



Douglas A. Ducey,
Governor

Arizona State Board of Massage Therapy

“Protecting the Public’s Health”

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OPEN SESSION MINUTES

July 30, 2018

Members of the Arizona State Board of Massage Therapy (“Board”) held a meeting at 9:32 a.m. on Monday, July 30, 2018 at the Board’s office in Boardroom C, 1740 West Adams Street, Phoenix, Arizona 85007. No executive sessions were held.

BOARD MEMBERS:

- Earl Duskey, LMT Board Chairperson and Therapist Member
- × Victoria Bowmann, LMT..... Board Vice-Chairperson and Therapist Member
- William “Bill” Beard Public Member
- Mlee Clark, LMT Therapist Member
- John Ortega. Public Member

- × Absent

STAFF AND ASSISTANT ATTORNEY(S) GENERAL PRESENT:

- Ryan P. Edmonson..... Executive Director
- Michael Raine, Esq. Assistant Attorney General
- Marc Harris, Esq. Assistant Attorney General, Independent Legal Advisor
- Andrew White..... Board Investigator
- Tony Wilcox License Administrator
- April Romero Administrative Assistant II

GUEST(S) PRESENT AND/OR PARTICIPATING

- Garnet Adair, LMT American Massage Therapy Association, Arizona Chapter
- Kenia Rivera Applicant
- River Wolford..... Applicant
- Complainant..... Case 18-119
- José Ortiz, LMT Respondent – Case 18-121
- Complainant..... Case 18-121
- Jeffrey Simpson, LMT Respondent – Case 18-126
- Javier Martinez, LMT Respondent – Cases 18-127 & 18-135
- Complainant..... Case 18-127
- Tisa Tautimer, LMT..... Respondent – Case 18-137
- Roderick Grandy, LMT Respondent – Case 18-139
- Flynn Carey, Esq..... Respondent’s Attorney – Case 18-139
- Suzanne Davis, LMT Continuing Education Recipient

The Americans with Disabilities Act: Persons with disabilities may request reasonable accommodations, such as sign language interpreters. Requests should be made as early as possible to allow time to arrange the accommodation. This document is available in alternative format upon request.

Lisa Mullins-Phillips, LMT Continuing Education Recipient

OPEN SESSION

The meeting was called to order at 9:32 a.m. by Earl Duskey. The following order of business was then considered:

CALL TO THE PUBLIC

No one from the public wished to address the Board.

DECLARATION OF CONFLICTS OF INTEREST

No new conflicts were declared.

REVIEW, DISCUSSION AND POSSIBLE ACTION ON BOARD MEETING MINUTES

Discussion and approval of the Open Session Minutes from the June 25, 2018 board meeting
Discussion and approval of the Executive Session Minutes from the June 25, 2018 board meeting
A motion was made by Bill Beard, seconded by John Ortega and passed unanimously to approve the Open Session Minutes and the Executive Session Minutes from the June 25, 2018 board meeting.

ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

Application(s) for Massage Therapy School(s) Recognition

Monterey Institute of Touch, Inc.

Pitt Community College – Greenville, NC

Puerto Rico Massage & Bodywork Institute – San Juan, PR

A motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to approve the schools as Board-recognized schools.

License Application(s) for Arizona Massage Therapy License(s)

Phillips, Nicole

Nicole Phillips was not present to answer any questions regarding her massage therapy license application or her background. Ryan P. Edmonson read aloud a letter received from Mrs. Phillips' attorney, Steve Perlmutter Esq.

After discussion, a motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to table action on the applicant's application until the August Board meeting.

Rivera, Kenia

Kenia Rivera was present to answer any questions regarding her massage therapy license application or her background. Andrew White provided a summary of the applicant's application and background.

After discussion, a motion was made by Mlee Clark, seconded by Bill Beard and passed unanimously to grant the applicant a massage therapy license.

Wolford, River

River Wolford was present to answer any questions regarding his massage therapy license application or his background. Andrew White provided a summary of the applicant's application and background.

After discussion, a motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to grant the applicant a massage therapy license.

The Board took a break from 9:58 a.m. – 10:10 a.m.

Formal Hearing(s)

File No. 18-124; Quibell, Michael

Michael Quibell was not present. Michael Raine explained that the State determined the Board does not have jurisdiction to hear this case due to the fact that the complaint was received after the license had been expired for more than three years.

A motion was made by Bill Beard, seconded by John Ortega and passed unanimously to vacate the decision from the May 21, 2018 Board meeting to file a Complaint and Notice of Hearing.

A motion was made by Bill Beard, seconded by John Ortega and passed unanimously to dismiss the complaint with prejudice.

File Nos. 18-119 & 18-120; Niles, Travis

The hearing was scheduled for 10:00 a.m. and did not begin until 10:16 a.m. Travis Niles was not present. Michael Raine was present and appeared on behalf of the State. One complainant was present. Marc Harris was present to provide independent legal advice to the Board.

The State submitted three exhibits all of which were admitted by the Board. The State presented its case in chief, including witness testimony from complainant AM and Board Investigator, Andrew White. The State concluded that the Board must consider the similarities between the two testimonies and the acknowledgment of wrongdoing in the respondent's written answer to the Board.

A motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to adopt the Findings of Fact as written in the Complaint and Notice of Hearing.

A motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to adopt the Conclusions of Law as written in the Complaint and Notice of Hearing.

A motion was made by Bill Beard and seconded by Mlee Clark to revoke the respondent's license and for the respondent to pay restitution of the massage fees to the complainants within 30 days and submit evidence of compliance to the Board. The motion passed 4 – 0 by the following roll call vote:

Mlee Clark – Aye

Bill Beard – Aye

John Ortega – Aye

Earl Duskey – Aye

File No. 18-129; Castro, Sergio

Marc Harris explained that the respondent may not have received notice of the proceedings due to an incomplete address on the mailing and requested that the Board continue the hearing in order to re-notice the respondent for a future date.

A motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to continue the hearing pending appropriate notification of the respondent.

Formal Interview(s)

File No. 18-121; Ortiz, José

José Ortiz was present and represented himself. The complainant was present.

Andrew White summarized the allegations of inappropriate touching, sexual assault and improper draping. José Ortiz directed the Board's attention to the twenty-two character references submitted on his behalf and summarized his experience of the massage session. The complainant summarized her experience of the massage session and noted that she reported the incident to Elements Massage and the Phoenix Police Department.

After deliberation, a motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to accept the finding of fact as misconduct pursuant to A.R.S. § 32-4253(A)(10).

A motion was made by Bill Beard and seconded by Mlee Clark to issue a Decision and Order to include probation of the respondent's massage therapy license for twelve months. The probationary period included 16 hours of continuing education consisting of 8 hours in the area of ethics and 8 hours in the area of communication, which shall be in addition to the statutorily required continuing education hours. The order also included restitution of the massage fees to be paid to the complainant within 30 days from the effective date of the order. The motion passed 4 – 0 by the following roll call vote:

Mlee Clark – Aye
Bill Beard – Aye
John Ortega – Aye
Earl Duskey – Aye

File No. 18-126; Simpson, Jeffrey

Jeffrey Simpson was present and represented himself.

Andrew White summarized the investigative finding of failure to notify the Board of arrest and conviction within ten days. Jeffrey Simpson summarized the events leading to his conviction.

After deliberation, a motion was made by Bill Beard, seconded by John Ortega and passed unanimously to accept the finding of fact as failure to notify the Board of a conviction within ten days.

A motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to issue a Non-Disciplinary Order for Continuing Education to include 8 hours of continuing education in the areas of ethics and statutes/rules, which shall be in addition to the statutorily required continuing education hours to be completed within twelve months of the effective date of the order.

File Nos. 18-127 & 18-135; Martinez, Javier

Javier Martinez was present and represented himself. The complainant was present.

Andrew White summarized the allegations of sexual assault, inappropriate touching and a separate finding of failure to report within ten days of arrest and conviction. Javier Martinez summarized his experience of the massage session. Mr. Martinez then spoke to his conviction and the completion of jail time along with a fine. The complainant summarized her experience of the massage session and noted that she reported the incident to the Pima County Sheriff's Office and that the report was closed for lack of evidence.

After deliberation, a motion was made by Bill Beard, seconded by John Ortega and passed unanimously to accept the finding of fact in case number 18-135 as failure to notify the Board of a conviction within ten days.

A motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to accept the finding of fact in case number 18-127 as gross negligence and misconduct pursuant to A.R.S. §§ 32-4253(A)(8) & 32-4253(A)(10).

A motion was made by John Ortega and seconded by Mlee Clark to issue a Decision and Order for a Medical Evaluation and Continuing Education to include a psychiatric evaluation with a substance abuse component to be completed within six months of the date of the order at the therapist's expense and shall include a notification of the chosen doctor to the Board within 30 days of the date of the order and compliance with any treatment recommendations. The Order also included 8 hours of non-disciplinary continuing education in the area of ethics, which shall be in addition to the statutorily required continuing education hours. The motion passed 3-1 with the following roll call vote:

Mlee Clark – Aye

Bill Beard – Nay

John Ortega – Aye

Earl Duskey – Aye

The Board took a break from 1:04 p.m. – 1:21 p.m.

Investigation File(s)

File No. 18-137; Tautimer, Tisa

Tisa Tautimer was present. Andrew White summarized the allegation of failure to notify the Board of arrest and conviction within ten days. Ms. Tautimer summarized the events leading to her conviction and the terms of her probation.

A motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to offer a Consent Agreement for Non-Disciplinary Continuing Education to include 8 hours of continuing

education in the areas of ethics and statutes/rules, which shall be in addition to the statutorily required continuing education hours to be completed within twelve months of the effective date of the order and if not accepted within 30 days from the date offered to proceed to a Formal Interview.

File No. 18-139; Grandy, Roderick

Roderick Grandy was present with attorney Flynn Carey, Esq. The complainant was not present. Andrew White summarized the allegations of sexual assault and improper draping. Mr. Carey addressed each allegation and requested the Board either dismiss the case or issue a non-disciplinary action. Mr. Grandy answered questions from the Board regarding the complaint.

A motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to offer a Consent Agreement for Non-Disciplinary Continuing Education to include 8 hours of continuing education in the areas of draping and communication, which shall be in addition to the statutorily required continuing education hours to be completed within twelve months of the effective date of the order and if not accepted within 30 days from the date offered to proceed to a Formal Interview.

File No. 18-136; Hill, John

John Hill was not present. Andrew White summarized Mr. Hill's self-report of arrest and felony charge. Mr. White explained that Mr. Hill's absence is most likely due to the court proceedings being set on the same day. The Board discussed the legal options available.

A motion was made by Bill Beard, seconded by John Ortega and passed unanimously to refer the file back to staff for further investigation.

File No. 18-138; Centner, Stephen

Stephen Centner was not present. The complainant was not present. Andrew White summarized the allegations of improper contact.

A motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to offer a Consent Agreement for the surrender of the respondent's massage therapy license and if not accepted within 30 days from the date offered to proceed to file a Complaint and Notice of Hearing.

License Application(s) for Arizona Massage Therapy License(s)

Lincoln, Derek

Derek Lincoln was not present to answer any questions regarding his massage therapy license application or his background. Michael Raine recommended tabling the matter for the next Board meeting.

A motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to table the review of the application until the August Board meeting.

Review Compliance/Non-compliance with Consent Agreement

File No. 16-129; Lozano, Frank

Frank Lozano was not present. Andrew White summarized Mr. Lozano's violation of his Consent Agreement for Probation for failure to present the Board with documentation that shows completion of the ordered continuing education.

A motion was made by Bill Beard, seconded by John Ortega and passed unanimously to offer a Consent Agreement for the surrender of the respondent's massage therapy license and if not accepted within 30 days from the date offered to proceed to file a Complaint and Notice of Hearing.

FEDERATION OF STATE MASSAGE THERAPY BOARDS ("FSMTB")

Review, consideration and possible action regarding the FSMTB's Massage Therapy Licensing Database and the Board's use of this database.

Ryan P. Edmonson summarized the FSMTB's invitation for the Arizona Board of Massage Therapy to participate in their nationwide Massage Therapy Licensing Database ("MTLD").

After discussion, a motion was made by Earl Duskey, seconded by Mlee Clark and passed unanimously to approve participation in the MTLD.

Review, consideration and possible action regarding a nomination(s) for the FSMTB's Board of Directors.

Ryan P. Edmonson summarized the FSMTB's invitation for nomination(s) for the FSMTB's Board of Directors. No nominations were made.

DISCUSSION AND POSSIBLE ACTION ITEMS FOR FUTURE MEETING AGENDAS

Nomination of Board representative for the FSMTB Annual Meeting to be placed on the August meeting agenda.

EXECUTIVE DIRECTOR'S REPORT

The Board reviewed the budget and agency operations with Ryan P. Edmonson.

SUMMARY OF CURRENT EVENTS

Michael Raine suggested the need to balance the number of Formal Interviews and Formal Hearings placed on a single agenda.

NEXT BOARD MEETING DATE

The Board discussed the possibility of not having a quorum at the next meeting due to multiple scheduling conflicts. Board staff agreed to offer alternative meeting dates via email.

ADJOURNMENT

A motion was made by Mlee Clark, seconded by Bill Beard and passed unanimously to adjourn at 2:41 p.m.