

**MINUTES
DEPARTMENT OF HEALTH
BOARD OF MASSAGE THERAPY
GENERAL BUSINESS MEETING**

**TELEPHONE CONFERENCE CALL
December 14, 2010**

**DIAL-IN-NUMBER: 1-888-808-6959
PUBLIC CONFERENCE CODE: 2454590**

Call to Order Karen Ford, LMT
Roll Call Paula Mask, Program Operations Administrator

CALL TO ORDER

The meeting was called to order by Ms. Ford, LMT, Chair, approximately 2:30 p.m. Those present for all or part of the meeting included the following:

MEMBERS PRESENT:

Karen Ford, LMT, Chair
Bridget Burke-Wammack, LMT, V-Chair
Amy Hagen, LMT
Lydia Nixon, LMT
Robert Smallwood, LMT
William Stoehs, Consumer Member

STAFF PRESENT:

Anthony Jusevitch, Executive Director
Paula Mask, Program Operations Administrator
Brandi Hignight, Regulatory Specialist II

MEMBER ABSENT:

Lisa Oliver, Consumer Member

COURT REPORTER:

For The Record
Marlo Farnsworth
Office: 850.222-5491

BOARD COUNSEL:

Jaime Liang, Esq.

PROSECUTING ATTORNEY:

Sam DiConcilio, Assistant General Counsel

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

DISCIPLINARY PROCEEDINGS

Tab 7 Recommended Order: DOH v. Marcus E McCastler; DOAH Case No. 10-1149PL, DOH Case No. 2008-16655

Mr. McCastler was present and represented by S. A. Siddiqui, Esq. The Department was represented by S. J. DiConcilio, Esq., Assistant General Counsel.

Ms. DiConcilio presented the case to the Board for final action in consideration of the DOAH recommended order. The department filed a four count administrative complaint alleging in:

- Count I violation of sections 480.046(1)(o), 456.072(1)(v), 456.063(1), 480.0485, F.S. (2008), and rule 64B7-26.010(1) and (3), F.A.C.;
- Count II violation of sections 480.046(1)(o), 480.046(1)(h), F.S., (2008), and rule 64B7-30.001(5), F.A.C.;
- Count III violation of sections 480.046(1)(o), 456.072(1)(h), and 456.072(1)(m), F.S. (2007); and
- Count IV violation of sections 480.046(1)(o), and 480.047(1)(f), F.S. (2007).

Ms. DiConcilio advised the Division of Administrative Hearings recommended the Board of Massage Therapy enter a Final Order finding that Counts I and II of the Administrative Complaint were not proven by clear and convincing evidence; that Respondent committed the acts charged in Counts III and IV of the Administrative Complaint and by doing so, violated Sections 456.072(1)(h) and (m); 480.046(1)(o); and 480.047(1)(f), Florida Statutes (2007); and revoking his license to practice massage therapy.

Ms. Liang advised the Board must act on the Respondent's Exceptions to the Recommended Order. The Board has to consider the penalty also.

Respondent's Exceptions to the Recommended Order:

Exception #1 – After discussion, Ms. Ford moved to accept this exception because there is no competent and substantial evidence in the record to support the finding that Respondent was counseled by a lawyer, only a counselor. The motion was seconded by Mr. Smallwood and carried unanimously 6/0.

Exception #2 and #3 – After discussion, Mr. Smallwood moved to reject these exceptions because they do not qualify as exceptions as they are statements not relevant to the evidence. The motion was seconded by Ms. Burke-Wammack.

Mr. Siddiqui addressed the board regarding the motion.

After further discussion, Mr. Smallwood amended the motion to state exceptions 2 and 3 do not qualify as exceptions and exception #2 was accepted to reflect the advisor to Mr. McCastler was not an attorney but rather a counselor. Ms. Burke-Wammack seconded the motion which passed unanimously 6/0.

The board then took testimony from Mr. Siddiqui, attorney for respondent.

Action Taken: Ms. Ford moved to adopt the Administrative Law Judge's findings of fact with the exception of the Board's finding of fact in this proceeding. Mr. Stoehs seconded the motion which carried unanimously 6/0.

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

Action Taken: Ms. Burke-Wammack moved to adopt the Administrative Law Judge's findings of fact and conclusions of law as modified, if modified by the exceptions, and support a finding of a violation of sections 460.046(1)(o), 456.072(1)(h), 456.072(1)(m), and 480.047(1)(f), F.S. (2007), Counts 3 and 4 of the Administrative Complaint, and revocation of Mr. McCastler's license. Mr. Smallwood seconded the motion which carried unanimously 6/0.

Penalty Phase:

Action Taken: Ms. Burke-Wammack moved to impose a \$10,000 fine as recommended in the Administrative Law Judge's final order. Mr. Smallwood seconded the motion which carried unanimously 6/0.

Action Taken: Ms. Burke-Wammack moved to impose \$46,049.08 costs. Ms. Ford seconded the motion. Mr. Siddiqui questioned the fine and costs. The motion carried unanimously 6/0.

Action Taken: Ms. Burke-Wammack made a motion to allow payment of fine and costs to be made within five (5) years. Motion was seconded by Ms. Ford which carried unanimously 6/0.

PETITION FOR VARIANCE AND WAIVER

Tab 1 Cathy Shea, LMT, CT – Re: Rule 64B7-29.001, F.A.C.

Ms. Shea was present without counsel.

Action Taken: After discussion, Mr. Smallwood moved to deny the petition based on previous discipline and compliance with Chapters 456 and 480, F.S., and the rules promulgated thereunder. Ms. Nixon seconded which carried unanimously 6/0

MESSAGE THERAPIST APPLICANTS

Tab 2 Peter J. Davidson - Exam

Mr. Davidson was not present nor represented by counsel.

Action Taken: Ms. Burke-Wammack made a motion to approve the license unencumbered. Mr. Smallwood seconded the motion which carried unanimously 6/0.

(Mr. Stoehs was excused from the remainder of the meeting.)

Tab 3 Julie Anne Mackey – Exam

Ms. Mackey was present without counsel.

Action Taken: Ms. Burke-Wammack made a motion to approve the license unencumbered. Ms. Ford seconded the motion which carried unanimously 5/0.

Tab 4 Robert M. Olszanowski - Exam

Mr. Olszanowski was present without counsel

Action Taken: Mr. Smallwood made a motion to approve the license unencumbered. Ms. Burke-Wammack seconded the motion which carried unanimously 5/0.

Tab 5 Marc D. Trapani - Exam

Mr. Trapani was present without counsel.

Action Taken: After discussion, Ms. Burke-Wammack moved to grant the license with the condition to obtain a PRN evaluation to determine if he is safe to practice and accept the recommendation of PRN and if recommended for contract and licensure, the Executive Director may issue the license based on PRN's recommendation. Mr. Stoehs seconded the motion which carried unanimously 5/0.

Tab 6 Anna S. Weddington – Exam

Ms. Weddington was present without counsel.

Action Taken: After discussion, Ms. Burke-Wammack moved to grant the license with the condition to obtain a PRN evaluation to determine if she is safe to practice and accept the recommendation of PRN and if recommended for contract and licensure or licensure without a contract, the Executive Director may issue the license based on PRN's recommendation. Mr. Smallwood seconded the motion which carried unanimously 5/0.

GENERAL BUSINESS

Tab 8 Bill Analysis for HB 1565

Tab 9 Memorandum regarding HB 1565

Tab 10 Florida Statutes, Chapter 120, Administrative Procedure Act

Mr. Jusevitch and Ms. Liang discussed the effects the legislation passed during the special session regarding rulemaking.

The board discussed the impact the legislation will have on the national exams and rule 64B7-25.001, F.A.C. Mr. Jusevitch stated he would have more information by the next meeting.

NEW BUSINESS

Ms. Ford reported she had been working with the FSMTA regarding the monitor program which is being set up to assist licensees/applicants with this requirement. She requested if one of the board members would assist with this. Ms. Burke-Wammack volunteered.

Ms. Ford also stated the FSMTB requested Florida to participate and Ms. Ford be a part of, the committee to assist with a Model Practice Act for massage therapy. Ms. Liang will research to determine if this is a conflict of interest.

Mr. Smallwood also asked if it would be a conflict of interest for him to be on the Federation school committee. Ms. Liang will research.

House Bill 49 (Temporary Permits)

Action Taken: Ms. Ford made a motion to issue statement the board strongly opposes the proposed legislation for the following reasons:

1. Discriminatory to approved educational programs that are not accredited as specified in the proposed legislation;
2. Public safety due to not having met minimum competency requirements of passing the licensure exam, graduation alone does not ensure minimum competency;
3. Increased workload in Board office; and
4. Exam is provided daily via computer based testing and may be taken immediately after graduation from an approved program.

Motion was seconded by Mr. Smallwood and passed unanimously 5/0.

Senate Bill 246 (Human Trafficking)

Mr. Jusevitch explained the bill was similar to 2010 proposed legislation. He will copy the bill to the board and members are to report to Mr. Jusevitch for the January 2011 meeting.

Meeting adjourned approximately 4:50 p.m.