

**DEPARTMENT OF HEALTH
BOARD OF MASSAGE THERAPY
GENERAL BUSINESS MEETING
July 25-26, 2013**

**Orlando World Center Marriott
8701 World Center Dr.
Orlando, FL 32821
(407) 239-4200**

THURSDAY - JULY 25, 2013

The meeting was called to order by Ms. Karen Ford, LMT, Chair, approximately 9:10 a.m. Those present for all or part of the meeting included the following:

MEMBERS PRESENT:

Karen Ford, M.S., LMT, Chair
Bridget Burke-Wammack, LMT, CLT, V-Chair
Lydia Nixon, LMT
Sharon Phillips, LMT, AP, DOM

STAFF PRESENT:

Anthony Jusevitch, Executive Director
Paula Mask, Program Operations Administrator
Matthew Thompson, Regulatory Specialist II

MEMBER ABSENT:

Jonathan Walker, LMT (excused)

COURT REPORTER:

American Court Reporting
Phone: 904.353.7706

BOARD COUNSEL:

Lee Ann Gustafson, Esq.
Senior Assistant Attorney General

DEPARTMENT PROSECUTING ATTORNEYS:

Sharmin Hibbert, Esq., Assistant General Counsel
Candace Rochester, Esq., 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.

An AUDIO of this meeting can be found by clicking on "Audio Files" at

<http://ww10.doh.state.fl.us/pub/osteo/Massage/2013%20Meetings/>

DISCIPLINARY PROCEEDINGS

Informal Hearings

- | | |
|---|--|
| 1. SUZANNE M. GRAY, LMT, CASE # 2012-14403
MOVED TO FRIDAY 7/26/13 | PCP: Smallwood & Nixon |
| 2. GLENN C. MOORE, LMT, CASE # 2011-08123
WITHDRAWN | PCP: Harrison & Burke-Wammack |

Voluntary Relinquishments

Full Board Members: - A motion was made to accept the following voluntary relinquishments items 1 through 103, by Ms. Burke- Wammack. The motion was seconded and passed unanimously.

- | | | |
|------------------------------|--------------------------|--------------------|
| 1. YONGGE KLUND, LMT, | CASE # 2013-00251 | PCP: Waived |
| 2. SUXIA CHEN, LMT, | CASE # 2013-00021 | PCP: Waived |
| 3. CHUNHUA DENG, LMT, | CASE # 2013-00081 | PCP: Waived |

4. JESSICA WEIYU RAWLS, LMT, CASE # 2013-00774	PCP: Waived
5. XU KULIG, LMT, CASE # 2013-00253	PCP: Waived
6. QING MEI PEI, LMT, CASE # 2013-00526	PCP: Waived
7. HUIPING HAYES, LMT, CASE # 2013-00159	PCP: Waived
8. YANPING RIOS, LMT, CASE # 2013-00777	PCP: Waived
9. QINGWEI LIU, LMT, CASE # 2013-00396	PCP: Waived
10. HONGJUAN PANPFISTER, LMT, CASE # 2013-00524	PCP: Waived
11. YANYA YANG, LMT, CASE # 2013-01427	PCP: Waived
12. JUN PENG, LMT, CASE # 2013-00527	PCP: Waived
13. HUIQIN HU, LMT, CASE # 2013-00175	PCP: Waived
14. HENG BIN SUN, LMT, CASE # 2013-00820	PCP: Waived
15. XINQI LIU, LMT, CASE # 2013-00401	PCP: Waived
16. XINXIN ZHAO, LMT, CASE # 2013-01467	PCP: Waived
17. WAICHOV CHAN, LMT, CASE # 2013-00011	PCP: Waived
18. YANFEN POTARACKE, LMT, CASE # 2013-00530	PCP: Waived
19. YUEYUN SHAO, LMT, CASE # 2013-00781	PCP: Waived
20. HIUHA TSE, LMT, CASE # 2013-01022	PCP: Waived
21. INGE BAUMERT, LMT, CASE # 2013-04680	PCP: Waived
22. DONGKAI WU, LMT, CASE # 2013-01044	PCP: Waived
23. HONG ZHU, LMT, CASE # 2013-01476	PCP: Waived
24. GUIFANG DALEY, LMT, CASE # 2013-00079	PCP: Waived
25. ZONG YU DEVERSO, LMT, CASE # 2013-00083	PCP: Waived
26. WEIZHI WANG, LMT, CASE # 2013-01032	PCP: Waived
27. XIUE YANG, LMT, CASE # 2013-01425	PCP: Waived
28. MIN YANG, LMT, CASE # 2013-01422	PCP: Waived
29. YANHONG YANG, LMT, CASE # 2013-01426	PCP: Waived
30. AIHUA ZHANG, LMT, CASE # 2013-01432	PCP: Waived
31. SHAOMIN YUN, LMT, CASE # 2013-01431	PCP: Waived
32. HUALING MIAO, LMT, CASE # 2013-00513	PCP: Waived
33. JING LIU, LMT, CASE # 2013-00393	PCP: Waived
34. SAIE ZHAO, LMT, CASE # 2013-01464	PCP: Waived
35. GUIYING JIANG, LMT, CASE # 2013-00243	PCP: Waived
36. YIPING LOOMIS, LMT, CASE # 2013-00403	PCP: Waived
37. XIAOWEN LUO, LMT, CASE # 2013-00506	PCP: Waived
38. CAI ZHU MEI, LMT, CASE # 2013-00512	PCP: Waived
39. HONG YU, LMT, CASE # 2013-01429	PCP: Waived
40. MIKE XU, LMT, CASE # 2013-01418	PCP: Waived
41. PING JIANG, LMT, CASE # 2013-00244	PCP: Waived
42. XIAOHONG SU, LMT, CASE # 2013-00816	PCP: Waived
43. YECHUN PANG, LMT, CASE # 2013-00522	PCP: Waived
44. XIUQIN YAN, LMT, CASE # 2013-01419	PCP: Waived
45. HEYI XIE, LMT, CASE # 2013-01416	PCP: Waived
46. HAIYING DONG, LMT, CASE # 213-00086	PCP: Waived
47. LIJUAN RENCH, LMT, CASE # 2013-00776	PCP: Waived
48. GUANGLIANG LU, LMT, CASE # 2013-00404	PCP: Waived
49. FANG FANG, LMT, CASE # 2013-00095	PCP: Waived
50. YONG LI, LMT, CASE # 2013-00267	PCP: Waived
51. RUIJUN YANG, LMT, CASE # 2013-01423	PCP: Waived
52. HAIYAN CHENG, LMT, CASE # 2013-00025	PCP: Waived
53. LIPING CHANG, LMT, CASE # 2013-00012	PCP: Waived
54. JIAN XIN JIAN, LMT, CASE # 2013-00242	PCP: Waived
55. SHULI JOHNSON, LMT, CASE # 2013-00247	PCP: Waived
56. YANHONG KANG, LMT, CASE # 2013-00249	PCP: Waived
57. XU KULIG, LMT, CASE # 2013-00253	PCP: Waived
58. LUYAN ZHU, LMT, CASE # 2013-01479	PCP: Waived
59. NA NIU, LMT, CASE # 2013-00516	PCP: Waived
60. YONG ZHI ZHU, LMT, CASE # 2013-01483	PCP: Waived
61. RUIQU ZUO, LMT, CASE # 2013-01488	PCP: Waived
62. XIN OSBORN, LMT, CASE # 2013-00517	PCP: Waived
63. CHUNG WU, LMT, CASE # 2013-01043	PCP: Waived

64. XIANQIN LUO, LMT,	CASE # 2013-00505	PCP: Waived
65. XIAOYAN ZHANG, LMT,	CASE # 2013-01460	PCP: Waived
66. DANIEL MARTINEZ, LMT,	CASE # 2012-05291	PCP: Waived
67. ZHUPING MADAIO, LMT,	CASE # 2013-00509	PCP: Waived
68. FANG WANG, LMT,	CASE # 2013-01025	PCP: Waived
69. SUMEI HUANG, LMT,	CASE # 2013-00181	PCP: Waived
70. CAN CHEN, LMT,	CASE # 2013-00014	PCP: Waived
71. PINHUI WANG, LMT,	CASE # 2013-01030	PCP: Waived
72. DUO WANG, LMT,	CASE # 2013-01024	PCP: Waived
73. CHENGKE WU, LMT,	CASE # 2013-01042	PCP: Waived
74. XIA HE, LMT,	CASE # 2013-00165	PCP: Waived
75. YAN WANG, LMT,	CASE # 2013-01033	PCP: Waived
76. YUFENG L. BROWN, LMT,	CASE # 2013-00005	PCP: Waived
77. LIYAN LU, LMT,	CASE # 2013-00405	PCP: Waived
78. YING LIANG, LMT,	CASE # 2013-00385	PCP: Waived
79. LIJUAN PAN, LMT,	CASE # 2013-00521	PCP: Waived
80. YUE CHEN, LMT,	CASE # 2013-00024	PCP: Waived
81. YEELY CHUNER, LMT,	CASE # 2013-00245	PCP: Waived
82. YONGMEI ZHU, LMT,	CASE # 2013-001485	PCP: Waived
83. BAOHUA ZHANG, LMT,	CASE # 2013-01433	PCP: Waived
84. LISHU WANG, LMT,	CASE # 2013-01029	PCP: Waived
85. GUIZHEN HUANG, LMT,	CASE # 2013-00176	PCP: Waived
86. JING WU, LMT,	CASE # 2013-01045	PCP: Waived
87. SARA LOUSE PALMER, LMT,	CASE # 2013-01500	PCP: Waived
88. LING ZHANG, LMT,	CASE # 2013-01456	PCP: Waived
89. WANXIAO LIN, LMT,	CASE # 2013-00389	PCP: Waived
90. YUYING SHAN, LMT,	CASE # 2013-00780	PCP: Waived
91. XIAOQING LIU, LMT,	CASE # 2013-00400	PCP: Waived
92. FENGLING HE, LMT,	CASE # 2013-00160	PCP: Waived
93. LINDA R. SPAFFORD, LMT,	CASE # 2013-03940	PCP: Waived
94. EVELISSE ACOSTA, LMT,	CASE # 2012-11133	PCP: Waived
95. YUELAN WANG, LMT,	CASE # 2013-01036	PCP: Waived
96. YUPING WANG, LMT,	CASE # 2013-01037	PCP: Waived
97. JINMEI LIN, LMT,	CASE # 2013-00387	PCP: Waived
98. JING LIU, LMT,	CASE # 2013-00394	PCP: Waived
99. SUJAN HAN, LMT,	CASE # 2013-00148	PCP: Waived
100. RUI WANG, LMT,	CASE # 2013-01031	PCP: Waived
101. LI PENG, LMT,	CASE # 2012-13358	PCP: HAYNES & BUCKLEY
102. JUN HE, LMT,	CASE # 2012-12136	PCP: HAYNES & BUCKLEY
103. LIN HU, LMT,	CASE # 2012-12141	PCP: HAYNES & BUCKLEY

WITHDRAWN VR CASES

104. MEI YING XUE, LMT,	CASE # 2012-13996	PCP: HARRISON & NIXON
105. WEI BING TANG, LMT,	CASE # 2012-13770	PCP: HARRISON & NIXON
107. XIAO LING CHIN, LMT,	CASE # 2012-11651	PCP: SMALLWOOD & NIXON

VR CASES MOVED TO FRIDAY, 7/26/13

106. ZEJIN ZHOU, LMT,	CASE # 2012-14144	PCP: HARRISON & NIXON
108. BAOLI CAO, LMT,	CASE # 2012-11571	PCP: SMALLWOOD & NIXON
109. YAFENG YU, LMT,	CASE #2012-00884	PCP: HARRISON & BURKE-WAMMACK

Determination of Waivers

WITHDRAWN CASES

1. JINGNAN ZHANG, LMT,	CASE # 2012-14084	PCP: HARRISON & NIXON
2. WEI ZHAO, LMT,	CASE # 2012-14135	PCP: HARRISON & NIXON
3. YUPINA TANG, LMT,	CASE # 2012-13783	PCP: HARRISON & NIXON

4. HUAYUE JIN, LMT,	CASE # 2012-15665	PCP: HARRISON & NIXON
5. JUNFANG LI, LMT,	CASE # 2012-00877	PCP: HARRISON & BURKE-WAMMACK
7. HAIPING SUN, LMT,	CASE 3 2012-07055	PCP: HARRISON & BURKE-WAMMACK
8. XIULI WANG, LMT,	CASE # 2012-07039	PCP: HARRISON & BURKE-WAMMACK
9. BETHANY ANN VAUGHN, LMT,	CASE # 2012-04369	PCP: HARRISON & BURKE-WAMMACK
10. EDDY E. TAPIA, LMT,	CASE # 2012-11725	PCP: HARRISON & BURKE-WAMMACK
14. MARGARET PEILING CHIN, LMT,	CASE # 2012-11646	PCP: SMALLWOOD & NIXON

WAIVER CASES MOVED TO FRIDAY, 7/26/13

6. JIPING ZHU, LMT,	CASE # 2012-09507	PCP: HARRISON & BURKE-WAMMACK
11. CLEBURN A. POWERS, LMT,	CASE # 2012-13912	PCP: HARRISON & BURKE-WAMMACK

*If the Respondent **was present**, the board, as appropriate, accepted unanimously the following motions:*

1) The Department asks that you accept the investigative report into evidence for the purpose of imposing a penalty. 2) The Department asks you find the Respondent was properly served and waived the right to a formal hearing (either by failing to respond at all or timely). 3) The Department asks you adopt the findings of fact as set forth in the Administrative Complaint. 4) The Department asks you adopt the conclusions of law as set forth in the Administrative Complaint, and find that this constitutes a violation of the practice act.

*If the Respondent **was not present**, the board, as appropriate, accepted unanimously the following motions:*

1) The Department asks that you accept the investigative report into evidence for the purpose of imposing a penalty. 2) The Department asks you find the Respondent was properly served and waived the right to a formal hearing (either by failing to respond at all or timely). 3) The Department asks you adopt the findings of fact and conclusions of law as set forth in the Administrative Complaint, and find that this constitutes a violation of the practice act.

12. EDUARDO R. ROMERO, LMT, CASE # 2009-24629 **PCP: HARRISON & OLIVER**

Respondent was not present nor represented by counsel.

Ms. Hibbert represented the Department and presented the case to the Board.

Allegations of the Administrative Complaint: 480.046(1)(o), 456.072(1)(ii), and 456.072(1)(II), F.S.

Action Taken: Motion made and seconded to impose the following penalty:

- Revocation

Additional Action Taken: Motion made and seconded to assess costs in the amount of \$736.34. Motion passed unanimously.

Additional Action Taken: After further discussion, Motion made and seconded to rescind the assessment of costs. Motion passed 3/1 with Ms. Burke-Wammack dissenting.

Motion passed 3-1, with Ms. Burke-Wammack dissenting.

13. JOSE A. FERNANDEZ, LMT, CASE # 2012-02185 **PCP: HARRISON & OLIVER**

Respondent was not present nor represented by counsel.

Ms. Hibbert represented the Department and presented the case to the Board.

Allegations of the Administrative Complaint: 480.046(1)(o), 456.072(1)(v), 456.063(1), 480.0485, F.S., and rule 64B7-30.001(5) and 64B7-26.010(1), (3) and (4), F.A.C.

Action Taken: Motion made and seconded to impose the following penalty:

- Revocation

Motion passed unanimously.

Recommended Order

1. SHIYAN PENG, LMT, DOH CASE # 2012-13362 / DOAH CASE # 12-003666PL PCP: HAYNES & BUCKLEY

Respondent was present and represented by Lance O. Leider, Esq. The Department was represented by Candace Rochester, Esq., Assistant General Counsel. Ms. Gustafson explained the Recommended Order was before the Board for final action and explained the process for reviewing the Recommended Order.

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

- Count I violation of sections 480.046(1)(o) and 456.072(1)(h), F.S.;
- Count II violation of sections 480.046(1)(o) and 456.072(1)(w), F.S.; and
- Count III violation of section 480.046(1)(o), F.S., in violation of section 480.041(1)(b), F.S.

Ms. Rochester advised the Division of Administrative Hearings (DOAH) recommended the Board of Massage Therapy enter a final order finding Respondent not guilty of the offenses charged in the administrative complaint.

Ms. Gustafson, Board Counsel, reviewed each exception with the board.

Petitioner's Exceptions to the Findings of Fact:

Exception #1 – Paragraph 8 of the Recommended Order

Action Taken A motion was made by Ms. Phillips to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #2 – Paragraph 16 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #3 – Paragraph 20 of the Recommended Order

Action Taken: A motion was made by Ms. Phillips to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #4 – Paragraph 21 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #5 – Paragraph 25 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Phillips seconded the motion, which passed unanimously.

Exception #6 – Paragraph 27 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Phillips seconded the motion, which passed unanimously.

Exception #7 – Paragraph 28 of the Recommended Order

Action Taken: A motion was made by Ms. Phillips to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #8 – Paragraph 29 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #9 – Paragraph 30 of the Recommended Order

Action Taken: A motion was made by Ms. Phillips to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #10 – Paragraph 31 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #11 – Paragraph 32 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #12 – Paragraph 33 of the Recommended Order

A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Petitioner's Exceptions to Conclusions of Law:

Exception #13 – Paragraphs 40 and 41 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #14 – Paragraphs 42 and 43 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #15 – The ALJ reads “act” in section 456.072(1) to mean that the statute requires a culpable act on the part of the licensee.

Ms. Gustafson advised the board does not need to rule on these exception since they had ruled on exception #14.

Exception #16 – Paragraphs 44 and 45 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #17 – Paragraph 52 of the Recommended Order

A motion was made by Ms. Phillips to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #18 – Paragraphs 53 and 55 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Phillips seconded the motion, which passed unanimously.

Exception #19 – Referenced rule 64B7-32.002, F.A.C.

Ms. Gustafson advised the board does not need to rule on this exception.

Exception #20 – Referenced rule 64B7-32.003, F.A.C.

Ms. Gustafson advised the board does not need to rule on this exception.

Exception #21 – The Administrative Law Judge erroneously concluded Respondent completed the required course of study.

Action Taken: A motion was made by Ms. Nixon to reject the exception. Ms. Burke-Wammack seconded the motion, which passed unanimously.

Exception #22 – Paragraph 58 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #23 – Paragraph 59 of the Recommended Order

Action Taken: A motion was made by Ms. Nixon to reject the exception. Ms. Burke-Wammack seconded the motion, which passed unanimously.

Exception #24 – Paragraph 60 of the Recommended Order

Action Taken: A motion was made by Ms. Phillips to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #25 – Paragraph 64 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #26 – Paragraph 68 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #27 – Paragraph 69 of the Recommended Order

Action Taken: A motion was made by Ms. Nixon to reject the exception. Ms. Burke-Wammack seconded the motion, which passed unanimously.

The board then heard testimony from Mr. Leider, attorney for respondent.

Final Action Taken: A motion was made by Ms. Phillips to accept the Findings of Fact and the Conclusions of Law in the Recommended Order and to DISMISS the Administrative Complaint. The motion was seconded by Ms. Nixon, which passed unanimously.

Reconsideration of Final Order

1. LANMEI LI, LMT, CASE # 2012-12552

PCP: HAYNES & BUCKLE

Respondent was not present. Counsel of record, Helen Wu, Esq., was not present.

Ms. Gustafson advised the Respondent's Voluntary Relinquishment was accepted by the board at its January 24, 2013 meeting and the Final Order was filed February 4, 2013. Respondent's request for reconsideration was received by the department on April 12, 2013. Ms. Gustafson further advised the board no longer had jurisdiction to consider the request for reconsideration as the time for appeal to the District Court of Appeal had passed.

Action Taken: Ms. Phillips moved to deny the request for Reconsideration of Final Order. Motion seconded and carried unanimously.

PROSECUTOR'S REPORT

1. July 2013 Massage Therapy Prosecutor's Report

Ms. Hibbert presented the report to the board.

Total Cases open/active in PSU:	356
Cases under legal review:	45
Cases where PC recommendation made:	41
Total Cases where PC has been found:	94
Cases in holding status:	0
Cases pending before DOAH:	16
Cases in intake status:	11
Cases Agendaed for Board:	120

***REVIEW AND APPROVAL OF MINUTES**

1. June 12, 2013, General Business Meeting Conference Call

Action Taken: Ms. Burke Wammack made a motion to approve the minutes as written, which was seconded and carried unanimously.

***REPORTS**

Board Chair Report – Karen Ford **Legislative Liaison Report – Karen Ford**

1. Proposed 2014 Legislative Changes BOMT July 2013

Ms. Ford reviewed with the board statutory changes previously approved by the board.

480.033 Definitions

- (3) Amend colonic irrigation to “Colon Hydrotherapy”
- (5) Strike “apprentice” definition
- (6) Amend colonic irrigation to “Colon Hydrotherapy”
- (10) Definition for “Direct Supervision”
- (11) Definition for “Sponsoring Massage Therapist”
- (12) Definition for “Sponsorship”

480.041 Massage therapists; qualifications; licensure; endorsement

- (1)(a) new - adds “good moral character”
- (1)(c) Strike reference to apprenticeship program (and add back the word “school”)
- (d) Strike reference to exam administered by the department
- (2) Every person desiring to be licensed ~~examined for licensure~~ and strike last sentence in this section
- (4)(a) Strike (a) referencing apprentices
- (a) Amend colonic irrigation to “Colon Hydrotherapy”
- (c) Remains the same

480.042 Examinations

(5) ~~All licensing examinations shall be conducted in such manner that the applicant shall be known to the department by number until her or his examination is completed and the proper grade determined. An accurate record of each examination shall be made; and that record, together with all examination papers, shall be filed with the State Surgeon General and shall be kept by the testing entity(s) for reference and inspection for a period of not less than 2 years immediately following the examination.~~

480.043 Massage establishments; requisites; licensure; inspection

(7)(b) A license may be transferred from one location to another only ~~after inspection and approval by the board~~ and receipt of an application and ~~inspection~~ fee set by rule of the board, not to exceed ~~\$75~~ \$125.

Note: Mr. Jusevitch advised the department was not moving forward with this amendment. Ms. Burke-Wammack requested to submit the proposal again. The board determined suggestion could be made to FSMTA.

480.044 Fees; disposition

- (1)(h) Strike fee reference for apprentice
- (i) and (j) amend colonics to read “colon hydrotherapy”

480.046 Grounds for disciplinary action by the board

- (1)(n) Strike colonic irrigation and insert colon hydrotherapy

New Proposed Statutory Changes:

480.035 Board of Massage Therapy

(5) Strike "A quorum of the board shall consist of not less than four."

Action Taken: After discussion, Ms. Phillips moved to approve the suggested amendment. Ms. Nixon seconded with carried 4/0.

480.041 Massage therapists; qualifications; licensure; endorsement.

(1)(a) Strike "or" and include "and" 18 years of age and received a high school diploma....

Action Taken: Consensus was to include this amendment in the legislative proposal.

480.046 Grounds for disciplinary action by the board

(1)(c) Adds "or entering a plea of guilty or nolo contendere to" and strikes last sentence of section. This will conform to 456.071(2)(c).

New (p) Violating any provision of chapter 787.06 or 796;

Note: add statutes for human trafficking and prostitution

New (q) Engaging in unprofessional conduct as determined by the Board;

Note: Correct to read: (q) Engaging in unprofessional conduct as determined by board rule.

New r) Failure to maintain Minimal Standards for Record Keeping, (add: as defined by board rule,) in rendering or providing services or billing for services of treatment procedures under the prescription of a physician or physician assistant licensed under chapter 458, an osteopathic physician or physician assistant licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, an advanced registered nurse practitioner licensed under part 1 of chapter 464, or a dentist licensed under chapter 466.

Note: Add "as defined by board rule," after words "record keeping". The board's consensus was to accept language with corrections.

Action Taken: After discussion, Ms. Burke-Wammack moved to present the changes to the Department. Ms. Phillips seconded the motion, which passed unanimously.

The board will present board proposals to the FSMTA also.

Public Relations Liaison Report - Karen Ford

Ms. Ford advised she was invited to speak to the Florida Chiropractic Association.

School Liaison Report – Karen Ford

1. Approved Schools 04/05/2013 to 06/30/2013

Action taken: Motion made, seconded and carried to ratify the approved massage therapy schools.

2. Out of State Massage Therapy Schools

Ms. Ford presented information related to the education practices of schools in other states. She suggested the following schools do not meet the standards for approval under Chapter 480.033(9) F.S.

California – Andrew Health Institute; East West Institute of Hand Therapy; Royal Irvin College; and Select Therapy Institute

Georgia – Georgia Academy of Massage

New Jersey – Body Concepts and Wellness Institute

Action Taken: After a lengthy discussion, Ms. Phillips moved that the above listed schools be deemed non-approved schools as they do not meet the definition of section 480.033(9), F.S., which states: “Board-approved massage school” means a facility which meets minimum standards for training and curriculum as determined by rule of the board and which is licensed by the Department of Education pursuant to chapter 1005 or the equivalent licensing authority of another state or is within the public school system of this state.” Motion seconded by Ms. Burke-Wammack and passed unanimously.

Additional Action Taken: Ms. Phillips moved to require any application with a transcript from the above listed schools be presented to the board in perpetuity. Motion seconded and passed unanimously.

Regarding the Florida schools as mentioned by Ms. Ford, Academy of Health and Beauty and the Tokyo Beauty & Massage School, Ms. Gustafson explained the board would need to issue a Notice of Intent to Rescind Approval and give the school a point of entry for a hearing. Ms. Ford advised the Florida schools will be reviewed separately and at a later time.

(break)

3. Matters regarding Florida College of Natural Health – Pompano Campus

Action Taken: Ms. Phillips moved for the Department of Education, Commission on Independent Education (CIE), be requested to open an investigation on Florida College of Natural Health – Pompano Campus, regarding their compliance with CIE rules as the school is a duly licensed entity with DOE. Motion seconded and passed unanimously.

Action Taken: Ms. Phillips moved to request Florida College of Natural Health – Pompano Campus, present reasons as to why their transcripts in the fraudulent cases were not rescinded. Ms. Nixon seconded the motion, which carried unanimously.

Ms. Ford and Ms. Gustafson will draft the letter.

Board Counsel's Report – Lee Ann Gustafson

1. July 2013 Rules Report

Ms. Gustafson presented the rules report which included the status on the following rules:

- 64B7-25.001 – Examination Requirements – Noticed published 6/25/13
- 64B7-25.0011 - Colonic Irrigation Application – Effective 6/19/13
- 64B7-25.004 – Endorsements – In draft stage
- 64B7-28.0095 – Continuing Education for Pro-Bono Services – Pending review and OFARR notification
- 64B7-28.010 - Requirements for Board Approval of Continuing Education Programs – Rule Development published 7/9/13
- 64B7-32.002 - Proof of Graduation – Rule development published 3/13/13; received SERC 6/10/13, pending review

2. 2013-2014 Annual Regulatory Plan

- 64B7-25.001 - Examination Requirements
- 64B7-26.002 - Licensure of Massage Establishments
- 64B7-26.007 - Transfer of Massage Establishment License
- 64B7-28.0041 - Inactive Status and Renewal of Inactive Status
- 64B7-28.0043 - Delinquent Status License
- 64B7-29.002 - Qualification
- 64B7-29.003 - Apprenticeship Training Program
- 64B7-29.005 - Extension of Apprenticeship
- 64B7-29.007 - Colonics Training through Apprenticeship
- TBD – New rule for any statutory mandate (federal or state)

Ms. Gustafson presented the updated Annual Regulatory Plan and asked for board approval to present the list to the Office of the Governor as the list of rules to be developed for the Fiscal Year 2013-2014.

Action Taken: Motion made, seconded and passed to present the regulatory plan to the Office of the Governor as the list of rules to be developed for the coming year.

Vice Chair Report – Bridget K. Burke-Wammack

No report.

Rules Liaison Report – Bridget Burke-Wammack

1. Rule 64B7-25.001, F.A.C., Examination Requirements

Informational per Ms. Gustafson.

5/17/13 Email from Jennifer Fowler, Office of Fiscal Accountability and Regulatory Reform (OFARR)

5/17/13 Email response from Board Counsel

5/17/13 Email from Jennifer Fowler, OFARR

Notice of Proposed Rule published 6/25/13

Approved Revised Massage Therapist Application (approved by board 9/12)

Continuing Education Liaison Report – Sharon Phillips

1. Approved Pro Bono Requests 04/05/2013 to 06/30/2013

Action taken: Motion made, seconded and carried to ratify the pro bono requests.

Executive Director's Report – Anthony Jusevitch

**1. Ratification of Licensure - Massage Therapists 04/05/2013 to 06/30/2013
License numbers MA72380 through MA73325**

Action taken: Motion made, seconded and carried to ratify the massage therapists

Budget Liaison Report – Lydia Nixon

1. Board of Massage Therapy Expenditures for Period Ending 3/31/2012

Ms. Nixon presented the expenditure report to the board. Ms. Ford requested information regarding DOAH has billed the department on the fraudulent transcript cases. Ms. Nixon advised she would call the department for the answer.

Unlicensed Activity Report – Lydia Nixon

Ms. Nixon presented the report to the board. Ms. Nixon had questions regarding an unlicensed activity campaign and will contact Stacey Wolf.

Human Trafficking Report – Anthony Jusevitch

Mr. Jusevitch presented a report to the board. Ms. Ford will assume role of liaison for human trafficking. Mr. Jusevitch advised of the upcoming Human Trafficking Summit on October 3rd at USF in Tampa.

ADMINISTRATIVE PROCEEDINGS

Applicants with History

5. Chunmei Liang – exam

Ms. Liang was present with counsel, Qian Wen, Esq., and was sworn in by the court reporter.

Ms. Liang was issued a license in error. Her license was returned at the request of the board office. Her application required board review prior to licensure.

Action Taken: After discussion, Ms. Phillips moved to grant the license unencumbered. Ms. Ford seconded the motion, which passed unanimously.

Ms. Ford introduced new PRN Medical Director, Penny Ziegler, M.D., to the Board.

(Lunch Break)

***RULES DISCUSSION**

1. Rule 64B7-28.009, F.A.C., Continuing Education

Action Taken: After discussion, motion was made, seconded and carried to approve with amendments.

2. Rule 64B7-28.010, F.A.C., Requirements for Board Approval of Continuing Education Programs

Action Taken: After discussion, motion was made, seconded and carried to approve with amendments.

3. Grounds for Disciplinary Action - Chapter 2013-212, Laws of Florida (CS/CS/CS/HB 7005)

Section 2 of this law provides additional grounds for the denial of a license or disciplinary action which states:

480.046 Grounds for disciplinary action by the board.

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(e) Advertising to induce or attempt to induce, or to engage or attempt to engage, the client in unlawful sexual misconduct as described in s. 480.0485.

Action Taken: Motion made, seconded and carried to set the guidelines for discipline as a \$2500 fine and revocation.

Section 4 of the law prohibits the operation of a massage establishment during specified times; provides exceptions; prohibits the use of a massage establishment as a principal domicile unless the establishment is zoned for residential use under a local ordinance and provides penalties.

Section 480.0475 Massage establishments; prohibited practices.- Subsection (1)

Action Taken: Motion was made to set the discipline guidelines as:
First Offense - \$250 fine
Second Offense - \$500 fine
Third Offense: \$500 fine/probation

The motion was seconded, and failed 1/3 with Ms. Ford, Ms. Nixon, and Ms. Phillips dissenting.

Action Taken: A second motion was made to set the discipline guidelines as a \$1000 and revocation. The motion was seconded and passed with Ms. Burke-Wammack dissenting.

Subsection (2)

Action Taken: Motion was made to set the discipline guidelines as a \$1000 fine and revocation. The motion was seconded and passed unanimously.

(Returned to rule 64B7-28.010 to vote on motion.)

***NEW BUSINESS**

1. Delegation of Authority

Action Taken: A motion was made to approve the delegation of authority, with the removal of sections 3(b)(ii) and 3(b)(iii). The motion was seconded and passed unanimously.

***INFORMATIONAL**

1. SB 248 Enrolled

Mr. Jusevitch stated the bill allows the board to delegate the authority to one person to compel someone to have a PRN evaluation.

2. Change of PRN Medical Director

Dr. Ziegler was acknowledged and welcomed by the Board.

****Note:** Ms. Burke-Wammack requested rule 64B7-32.003(1)(b), F.A.C., be opened for rule development and be included on the October agenda.

The meeting recessed approximately 3:30 p.m.

FRIDAY - July 26, 2013

The meeting was called to order by Ms. Karen Ford, LMT, Chair, approximately 9:00 a.m. Those present for all or part of the meeting included the following:

MEMBERS PRESENT:

Karen Ford, M.S., LMT, Chair
Bridget Burke-Wammack, LMT, CLT, V-Chair
Lydia Nixon, LMT
Sharon Phillips, LMT, AP, DOM
Jonathan Walker, LMT

STAFF PRESENT:

Anthony Jusevitch, Executive Director
Paula Mask, Program Operations Administrator
Matthew Thompson, Regulatory Specialist II

BOARD COUNSEL:

Lee Ann Gustafson, Esq.
Senior Assistant Attorney General

COURT REPORTER:

American Court Reporting
Phone: 904.353.7706

DEPARTMENT PROSECUTING ATTORNEYS:

Sharmin Hibbert, Esq., Assistant General Counsel
Candace Rochester, Esq., Assistant General Counsel

ADMINISTRATIVE PROCEEDINGS

Applicants with History

1. Chris Elidas – exam

Applicant was not present nor represented by counsel.

Action Taken: After discussion, Ms. Burke-Wammack moved to grant the license unencumbered. Motion was seconded and passed 4-1 with Ms. Nixon dissenting.

2. Francis Jackson – exam

Applicant was present without counsel. Applicant was sworn in by the court reporter.

Action Taken: After discussion, Ms. Nixon moved to grant the license unencumbered. Motion was seconded and passed unanimously.

3. Kaitland Smith – exam

Applicant was present without counsel. Applicant was sworn in by the court reporter.

Action Taken: After discussion, Mr. Walker moved to grant the license unencumbered. Motion was seconded and passed unanimously.

4. Amy Jaeger – exam

Applicant was present without counsel. Applicant was sworn in by the court reporter.

Action Taken: After discussion, Ms. Burke-Wammack moved to grant the license with conditions:

- The applicant undergoes an evaluation coordinated by the Professionals Resource Network (PRN), and complies with any and all terms and conditions imposed by PRN as a result of said evaluation. It is the duty of the applicant to contact the PRN within 30 days of the filed final order. If a contract is

recommended, the applicant must sign a contract within 120 days of the filed final order. The Board delegates to the Executive Director the authority to accept the recommendation of PRN.

Motion was seconded and passed unanimously.

6. Alyssa Malvinni - exam

Applicant was present without counsel. Applicant was sworn in by the court reporter.

Action Taken: After discussion, Ms. Burke-Wammack moved to grant the license with conditions:

- The applicant undergoes an evaluation coordinated by the Professionals Resource Network (PRN), and complies with any and all terms and conditions imposed by PRN as a result of said evaluation. It is the duty of the applicant to contact the PRN within 30 days of the filed final order. If a contract is recommended, the applicant must sign a contract within 120 days of the filed final order. The Board delegates to the Executive Director the authority to accept the recommendation of PRN.

The motion failed due to lack of second.

Additional Action Taken: After discussion, Ms. Ford moved to grant the license unencumbered. Ms. Burke-Wammack seconded the motion which carried 4/1 with Ms. Nixon dissenting.

Applicants with Foreign Education

1. Yamiris Segarra

Applicant was present without counsel. Applicant was sworn in by the court reporter.

Action Taken: After discussion, the applicant withdrew her application due to lack of meeting education requirements and requested a refund of applicable fees. The Board accepted her withdrawal.

Applicant Informal Hearings

1. Joshua Lee

Applicant was present without counsel. Applicant was sworn in by the court reporter.

Mr. Lee's application was reviewed at the April 2013 board meeting. The board required him to obtain a PRN evaluation. Mr. Lee disputed having to sign a PRN contract.

Action Taken: After discussion, Ms. Phillips moved to grant the license unencumbered. Motion was seconded and passed 4-1, with Ms. Burke-Wammack dissenting.

2. Xue Hua Lin

Applicant was present and sworn in by the court reporter. Attorney of record, Hongwei Shang, Esq., was not present. Applicant's fiancé, Alberto Rosello, was present on Ms. Lin's behalf. He was sworn in by the court reporter.

At the April 2013 board meeting, the applicant was issued a Notice of Intent to Deny. Applicant was previously disciplined by the board.

The board tabled this application until later in the meeting in order to allow staff to obtain certain documentation regarding the Pennsylvania Professional School of Massage.

3. Xiaohe Zhao

Applicant was present without counsel. Applicant was sworn in by the court reporter. Applicant was accompanied by Charles Rogers, her husband, who was also duly sworn in.

At the June 12, 2013 the applicant was issued a Notice of Intent to Deny because she did not demonstrate she completed a massage therapy program that meets the minimum standards for training curriculum set forth in rule 64B7-32.003, F.A.C. The applicant was missing sufficient hours in theory and history of massage, massage practicum, business, ethics and hydrotherapy.

Action Taken: After discussion, Ms. Ford moved to uphold the Order of Intent to Deny, based upon a lack of required hours per the requirements of rule 64B7-32.003 F.A.C. The motion was seconded and passed unanimously.

Additional Action Taken: After discussion, motion made, seconded and passed to reconsider the previous motion.

Additional Action Taken: Motion made, seconded and passed to allow the applicant to submit any and all information related to her massage therapy education obtained in China and the U.S. An English translation is required of the Chinese transcripts. The application will be continued to the next meeting.

DISCIPLINARY PROCEEDINGS

Recommended Orders

2. JUN PING HAO, LMT, DOH CASE # 2012-11912 / DOAH CASE # 12-3611PL PCP: HAYNES & BUCKLEY

Respondent was present and sworn in by the court reporter. Respondent was represented by Martin P. McDonnell, Esq. The Department was represented by Candace Rochester, Esq., Assistant General Counsel. Ms. Gustafson explained the Recommended Order was before the Board for final action and explained the process for reviewing the Recommended Order.

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

- Count I violation of sections 480.046(1)(o) and 456.072(1)(h), F.S.;
- Count II violation of sections 480.046(1)(o) and 456.072(1)(w), F.S.; and
- Count III violation of section 480.046(1)(o), F.S., by violating section 480.041(1)(b), F.S.

Ms. Rochester advised the Division of Administrative Hearings (DOAH) recommended the Board of Massage Therapy enter a final order finding Respondent not guilty of the offenses charged in the administrative complaint.

Ms. Gustafson, Board counsel, reviewed each exception with the board.

Petitioner's Exceptions to the Findings of Fact:

Exception #1 – Paragraph 4 of the Recommended Order

Action Taken: A motion was made by Ms. Phillips to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #2 – Paragraphs 10, 11, and 12 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #3 – Paragraph 13 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Phillips seconded the motion, which passed unanimously.

Petitioner's Exceptions to Conclusions of Law:

Exception #4 – Paragraph 26 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Phillips seconded the motion, which passed unanimously.

Exception #5 – Paragraph 27 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Phillips seconded the motion, which passed unanimously.

Exception #6 – The ALJ reads “act” in section 456.072(1) to mean that the statute requires a culpable act on the part of the licensee. After discussion,

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously

Exception #7 – Paragraph 28 of the Recommended Order

Action Taken: A motion was made by Ms. Phillips to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #8 – Referenced rule 64B7-32.002, F.A.C.

Ms. Gustafson advised the board did not need to rule on this exception.

Exception #9 – Referenced rule 64B7-32.003, F.A.C.

Ms. Gustafson advised the board did not need to rule on this exception.

Exception #10 – ALJ erroneously concluded section 480.046(1)(o), F.S., sets out qualifications for an applicant for licensure; it does not, strictly speaking, make it a violation to obtain a license without being qualified.

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

The board then heard testimony from Mr. McDonnell, attorney for respondent.

Final Action Taken: A motion was made by Ms. Burke-Wammack to accept the Findings of Fact and the Conclusions of Law in the Recommended Order and to DISMISS the Administrative Complaint. The motion was seconded by Ms. Nixon, which passed unanimously.

**3. YUPING JIANG, LMT, DOH CASE # 2012-12154 / DOAH CASE # 12-3610PL
PCP: HAYNES & BUCKLEY**

Respondent was present and sworn in by the court reporter. Respondent was represented by Martin P. McDonnell, Esq. The Department was represented by Candace Rochester, Esq., Assistant General Counsel. Ms. Gustafson explained the Recommended Order was before the Board for final action and explained the process for reviewing the Recommended Order.

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

- Count I violation of sections 480.046(1)(o) and 456.072(1)(h), F.S.;
- Count II violation of sections 480.046(1)(o) and 456.072(1)(w), F.S.; and
- Count III violation of section 480.046(1)(o), F.S., by violating section 480.041(1)(b), F.S.

Ms. Rochester advised the Division of Administrative Hearings (DOAH) recommended the Board of Massage Therapy enter a final order finding Respondent not guilty of the offenses charged in the administrative complaint.

Attorney for Respondent addressed the board.

Ms. Gustafson, board counsel, reviewed each exception with the board.

Petitioner's Exceptions to the Findings of Fact:

Exception #1 – Paragraph 4 of the Recommended Order

Action Taken: A motion was made by Ms. Nixon to reject the exception. Ms. Burke-Wammack seconded the motion, which passed unanimously.

Exception #2 – Paragraph 10 of the Recommended Order

Action Taken: A motion was made by Ms. Phillips to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #3 – Paragraphs 11 and 12 of the Recommended Order

Action Taken: A motion was made by Ms. Nixon to reject the exception. Ms. Phillips seconded the motion, which passed unanimously.

For the record, Ms. Gustafson reviewed Exception #2 and #3 again.

Action Taken: A motion was made by Ms. Burke-Wammack to reject exceptions #2 and #3. Ms. Nixon seconded the motion which passed unanimously.

Exception #4 – Paragraph 14 of the Recommended Order

Action Taken: A motion was made by Ms. Nixon to reject the exception. Ms. Burke-Wammack seconded the motion, which passed unanimously.

Petitioner's Exceptions to Conclusions of Law:

Exception #5 – Paragraph 27 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #6 – Paragraph 28 of the Recommended Order

Exception #7 – The ALJ reads “act” in section 456.072(1) to mean that the statute requires a culpable act on the part of the licensee.

Action Taken: A motion was made by Ms. Nixon to reject exceptions 6 and 7. Ms. Burke-Wammack seconded the motion, which passed unanimously

Exception #8 – Paragraph 29 of the Recommended Order

Action Taken: A motion was made by Ms. Phillips to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Exception #9 – Referenced rule 64B7-32.002, F.A.C.

Ms. Gustafson advised the board did not need to rule on this exception.

Exception #10 – Referenced rule 64B7-32.003, F.A.C.

Ms. Gustafson advised the board did not need to rule on this exception.

Exception #11 – ALJ erroneously concluded section 480.046(1)(o), F.S., sets out qualifications for an applicant for licensure; it does not, strictly speaking, make it a violation to obtain a license without being qualified.

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Nixon seconded the motion, which passed unanimously.

Final Action Taken: A motion was made by Ms. Nixon to adopt the Findings of Fact and the Conclusions of Law in the Recommended Order and DISMISS the Administrative Complaint. The motion was seconded by Ms. Burke-Wammack, which passed unanimously.

4. MEIHUA QIU, LMT, DOH CASE # 2012-13663 / DOAH CASE # 12-3824PL PCP: HARRISON & NIXON

Respondent was present and sworn in by the court reporter. Respondent was represented by Martin P. McDonnell, Esq. The Department was represented by Candace Rochester, Esq., Assistant General Counsel. Ms. Gustafson explained the Recommended Order was before the Board for final action and explained the process for reviewing the Recommended Order.

Ms. Nixon was recused due to participation on the probable cause panel.

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

- Count I violation of sections 480.046(1)(o) and 456.072(1)(h), F.S.;
- Count II violation of sections 480.046(1)(o) and 456.072(1)(w), F.S.; and
- Count III violation of sections 480.046(1)(o), and 480.041(1)(b), F.S.

Ms. Rochester advised the Division of Administrative Hearings (DOAH) recommended the Board of Massage Therapy enter a final order finding Respondent not guilty of the offenses charged in the administrative complaint.

Attorney for the respondent addressed the board.

Ms. Gustafson, board counsel, reviewed each exception with the board.

Petitioner's Exceptions to the Findings of Fact:

Exception #1 – Paragraph 4 of the Recommended Order

Action Taken: A motion was made by Ms. Phillips to reject the exception. Ms. Ford seconded the motion, which passed unanimously.

Exception #2 – Paragraph 7 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Phillips seconded the motion, which passed unanimously.

Exception #3 – Paragraphs 11, 12 and 13 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Ford seconded the motion, which passed unanimously.

Exception #4 – Paragraph 14 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Phillips seconded the motion, which passed unanimously.

Petitioner's Exceptions to Conclusion of Law:

Exception #5 – Paragraph 28 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Phillips seconded the motion, which passed unanimously.

Exception #6 – Paragraph 29 of the Recommended Order

Exception #7 – The ALJ reads “act” in section 456.072(1) to mean that the statute requires a culpable act on the part of the licensee.

Action Taken: A motion was made by Ms. Burke-Wammack to reject exceptions 6 and 7. Ms. Ford seconded the motion, which passed unanimously.

Exception #8 – Paragraph 30 of the Recommended Order

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Phillips seconded the motion, which passed unanimously.

Exception #9 – Referenced rule 64B7-32.002, F.A.C.

Exception #10 – Referenced rule 64B7-32.003, F.A.C.

Ms. Gustafson advised the board did not need to rule on these exceptions

Exception #11 – ALJ erroneously concluded section 480.046(1)(o), F.S., sets out qualifications for an applicant for licensure; it does not, strictly speaking, make it a violation to obtain a license without being qualified.

Action Taken: A motion was made by Ms. Burke-Wammack to reject the exception. Ms. Phillips seconded the motion, which passed unanimously.

Final Action Taken: A motion was made by Ms. Phillips to adopt the Findings of Fact and the Conclusions of Law in the Recommended Order and DISMISS the Administrative Complaint. The motion was seconded by Ms. Burke-Wammack, which passed unanimously.

(Break)

Informal Hearings

*If the Respondent **was present** the board, as appropriate, accepted unanimously the following motions:*

1) The Department asks that you find the Respondent was properly served and that an informal hearing was requested. 2) The Department asks that you adopt the findings of fact as set forth in the Administrative Complaint; 3) The Department asks that you adopt the conclusions of law as set forth in the Administrative Complaint; 4) The Department asks that you accept the case materials and any materials in the addendum into evidence as a part of the record and find that this constitutes a violation of the practice act.

*If the Respondent **was not present**, the board, as appropriate, accepted unanimously the following motion:*

1) The Department asks that you accept the investigative report into evidence for the purpose of imposing a penalty. 2) The Department asks you find the Respondent was properly served and an informal hearing was requested. 3) The Department asks that you adopt the findings of fact and conclusions of law as set forth in the Administrative Complaint, and find that this constitutes a violation of the practice act.

1. SUZANNE M. GRAY, LMT, CASE # 2012-14403

PCP: Smallwood & Nixon

Respondent was present and was sworn in by the court reporter.

Ms. Nixon was recused due to participation on the probable cause panel.

Ms. Hibbert represented the Department and presented the case to the board.

Allegations of the Administrative Complaint: Section 480.046(1)(o) and 456.065(2)(d)3., F.S.

Action Taken: Ms. Ford moved to dismiss the case, which was seconded and passed 3/1 with Ms. Burke-Wammack opposing the motion.

Voluntary Relinquishments

Items 106 and 108 were combined for one vote. Neither respondents nor attorney of record, Kenneth M. Skinner, Esq., were present for these cases. Ms. Nixon was recused due to participation on the probable cause panel. Ms. Hibbert presented the cases to the board.

Action Taken: Ms. Ford moved to accept the voluntary relinquishments for Items 106 and 108. Motion seconded by Ms. Burke-Wammack and carried unanimously.

106. ZEJIN ZHOU, LMT, CASE # 2012-14144

PCP: HARRISON & NIXON

Allegations of the Administrative Complaint: Sections 480.046(1)(o) by violating s. 456.072(1)(h) and 456.072(1)(w); and 480.401(1)(b), F.S.

108. BAOLI CAO, LMT, CASE # 2012-11571

PCP: SMALLWOOD & NIXON

Allegations of the Administrative Complaint: Sections 480.046(1)(o) by violating s. 456.072(1)(h) and 456.072(1)(w); and 480.401(1)(b), F.S.

109. YAFENG YU, LMT, CASE #2012-00884

PCP: HARRISON & BURKE-WAMMACK

Respondent was not present nor the attorney of record, June Zhou, Esq.

Ms. Burke-Wammack was recused due to participation on the probable cause panel.

Allegations of the Administrative Complaint: Sections 480.046(1)(o), 456.072(1)(h), 456.072(1)(m) and 456.072(1)(w), F.S.

Ms. Hibbert presented the case to the board.

ACTION TAKEN: Ms. Phillips moved to accept the voluntary relinquishment. Mr. Walker seconded the motion, which carried unanimously.

Determination of Waivers

The board, as appropriate, accepted unanimously the following motions: 1) to find that the respondent was properly served and waived their rights to a hearing as to the material issues of fact by not filing a response; 2) to adopt the material facts as alleged in the administrative complaint are not in dispute and to adopt the allegations of fact and law in the administrative complaint as the Board's conclusions of fact and law in this proceeding; and 3) to adopt the materials and any addendum materials into evidence in this proceeding.

6. JIPING ZHU, LMT, CASE # 2012-09507

PCP: HARRISON & BURKE-WAMMACK

Respondent was not present nor represented by counsel.

Ms. Burke-Wammack was recused due to participation on the probable cause panel.

Ms. Hibbert represented the Department and presented the case to the Board.

Allegations of the Administrative Complaint: 480.046(1)(o), 456.072(1)(v), 456.063(1), 480.0485, F.S., and rule 64B7-26.010(1)(3), and (4), F.A.C.

Action Taken: Motion made and seconded to impose the penalty of revocation, which passed unanimously.

Respondent was not present nor represented by counsel.

Ms. Burke-Wammack was recused due to participation on the probable cause panel.

Ms. Hibbert represented the Department and presented the case to the Board.

Allegations of the Administrative Complaint: 480.046(1)(o), 480.0485, F.S., and rules 64B7-30.001(5), F.A.C.

Action Taken: Motion made and seconded to impose the penalty of revocation, which passed unanimously.

Petition for Variance or Waiver

1. Timothy Agnew – Rule 64B7-28.009, F.A.C., Continuing Education

Licensee was not present.

Licensee requested a petition for declaratory statement to obtain continuing education credits for attending National Athletic Trainer Association (NATA) seminars. Board counsel advised him it appeared he was seeking a waiver or variance of board rules, not a declaratory statement.

Action Taken: Motion made, seconded and passed to deny the petition for a declaratory statement, as a petition for variance or waiver was more appropriate.

Ms. Phillips moved to reconsider the motion, which was seconded by Ms. Burke-Wammack. Motion carried 5/0. Ms. Gustafson advised no action was necessary on this petition as she had responded to him advising he should file a petition for variance or waiver of a rule.

2. Frank Lovato – Rule 64B7-25.004, F.A.C., Endorsement

Licensee was present and duly sworn in.

Licensee requested a variance or waiver of rule 64B7-25.004, which requires an applicant for licensure by endorsement to complete a current curriculum course from a board approved school covering the Florida Statutes and rules related to massage therapy. He is currently licensed in Colorado and has not made application to Florida for licensure.

Ms. Gustafson advised the petitioner is, in essence requesting waiver of section 480.041(4)(c), F.S., and the board does not have the authority to waive the requirements of statutes.

Action Taken: Motion made, seconded and passed to deny his request for a variance or waiver of rule 64B7-25.004, F.A.C.

3. Lively Technical – Rule 64B7-32.003(1)(b), F.A.C., Board Approved Massage School

Licensee was not present.

Vernea Randolph, on behalf of Lively Technical Center, requested the agency's approval to waive the requirement of no more than six hours per day, as a limitation on the classroom hours for students, and asked approval for 7.5 hours per day.

Action Taken: Motion made, seconded and passed to grant the petition for waiver of the limitation of six classroom hours per day as required by rule 64B7-32.003(1)(b), F.A.C.

4. Omar Garcia – Rule 64B7-29.003(3)(a) and (b), F.A.C., Apprenticeship Training Program

Mr. Garcia was not present.

Mr. Garcia is currently completing an apprenticeship training program and requested a waiver of the requirement to complete 300 hours of study in physiology and 300 hours in anatomy. Mr. Garcia stated he has a Bachelor of Science degree in Anatomy & Physiology and a Master's of Science in Physical Therapy. He has a license in physical therapy.

Mr. Jusevitch reviewed his PT transcript on line which was read into the record.

Action Taken: Motion made, seconded and passed to deny his request for a variance or waiver of rule 64B7-29.003(3)(a) and (b), F.A.C. as the petitioner did not provide sufficient information related to his education from an accredited university confirming the hours in anatomy and physiology. The board requested he submit the transcripts from his PT program.

Compliance and Probation Review

1. Arnaldo Gonzalez

Board chair had temporarily approved monitor, Kadir Marrero, on May 29, 2013.

Action Taken: Motion made, seconded and passed accepting Mr. Marrero as monitor for Mr. Gonzalez.

2. Michael Jordan

Mr. Jordan was required to appear before the Board at the last meeting of the board preceding scheduled termination of the probation.

Action Taken: Motion made, seconded and passed terminating Mr. Jordan's probation.

3. Mi Nangle - WITHDRAWN

4. Massage Hut

Respondent was required to appear before the Board at the first meeting after probation commences. Ms. Jacqueline Levine was present and sworn in by the court reporter.

Action Taken: Motion made, seconded and passed affirming the establishment is in compliance with probation.

Additional Action Taken: A motion was made by Ms. Nixon to extend the due date of all fines to February 5th, 2015. The motion was seconded and passed 4-1, with Ms. Burke-Wammack dissenting.

REPORTS

Continuing Education Liaison Report – Sharon Phillips

2. Approved CE Providers 04/05/2013 to 06/30/2013

Action taken: Motion made, seconded and carried to ratify the continuing education providers.

NEW BUSINESS

1. Rescheduling of the September 11, 2013 Conference Call

The Board agreed to reschedule the call to September 18, 2013.

2. The Alliance for Massage Therapy Education

Ms. Burke-Wammack attended an Alliance for Massage Therapy Education meeting and shared information to the board.

(Break)

ADMINISTRATIVE PROCEEDINGS

Applicant Informal Hearings

2. Xue Hua Lin – *(continued from earlier in the meeting)*

Ms. Ford informed the board the transcript from the Pennsylvania Professional School of Massage was signed by the appropriate person.

The board discussed her education at length.

Action Taken: Ms. Ford moved to continue the hearing until the October board meeting, requesting the applicant to provide any educational information to support her education, such as a catalogue from the school, notes, or syllabus from the school within 60 days. It was also recommended to have a translator. Motion was seconded and passed unanimously.

Ms. Ford returned to rules discussion regarding language for rule 28.009(2)(a). She suggested language such as "One-half of the classroom hours shall be in the physical presence of the instructor. These hours must include hands-on participation by the licensee and or demonstration by the instructor." The next sentence should include the listing of the massage therapy techniques.

The board was in consensus regarding this language.

The meeting adjourned approximately 1:00 p.m.