter 893, Florida Statutes. Ms. Ford  
11 seconded the motion, which passed unanimously 5/0. The board requested the order state the applicant is  
12 permitted to file a written request to withdraw his applicant within 21 days from the date the order is filed.

13 **Petitions for Variance and/or Waiver**

14 **Tab 69 Sherry Donovan; At Peace Media, LLC**

15 Ms. Donovan, At Peace Media, was not present nor represented by counsel. The petitioner requested a  
16 variance or waiver of rule 64B7-28.009(3)(a), F.A.C., with respect to the 12 continuing education hours via  
17 live classroom instruction which includes hands-on instruction or demonstration. Petitioner requested a  
18 variance or waiver from the requirement by requesting the board to allow on-line webinars.

19 **Action taken:** After discussion, Mr. Smallwood moved to deny the petition based on petition was not in  
20 substantial compliance with Section 120.542, F.S., and Chapter 28-104, F.A.C.; petitioner did not identify a  
21 person subject to the rule and did not demonstrate that application of the rule would create a substantial  
22 hardship, and petitioner did not indicate if the requested variance was permanent or temporary. Mr. Stoehs  
23 seconded the motion which passed unanimously 5/0.

24 **Tab 70 Pina Olson, L.M.T.**

25 Petitioner was not present nor represented by counsel. The petitioner requested a variance or waiver of rule  
26 64B7-28.009, F.A.C. Petitioner requested a permanent waiver of the provisions of the rule that requires  
27 continuing education to be approved by the Board pursuant to rule 64B7-28.010, F.A.C.

28 The courses she requested the variance for were: 1, TRX Sports Medicine Suspension Training Course  
29 (Level 1), TRX Suspension Training Course (Level 1), and SCW Advanced Functional Training Certification.

30 **Action taken:** After discussion, Ms. Burke-Wammack moved to deny the petition for waiver or variance of  
31 rule 64B7-28.009, F.A.C., based on the petition was not in substantial compliance with the provisions of  
32 Section 120.542, F.S., and Chapter 28-104, F.A.C., and petitioner did not meet the purpose of the underlying  
33 statute because the content of the courses is beyond the scope of practice of massage therapy.

34 Motion seconded by Ms. Ford and passed unanimously 5/0.

1 **Petition for Declaratory Statement**

2 **Tab 77 Scott W. Dutton, Esquire, and Randall A. Wainoris, Esquire; Scope of Practice of a**  
3 **Licensed Massage Therapist Operating in an Automobile Accident Clinical Setting**

4 Mr. Sutton was present and addressed the board with the question as stated in his petition: "In the state of  
5 Florida, to what extent may a licensed massage therapist operating in a clinic with no direct supervision from  
6 a medical doctor or chiropractor other than a written prescription for therapy, assess the patient for medical  
7 necessity and perform and bill for physical therapy modalities?"

8 **Action taken:** After discussion, Mr. Smallwood moved to deny the petition based on the board cannot issue  
9 a declaratory statement in response to a petition that is not limited to one petitioner's circumstances, but  
10 would result in an announcement of broad agency policy or provide interpretations that apply to an entire  
11 class of person and the petition does not meet the requirements of section 120.565, F.S., and the case law  
12 interpreting it.

13 Motion seconded by Ms. Nixon and passed unanimously 5/0.

14 Motion was made and seconded to refer to the department consumer services unit to determine if an  
15 investigation is required on the massage therapists listed in Mr. Dutton's documentation. Motion carried  
16 unanimously 5/0.

17 **Rules Discussion**

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

19 Ms. Gustafson presented a draft of this rule based on discussion by board on Wednesday, July 19, 2011.  
20 She advised since the department no longer handles reexamination applications for national exams or  
21 colonics examinations to repeal the reexamination fee for both; reduce the reactivation fee to \$100; the initial  
22 licensure fee for massage establishments be reduced to \$100; subsection (3) was added to include other  
23 fees such as the duplicate license fee and the ULA fee; and the rule title is amended to read 64B7-27.100 –  
24 Fees.

25 **Action Taken:** Mr. Smallwood moved to approve the recommended changes. Ms. Burke-Wammack  
26 seconded the motion which carried 5/0.

27 Ms. Gustafson requested the board to vote on the following matters.

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:** Motion was made and seconded that the rule amendment will not require a statement of  
32 regulatory costs and passed 5/0.

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. Burke-Wammack made a motion that it will not which Ms. Nixon seconded and passed  
36 5/0.

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?



1 (6) If a massage school is alleged to have violated any provision of Florida Statute 480, Rule Chapter  
2 64B7, or part therein:

3 (a) The Board shall inform the school of any alleged violations in writing;

4 (b) Beginning with graduate passage rates for calendar year 2013:

5 1. If an approved program's graduate passage rates do not equal or exceed the required passage rates  
6 for 2 consecutive calendar years, the board may place the program on probationary status pursuant to  
7 chapter 120 and may require the program director to appear before the board to present a plan for  
8 remediation. If the program is placed on probationary status the program shall remain on probationary status  
9 until it achieves a graduate passage rate that equals or exceeds the required passage rate for any 1  
10 calendar year.

11 2. Upon the program's achievement of a graduate passage rate that equals or exceeds the required  
12 passage rate, the board, at its regularly scheduled meeting following release of the program's graduate  
13 passage rate by the Board approved testing vendor, shall remove the program's probationary status.  
14 However, if the program, during the 2 calendar years following its placement on probationary status, does  
15 not achieve the required passage rate for any 1 calendar year, the board shall terminate the program  
16 pursuant to chapter 120.

17 (c) The school shall respond in writing and/or request to appear before the Board at the next scheduled  
18 meeting to explain any mitigating factors;

19 (d) If the Board determines that a school is in noncompliance, it may impose one of the following:

20 1. Corrective action required which shall include the time period in which the school must comply; or

21 2. Withdrawal of Board approval.

22 (e) The Board shall inform the Florida Department of Education or if an out of state school, the equivalent  
23 licensing authority, of the action taken.

24 **Action Taken:** Additional discussion was held and Mr. Smallwood moved to approve the rule with the  
25 proposed amendments, which was seconded by Ms. Burke-Wammack and passed 5/0.

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

27 Ms. Gustafson then presented rule 64B7-32.002 for approval.

29 **64B7-32.002 Proof of Graduation ~~Documentation of Graduation from a board Approved Massage~~**  
30 **~~School.~~**

31 ~~In order~~ To be acknowledged as a graduate of a Board approved massage school as referred to in  
32 subsection 480.033(9), F.S., the Board's administrative office must receive an official transcript documenting  
33 the applicant's training. Such transcript must document to the satisfaction of the Board that the applicant has  
34 successfully completed a course of study in massage which met the minimum standards for training and  
35 curriculum as delineated in this rule chapter. A transcript indicating passing grades in all courses, and  
36 including dates of attendance, and stating the date of successful completion of the entire course of study, is  
37 evidence of successful completion. If the transcript does not specifically state that the student successfully  
38 completed the entire course of study, the transcript must be accompanied by a diploma or certificate of  
39 completion indicating the dates of attendance and completion a list of graduates sent electronically in a  
40 method designed by the Board office or an official transcript which indicates that an applicant has met all  
41 educational and institutional requirements indicating the start date and the date of graduation.

42 **Action Taken:** Ms. Burke-Wammack moved to approve the proposed amendment, seconded by Mr.  
43 Smallwood and passed 5/0.

1 Ms. Gustafson then asked the board the following questions regarding 64B7-32.001, 32.002 and 32.003:

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

5 **Action Taken:** Mr. Smallwood moved that the proposed rule amendment will not have the above stated  
6 impact. Ms. Nixon seconded the motion which passed 5/0.

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

9 **Action Taken:** Mr. Smallwood moved that the proposed rule amendment will not have the above stated  
10 impact. Mr. Stoehs seconded the motion which passed 5/0.

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

13 **Action Taken:** Mr. Smallwood moved there were no further documents relied on in making this  
14 determination. Ms. Nixon seconded the motion which passed 5/0.

15 **Tab 90 Rule 64B7-28.001 Biennial Renewal of Massage Therapist's License.**  
16 **Rule 64B7-28.009 Continuing Education**

17 **Action Taken:** Mr. Smallwood moved to withdraw both his proposed draft and Ms. Gustafson's draft for  
18 rewrite. Motion seconded by Ms. Burke-Wammack which carried 5/0. Mr. Smallwood and Ms. Gustafson will  
19 rewrite this rule to present at the next board meeting.

20 **\*REPORTS**

21 **Vice Chair report – Bridget Burke-Wammack**

22 No report on the Board/Vice Chair meeting held in Tallahassee.

23 **Board Chair Report – Karen Ford**

24 The Chair reported on the FSMTB meeting and advised a majority of the states are having difficulty  
25 regarding board member vacancies.

26 She advised the delegates made it clear to the board of directors it was of the utmost importance to share  
27 information across state lines regarding schools acting illegally.

28 Ms. Ford advised the board the difficult time of locating and approving qualified monitors for non-English  
29 speaking applicants and disciplined licensees. She requested the board to begin thinking of other tools that  
30 could be used in locating monitors for non-English speaking individuals.

31 **Public Relations Liaison Report - Karen Ford**

32 No report.

1 **Legislative Liaison Report – Karen Ford**

2 The Chair referred the board to SB 80 (Human Trafficking) and HB 119 (PIP)

3 **NEW BUSINESS**

4 **Tab 99 Continuing Education Provider Approval: Mission Sports, Inc.**

5 **Action Taken:** After discussion, Ms. Ford moved to deny the application based on the course includes  
6 materials which are beyond the scope of massage therapy practice. Motion seconded by Ms. Nixon and  
7 passed unanimously 5/0.

8 **\*INFORMATIONAL**  
9 (Non-voting matters)

10 **Tab 95 Prosecution Services Unit Board Chair Report, Fiscal Year 2010-2011**

11 **Tab 100 Diagram of Enforcement Process**

12 **Meeting adjourned approximately 12:10 p.m.**