

FLORIDA | Board *of* Massage Therapy

DRAFT MINUTES
April 30 - May 1, 2015

Tampa Marriott Westshore
1001 N Westshore Blvd
Tampa, FL 33607



Bridget Burke-Wammack, LMT, CLT
Chair

Lydia Nixon, LMT,
Vice-Chair

Christy Robinson
Executive Director

THURSDAY, April 30, 2015

The meeting was called to order by Ms. Burke-Wammack, Chair, at approximately 9:00 a.m. Those present for all or part of the meeting included the following:

MEMBERS PRESENT:

Bridget Burke-Wammack, LMT, CLT, Chair
Lydia Nixon, LMT, Vice-Chair
Sharon Phillips, LMT, AP, DOM
Jonathan Walker, LMT
Robyn Dohn Havard, PLCS
Dr. Guery Davis, PhD

BOARD COUNSEL:

Lee Ann Gustafson, Esq.
Senior Assistant Attorney General

STAFF PRESENT:

Christy Robinson, Executive Director
Alexandra Alday, Program Operations Administrator
Marci Poston, Regulatory Specialist II

DEPARTMENT PROSECUTING ATTORNEYS:

Sharmin Hibbert, Esq., Assistant General Counsel
Oaj Gilani, Esq., Assistant General Counsel
Louise St. Laurent, Esq., Assistant General Counsel

COURT REPORTER:

Murray & Associates Court Reporting
Phone: (813) 229-8225

Please note the minutes reflect the actual order agenda items were discussed and may differ from the agenda outline. AUDIO from this meeting can be found online: www.floridasmassagetherapy.gov/meeting-information.

DISCIPLINARY PROCEEDINGS

Recommended Order

37. TANG LONG LIFE THERAPY MASSAGE, DOH CASE # 2013-13884, DOAH Case # 14-2551 & HONG TANG, LMT, DOH CASE # 2013-13886, DOAH Case # 14-2552PL

Respondent was not present. Counsel of record, Jack Goldberger, Esq. was present. The Department was represented by Ms. St. Laurent, 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. Mr. Walker was recused due to participation on the probable cause panel.

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

- Case #2013-13884 - Violation of Section 480.046(1)(o), FS., through Rule Title 64B7-26.010, FAC.
- Case #2013-13886 - Violation of Section 480.046(1)(o), FS., through 480.0485, FS.

Ms. St. Laurent 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.

The board then heard testimony from Jack Goldberger, Esq., attorney for respondent.

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 accept the penalty recommended by the Administrative Law Judge to DISMISS the Administrative Complaint in DOH Case #2013-13884 and DOAH Case # 14-2551. The motion was seconded by Ms. Nixon, which passed unanimously.

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

Petitioner's Exceptions to the Findings of Fact:

Exception #1 – Paragraph 6 of the Recommended Order

Action Taken: Ms. Burke-Wammack moved to approve the exception as there is no competent substantial evidence that the statement of “full service” was in reference to sexual activity. Ms. Nixon seconded the motion, which passed 5/1 with Ms. Havard opposing the motion.

Exception #2 – Paragraph 9 of the Recommended Order

Action Taken: Ms. Burke-Wammack moved to approve the exception as the paragraph contains a conclusion of law rather than a finding of fact. Ms. Phillips seconded the motion, which passed unanimously.

Petitioner's Exceptions to Conclusions of Law:

Exception #3 – Paragraph 16 of the Recommended Order

Action Taken: Ms. Havard moved to approve the exception. Evidence did prove the Respondent attempted to engage in activity outside the scope of practice. Ms. Phillips seconded the motion, which passed unanimously.

Exception #4 – Paragraph 17 of the Recommended Order

Action Taken: Ms. Phillips moved to approve the exception. There is no evidence in the record to support this conclusion of law. Ms. Burke-Wammack seconded the motion, which passed unanimously.

Exception #5 – Paragraph 18 of the Recommended Order

Action Taken: Ms. Burke-Wammack moved to approve the exception. It is improper for contract law to be used in the analysis of a criminal law. Ms. Phillips seconded the motion, which passed unanimously.

(short break)

Exception #6 – Paragraph 23 of the Recommended Order

Action Taken: Ms. Havard moved to approve the exception as the previous change in findings of fact does not support the conclusion. Ms. Phillips seconded the motion, which passed unanimously.

Additional Action Taken: Ms. Burke-Wammack moved to accept the Findings of Fact and the Conclusions of Law in the Recommended Order as amended and to ACCEPT the Administrative Complaint in Case #2013-13886 and DOAH Case #14-2552PL. The motion was seconded by Ms. Phillips, which passed unanimously.

Additional Action Taken: Ms. Burke-Wammack moved to find the Respondent induced or attempted to induce the patient to engage in sexual activity outside the scope of practice or the scope of generally accepted examination and treatment of the patient, in violation of Section 480.0485, F.S. this motion is based on the Findings of Fact and Conclusions of Law as amended. Motion seconded by Ms. Phillips, which passed unanimously.

Final Action Taken: Ms. Burke-Wammack moved to follow the disciplinary guidelines and impose the following penalty:

- \$2,500 fine
- Revocation

Motion seconded by Ms. Phillips, which passed unanimously.

The Department requests the board bifurcate costs and retain jurisdiction. Jack Goldberger, Esq. addressed the Department and stated intentions of appeal, and requested to withhold a cost order at this time unless the appeal is not filed timely. The Department had no objections to this request.

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.*

3. LILY SPA, CASE # 2014-06852

PCP: Harrison & Nixon

Respondent was not present nor represented by counsel.

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)(f), F.S.

Action Taken: Ms. Burke-Wammack moved to impose the following penalty:

- Reprimand
- Pay \$1,000 fine within 30 days of the filed final order
- Pay \$222.00 costs within 30 days of the filed final order

Motion seconded by Mr. Walker, which passed unanimously.

2. LILY SPA, CASE # 2014-09122

PCP: Harrison & Nixon

Respondent was not present nor represented by counsel.

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: Sections 480.046(1)(o) through 480.047(1)(c), F.S.

Action Taken: Ms. Burke-Wammack moved to impose the following penalty:

- Suspension for 6 months
- Pay \$1,000 fine within 30 days of the filed final order

Motion seconded by Ms. Phillips, which passed unanimously

Additional Action Taken: Ms. Burke-Wammack moved to assess costs in the amount of \$291.53. Motion seconded by Ms. Phillips, which passed unanimously.

1. LILY SPA, CASE # 2014-04247

PCP: Harrison & Nixon

Respondent was not present nor represented by counsel.

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: Sections 480.046(1)(o) through 480.047(1)(c), F.S.

Action Taken: Ms. Burke-Wammack made a motion to impose the following penalty:

- Revocation

Motion seconded by Ms. Phillips, which passed unanimously.

Additional Action Taken: Ms. Phillips moved to assess costs in the amount of \$427.63. Ms. Burke-Wammack seconded the motion, which passed unanimously.

4. YOSHI SWEDISH, CASE # 2014-01249

PCP: Harrison & Nixon

Respondent was not present nor represented by counsel.

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: Sections 480.046(1)(o) through 480.047(1)(c), F.S.

Action Taken: Ms. Burke-Wammack moved to impose the following penalty:

- Suspension for 30 days
- Pay \$1,000 fine within 30 days of the filed final order

Motion seconded by Mr. Walker, which passed unanimously.

Action Taken: Ms. Burke-Wammack moved to assess costs in the amount of \$608.09 to be paid within 90 days of the filed final order. Motion seconded by Ms. Nixon, which passed unanimously.

5. KYONG SEON CHOI DEKAT, LMT, CASE # 2014-05970

PCP: Harrison & Nixon

Respondent was present and not represented by counsel. Bruce Lecheler was present on Respondent's behalf.

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)(n), F.S.

Action Taken: Ms. Burke-Wammack moved to make a correction to the administrative complaint to correctly cite 480.046(1)(o), FS. Ms. Phillips seconded the motion, which passed unanimously. Ms. Burke-Wammack moved to adopt the conclusions of law as amended. Mr. Walker seconded the motion, which passed unanimously.

After further discussion, this item was tabled to until the next meeting.

6. DUSTIN PERRY DUNCAN, LMT, CASE # 2014-03710

PCP: Smallwood & Havard

Respondent was not present nor represented by counsel.

Ms. Havard 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: Count I Section 480.046(1)(n), F.S.; Count II Section 480.046(1)(p) through 456.072(1)(w), F.S.; Count III Section 480.046(1)(p) through 456.072(1)(w), FS.

Action Taken: Ms. Burke-Wammack moved to correct the administrative complaint to correctly cite 480.046(1)(o), FS. Ms. Phillips seconded the motion, which passed unanimously.

Action Taken: Ms. Burke-Wammack moved to dismiss count II. Ms. Phillips seconded the motion, which passed unanimously.

Action Taken: Ms. Nixon moved to adopt the conclusions of law as amended. Ms. Burke-Wammack seconded the motion, which passed unanimously.

Action Taken: Ms. Burke-Wammack moved to impose the following penalty:

- Reprimand
- Pay \$1250 fine within 90 days of the filed final order.

Motion seconded by Mr. Walker, which passed unanimously.

Action Taken: Ms. Burke-Wammack moved to assess costs in the amount of \$241.38 made payable within 90 days. Motion seconded by Mr. Walker, which passed unanimously.

Additional Action Taken: After discussion, Ms. Burke-Wammack moved to vacate all previous motions and directed the Department's prosecuting attorneys to bring the case back before the Board once corrections are made to the administrative complaint. Motion seconded by Ms. Nixon, which carried unanimously.

7. SERENITY MASSAGE, CASE # 2014-00202

PCP: Smallwood & Phillips

Respondent was not present nor represented by counsel. John Moran, owner, was present.

Ms. Phillips 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)(p) through 480.0475(2), FS.

Action Taken: Ms. Burke-Wammack moved to impose the following penalty:

- Reprimand
- Pay \$1500 fine within 120 days of the filed final order

Motion seconded by Ms. Nixon, which passed 4/1 with Mr. Walker opposing the motion.

Additional Action Taken: Ms. Nixon moved to assess costs in the amount of \$620.87 to be paid within 120 days. Motion seconded by Ms. Havard, which passed unanimously.

8. KYUNG AE PARK, LMT, CASE # 2014-03075

PCP: Smallwood & Phillips

Respondent was not present nor represented by counsel.

Ms. Phillips was recused due to participation on the probable cause panel. Ms. Gilani represented the Department and presented the case to the board.

Allegations of the Administrative Complaint: Section 480.046(1)(p) through 456.072(1)(w), FS.

Action Taken: Ms. Nixon made a motion to impose the following penalty:

- Revocation
- Pay \$5,000 fine within 90 days of the filed final order

Motion seconded by Ms. Burke-Wammack, which passed unanimously.

Ms. Nixon moved to assess costs in the amount of \$1496.97 within 90 days. Mr. Walker seconded, which passed unanimously.

(lunch break)

Settlement Agreements

For the following cases, Respondents were not present nor represented by counsel.

Ms. Hibbert represented the Department and presented the cases to the board. Ms. Phillips was recused due to participation on the probable cause panel.

9. SOOTHING MASSAGE, INC., CASE # 2014-14329

PCP: Smallwood & Phillips

- Allegations of Administrative Complaint: Sections 480.046(1)(f), F.S.
- Costs in the amount of \$280.14

**10. GREENVIEW ELECTRONICS, LLC CASE # 2014-10005
d/b/a SUNSHINE FOOT SPA**

PCP: Smallwood & Phillips

- Allegations of Administrative Complaint: Sections 480.046(1)(o), through 480.047(1)(c) F.S.
- Costs in the amount of \$783.35

11. ASIAN WELLNESS SPA, CASE # 2014-11560

PCP: Smallwood & Phillips

- Allegations of Administrative Complaint: Sections 480.046(1)(f), F.S.
- Costs in the amount of \$398.00

12. GREENVIEW ELECTRONICS, LLC CASE # 2014-12183

PCP: Harrison & Phillips

- Allegations of Administrative Complaint: Sections 480.046(1)(f), F.S.

- Costs in the amount of \$1,081.77

13. NEW ORIENTAL 87, INC., CASE # 2014-08941

PCP: Harrison & Phillips

- Allegations of Administrative Complaint: Sections 480.046(1)(f), F.S.
- Costs in the amount of \$501.82

Action Taken: Ms. Burke-Wammack moved to approve the following Settlement Agreements **9** through **13**. Motion seconded by Ms. Nixon which passed unanimously.

For the following cases, Respondents were not present nor represented by counsel.

Ms. Hibbert represented the Department and presented the cases to the board. Ms. Nixon was recused due to participation on the probable cause panel.

14. CARLOS L. SAMA, LMT, CASE # 2014-10374

PCP: Harrison & Nixon

- Allegations of Administrative Complaint: Sections 480.046(1)(o) through 480.046(1)(p), F.S.
- Costs in the amount of \$1,018.79

15. MIQUEL A. GARCIA DEJESUS, LMT, CASE# 2012-07654

PCP: Smallwood & Nixon

- Allegations of Administrative Complaint: Sections 480.046(1)(o) through 456.072(1)(m), F.S.
- Costs in the amount of \$2,383.34

Action Taken: Ms. Burke-Wammack moved to approve the following Settlement Agreements **14** and **15**. Motion seconded by Ms. Havard, which passed unanimously.

Voluntary Relinquishments

16. WEIZHEN QIU, LMT, CASE # 2013-09432

PCP: Smallwood & Phillips

Action Taken: Ms. Nixon moved to accept the voluntary relinquishment. Motion seconded by Ms. Burke-Wammack and passed unanimously

38. ERIC ANTUNES, LMT, CASE# 2013-16167

PCP: Harrison & Havard

Action Taken: Ms. Burke-Wammack moved to accept the voluntary relinquishment. Motion seconded by Ms. Nixon, which passed unanimously.

18. RAYMOND MEINHARDT, LMT, CASE# 2014-16527

PCP: Waived

19. MOUNT DORA MASSAGE INC., CASE # 2014-20262

PCP: Waived

20. HONG SONG, LMT, CASE # 2013-00802

PCP: Waived

21. JIE YANG, LMT, CASE # 2013-01421

PCP: Waived

22. LIPING LI CARMACK, LMT, CASE # 2013-00010

PCP: Waived

24. OSMANY RUIZ, LMT, CASE # 2012-18443

PCP: Waived

Action Taken: Ms. Burke-Wammack moved to accept the following voluntary relinquishments items **18** through **22**, and **24** en masse. Motion seconded by Ms. Nixon, which passed unanimously

23. MING-JIN TAI, LMT, CASE # 2013-00846

PCP: Waived

This item was pulled from the agenda.

Determination of Waivers

*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.*

25. SONG YING PIAO, LMT, CASE # 2013-06663

PCP: Smallwood & Phillips

Respondent was not present nor represented by counsel.

Ms. Phillips was recused due to participation on the probable cause panel. Ms. Gilani represented the Department and presented the case to the Board.

Allegations of Administrative Complaint: Sections 480.046(1)(p) through 456.072(1)(c), F.S.

Action Taken: Ms. Nixon moved to impose the following penalty:

- Revocation
- Pay \$5,000 fine within 90 days of the filed final order

Motion seconded by Ms. Burke-Wammack, which passed unanimously.

Additional Action Taken: Ms. Havard moved to assess costs in the amount of \$120.33. Motion seconded by Ms. Burke-Wammack, which passed unanimously.

26. ABNER LLENDERROZO, LMT, CASE # 2013-07921

PCP: Smallwood & Phillips

Respondent was not present nor represented by counsel.

Ms. Phillips was recused due to participation on the probable cause panel. Ms. Gilani represented the Department and presented the case to the Board.

Allegations of Administrative Complaint: Section 456.072(1)(c), F.S.

Action Taken: Ms. Nixon moved to impose the following penalty:

- Revocation
- Pay \$10,000 fine within 90 days of the filed final order

Motion seconded by Ms. Burke-Wammack, which passed unanimously.

Additional Action Taken: A motion was made, seconded and carried unanimously to assess costs in the amount of \$98.45 within 90 days.

27. YUANYAUN ZHOU, LMT, CASE # 2014-10123

PCP: Smallwood & Phillips

Action Taken: Ms. Burke-Wammack moved to grant the request for a continuance to the next board meeting as an Informal Hearing. Motion seconded by Ms. Nixon, which passed unanimously.

28. VICTOR A SANCHEZ, LMT, CASE # 2014-05910

PCP: Harrison & Phillips

Respondent was not present nor represented by counsel.

Ms. Phillips was recused due to participation on the probable cause panel. Ms. Hibbert represented the Department and presented the case to the Board.

Allegations of Administrative Complaint: Section 480.046(1)(p) through 480.0485,FS.

Action Taken: Ms. Havard moved to impose the following penalty:

- Revocation
- Pay \$5,000 fine within 365 days of the filed final order Motion seconded by Mr. Walker, which passed unanimously.

Additional Action Taken: Ms. Burke-Wammack moved to assess costs in the amount of \$2,981.49. Motion seconded by Ms. Nixon, which passed unanimously.

**29. O ASIAN WELLNESS SPA AND MASSAGE LLC
CASE # 2014-09073**

PCP: Harrison & Phillips

Respondent was not present nor represented by counsel.

Ms. Phillips was recused due to participation on the probable cause panel. Ms. Hibbert represented the Department and presented the case to the Board.

Allegations of Administrative Complaint: Count I Section 480.046(1)(p), F.S. by violating Rule 64B7-26.010, F.A.C.; Count II 480.046(1)(f),FS.; Count III Section 480.046(1)(p), F.S, by violating 480.0475(2), F.S.

Action Taken: Ms. Nixon made and seconded to impose the following penalty:

- Revocation
- Pay \$15,000 fine paid within 30 days of the filed final order

Motion seconded by Ms. Havard, which passed 4/1 with Ms. Burke-Wammack opposing the motion.

Additional Action Taken: Ms. Burke-Wammack made a motion to assess costs in the amount of \$929.95 within 30 days of the filed final order. Motion seconded by Ms. Nixon, which passed unanimously.

30. ALEJANDRA M. TOBON, LMT, CASE # 2014-06004

PCP: Harrison & Nixon

Respondent was not present nor represented by counsel.

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 Administrative Complaint: Section 480.046(1)(j), FS.

Action Taken: Ms. Burke-Wammack moved to impose the following penalty:

- Revocation
- Pay \$2,000 fines paid within 60 days of the filed final order

Motion seconded by Mr. Walker, which passed unanimously.

Additional Action Taken: Ms. Burke-Wammack moved to assess costs in the amount of \$865.20. Motion seconded by Mr. Walker, which passed unanimously.

**31. JJ EAST AMERICA, LLC d/b/a GREEN SPA
CASE # 2014-05591**

PCP: Harrison & Nixon

Respondent, Jared Nu, owner, was present without counsel, and with Julie Wang, translator.

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 Administrative Complaint: Sections 480.046(1)(o) and 480.047(1)(c), FS.

After discussion, this case was pulled from the agenda at the request of the Department.

32. PRIME MASSAGE, CASE # 2014-03666

PCP: Harrison & Havard

Respondent was not present nor represented by counsel.

Ms. Havard was recused due to participation on the probable cause panel. Ms. Hibbert represented the Department and presented the case to the Board.

Allegations of Administrative Complaint: Sections 480.046(1)(o) and 480.047(1)(c), FS.

Action Taken: Ms. Burke-Wammack moved to impose the following penalty:

- Suspension for 30 days
- Pay \$1,000 fine within 30 days of the filed final order

Motion seconded by Ms. Nixon, which passed unanimously.

Additional Action Taken: Ms. Burke-Wammack moved to assess costs in the amount of \$405.02 within 30 days. Motion seconded by Ms. Nixon, which passed unanimously.

33. THOMAS D. MURPHY, LMT, CASE # 2013-17243

PCP: Harrison & Havard

This case was pulled from the agenda.

34. TRAVIS J. FRANCE, LMT, CASE # 2013-18050

PCP: Smallwood & Havard

This case was pulled from the agenda.

35. FENG YING REN, LMT, CASE # 2014-04059

PCP: Harrison & Walker

Respondent was not present nor represented by counsel.

Mr. Walker was recused due to participation on the probable cause panel. Ms. Hibbert represented the Department and presented the case to the Board.

Allegations of Administrative Complaint: Section 480.046(1)(p) through 480.0485, FS.

Action Taken: Ms. Nixon moved to impose the following penalty:

- Revocation
- Pay \$5,000 fine within 60 days of the filed final order

Motion seconded by Ms. Phillips, which passed unanimously.

Additional Action Taken: Ms. Burke-Wammack moved to assess costs in the amount of \$638.07 within 30 days of the filed final order. Motion seconded by Ms. Nixon, which passed unanimously.

36. ADAM F. PERRY, LMT, CASE # 2014-12676

PCP: Smallwood & Walker

Respondent was not present nor represented by counsel.

Mr. Walker was recused due to participation on the probable cause panel. Ms. Hibbert represented the Department and presented the case to the Board.

Allegations of Administrative Complaint: Section 480.0485, FS.

Action Taken: Ms. Nixon moved to impose the following penalty:

- Revocation
- Pay \$5,000 fine within 60 days of the filed final order

Motion seconded by Ms. Nixon, which passed unanimously.

Additional Action Taken: Ms. Burke-Wammack moved to assess costs in the amount of \$1,860.66 within 30 days of the filed final order. Motion seconded by Ms. Nixon, which passed unanimously.

62. DREAM HEALTH MASSAGE, CASE # 2014-06995

PCP: Harrison & Phillips

Respondent was not present nor represented by counsel.

Mr. Phillips was recused due to participation on the probable cause panel. Ms. Gilani represented the Department and presented the case to the Board.

Allegations of Administrative Complaint: Section 480.046(1)(f) and (p), FS.

Action Taken: Ms. Burke-Wammack moved to impose the following penalty:

- Revocation
- Pay \$10,000 fine within 90 days of the filed final order

Motion seconded by Ms. Nixon, which passed unanimously.

Additional Action Taken: Ms. Havard moved to assess costs in the amount of \$602.45 within 30 days of the filed final order. Motion seconded by Mr. Walker, which passed unanimously.

PROSECUTOR'S REPORT

Ms. Hibbert presented the current Prosecution Services caseload report, explained the increased case load in the Department since HB1065 came into effect, and the Department's plan of action to mitigate the high volume of incoming cases associated with background screening.

Ms. Robinson presented current compliance numbers in accordance with HB1065.

As of April 30, 2015:

- 76% of Massage Therapists have complied
- 47 % of Massage Establishment Owners have complied

Ms. Robinson encouraged licensees who have not yet been fingerprinted to do so as soon as possible or voluntarily relinquish their license.

Ms. Burke-Wammack requested the Department include the disciplinary guidelines associated with the case on future Board Memorandums.

REVIEW AND APPROVAL OF MINUTES

45. March 11, 2015, Telephone Conference Call Meeting Minutes

Ms. Burke-Wammack made a motion to approve the minutes as written. Motion seconded by Ms. Nixon, which passed unanimously.

REPORTS

Legislative Liaison Report – Bridget Burke-Wammack

SB534 (engrossed)/HB369 Human Trafficking

Senate Bill requires massage establishments to have an awareness sign about human trafficking. House Bill 369 is a companion Bill to Senate Bill 534; however House Bill 369 does not require massage establishments to display the human trafficking signs.

Alex Spasoff, FSMTA Liaison, addressed the board and gave an update on this bill. Senate Bill passed the house version with amendment that the signs would only be required if the owner is NOT licensed under chapter 456, F.S.

SB1106/HB465 Changes in Penalties for Prostitution Convictions

Ms. Burke-Wammack explained the first offense would be considered a first degree misdemeanor, second offense would be considered a third degree felony, punishable Section 775.082, F.S. and Section 775.083, F.S. This change would further help the board in decisions of license revocation for offenses of this nature.

SB710/HB515 Chapter 486, Physical Therapy Practice Act

Ms. Burke-Wammack addressed the board and explained this Bill refers to the Physical Therapy Practice Act and their definition now includes "massage therapy". Physical therapists are unable to open massage establishments for purposes of performing massage services only. This change allows physical therapists to perform massage in treating their physical therapy clients.

Public Relations Liaison Report - Bridget Burke-Wammack

Ms. Burke-Wammack updated the board on the upcoming Premier Hair Show presentation in Orlando, Florida, and the board's previous mention of sending a board member. Ms. Burke-Wammack is currently coordinating with Lynda Solien-Wolfe from Performance Health.

The Board of Massage Therapy will have a booth at the upcoming June 25-28, 2015, FSMTA Convention. Ms. Burke-Wammack will also be present and give a presentation during the Successful Start Program.

Vice Chair Report – Lydia Nixon

No report at this time.

Board Counsel Report – Lee Ann Gustafson, Esq.

47. April 2015 Rules Report

Ms. Gustafson addressed the board and stated that currently there are no rules in progress.

Ms. Gustafson explained the case involving the Federal Trade Commission vs. North Carolina Board of Dentistry. An overview was provided of the decision and its potential effects in Florida, including Regulatory Boards facing Anti-Trust violations and or lawsuits. This decision also has the potential to change the dynamics of Regulatory Boards to where 50% of serving board members are consumer members.

Chair Report – Bridget Burke-Wammack

46. FSMTB March 2015 In Touch Newsletter

This item was discussed in conjunction with the above Board Counsel Report.

Executive Director's Report – Christy Robinson, Executive Director

48. Ratification of Licensure - Massage Therapists 12/22/2014 to 04/03/2015

Action taken: Ms. Phillips moved to ratify the massage therapist licenses. Motion seconded by Ms. Burke-Wammack, which passed unanimously.

49. Are You Renewal Ready Memorandum

Ms. Robinson provided statistical information relating to the number of voluntary relinquishments received following implementation of HB1065, with comparison to the number of voluntary relinquishments received in previous years. As of April 30, 2015, 1,437 Massage Therapists and 1,039 Massage Establishments have voluntarily relinquished their license since July 01, 2014. Ms. Robinson reported that in years past, approximately 100 of each license type voluntarily relinquished their license on average per year.

Sondra Thompson, LMT addressed the board on problems encountered associated with electronic fingerprinting. Ms. Robinson addressed Ms. Thompson's request and provided contact information to the board office for further research and resolution to the inquiry.

School Liaison Report – Jonathan Walker

50. Massage Therapy Program Approval 12/22/2014 to 04/03/2015

Action Taken: Mr. Walker moved to ratify the massage therapy programs. Motion seconded by Ms. Burke-Wammack, which passed unanimously.

Mr. Walker stated for the record his appreciation and thanks to Ms. Karen Goff Ford for her breakdown of hours template used by schools in their submissions for approval.

Continuing Education Liaison Report – Sharon Phillips

51. Approved Pro Bono Requests 12/22/2014 to 04/03/2015

Action Taken: Ms. Burke-Wammack moved to ratify the pro bono requests. Motion seconded by Mr. Walker, which passed unanimously.

52. Approved CE Providers 12/22/2014 to 04/03/2015

Action Taken: Ms. Burke-Wammack moved to ratify the continuing education providers. Motion seconded by Mr. Walker, which passed unanimously.

Ms. Phillips provided the following continuing education provider applications report:

130 applications total

- **68 awaiting board review**
- **10 awaiting continuing education liaison review**
- **52 awaiting additional material**

After discussion the board office proposed revising the current processing method. The board discussed collaborating with the continuing education liaison to create a matrix used by board staff to streamline processing and submissions to the liaison.

Budget Liaison Report – Robyn Havard

Board Expenditures, period ending December 31, 2014

Ms. Havard presented the Expenditures report to the Board.

Unlicensed Activity Report – Lydia Nixon

No report at this time.

(Recess)

FRIDAY, May 1, 2015

ADMINISTRATIVE PROCEEDINGS

Applicants with History

39. Erica E. Constransitch – exam

Applicant was not present nor represented by counsel. Dr. Martha Brown from Professionals Resource Network was present.

Action Taken: After discussion, Ms. Havard moved to grant the license unencumbered. Motion seconded by Ms. Nixon, which 5/1 with Ms. Burke-Wammack opposing the motion.

Applicants with Foreign Education

67. Simone Muscolino – exam

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

Action Taken: Ms. Burke-Wammack moved to grant the Petition for Variance or Waiver. Ms. Nixon seconded the motion, which passed unanimously.

Action Taken: After discussion, Ms. Burke-Wammack moved to grant the license unencumbered. Motion seconded by Ms. Phillips, which passed unanimously.

Petition for Variance or Waiver

40. Rebecca L. Pollock

Applicant was present and sworn in by the court reporter.

Action Taken: Ms. Burke-Wammack moved to approve the Petition for Variance or Waiver. Motion seconded by Mr. Walker, which passed unanimously.

Additional Action Taken: Ms. Burke-Wammack moved to approve the application for licensure. Motion seconded by Mr. Walker, which passed unanimously.

41. Alexandra Earl

Applicant was not present nor represented by counsel.

Action Taken: Ms. Burke-Wammack moved to deny the Petition for Variance or Waiver. The curriculum appears to only have three different courses. The courses appear concern primarily skin care, not massage therapy. It is unclear for which biennium Petitioner seeks approval of the submitted courses, the 2011-2013 biennium or the 2013-2015 biennium. Motion seconded by Ms. Nixon, which passed unanimously.

63. Rebecca Hoogland

Applicant was not present nor represented by counsel.

Action Taken: Ms. Burke-Wammack made a motion to deny the Petition for Variance or Waiver. Petition not in substantial compliance with Section 120.542 FS and Chapter 28-104, FAC. Petitioner did not allege that Empire Education Group, Inc. cannot obtain and print the transcript on counterfeit proof paper. Motion seconded by Mr. Walker, which passed unanimously.

Additional Action Taken: Ms. Burke-Wammack made a motion to deny the application. The massage therapy program attended does not meet minimum standards as set forth in Rule 64B7-32.003, FAC. The transcript is not printed on counterfeit proof paper as required by Rule 64B7-32.002, FAC. Convicted of a crime related to the practice of or ability to practice as a massage therapist. Motion seconded by Mr. Walker, which passed unanimously.

Notice of Intent to Deny

42. Myung Nieves

Applicant was not present nor represented by counsel.

Action Taken: Ms. Burke-Wammack made a motion to deny the continuing education certificates as they do not meet requirements set forth in previous Final Order. Motion seconded by Ms. Nixon, which passed unanimously.

Compliance and Probation Review

43. Sun Tok Park

Respondent was present with counsel, Alison Mitchell, Esq. and monitor Danny Gregoire, LMT.

Action Taken: Ms. Burke-Wammack moved to formally approve the monitor. Motion seconded by Ms. Nixon, which passed unanimously.

44. Sun Pae

Applicant was present, without counsel, and with monitor Thomas Valenzano, LMT.

Action Taken: Ms. Burke-Wammack moved to formally approve the monitor. Motion seconded by Ms. Phillips, which passed unanimously.

64. Stephanie Andersen

Applicant was not present nor represented by counsel.

Action Taken: After discussion, Ms. Nixon moved to terminate the probation previously imposed on the licensee. Motion seconded by Ms. Havard, which passed unanimously.

***GENERAL BUSINESS DISCUSSION**

66. The Efficacy of Massage Therapy, the Legislature, and Third Party Payors-The Florida Legal Advocacy Group of Tampa Bay, P.A. on behalf of FSMTA

Alex Spassoff, FSMTA Legislative Chair, and Adam Levine, M.D.,J.D., Legal Counsel and Legislative Lobbyist, addressed the board on Third Party Payor denials and suggestions for changes to the Massage Therapy Practice Act to include applying over the counter preparations. They invited the Board to participate in a discussion on this topic at the upcoming FSMTA Annual Massage Convention and Trade show in Orlando, FL on June 25-28, 2015.

***REPORTS**

Healthy Weight Liaison Report – Jonathan Walker

Mr. Walker presented information on Healthiest Weight Florida, which was launched in 2013. Healthiest Weight Florida is a public-private collaboration bringing together state agencies, not for profit organizations, businesses, and entire communities to help Florida's children and adults make consistent, informed choices about healthy eating and active living.

Mr. Walker indicated that only 36 percent of Floridians are at a healthy weight and if our current trend continues, almost 60 percent will be obese by 2030. This obesity is expected to contribute to millions of cases of preventable chronic diseases such as type 2 diabetes, heart disease and cancer, costing an estimated \$34 billion over the next 20 years in Florida.

The overall goal of this initiative is to bend the weight curve by 5% by 2017.

Rules Liaison Report – Lydia Nixon and Sharon Phillips

No report at this time.

*RULES DISCUSSION

53. Rule 64B7-27.100, F.A.C., Fees & Rule 64B7-28.0044, F.A.C. Retired Status and Reactivation of Retired Status License

The board reviewed the proposed technical change to correct the citing of Fees after recent revision. It was the consensus of the board to approve changes with no objection. Board Counsel advised the board a motion was not required for this change.

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

Alex Spassoff, JD, FSMTA Legislative Chair, Dar Mikula, Florida School of Massage and Sally Hacking, FSMTB, addressed the board on the proposed rule changes.

After discussion, a review of Form B was requested for “evaluation and examination”, for clarification; as well updating the instructions on Form B regarding “test”. Board Counsel will draft the changes and bring the proposed Form B for board review at the next General Business Meeting.

(lunch break)

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

Alex Spassoff, JD, FSMTA Legislative Chair, and Dar Mikula, Florida School of Massage, addressed the board on the proposed changes.

After lengthy discussion, the board came to the following consensus with proposed changes to Rule 64B7-28.009, F.A.C., Continuing Education:

Action Taken: Ms. Burke-Wammack moved to remove the proposed changes to 64B7-28.009 (3)(a), F.A.C., submitted. Motion seconded by Ms. Nixon, which passed unanimously. Approved changes to this section of Rule are as follows:

64B7-28.009(3) Continuing Education.

~~(a)(b)~~ Two classroom hours of instruction on prevention of medical errors that meet the requirements of Section 456.013(7), F.S.

Action Taken: Ms. Burke-Wammack moved to remove the subparagraph (4)(e) from Rule 64B7-28.009, F.A.C., Continuing Education. Motion seconded by Ms. Nixon, which passed 5/1 with Ms. Phillips opposing the motion.

Action Taken: Ms. Burke-Wammack moved to insert previously removed language from Rule 64B7-28.009(1), F.A.C., Continuing Education. Motion seconded by Ms. Phillips, which passed unanimously. Approved changes to this section of Rule are as follows:

64B7-28.009 Continuing Education.

(1) During each biennium, each licensee shall complete a minimum of one classroom hour of continuing education from a Board-approved provider for each month the license is active, up to a maximum requirement of 24 months for the renewal period. ~~Graduates of a Board-approved massage therapy school who are renewing their license for the first time shall complete a course of two classroom hours on prevention of medical errors that meets the requirements of Section 456.013(7), F.S. If the prevention of medical errors course completed during the course of study at the Board-approved massage school meets the requirements of Section 456.013(7), F.S., that course will satisfy the requirement of this rule.~~

Additional Action Taken: Ms. Burke-Wammack made a motion to approve the amended changes promulgated to the Rule. Motion seconded by Ms. Nixon, which passed unanimously.

Action on SERC Questions: Ms. Burke-Wammack moved to find that the proposed changes would not have an adverse impact on small business; that the proposed changes would not have a direct or indirect impact on regulatory costs; and the proposed changes would not directly or indirectly increase regulatory costs to any entity in excess of \$200,000 in the aggregate within one year of implementation, no SERC was needed and legislative ratification required. Motion seconded by Ms. Nixon, which passed unanimously.

57. Rule 64B7-33.001, F.A.C, Advertisement

After discussion, it was the consensus of the board to leave Rule 64B7-33.001, F.A.C., Advertisement, as written. Board counsel advised that no action was needed.

***GENERAL BUSINESS DISCUSSION**

58. Correspondence from Dr. Davis

Alex Spassoff, JD, FSMTA Legislative Chair addressed the board on the correspondence.

After discussion, Board Counsel advised tiered licensure would require a legislative change. Mr. Spassoff asked the board if recognizing NCBTMB certification for tiered licensure would require statutory change, Ms. Gustafson advised that the circumstance presented by Mr. Spassoff would require statutory change. Board staff will research other states with tiered licensure and their methods to bring back more discussion.

***RULES DISCUSSION**

56. Rule 64B7-32.003, F.A.C., Minimum Requirements for Board Approved Massage Therapy Schools

Alex Spassoff, JD, FSMTA Legislative Chair, and Karen Roth, AMTA addressed the board on their concerns regarding discussion of increasing the minimum program hour requirement for Board Approved Massage

Therapy Schools. After lengthy discussion it was the consensus of the board to hold a Rules Workshop on this rule before the next General Business Meeting and requested Board staff coordinate such a meeting.

***GENERAL BUSINESS DISCUSSION**

59. Correspondence from Mr. Sweeney

Action Taken: After discussion, it was the consensus of the board for Mr. Sweeney to contact his State Legislator for resolution to his inquiry.

60. Delegation of Authority

Action Taken: Ms. Burke-Wammack moved to approve the delegation of authority with proposed changes. Motion seconded by Ms. Phillips, which passed unanimously.

Annual Regulatory Plan

Action Taken: Ms. Havard moved to approve the Annual Regulatory Plan as written. Motion seconded by Ms. Nixon, which passed unanimously.

Additional Action Taken: Ms. Phillips moved to delegate to the Board Chair or Vice Chair the ability to approve forms submitted by Board Counsel for annual rule review. Motion seconded by Ms. Nixon, which passed unanimously.

***OLD BUSINESS**

None

***NEW BUSINESS**

None

***INFORMATIONAL**

61. MQA Annual Report

Informational item.

The meeting adjourned approximately 3:45 p.m.