



Arizona State Board of
Massage Therapy
“Protecting the Public’s Health”

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Douglas A. Ducey,
Governor

OPEN SESSION MINUTES

February 25, 2019

Members of the Arizona State Board of Massage Therapy (“Board”) held a meeting at 9:31 a.m. on Monday, February 25, 2019 at the Board’s office in Boardroom C, 1740 West Adams Street, Phoenix, Arizona 85007. Executive session was held from 1:54 p.m. to 2:06 p.m.

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
- ⌚ Arrived at 9:34 a.m.

STAFF AND ASSISTANT ATTORNEY(S) GENERAL PRESENT:

- Tom Augherton..... Executive Director
- Ryan P. Edmonson..... Former Executive Director
- Michael Raine, Esq. Assistant Attorney General
- Marc H. Harris, Esq. Assistant Attorney General, Independent Legal Advisor
- Andrew White..... Senior Board Investigator
- Tony Wilcox Licensing & Operations Specialist
- April Romero Licensing & Program Specialist
- Kathy Rich Intake Specialist
- ① Board staff experienced technical difficulties with the audio recording of the meeting from 9:31 a.m. to 10:00 a.m.

GUEST(S) PRESENT AND/OR PARTICIPATING:

Sophia Perkovich Accrediting Council for Continuing Education & Training
Garnet Adair, LMT American Massage Therapy Association, Arizona Chapter
& Continuing Education Recipient
Mary Tee Wills American Massage Therapy Association, Arizona Chapter
& Continuing Education Recipient
Sergio Castro, LMT Respondent – Case 19-118
Complainant Case 19-118
Kenneth Reader, LMT Respondent – Case 19-115
David Bednar, Esq Respondent’s Attorney – Case 19-115
Complainant Case 19-115
Yong Liang Qu, LMT Respondent – Case 19-138
Ai Qi Morgan Respondent’s Interpreter – Case 19-138
Complainant Case 19-138
Dennis Silvan, LMT Respondent – Case 19-141
Molly Green Applicant
Chris Fink Guest
Zhang Qu Guest
Linda Vandenberg Guest
Ling Cui Guest
Jeff McGrath Guest
Robert Stacks Guest
Clarence Smith Guest
Gabriela Bell Guest
Ramon Franco Guest
Ruby [Vautford] Guest
Delma Juarez Guest
Gwen Payne Guest
Norma Ramirez Guest
Jonathan Navarro Guest
Thomas Walker Guest
Kathleen Turpin Continuing Education Recipient
Lijuan Tong Guest
Amanda Garcia Continuing Education Recipient
[Andy] Guest
Eddie Padilla Guest
Jimmy Caligan Guest
Harry L. Eason Guest
Wendi Vandenberg Continuing Education Recipient

OPEN SESSION

The meeting was called to order at 9:31 a.m. by Earl Duskey. The following order of business was then considered:

ROLL CALL

Roll call of the Board members was taken and a quorum was established.

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 January 28, 2019 board meeting.
Discussion and approval of the Executive Session Minutes from the January 28, 2019 board meeting.

A motion was made by Bill Beard, seconded by Victoria Bowmann and passed unanimously to approve the Open Session Minutes and Executive Session Minutes from the January 28, 2019 board meeting.

INFORMATIONAL PRESENTATION(S)

2019 Legislative Policy Update

Commissioner Sophia Perkovich of the Accrediting Council for Continuing Education & Training was present and gave a brief presentation to the Board cautioning against the decrease of regulation of the massage therapy profession.

ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

Formal Hearing(s)

File No. 19-118; Castro, Sergio

Sergio Castro was present and represented himself. Michael Raine was present and appeared on behalf of the State. Marc H. Harris was present to provide independent legal advice to the Board.

The State began presenting its case, including witness testimony from the complainant. The State submitted one exhibit, which was admitted by the Board.

The Board took a break from 10:13 a.m. to 10:19 a.m.

The complainant answered questions from the Board. The State continued presenting its case in chief, including witness testimony from Senior Board Investigator, Andrew White. The State submitted a second exhibit, which was admitted by the Board.

The Respondent presented his case in chief, including answering questions from the Board. The State followed up with a redirect examination of the complainant. Both sides presented closing arguments.

A motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to adopt the Factual Allegations as the Findings of Fact.

A motion was made by Bill Beard, seconded by Mlee Clark and passed unanimously to adopt the Alleged Violations as Conclusions of Law.

A motion was made by John Ortega and seconded by Bill Beard to revoke the respondent's massage therapy license. The motion passed 5 – 0 by the following roll call vote:

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

The Board took a break from 11:18 a.m. to 11:26 a.m. John Ortega returned from break at 11:28 a.m.

File No. 19-115; Reader, Kenneth

Kenneth Reader was present with attorney David Bednar, Esq. Michael Raine was present and appeared on behalf of the State. Marc H. Harris was present to provide independent legal advice to the Board.

The State withdrew its motion to deem the allegations as admitted under A.R.S. § 32-4254(H) for failure to respond. The State submitted one exhibit, which was admitted by the Board. The State presented its case in chief, including witness testimony from the complainant. The complainant answered further questions from the Board. Mr. Bednar presented his case in chief, including witness testimony from the respondent.

John Ortega stepped out of the room at 1:14 p.m. The Board took a break from 1:16 p.m. to 1:24 p.m.

The respondent answered further questions from the Board. Mr. Bednar followed-up with a redirect examination of the respondent. The State submitted two additional exhibits, which were admitted by the Board. Both sides presented closing arguments.

The Board discussed going into executive session to seek legal advice.

EXECUTIVE SESSION

A motion was made by Earl Duskey, seconded by Mlee Clark and passed 4 – 1 to go into executive session at 1:54 p.m. to seek legal advice pursuant to A.R.S. § 38.431.03(A)(3) regarding A.R.S. § 32-4253 and File No. 19-115.

John Ortega voted against the motion.

After consideration in executive session, the Board reconvened in open session at 2:06 p.m.

OPEN SESSION

ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

Formal Hearing(s)

File No. 19-115; Reader, Kenneth

The Board discussed at length the testimony presented.

A motion was made by Bill Beard, seconded by Earl Duskey and passed unanimously to adopt Factual Allegation #1 as Finding of Fact.

A motion was made by Bill Beard, seconded by John Ortega and passed 3 – 2 to adopt Factual Allegation #2 as Finding of Fact.

Earl Duskey and Victoria Bowmann voted against the motion.

A motion was made by Bill Beard, seconded by Earl Duskey and failed 4 – 1 to adopt Factual Allegation #3 as Finding of Fact.

Bill Beard voted in favor of the motion.

A motion was made by Bill Beard, seconded by Mlee Clark and failed 4 – 1 to adopt Factual Allegation #4 as Finding of Fact.

Bill Beard voted in favor of the motion.

A motion was made by Earl Duskey, seconded by John Ortega and passed unanimously to adopt Alleged Violation #1 as Conclusion of Law.

A motion was made by Earl Duskey, seconded by John Ortega and failed unanimously to adopt Alleged Violation #2 as Conclusion of Law.

A motion was made by Earl Duskey, seconded by Bill Beard and passed unanimously to adopt Alleged Violation #3 as Conclusion of Law.

A motion was made by Bill Beard, seconded by Mlee Clark and passed 4 – 1 to adopt Alleged Violation #4 as Conclusion of Law.

Victoria Bowmann voted against the motion.

A motion was made by Victoria Bowmann, seconded by Earl Duskey and failed unanimously to adopt Alleged Violation #5 as Conclusion of Law.

A motion was made by Bill Beard, seconded by Mlee Clark and passed 4 – 1 to adopt Alleged Violation #6 as Conclusion of Law.

Earl Duskey voted against the motion.

After discussion, a motion was made by Earl Duskey and seconded by Bill Beard to issue a Decision and Order to include probation of the respondent's massage therapy license for 1 year, during which time, the respondent must complete 16 hours of continuing education courses in the areas of ethics and draping which shall be in addition to the 24 statutorily required continuing education hours and pre-approved by Board staff. The continuing education shall consist of 8 hours in a classroom setting. The motion passed 5 – 0 by the following roll call vote:

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

File No. 19-119; Ryska, David

David Ryska was not present. Michael Raine was present and appeared on behalf of the State. Marc H. Harris was present to provide independent legal advice to the Board.

The State filed a motion to deem the allegations as admitted under A.R.S. § 32-4254(H) for failure to respond.

A motion was made by Bill Beard, seconded by Victoria Bowmann and passed unanimously to deem the allegations as admitted.

A motion was made by Bill Beard, seconded by Victoria Bowmann and passed unanimously to adopt the Factual Allegations as the Findings of Fact and the Alleged Violations as the Conclusions of Law.

A motion was made by Victoria Bowmann and seconded by Bill Beard to revoke the respondent's massage therapy license. The motion passed 5 – 0 by the following roll call vote:

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

Investigation File(s)

File No. 19-138; Qu, Yong Liang

Yong Liang Qu was present with interpreter Ai Qi Morgan. Andrew White summarized the investigative report, which included allegations of sexual assault. The complainant was present to provide a summary of the incident. Ms. Morgan translated the respondent's pre-written statement regarding the incident in question.

A motion was made by John Ortega, seconded by Mlee Clark and passed unanimously to file a Complaint and Notice of Hearing.

File No. 19-133; Dominguez, Phillip

Phillip Dominguez was not present. Andrew White summarized the investigative report, which included allegations of sexual assault.

A motion was made by Victoria Bowmann and seconded by Bill Beard to offer a Consent Agreement for the surrender of the respondent's massage therapy license and if not accepted within 10 days from the date offered to proceed to file a Complaint and Notice of Hearing. The motion passed by the following roll call vote:

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

File No. 19-141; Silvan, Dennis

Dennis Silvan was present. Andrew White summarized the investigative report, which included Mr. Silvan's self-reported conviction of a Class 6 Felony. Mr. Silvan provided an explanation of his failure to report timely, summarized the incident and described the terms of his criminal probation.

After discussion, a motion was made by Victoria Bowmann and seconded by Bill Beard to offer a Consent Agreement of for the probation of the respondent's massage therapy license congruent with the terms of his criminal probation and if not accepted within 10 days from the date offered to proceed to a Formal Interview. The motion passed by the following roll call vote:

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

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

Greene, Molly

Molly Greene was present to answer any questions regarding her massage therapy license application or her background.

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

Unlawful Use of the Massage Therapy Designation and/or Unlawful Practice

File No. 19-139; McDonald, Stuart – Rainbow Foot Spa

Stuart McDonald was not present. Andrew White provided an update regarding the closing of Stuart McDonald's business, Rainbow Foot Spa.

A motion was made by Victoria Bowmann, seconded by John Ortega and passed unanimously to take no action and close the file.

File No. 19-142; Zhou, Zhu Hua – Chi Foot Spa

Zhu Hua Zhou was not present. Andrew White provided an update regarding the respondent's removal of all massage therapy advertisements and agreement not to repost the advertisements until properly licensed.

A motion was made by Bill Beard, seconded by John Ortega and passed unanimously to take no action and close the file.

Petition for Review of Background Information Prior to License Application(s) for Arizona Massage Therapy License(s)

Kramer, Jenna

Jenna Kramer was not present. Michael Raine provided a review and interpretation of the statues as they relate to the petition.

A motion was made by Bill Beard, seconded by John Ortega and passed unanimously to determine the petitioner's background does not disqualify her from obtaining a massage therapy license.

EXECUTIVE DIRECTOR'S REPORT

The Board reviewed the budget and agency operations with Tom Aughterton.

SUMMARY OF CURRENT EVENTS

None were discussed.

DISCUSSION AND POSSIBLE ACTION ITEMS FOR FUTRUE MEETING AGENDAS

None were discussed.

NEXT BOARD MEETING DATE

Monday, March 25, 2019

ADJOURNMENT

A motion was made by Bill Beard, seconded by John Ortega and passed unanimously to adjourn at 3:53 p.m.