



State of Arizona
Janet Napolitano – Governor

Arizona State Board of Massage Therapy

"Protecting the Public's Health"

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De Mario Vaughn, LMT; Nancy Gath, Public Member; Daniel Pozefsky, Public Member
Dennis Beye, LMT, Susan Pomfret, LMT, Craig Runbeck, NMD, Executive Director

Minutes BOARD MEETING

June 23, 2008 10:00 a.m.
1400 West Washington St, B1
Phoenix, AZ 85007

1. **Call to Order by Presiding Officer**

Mr. Beye, Chair called the meeting to order at 10:20am.

- A. Roll call of Board members was done to establish a quorum to conduct the meeting.

Board Members present: Dennis Beye, Chair, LMT
Susan Pomfret, Vice Chair, LMT
Nancy Gath, Public Member
Daniel Pozefsky (joined the meeting at 10:40)

Board Members absent: De Mario R. Vaughn, LMT

- C. Acknowledgement of presence of Board staff and legal counsel.

Assistant Attorney General: Michelle Wood

Soliciter Recorder Ms. Foster

Board Staff: Dr. Craig Runbeck, Executive Director
Robert Wilson, Deputy Director
Stan Conger, Investigations
Ellen Boyd, Licensing Administrator

2. **Call to the Public**

Mr. Beye gave a call to the public at 10:22 am.

Dr. Runbeck was present to address the Board regarding Capitol Reserve and pending legislature budget sweeps.

No other requests were made.

3. **Discussion, Consideration and Possible Action of Consent Agenda** (*Any item under consent may be removed for independent discussion and action by a Board Member.*)

- A. Approval of Minutes: March 24, 2008 Board Meeting

- B. Approval of Massage Therapy Application(s) April, May, and June 405

MOTION: Ms. Pomfret moved to approve the minutes and consent agenda as listed above, Ms. Gath seconded the motion.

VOTE: The Motion Passed 3 ayes, 0 no

Chairman Beye brought Agenda item #5 for discussion at this time.

5. Discussion and Consideration and Possible Action on Administrative Matters

A. Massage license status report

Dr. Runbeck updated the board on the license status to date.

Active licensee's	8,842	Closed withdrawn and Failed to Qualify	111
Revoked	4	Denied	19
Voluntarily Surrendered	6	Closed – Expired	2121
		Pending	247
Total applications received 11,350			
Renewed 06/01/06-06/13/08	4,641	Non-Renewed 06/01/06-06/13/08	2,156

B. Cease and Desist

Mr. Stan Conger updated the Board on Cease and Desist cases. 11 actions since the first of this year

C. Administrative and Legislative updates – to be discussed at the next board meeting

4. Discussion, Consideration and Possible Action of Regulatory Matters

A. Formal Hearing – Investigations

1. Isabel Salinas – (case #07-107)

Roll call for the formal hearing – Present - Dennis Beye, Chair, LMT, Susan Pomfret, Vice Chair, LMT, Nancy Gath, Public Member

Detective Gilbreth, Phx PD and Deputy Director Wilson were sworn in by the court reporter.

Mr. Wilson had made all the proper attempts to notify Ms. Salinas to attend this board meeting. Ms. Salinas was not present at the board meeting. No attorney was present for Ms. Salinas.

Detective Gilbreth testified that he called Ms. Salinas from an ad on Craig's List. He set up an appointment with her for a massage. During the massage, an agreement was made between Detective Gilbreth and Ms. Salinas for her to provide sexual related services for extra money. Detective Gilbreth gave the signal for the officers in the adjoining room to come and make the arrest.

From Minutes of March 24: Ms. Salinas was cited for the following violations: Prostitution; Massage with the intent to arouse; touching private anatomical areas of client; Practitioner not fully clothed. All violations are a Class 1 Misdemeanor. Ms. Salinas' license expired on February 22, 2008, but per **ARS 32-3202** the Board continues to have jurisdiction.

Rob Wilson gives testimony concerning custodial documents.

MOTION: Susan Pomfert moved to adopt the Finding of Fact as presented. Ms. Gath seconded the motion.

Vote: Ayes – 3
Nays – 0
Abstention – 1
Absent - 1

MOTION: Ms. Pomfert moved to adopt the Conclusions of Law as presented.

Ms. Gath seconded the motion.

Vote: Ayes – 3
Nays – 0
Abstention - 1
Absent – 1

MOTION: Ms. Pomfert moved to revoke Ms. Salinas' massage license.

Ms. Gath seconded the motion.

Roll call vote: Nancy Gath, Public Member - Aye
Susan Pomfret, Vice Chair, LMT - Aye
Dennis Beye, Chair, LMT - Aye
Daniel Pozefsky – Abstained
De Mario Vaughn - Absent

Recessed 10:55 am
Reconvened 11:10 am

2. . Paul Hykes – (case #06-139)

Chairman Beye called the roll:

Present were members: Ms. Gath, Mr. Beye, and Mr. Pozefsky

Ms Pomfert – recused

Mr. Vaughn - absent

Mr. Hykes was not present, nor was a representative.

Witness Ms. A.E.P. and Rob Wilson were sworn in by the court reporter.

Ms A.E.P. testified that while getting a massage by Mr. Paul Hykes, she was sexually assaulted by Mr. Hykes.

From minutes of March 24: Mr. Wilson summarized this case for the Board. Mr. Wilson explained that he has written Mr. Hykes letters and left phone messages regarding the polygraph test he agreed to take at his own expense at the September 24, 2007 board meeting. Mr. Hykes is claiming he had not originally been advised the test was to be at his own expense and told Mr. Wilson he was not taking the polygraph test. Mr. Wilson advised the Board that Mr. Hykes is in potential violation of interfering with an investigation. **ARS 32-4253.A-20** Mr. Hykes license expired on January 25, 2008, but per **ARS 32-3202** the Board continues to have jurisdiction until the case is cleared.

Mr. Hykes, as of this date, has not taken the polygraph (lie detector) test.

MOTION: Mr. Pozefsky makes motion to accept the Finding of Facts as presented.
Ms. Gath seconds the motion

VOTE:

Ayes – 3
Nays – 0
Recusal – 1
Absent - 1

MOTION: Mr. Pozefsky makes motion to accept the Conclusions of Law as presented.
Ms. Gath seconds the motion

VOTE:

Ayes – 3
Nays – 0
Recusal – 1
Absent - 1

MOTION: Ms. Gath made a motion to revoke Mr. Hykes' massage license.

The Board discussed appeal rights
Mr. Pozefsky seconds the motion

VOTE:

Ayes – Mr. Pozefsky, Ms. Gath, Mr. Beye
Nays – 0
Recused – Ms. Pomfret
Absent – Mr. Vaughn

Recessed 12:20 pm
Reconvened 12:25 pm

3. Jason Brusca – Initial Review (case #06-137)

Chairman Beye called the roll:
Present were members: Ms. Gath, Mr. Beye, Mr. Pozefsky, and Ms. Susan Pomfret

Mr. Brusca was not present, nor as a representative.

Ms R. M., Ms. Schuster, and Mr. Wilson were sworn in by the court reporter.

Ms R. M gives testimony that breasts were exposed while massage was given. Also, legs were elevated, exposing the genital area. Sexually explicit comments and other improper comments were made by Mr. Brusca. Repeated touching of the breasts and between the legs were done by the respondent.

Ms. Schuster, a former clinical director of SWIHA, states that other complaints of a similar nature were made during the time Mr. Brusca worked under her supervision. She fired Mr. Brusca because of his actions.

From minutes of March 24: Mr. Wilson summarized the investigative report on Mr. Brusca for the Board. There are two complaints from separate individuals who received a massage from Mr. Brusca while he was employed with Southwest Institute of Healing Arts. (SWIHA) Both complaints are in regards to draping positions leading to exposure; inappropriate touching and comments. SWIHA terminated the employment of Mr. Brusca after these complaints. Also, Mr. Brusca failed to notify the Board within 10 days of a change of address. **ARS 32-4225C**

MOTION: Mr. Pozefsky moved to accept Finding of Facts 1 – 4, 7 & 8
Ms. Pomfert seconded the motion

Vote: Ayes 4
Nays 0
Absent 1

MOTION: Mr. Pozefsky moved to adopt the Conclusions of Law as presented
Ms. Gath seconded

Vote: Ayes 4
Nays 0
Absent 1

Board discusses the option of revoking and suspension with probation.

MOTION: Mr. Pozefsky moved for suspension and probation for 6 months. Psycho sexual analysis by a board approved evaluator to be paid for by respondent within 45 days of board order. Take a boundaries course while on probation. He must report to any employer that he is on probation. Failure to comply will result in immediate revocation.

Ms. Pomfert seconded the motion.

Vote: Mr. Pozefsky – Aye, Ms. Pomfret – Aye
Mr. Beye – Nay, Ms. Gath – Nay

Mr. Vaughn – Absent - 1

Motion failed

Gavel is passed to Vice Chair Pomfert

MOTION: Ms. Gath moved to revoke Mr. Brusca's massage license
Mr. Beye seconded the motion

2nd vote: Ms. Gath – Aye, Mr. Beye – Aye, Ms. Pomfret - Aye
Mr. Pozefsky - Nay
Mr. Vaughn – Absent

B. Board Review – Investigations

1, Natalie Blair Case #07-121

Case closed – applicant deceased

2. Steven Chen/ Oriental Chi Case #06-138

Mr. Chen was charged with using unlicensed massage therapists in his business.
Mr. Beye recused himself because he had assisted in the investigation.
Steven Chen states they are currently only doing reflexology, wishes to be in compliance and is amenable to a consent agreement.

MOTION: Mr. Pozefsky moved to a authorize staff to negotiate a consent agreement.
Ms. Gath seconded

VOTE: Motion passed with 3 ayes, 1 recusal, and 1 absent.

3. Julie Ignasiak Case #07-108

Criminal case dismissed in Mesa. The judge ordered all files on the case to be destroyed.

MOTION: Mr. Pozefsky moved to dismiss because there was no evidence for the Board to consider.
Ms. seconded
Ms. Gath states she will abstain because the case involved her employer.

VOTE: Motion passed, 3 ayes, 1 abstention, 1 absent

4. Christopher Sanchez Case #07-118

Licensed surrendered

MOTION: Ms. Gath moved to accept surrendered license
Ms. Pomfert seconded motion

VOTE: Motion passed with 4 ayes, 1 absent

The next scheduled meeting is August 25, 2008

The meeting was adjourned at 2:00 pm

ADJOURNMENT