

FLORIDA | Board *of* Massage Therapy

DRAFT MINUTES **July 24-25, 2014**

Tampa Airport Marriott
4200 George J Bean Outbound Parkway
Tampa, FL 33607



Bridget Burke-Wammack, LMT, CLT
Chair

Lydia Nixon, LMT
Vice-Chair

Christy Robinson
Executive Director

THURSDAY, July 24, 2014

The meeting was called to order by Ms. Burke-Wammack, Chair, at approximately 9:03 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
Guery Davis, PhD

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

BOARD COUNSEL:

Lee Ann Gustafson, Esq.
Senior Assistant Attorney General

COURT REPORTER:

Dempsey Berryhill
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.floridasmassage.com/meeting-information.

DISCIPLINARY PROCEEDINGS

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. ARNAULD F. CALAND, LMT, CASE # 2013-20080

PCP: Smallwood & Phillips

Respondent was present without 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 the Administrative Complaint: Sections 480.046(1)(p) through 480.0485, F.S.

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

- Revocation
- Pay \$1,288.25 costs within 90 days of the filed final order

Motion seconded by Ms. Nixon, which passed 5/0 with Ms. Phillips recused.

2. JESSICA L. THOMAS, LMT, CASE# 2013-03722

PCP: Smallwood & 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 the Administrative Complaint: Sections 480.046(1)(b), F.S.

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

- Revocation
- Pay \$217.44 costs within 90 days of the filed final order

Motion seconded by Mr. Walker, which passed 5/0 with Ms. Phillips recused.

Settlement Agreements

3. MEIHUA QIU, LMT, CASE # 2012-13663

PCP: Harrison & Nixon

Respondent was not present. Counsel, Maggie Schultz, Esq., was present.

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

Allegations of Administrative Complaint: Sections 480.046(1)(o), 456.072(1)(h)(w), and 480.041(1)(b) F.S.

Action Taken: Ms. Havard made a motion to accept the Settlement Agreement. Motion seconded by Ms. Burke-Wammack, which passed 4/1 with Ms. Phillips opposing the motion and Ms. Nixon recused.

Penalty Imposed:

- Required to complete and provide proof of Florida Laws and Rules course, HIV/AIDS course, Prevention of Medical Errors course, and acceptable out-of-state coursework.

4. YAN G. REN, LMT, CASE # 2012-13664

PCP: Harrison & Nixon

This item was withdrawn from the agenda.

5. HUA TANG, LMT, CASE # 2012-13765

PCP: Harrison & Nixon

This item was withdrawn from the agenda.

6. RALPH E. PEIRSON, LMT, CASE # 2013-19703

PCP: Harrison & Dohn Havard

Respondent was not present nor represented by counsel.

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

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

Action Taken: Ms. Burke-Wammack made a motion to approve the Settlement Agreement. Motion seconded by Ms. Nixon, which passed 5/0 with Ms. Havard recused.

Penalty Imposed:

- Reprimand
- Pay \$100 fine
- Pay \$619.57 costs

7. YUN LI, LMT, CASE # 2012-12652

PCP: Smallwood & Nixon

This item was withdrawn from the agenda.

8. SERENITY MESSAGE, CASE # 2014-00202

PCP: Smallwood & Phillips

Respondent was not present nor represented by counsel.

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

Allegations of Administrative Complaint: Sections 480.046(1)(p), 480.0475(2) F.S.

Action Taken: Ms. Burke-Wammack made a motion to reject the Settlement Agreement and offer a counter agreement to include the penalties below. Motion seconded by Ms. Nixon, which passed 5/0 with Ms. Phillips recused.

Penalty Imposed:

- Reprimand
- Pay \$5,000 fine
- Eviction of any Licensed Massage Therapist living within the Massage Establishment
- Pay investigative costs

Voluntary Relinquishments

A motion was made by Ms. Phillips to accept the following voluntary relinquishments items 9 through 16.

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| 9. ALEXEI A. ALVAREZ, LMT CASE # 2013-19984 | PCP: Waived |
| 10. BADA JAX CORP d/b/a OCEAN SPA, CASE # 2013-14698 | PCP: Waived |
| 11. CARLOS R. LEON LAM, LMT, CASE # 2014-06418 | PCP: Waived |
| 12. YANG QIAO, LMT, CASE # 2013-00531 | PCP: Waived |
| 13. LINO M. TAPIAS, LMT, CASE# 2014-02811 | PCP: Waived |
| 14. ARMADNO TERRELONGE, LMT, CASE # 2014-01232 | PCP: Waived |
| 15. TING YU YANG, LMT, CASE # 2013-01424 | PCP: Waived |
| 16. SUHUA LI, LMT, CASE # 2012-12639 | PCP: Haynes & Buckley |
- Counsel of record – June Zhou, Esq.

Motion seconded by Ms. Havard which passed unanimously.

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| 17. DAVID M. PACKOUZ, LMT, CASE # 2013-16133 | PCP: Smallwood & Phillips |
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Action Taken: After discussion, Ms. Burke-Wammack made a motion to accept the voluntary relinquishment. Motion seconded by Ms. Nixon, which passed 5/0 with Ms. Phillips recused.

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.

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| 18. JORGE L. ACOSTA, LMT, CASE # 2013-02967 | PCP: Harrison & Walker |
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Respondent was not present nor represented by counsel.

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

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

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

- Revocation
- Pay \$824.48 costs within 90 days of the filed final order

Motion seconded by Ms. Nixon, which passed 5/0 with Mr. Walker recused.

19. ZHEN JI PIAO, LMT, CASE # 2012-15662

PCP: Harrison & Nixon

This item was withdrawn from the agenda.

20. LAZARO B. ALMEIDA-PEREDA, LMT, CASE # 2012-12881 PCP: Smallwood & Phillips

Respondent was not present nor represented by counsel.

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

Allegations of Administrative Complaint: Sections 480.046(1)(o), 480.046(1)(c), 456.072(1)(ff) and 480.046(1)(o) F.S.

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

- Revocation
- Pay \$1,418.70 costs within 30 days of the filed final order

Motion seconded by Ms. Nixon, which passed 5/0 with Ms. Phillips recused.

21. TARA C. FLORES, LMT, CASE # 2013-14987

PCP: Smallwood & Burke-Wammack

Respondent was not present nor represented by counsel.

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

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

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

- Reprimand
- Pay \$500 fine within 90 days of the filed final order
- Pay \$836.33 costs within 90 days of the filed final order
- 10 Hours Florida Laws and Rules with an approved provider within six (6) months of the filed final order

Motion seconded by Ms. Nixon which passed 5/0 with Ms. Burke-Wammack recused.

(break)

Federation of State Massage Therapy Boards Exam Update

Sally Hacking, FSMTB Government Relations Representative, presented the changes to the MBLEx examination and the examination process to the Board.

***REVIEW AND APPROVAL OF MINUTES**

32. June 18, 2014, Telephone Conference Call Meeting Minutes

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

***REPORTS**

Chair Report – Bridget Burke-Wammack

50. Discussion Regarding Anatomy & Physiology and Pathology Coursework

The Board held discussion about the coursework. It was the consensus of the Board to revisit this topic once Rule 64B7-32.003, F.A.C. has been opened for development.

Legislative Liaison Report – Bridget Burke-Wammack

33. Massage Therapy House Bill 1065 Update

Ms. Alday provided an updated status of the implementation of this bill and what licensees needed to do to comply with the new law.

Public Relations Liaison Report - Bridget Burke-Wammack

Ms. Burke-Wammack, Ms. Robinson, and Ms. Alday attended the Florida State Massage Therapy Association annual convention in Orlando, FL on June 25-29. They spoke with approximately 500 people about the new background screening requirement.

Vice Chair Report – Lydia Nixon

No report at this time.

Rules Liaison Report – Lydia Nixon and Sharon Phillips

No report at this time.

Board Counsel's Report – Lee Ann Gustafson

34. June 2014 Rules Report

Executive Director's Report – Christy Robinson, Executive Director

35. Ratification of Licensure - Massage Therapists 04/16/2014 to 07/02/2014

Action taken: Ms. Phillips made a motion to ratify the massage therapist licenses. Motion seconded by Ms. Nixon, which passed unanimously.

School Liaison Report – Jonathan Walker

36. Massage Therapy Program Approval 04/16/2014 to 07/02/2014

Action taken: Mr. Walker made a motion to ratify the massage therapy programs. Motion seconded by Ms. Burke-Wammack, which passed unanimously.

Continuing Education Liaison Report – Sharon Phillips

37. Approved Pro Bono Requests 04/16/2014 to 07/02/2014

Action taken: Ms. Phillips made a motion to ratify the pro bono requests. Motion seconded by Ms. Nixon, which passed unanimously.

38. Approved CE Providers 04/16/2014 to 07/02/2014

No report at this time.

Ms. Phillips reminded all potential providers to use the current Massage Continuing Education Provider Application-Form B: Course Offering Data Form.

Budget Liaison Report – Robyn Havard

39. Board Expenditures, period ending March 31, 2014

Ms. Havard will coordinate with Board staff to brainstorm strategies to reduce budget deficiencies.

Unlicensed Activity Report – Robyn Havard

No report at this time.

Ms. Burke-Wammack appointed Ms. Nixon as the new Unlicensed Activity Liaison.

*RULES DISCUSSION

47. 64B7-32.003 F.A.C., Minimum Requirements for Board Approved Massage Schools

Discussion was held. Iris Burman, Educating Hands School of Massage, addressed the board on increasing the current 500 clock hour requirement.

Action taken: Ms. Phillips made a motion to open the rule for development to address concerns and provide clarification. Motion seconded by Ms. Burke-Wammack, which passed unanimously.

(lunch break)

48. 64B7-28.009 F.A.C., Continuing Education

Discussion was held. Ms. Iris Burman, Educating Hands School of Massage, addressed the board.

Action Taken: After lengthy discussion, Ms. Nixon made a motion to open the rule for development. Ms. Burke-Wammack seconded the motion which passed unanimously.

***GENERAL BUSINESS DISCUSSION**

49. Correspondence from Dr. Guery Davis

Board members held discussion regarding accepting documentation during the board meeting. No action taken.

41. July meeting discussion

Ms. Burke-Wammack made a request that the school liaison or continuing education liaison attend the 2015 Educational Congress, July 21-28, 2015, in Minneapolis, MN. The Educational Congress is being hosted by the Alliance for Massage Therapy Education and the Commission on Massage Therapy Accreditation. Ms. Robinson will research to see if the board office is able to send both or one liaison.

51. FSMTA Proposed Legislative Changes 2015

Alex Spassoff, FSMTA Legislative Chair, presented the FSMTA's proposed legislative changes for the 2015 legislative session. Karen Roth AMTA, Florida Chapter President; and Michael Garcia, Alpha School of Massage and member of FSMTA, addressed the board regarding the proposed changes.

After lengthy discussion Ms. Burke-Wammack requested that Board staff consult with the Boards of Pharmacy and Medicine for input on the proposed changes.

(break)

52. Board of Massage Therapy Proposed Legislative Changes 2015

After discussion the board discussed changes to the boards legislative proposal.

(recess at 4:03 p.m.)

ADMINISTRATIVE PROCEEDINGS

Applicants with History

22. Amanda J. Bartlett

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 seconded by Ms. Phillips, which passed unanimously.

23. Mikala Lynn Bauman

Applicant was not present nor represented by counsel.

Action Taken: After discussion, Ms. Phillips moved to require an appearance before the board at one of the next two upcoming board meetings. Motion seconded by Ms. Burke-Wammack, which passed unanimously.

24. Adriana Delgado Rocero

Applicant was not present nor represented by counsel.

Action Taken: After discussion, Ms. Phillips moved to require an appearance before the board at one of the next two upcoming board meetings. Motion seconded by Ms. Havard, which passed unanimously.

25. Zong Yu Deverso

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

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

26. Susan Rene Jarreau

Applicant was not present nor represented by counsel.

Action Taken: After discussion, Ms. Phillips moved to require an appearance before the board at one of the next two upcoming board meetings. Motion seconded by Ms. Havard, which passed unanimously.

27. Ilze Shaw

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

Action Taken: After discussion, Ms. Burke-Wammack moved to delegate to the Executive Director, the authority to issue the license unencumbered upon receipt of livescan fingerprint results that show no criminal history. Motion seconded by Mr. Walker, which passed unanimously.

42. Xiujiang Wu

Applicant was present with counsel, Kenneth Metzger, Esq. Applicant was sworn in by the court reporter.

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

Applicants with Foreign Education

28. Adam Levin

Applicant was not present nor represented by counsel.

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

29. Scott Pinto

Applicant was not present nor represented by counsel.

Action Taken: After discussion, Ms. Nixon moved to grant the license unencumbered. Motion seconded by Mr. Walker, which passed unanimously.

Applicants with Out of State Education

30. Wenxian Guo Reynolds

Applicant was not present nor represented by counsel.

Action Taken: After discussion, Ms. Phillips moved to require an appearance before the board at one of the next two upcoming board meetings. Motion seconded by Ms. Nixon, which passed unanimously.

Applicant Informal Hearings

43. EZ Skincare & Wellness Center

Applicant was present without counsel.

Ms. Zabala requested an informal hearing after being issued a Notice of Intent to Deny at the May 2014 general business meeting.

Action Taken: After discussion, Ms. Havard moved to continue the informal hearing to the next board meeting. Motion seconded by Ms. Burke-Wammack which passed unanimously.

44. Stuart R. Friedman

Applicant was not present nor represented by counsel.

Mr. Friedman requested an informal hearing after being issued a Notice of Intent to Deny at the May 2014 general business meeting.

Action Taken: After discussion, Ms. Nixon moved to deny the application based on previous sexual misconduct. Motion seconded by Ms. Burke-Wammack, which passed unanimously.

(break)

Petition for Variance or Waiver

31. Clifford Johnson

Applicant was not present nor represented by counsel.

Action Taken: Ms. Burke-Wammack made a motion to deny the Petition for Variance or Waiver as the petition does not meet the requirements set forth in Florida Statutes. Motion seconded by Ms. Nixon, which passed unanimously.

Action Taken: Ms. Nixon made a motion to deny application. Motion seconded by Ms. Burke-Wammack, which passed unanimously.

45. Kayla C. Rosen

Applicant was not present nor represented by counsel.

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

Action Taken: Ms. Phillips made a motion to approve the application. Motion seconded by Ms. Nixon which passed unanimously.

***REPORTS**

Healthy Weight Liaison Report – Jonathan Walker

Mr. Walker attended the Healthy Weight Liaison meeting on July 14, 2014 and presented some of the items discussed during the meeting to the Board.

The meeting adjourned approximately 10:47 a.m.