

Minutes  
Tennessee Massage Licensure Board  
August 12, 2019

Time: 9:00 a.m. Central Standard Time  
Location: 665 Mainstream Drive  
HRB Conference Center  
1<sup>st</sup> Floor, Iris Room  
Nashville, TN 37243

Members Present: Marvis Burke, LMT, Chairperson  
Cynthia Jagers, LMT, Secretary  
Ed Bolden, LMT  
Bill Mullins, LMT  
Virginia P. Yarbrough, LMT  
Christi Cross, Public Member  
Michael Velker, Public Member

Staff Present: Kimberly Hodge, Board Manager  
Kimberly Wallace, Unit 3 Director  
Marc Guilford, Office of General Counsel

The meeting was called to order at 9:14 a.m. by Ms. Marvis Burke, Chairperson. Ms. Burke acknowledged and thanked the therapists, schools, and students present and joining online. Ms. Burke stated that the reason the Board exists is to protect the health, welfare, and safety of the people of Tennessee. Ms. Kimberly Hodge conducted a roll call to establish a quorum. A quorum was established.

**Receive Reports and/or Requests from the Board Director/Manager**

**Investigation/Disciplinary Reports**

This report was brought by Lori Leonard of the Disciplinary Coordinator's office. The Disciplinary Coordinator's office was currently monitoring 24 massage therapists whose licenses were under reprimand; 70 under probation; 35 under suspension; 21 under revocation or surrender; and 3 under child support discipline. Ms. Leonard stated that the reason her office was monitoring licensees under revocation or surrender was because there were still fees owing in those cases. The Disciplinary Coordinator's office was currently monitoring 32 massage establishment licenses under discipline.

At that point in 2019, Investigations had received 44 new complaints for massage therapists. Of those complaints, 5 were for alleged sexual misconduct; 2 for criminal charges; 1 for malpractice/negligence; 3 for unlicensed practice; 19 for unprofessional conduct; 8 for lapsed license; 2 for criminal convictions; 1 for right to know violation; 1 for continuing education violation; and 2 were outside the investigative scope.

For the year of 2019 so far, Investigations has closed a total of 41 complaints for massage therapists. Of those complaints, 4 were closed with insufficient evidence to discipline, 17 were closed and sent to the Office of General Counsel for formal discipline; 9 were closed with no action; 3 were closed with a letter of concern; and 8 were closed with a letter of warning. Ms. Leonard reminded the Board that letters of concern and letters of warning are not reportable to the national database, therefore they are not considered formal discipline. Forty-two complaints are currently open and being investigated for massage therapists.

At that point in 2019, Investigations has opened a total of 37 new complaints for massage establishments. Of those complaints, 1 was for sexual misconduct; 4 for unlicensed practice; 28 for unprofessional conduct; 2 for lapsed license; and 2 were outside the investigative scope.

For the year of 2019 so far, Investigations has closed 24 complaints for massage establishments. Of those complaints closed, 1 was closed for insufficient evidence to discipline; 7 were closed and sent to the Office of General Counsel for formal discipline; 10 were closed with no action; 3 were closed with a letter of concern; 3 were closed with a letter of warning. There were 34 complaints for massage establishments currently being investigated.

In response to a question from Mr. Velker, Ms. Leonard and Mr. Guilford address the definition of “unprofessional conduct”. Mr. Guilford stated that if an allegation does not fall into another category, yet is clearly unprofessional, such as inadequate draping or employment of unlicensed persons in an establishment, it would then be classed as unprofessional conduct. Ms. Leonard stated that if there were multiple allegations, the complaint would be classed under the most egregious allegation. Mr. Guilford stated that unprofessional conduct was considered a very egregious allegation, so several allegations might be grouped together under such a complaint.

In response to a question from Dr. Bolden, Ms. Leonard explained that “outside the scope of investigation” was a new code that had only been in use for about the past 3 months. Mr. Guilford stated that it seemed this code was typically used for complaints that fell outside the scope of the Practice Act. Ms. Leonard stated that she would get together with her investigators to come up with some concrete examples for the Board. Mr. Guilford mentioned some examples from the medical board, including billing disputes and long wait times to see a doctor, that would fall under that code.

### **Approve the Minutes from the May 13 & 14, 2019 Board Meeting**

Dr. Bolden asked to correct the spelling of the word “beep” to “been” under the applicant interview for Jodi Mehlenbacher of Thrive Wellness LLC. A motion was made by Ms. Cross, seconded by Dr. Bolden, to approve the minutes with Dr. Bolden’s recommended correction. The motion carried.

### **Applicant Interviews**

Ms. Burke introduced and welcomed the Mandarin interpreter, Ms. Jiao Hoggard, who would be translating for applicants who requested translation services at this meeting. Ms. Hoggard stated that she had established that she could communicate with each of those applicants.

### **Meng Lijun, LMT & Pang Chunling - JM Foot Spa**

Mr. Lijun and Ms. Chunling applied for a massage establishment license for JM Foot Spa at 3441 Lebanon Pike, Suite 106, Hermitage, TN 37076, and were present at this meeting to answer the Board’s concerns about their application. The Board was concerned that Mr. Lijun signed a consent order that was ratified at the last Board meeting; the consent order was for allowing two unlicensed individuals to practice massage at his establishment from August 2015 to August 2017; Mr. Lijun stated that he only knew them by the names Lee and Kim, and that they were training; upon investigation, it was discovered that no one practicing massage at the establishment was a licensed massage therapist; the Board revoked Mr. Lijun’s license at their May 2019 meeting. The translator, Ms. Jiao Hoggard, translated the Board’s questions for Mr. Lijun’s and Ms. Chunling’s application for a massage establishment license.

In response to questions from the Board, Mr. Lijun stated that only he and Ms. Chunling were going to work in the establishment, and that neither of them were licensed as massage therapists or reflexologists. After much discussion, a motion was made by Ms. Cross, seconded by Mr. Mullins, to deny Mr. Lijun’s and Ms. Chunling’s application for a massage establishment license. Dr. Bolden called for continued discussion. In response to a question from Dr. Bolden, Mr. Lijun and Ms. Chunling stated that they both planned to work as massage therapists at this establishment, and that they did not plan to hire any other employees. Dr. Bolden called for the question. The motion carried to deny Mr. Lijun’s and Ms. Chunling’s application for a massage establishment license.

Ms. Hodge asked for a brief break, which Ms. Burke acknowledged, and the Board took a two minute break. Upon return from the break, Ms. Hodge conducted a roll call. All the Board members were present.

### **Chunhua Wang Dickey – Spa YangSheng Tang Inc.**

Ms. Dickey applied for a massage establishment license for Spa YangSheng Tang, Inc., at 2400 Madison Street, Suite 9, Clarksville, TN 37043. Ms. Dickey was present at this meeting to

answer the Board's concerns about her application. The Board was concerned that Ms. Dickey had a previous massage establishment license application denied at the Board's May 2019 meeting; at that meeting, Ms. Dickey stated that she did not do massage, but that she performed hypnosis therapy which included trigger point therapy, pressing down on her clients' arms, legs and hips; although Ms. Dickey stated that no massage was performed at her previous establishment, Groupons were advertised and sold for massage services at that location, and online ads also advertised massage at this location and provided reviews of massage at this location; although Ms. Dickey stated on her current application that she did not have anyone completing the application for her, there is a letter in the application file from Ms. Dickey's husband, stating that he completed the application for her because she did not speak English well and did not understand the questions, and that he marked the wrong boxes indicating erroneously that she had previously not applied for, or been denied for a massage establishment license; and there are no licensed massage therapists listed on the current massage establishment application. The translator, Ms. Jiao Hoggard, translated the Board's questions for Ms. Dickey's application for a massage establishment license.

Mr. Guilford introduced Mr. Robb, who was present at this meeting as legal counsel for Ms. Dickey. Mr. Guilford emphasized that the Board does not have information that the current establishment is operating, and that all the information about operating without a license pertains to the earlier application that was denied at the May 2019 Board meeting.

In response to a question from Ms. Burke, Ms. Dickey stated that she can read, speak and understand simple English. Ms. Dickey stated that her establishment is now closed, and if the Board grants her this license she will only hire licensed massage therapists.

Mr. Robb made a statement to the Board on Ms. Dickey's behalf. He stated that Huidong Tian, LMT, #11589, would be working at the establishment. He reiterated Ms. Dickey's statement that she was only applying for a massage establishment license, and that only licensed massage therapists would work there.

In response to a question from Ms. Cross, Ms. Dickey stated that she did have an interpreter when she completed the required 2 hour Tennessee massage law (rules and statutes) course. In response to questions from Ms. Hodge, Ms. Dickey stated that she wrote out the answers on the current application herself, with her husband translating for her, including the questions about whether she had ever applied for a license that was denied. She stated that she had asked "the accountant" to write the letter that stated that her business never provided massage to customers. Mr. Robb clarified that Ms. Dickey had provided hypnosis acupressure services, which she did not feel was massage, at her establishment before the May 2019 Board meeting. Ms. Yarbrough clarified that Ms. Dickey had stated that she provided trigger point therapy at her establishment, and that trigger point therapy is a modality of massage. Ms. Hodge referred to the approved minutes of the May 2019 Board meeting, in which Ms. Dickey stated that "her bodywork hypnosis involves the practitioner pressing on trigger points located on the client's back, legs,

arms, and head". Ms. Hodge called the Board's attention to a letter in the current application file from Ms. Dickey's husband, who stated that he had mistakenly put the wrong answers to the questions b and e on the Ownership and Proceeds Disclosure portion of the application, which stated that Ms. Dickey had not applied for an establishment license before, and that no such application had been denied. Mr. Dickey stated in this letter that he had not been aware that his wife had applied before for an establishment license, or had been denied. Ms. Cross pointed out that the same letter stated that Ms. Dickey had limited use of her right arm, and that Ms. Dickey's lawyer had said that she intended to apply for a massage therapist license. Ms. Dickey again said that she had written the answers to those questions, but that she had relied on her husband for translation of the questions, and that her answers to those questions were incorrect. After much discussion, a motion was made by Ms. Cross, seconded by Mr. Velker, to deny Ms. Dickey's application for a massage establishment license. The motion carried.

The Board thanked Ms. Hoggard for her service as translator at this meeting.

### **Sasha Marie Carr, MT**

Ms. Carr applied for reinstatement of her massage therapist license, and was not present at this meeting to answer the Board's concerns about her application. A motion was made by Ms. Cross, seconded by Mr. Velker, to proceed in default. The motion carried.

The Board was concerned that Ms. Carr appeared to be offering massage services in conjunction with prostitution in online ads. Ms. Carr's reinstatement application had been deferred to this meeting from the May 2019 Board meeting to allow Ms. Carr time to submit copies of police reports and documentation showing that she had requested twitter and an escort website to take down advertisements for escort services with her photos on them. Ms. Carr had told the board at the May 2019 meeting that her ex-partner had stolen her photos and had posted her as an escort on several sites. As of this meeting, no documentation had been received by the Board's administrative office from Ms. Carr. Ms. Hodge stated that she had emailed Ms. Carr and left her a voicemail, reminding Ms. Carr of the upcoming Board meeting and that the office had not yet received any documentation from her. Ms. Hodge received no response from Ms. Carr to any of her messages. In response to a question from Dr. Bolden, Mr. Guilford stated that he had reached out to the Nashville Police Department to find evidence of the police report Ms. Carr stated in the previous Board meeting that she had filed about this issue, and that the Nashville Police Department had confirmed that no such police reports had been filed by Ms. Carr. A motion was made by Dr. Bolden, seconded by Ms. Cross, to deny Ms. Carr's application for reinstatement of her massage therapist license, and to refer the file to Investigations for possible revocation of the license. The motion carried.

### **Ruby Renee Simms, MT**

Ms. Simms applied for reinstatement of her retired massage therapist license, and was present at this meeting to answer the Board's concerns about her application. The Board was concerned that the Board has found evidence that while Ms. Simms's license was active, during a massage appointment; Ms. Simms offered to perform a sex act for money. Ms. Simms stated that she did not do that. Ms. Simms stated that she had been arrested and charged with offering to perform a sex act for money, but that the charges had been dismissed. In response to a question from Dr. Bolden, Mr. Guilford stated that the Department did have a witness that they could present at a contested case hearing that witnessed Ms. Simms offer to perform a sex act for money during a massage appointment. In response to a question from Mr. Mullins, Ms. Simms's lawyer explained to the Board that the charge had been brought, but not prosecuted, and had been dismissed and expunged; therefore there was no basis to deny Ms. Simms's application for reinstatement. Mr. Guilford stated that the Board could defer their decision on this matter to the next Board meeting, at which time the Department could have the witness available to testify before the Board. A motion was made by Ms. Cross to deny Ms. Simms's application for reinstatement of her massage therapist license. The Board heard from Mr. Guilford regarding evidence in an expunged case and the burden of proof in a regulatory Board decision. Mr. Guilford also stated that an arrest, even without a conviction, can be expunged. After much discussion, Ms. Cross withdrew her motion. A motion was made by Mr. Velker, seconded by Ms. Cross, to defer a decision on Ms. Simms's reinstatement application to the next Board meeting to allow the Department to investigate this matter fully. The motion carried, with Dr. Bolden abstaining from the vote.

### **Discuss Legislation**

Mr. Patrick Powell of the Legislative Liaison Office brought this report about recent legislation affecting the Board. Mr. GET NAME stated that Public Chapter 61, which took effect on March 28, 2019, states that an entity responsible for an Automatic External Defibrillator (AED) program is immune from civil liability for personal injury caused by maintenance or use of an AED if such conduct does not rise to the level of willful or wanton misconduct or gross negligence. Mr. GET NAME stated that the purpose of this legislation was to encourage more people and entities to make AED's available and to use them when needed.

Mr. Powell stated that Public Chapter 195, which went into effect July 1, 2019, mostly pertains to boards governed by the Department of Commerce and Insurance. However, one section does apply to the Health Related Boards. This act removes the previous requirement that a military spouse must leave employment to qualify for the expedited licensure process. No change in Rules is needed to implement this act.

Mr. Powell spoke about Public Chapter 229, which went into effect on April 30, 2019. He stated that a related act went into effect earlier, allowing medical doctors and osteopathic doctors to barter with patients for their services. This act makes it permissible for all healthcare professionals to barter for their services if the patient is not covered by health insurance, and if

all such barbers accepted are submitted to the IRS annually. Mr. Powell stated that this act does not apply to healthcare services provide at a pain management clinic.

Mr. Powell stated that Public Chapter 243, requires that all tests required for licensure be ADA (Americans with Disabilities Act) compliant by providing appropriate accommodations, and that the licensing agency promulgate rules on eligibility criteria. Mr. Powell stated that this act was introduced to assist individuals with dyslexia. Mr. Powell stated that for the purpose of rule-making, this act took effect on May 2, 2019, and will go into effect for all other purposes on July 1, 2020.

Mr. Powell stated that Public Chapter 357, which took effect on May 10, 2019, directly affects the Massage Licensure Board. The act states that a massage establishment license is no longer required for the office of a licensed medical doctor, osteopathic doctor, or chiropractor if a massage for compensation is provided within that office by a licensed massage therapist.

Mr. Powell stated that Public Chapter 447, which went into effect on May 22, 2019, permits law enforcement agencies to subpoena materials and documents pertaining to an investigation conducted by the Department of Health prior to formal disciplinary charges being filed against the provider. This bill was brought by the Tennessee Bureau of Investigations. Mr. Powell stated that several years ago, the Department brought legislation to curb civil attorneys from inappropriately using the Department's investigation staff to prove their civil cases. The way the language was stated in that legislation, it also barred law enforcement entities from using that information, which was not intended. Mr. Powell stated that this act remedies that unintentional oversight.

### **Sherry Jean Miller, LMT – Intellectual Massage Mobile**

Ms. Miller applied for a massage establishment license for Intellectual Massage Mobile, at 18 Brentshire Square, #A Jackson, TN 38305, and was present at this meeting to answer the Board's concerns about her application. The Board was concerned that even though Ms. Miller has held a massage establishment license at another location since 2010, she has several criminal convictions from several years previous that may or may not be resolved by the Fresh Start Act. Ms. Miller explained that the new establishment license was for a mobile unit, such as a recreational vehicle (RV) to continue her practice of massage and other healing practices. In response to a question from Ms. Cross, Ms. Hodge confirmed that Ms. Miller was originally licensed as a massage therapist shortly after the May 2010 flood in Nashville, and was not then or ever required to complete a peer assistance program evaluation prior to her licensure as a massage therapist or for her first massage establishment license. Ms. Hodge also stated that Ms. Miller has been licensed since that time with no discipline on either license. A motion was made by Dr. Bolden, seconded by Mr. Velker, to approve Ms. Miller's application for a massage establishment license. After some discussion, the motion carried.

### **Linda Todd, MT**

Ms. Todd applied to reinstate her massage therapist license, and was present to answer the Board's concerns about her application. The Board was concerned that Ms. Todd had not complied with a previous Order for continuing education violations for the cycle of 2009/2010, which required payment of a \$1,550.00 fine and submission of 32 total approved continuing education hours in addition to the 20 hours required for her reinstatement application, and the hours required for the current cycle. The Board heard from Ms. Todd and Mr. Guilford about options for a conditional license for Ms. Todd. After much discussion, a motion was made by Dr. Bolden, seconded by Mr. Velker and Ms. Yarbrough, to approve a conditional reinstatement of Ms. Todd's massage therapist license upon her completion of the required 31 continuing education hours, and conditional upon Ms. Todd paying a fine of \$775.00 within 6 months. The motion carried.

### **Leanna Nicole Fender**

Ms. Fender applied for a massage therapist license and was present at this meeting to answer the Board's concerns about her application. The Board was concerned that Ms. Fender had criminal convictions that might impact her practice of massage. However, Ms. Fender had an evaluation with TnPAP, and the letter from the evaluator stated that they saw no reason that Ms. Fender would need treatment or to complete a monitoring agreement with TnPAP before being considered safe to practice and licensed. The Board heard from Ms. Fender about how far in the past the convictions were, and the steps she had taken so that this would no longer be an issue for her. A motion was made by Ms. Cross, seconded by Dr. Bolden, to approve Ms. Fender's application for a massage therapist license. The motion carried.

The Board took a brief break. When the Board reconvened, a roll call was conducted by Ms. Hodge. All the Board members were present, and a quorum was once again established.

### **Afton Lynne Tolliver**

Ms. Tolliver applied for a massage therapist license, and was present at this meeting to answer the Board's concerns about her application. The Board was concerned that Ms. Tolliver had criminal convictions that might impact her practice of massage. However, Ms. Tolliver had an evaluation with TnPAP, and the letter from the evaluator stated that they saw no reason that Ms. Fender would need treatment or to complete a monitoring agreement with TnPAP before being considered safe to practice and licensed. The Board heard from Ms. Tolliver and Ms. Hodge. A motion was made by Ms. Cross, seconded by Mr. Velker and Dr. Bolden, to approve Ms. Tolliver's application for a massage therapist license. The motion carried.

### **Natasha D. Garrett**



Ms. Garrett applied for a massage therapist license, and was present at this meeting to answer the Board's concerns about her application. The Board was concerned that Ms. Garrett's original massage school had submitted multiple transcripts, letters, hours breakdowns, and course catalogs that were not consistent with each other, making it difficult to determine what hours were actually completed and whether Ms. Garrett met the educational requirements for licensure. The Board heard from Ms. Garrett about her time at an accredited community college where she completed an IT degree as well as the massage therapy program. She described her experience trying to obtain the required information from the college, which had been problematic. The Board also heard from Dr. Bolden about his evaluation of Ms. Garrett's educational documentation. Dr. Bolden explained that the many different documents submitted by Ms. Garrett's school that he reviewed did not agree with each other on Ms. Garrett's education, therefore he was unable to determine whether Ms. Garrett met the Board's educational requirements for licensure. The Board heard from Ms. Hodge about her own unsuccessful efforts to determine the number of educational hours Ms. Garrett completed from the same set of documents received from the massage school. After much discussion, a motion was made by Ms. Cross to deny Ms. Garrett's application for a massage therapist license because her education could not be proven to meet the Board's requirements for licensure. After further discussion, Ms. Hodge asked that the Board defer the decision on Ms. Garrett's application to the next Board meeting to give Ms. Garrett time to get her massage school to send in proper documentation. Ms. Garrett also requested the deferment. The motion to deny Ms. Garrett's application for a massage therapist license was withdrawn by Ms. Cross. A motion was made by Ms. Cross, seconded by Ms. Yarbrough, to defer a decision on Ms. Garrett's application for a massage therapist license to the November 2019 Board meeting. The motion carried.

### **Krista Lyn Harms**

Ms. Harms applied for a massage therapist license, and was present at this meeting to answer the Board's concerns about her application. The Board was concerned that the Board had previously denied an application from Ms. Harms for a massage therapist license based on Ms. Harms's criminal convictions, her TnPAP evaluation, and her unwillingness to comply with TnPAP's recommendations that Ms. Harms complete an ASAM Level II Intensive Outpatient Treatment Program and execute a monitoring agreement with TnPAP. Ms. Harms was offered a second evaluation with TnPAP, scheduled the appointment, and then failed to come to the appointment. The Board was also concerned that when Ms. Harms applied for a nursing license in Illinois, that license application was denied because Ms. Harms forged the signature of the president of the nursing school on documents stating that she had completed the nursing education program, when in fact Ms. Harms had been academically dismissed from the program.

The Board heard from Ms. Harms about her licensure and experience as a massage therapist in Illinois, how she dealt with her previous criminal convictions, and her previous experience with alcohol rehabilitation in Illinois and with TnPAP. Ms. Harms stated that she had never forged anything, and provided documentation to the Board from a treatment program in Illinois stating

that she did not need further treatment for alcohol or substance abuse. Ms. Cross noted that the letter from the Illinois program was from three years ago, and stated that Ms. Harms was at significant risk for relapse. Ms. Harms admitted that her toxicology screening through TnPAP indicated a high level of alcohol use, and that she could not explain that result. In response to questions from Mr. Velker, Ms. Harms stated that she had taken and passed the NCLEX exam, and was denied a nursing license in Illinois because that board said she did not have the right education. Ms. Harms again denied ever having forged anything. She told the Board that this is the first time she has heard of any document being forged, and that she never had a hearing or notification of any forgery accusation from the state of Illinois. In response to a question from Ms. Cross, Ms. Harms stated that she was willing to have another evaluation with a different TnPAP evaluator, and to comply with the resulting TnPAP recommendations. A motion was made by Mr. Velker, seconded by Ms. Cross, to defer a decision on Ms. Harms's application for licensure as a massage therapist to the November 2019 Board meeting to allow time for Ms. Harms to get another TnPAP evaluation, and to contact the Illinois nursing board and have them provide the Board documentation supporting Ms. Harms's statement that she did not forge the documents that were submitted for her Illinois nursing license application. After further discussion, the motion carried.

### **Gideon Pogue**

Mr. Pogue had applied for a massage therapist license, and was present at this meeting to answer the Board's concerns about his application. The Board was concerned that Mr. Pogue had criminal convictions that might impact his practice of massage; that Mr. Pogue had a previous massage therapist license application denied by the Board due to not complying with TnPAP requirements; and that Mr. Pogue had still not completed an evaluation with toxicology screen through TnPAP. During his first application, Mr. Pogue had submitted a sample for toxicology screening that came back positive for a substance Mr. Pogue had not told TnPAP he was taking. Because the evaluator determined that they did not have enough information to accurately form a professional opinion about Mr. Pogue's safety to practice massage, they recommended that Mr. Pogue undergo an inpatient evaluation. Because Mr. Pogue did not undergo the recommended inpatient evaluation, TnPAP was unable to make any recommendation to the Board regarding Mr. Pogue's safety to practice. When Mr. Pogue's 2017 application for licensure as a massage therapist came before the Board, it was denied with a recommendation that Mr. Pogue contact TnPAP and secure their recommendation prior to applying again. At the time of this meeting, TnPAP was still unable to make any recommendation to the Board regarding Mr. Pogue's safety to practice, and Mr. Pogue had stated to the Board's administrative office that he was in the process of having his prior criminal convictions expunged.

The Board heard from Mr. Pogue, who presented a packet of information for the Board members to review; from Ms. Hodge of the Board's administrative office; and Mr. Mike Harkreader and Ms. Elaine Eaton of TnPAP.

Mr. Pogue stated that he had done everything the Board's administrative office had told him to do, starting in January of 2019 when he applied for the second time, but that he kept receiving letters from that office telling him to do the same things again. Mr. Pogue stated that he then received a letter from the administrative office telling him to "do TnPAP again". Mr. Pogue stated that he contacted TnPAP and went for an evaluation, but that because he did not bring his prescription for Tramadol, he was denied a license at that time. Mr. Pogue stated that he went for a second evaluation through TnPAP, and this time brought his Tramadol prescription. Mr. Pogue stated that the second evaluator was going to give him his Tennessee massage therapist license, but that he still got denied by "someone else on the Board". Mr. Pogue stated that he has been working on getting licensed in Tennessee for over two years, and that during this time, he has become licensed in North Carolina where he had been working, and still holds active licensure in Utah. He stated that this Board should call those states to see if there are any complaints against those licenses. Mr. Pogue presented for the Board's review a letter of recommendation from his neighbor, a retired school teacher, for the Board to review. Mr. Pogue also presented a certificate for perfect attendance at an educational program he attended, a copy of his MBLEx exam scores, and his children, whom he said had to attend the meeting because they didn't have a babysitter. Mr. Pogue also presented to the Board copies of two non-TnPAP drug test results.

Mr. Mike Harkreader of TnPAP stated that Mr. Pogue was evaluated by a TnPAP evaluator in January 2018. Mr. Harkreader read from the summary of Mr. Pogue's evaluation. The summary states that complicating factors included the fact that Mr. Pogue had stated in his initial evaluation that he did not take any medications, and that the drug test would not be positive for anything for any reason, however, later the same day, the evaluator determined that Mr. Pogue's drug screen was positive for Tramadol. The evaluator spoke with Mr. Pogue the same day they had reviewed the drug screen results, and Mr. Pogue then listed several medications that he was taking. Mr. Pogue later slid a pharmacy printout under the evaluator's door; this printout listed Tramadol and several other medications prescribed to Mr. Pogue. On January 4, 2018, the evaluator contacted Mr. Pogue to let him know that the drug screen would need to be repeated due to the initial sample being dilute and positive for a substance that the evaluator had not been told Mr. Pogue was taking. Mr. Harkreader stated that with that drug test, a creatinine level between 20 and 300 is normal and required, but that the level in Mr. Pogue's specimen was 9.7. Mr. Harkreader stated that Mr. Pogue's specimen was positive for Tramadol at a reading of 1,695 ng/ml, when 100 ng/ml is considered the cutoff. Mr. Harkreader, going back to the summary of Mr. Pogue's evaluation, stated that Mr. Pogue left the evaluator a voicemail stating that the specimen was not dilute, and that he was not going to take another UDS. Regardless of that statement, TnPAP continued to try to contact Mr. Pogue to schedule another drug screen. The evaluator emailed Mr. Pogue telling him he needed to contact TnPAP immediately to schedule another drug screen. On January 12, 2018, the evaluator received an email from Mr. Pogue's wife, Hannah, stating that Mr. Pogue had a bronchial infection and would be unable to be tested for several days. The evaluator interpreted this email to be a possible intentional delay for urine drug-screen testing. For that reason, the evaluator requested that TnPAP schedule Mr.

Pogue for a hair stat test. The evaluator selected this test to uncover possible positive results that would not be shown on a UDS test after a two week delay. Mr. Pogue eventually told TnPAP that he would not be able to take the test due to the expense. The evaluator noted that up to this point in the evaluation process, all services to Mr. Pogue had been at no cost to Mr. Pogue, since the Massage Licensure Board's grant covered those services. Due to the fact that Mr. Pogue was unable and/or unwilling to continue with further drug testing, the evaluator was unable to make an accurate assessment of Mr. Pogue's fitness to practice. The evaluator stated that if Mr. Pogue wished to continue with the licensure process, Mr. Pogue would need to undergo a comprehensive inpatient evaluation at a TnPAP recognized treatment center to determine the extent of possible substance abuse disorders diagnosis. The evaluator recommended that Mr. Pogue should not be licensed as a massage therapist before completing the recommended inpatient evaluation and executing a monitoring agreement with TnPAP.

Mr. Harkreader stated that when Mr. Pogue contacted TnPAP in 2019 about his new application for licensure as a massage therapist, Mr. Harkreader contacted the evaluator and asked if they would accept the results of Mr. Pogue taking a hair stat test instead of the original recommended inpatient evaluation. In August of 2019, Mr. Pogue kept the appointment for the hair test, but was told by the testing technicians that Mr. Pogue did not have enough hair for the test to be completed. Mr. Harkreader left messages for Mr. Pogue to tell him that he could go back into the lab and have a nail test completed instead. Mr. Harkreader said that his messages were never returned, so he assumed Mr. Pogue had not returned to the lab for a nail test. Mr. Harkreader stated that the evaluator remained concerned about the high positive levels of Tramadol in spite of the specimen being dilute, in the only specimen Mr. Pogue submitted for testing, and was still unable to make a determination about Mr. Pogue's fitness to practice.

Mr. Harkreader went on to explain that since the sample was dilute, the concentration of Tramadol could actually be higher than what showed up on that test, and that other drugs could also be present but not show up due to the specimen being dilute. Mr. Harkreader stated that this was why the evaluator requested the hair stat test.

Mr. Pogue stated that he did not understand why he had to do further testing since he had a prescription for Tramadol. Mr. Pogue also stated that when he went in for the hair test, the technician told him he did not have enough hair on his head to perform the test, and refused to take hair from anywhere else on his body. Mr. Harkreader stated that TnPAP's medical officer had stated that body hair stores drugs for up to several months, and for that reason they would only use hair from the head for testing purposes. Mr. Harkreader stated that the recommendations were based not only on the high Tramadol readings from the dilute sample, but also on the fact that Mr. Pogue had initially told the evaluator that he was not on any medications. Mr. Pogue denied that he had said that to the evaluator, and further stated that the evaluator did not need to know information about Mr. Pogue's prescriptions anyway. Mr. Pogue stated that he had not applied to TnPAP for a license, so TnPAP did not need to know anything

about him. Mr. Pogue stated that he did not understand why the Board required that he give any personal information to a TnPAP evaluator.

Ms. Elaine Eaton of TnPAP told the Board that she had been working with Mr. Pogue to get his second evaluation and testing completed for his new application for licensure. She stated that on July 31, 2019, Mr. Pogue began calling her office repeatedly, 5 or 6 times that day. Ms. Eaton stated that she returns calls in the order in which they are received, and that it was late afternoon that day before she could get back to Mr. Pogue by phone. Ms. Eaton stated that when she got Mr. Pogue's voicemail, she left a message with the number for her personal cell phone since Mr. Pogue's messages indicated that this was a very important matter, and Ms. Eaton knew she would be out of the office the next day. Ms. Eaton did speak by phone with Mr. Pogue the next morning, and explained to Mr. Pogue what needed to occur per Mr. Harkreader's notes. At that time, Ms. Eaton and Mr. Pogue determined that due to Mr. Pogue's work schedule and inability to answer the phone while working, email would be the best way to communicate going forward. Ms. Eaton stated that when a client is loud and rude, it becomes difficult for her office to communicate with that client. Ms. Eaton stated that she was never sure in her conversations with Mr. Pogue if he was actually hearing and understanding what she was telling him. She stated that Mr. Pogue continually wanted to bring up things that had happened in the past, or things that were happening in the Board's administrative office, even though Ms. Eaton told him repeatedly that she had no control over those things and that those things were not the issue with TnPAP. Ms. Eaton stated that she struggled during these conversations to keep Mr. Pogue's focus on how to get his evaluation completed per the Board's instructions. Ms. Eaton stated that they were able to get Mr. Pogue scheduled for the required drug test at a TnPAP recognized lab, and that Mr. Pogue reported to her by phone that he had gone to the appointment and that the technician had informed him that he was unable to obtain a specimen for the hair test. Ms. Eaton ascertained that Mr. Pogue was still in the parking lot at the lab, and asked him to go back in and ask about providing a nail sample instead. She asked Mr. Pogue to allow her to speak directly to the technician to verify that he was at the lab, and to speak with the technician about why it was not possible to get a hair sample, and to discuss the nail test option. Ms. Eaton stated that Mr. Pogue then told her the lab could not do a nail test, and that he wanted to do a urine test and a blood test. Ms. Eaton told Mr. Pogue that she did not have the authority to change the test format, but that she would contact the TnPAP executive director and get back to Mr. Pogue about that. After contacting the executive director, Ms. Eaton stated that she had repeatedly tried to contact Mr. Pogue by phone and by email to set up the required testing, and that the lab has also called Mr. Pogue repeatedly to try to set up an appointment for the testing. Ms. Eaton stated that her concern, as a layperson and as a possible consumer, was Mr. Pogue's lack of patience with the process. Ms. Eaton stated that she and TnPAP as a whole want to help Mr. Pogue with this process, but that it was difficult to work with someone who repeatedly hung up on her during phone conversations, and consistently refused to listen to and follow up on instructions she tried to share with him about the steps he needed to take. Ms. Eaton stated that she understood Mr. Pogue's frustration, but that TnPAP could not help him through this process unless he allowed them to do so.

Ms. Hodge of the Board's administrative office explained the process of how the administrative office receives mail, including that the U.S. postal service mail first arrives at the state government mail office in downtown Nashville before being sent on to the correct building, and then is sorted and sent to many different board offices in that building. Ms. Hodge stated that unfortunately, with this process, some mail does not reach the correct board in a timely manner, or at all. Ms. Hodge stated that in spite of this concern, all mail that does arrive in the Board administrative office is date-stamped in every single working day, and is then placed either in pending mail if no application for that person has been received, or into an active application file. Ms. Hodge stated that while she was more than happy to answer any questions about the deficiency letters that were sent to Mr. Pogue from the administrative office, she wanted to emphasize that the administrative office has been in touch with Mr. Pogue every month. Ms. Hodge stated that the office sends out deficiency letters every 30 days telling the applicants if additional items are still needed to complete their application file. Ms. Hodge stated that she did not feel the problem was lack of communication from the administrative office, but that the office had simply continued to notify Mr. Pogue of items that had not been received for his application file. Ms. Hodge stated that it was normal for the office to have some applications that came in to the office complete and could be approved within 48 hours, and also normal to receive applications that came to the office incomplete and therefore had to wait on items to arrive in the office before they could be completed and approved.

Ms. Hodge stated that the administrative office deals with many, many frustrated applicants. Ms. Hodge stated that she understood why Mr. Pogue was frustrated with what had become a long application process. Ms. Hodge stated that she was in agreement with Ms. Eaton that it became difficult to help an applicant through the process if that person seemed unable to listen to helpful instruction, or was constantly hanging up on the person trying to help them. Ms. Hodge stated that this had been her experience in trying to assist Mr. Pogue through the application process. Ms. Hodge stated that she had been very clear with Mr. Pogue about what his options were, but that as Ms. Eaton had stated, Mr. Pogue did not seem to remember or put together the things he was told. Ms. Hodge stated that this was a serious concern for her and for the administrative office, because that office is not equipped to evaluate such concerns. Ms. Hodge stated that TnPAP was the entity the Board had designated to address such concerns through the evaluation of licensed professionals in that field.

Ms. Cross stated that contrary to Mr. Pogue's earlier statement, applications for licensure are not and cannot be denied by one Board member. Ms. Cross stated that the Board must vote on any decision to be made on a license application, and that a majority of the Board members must vote to take any specific action, such as approving or denying an application for licensure. Mr. Pogue stated that he knew his application had been denied by one Board member, because one Board member had to say they wanted to approve it, and if another Board member does not second that, the whole Board has to be against it. Mr. Pogue stated that this procedure is unprofessional.

In response to a question from Mr. Mullins, Mr. Pogue stated that he had his hair cut perhaps once a month. Mr. Mullins asked why, when Mr. Pogue knew he had to provide a hair sample for testing by TnPAP a second time, Mr. Pogue had not chosen to allow his hair to grow out for that purpose. Mr. Pogue stated that he was not aware that he had needed to do that. Ms. Cross noted that it was on record from Mr. Pogue's last appearance before the Board that the Board had discussed with Mr. Pogue the need to grow out enough hair on his head or enough fingernails to have a sufficient sample for hair or nail drug testing. Ms. Cross noted that this was the same meeting at which it was discovered that Mr. Pogue had shaved his head and trimmed his nails before his previous appointment for hair and nail drug testing. Ms. Cross reminded the Board that they had gone into great detail at that time about what Mr. Pogue needed to do to have a hair or nail drug test, therefore Mr. Pogue had been made aware of these requirements.

In response to questions from Mr. Mullins, Mr. Harkreader stated that because the only sample submitted for testing was dilute, TnPAP's medical officer could not make any determinations about the actual levels of Tramadol present in Mr. Pogue. Mr. Harkreader stated that the levels of any drug detected in a dilute specimen would be expected to actually be higher if the specimen was not dilute, therefore any results from a dilute specimen would be invalid. Mr. Harkreader stated that with an invalid sample, no determination can be made about what drugs are present, and in what levels they are present. Mr. Harkreader stated that he had received the same test result documentation from another lab that Mr. Pogue had presented to the Board at this meeting. Mr. Harkreader stated that TnPAP does not accept any testing done at a lab that is not approved by TnPAP, because the TnPAP approved labs have already been determined to meet certain standards in protocol required by TnPAP. In response to a question from Ms. Hodge, Ms. Cross stated that it is standard policy for a company such as TnPAP to not accept results from outside labs. In response to a question from Mr. Guilford, Mr. Harkreader confirmed that this policy is not because outside labs are not any good, but simply because TnPAP has not had the chance to review and approve their protocols.

Ms. Cross stated that the issue she saw with this application was that after more than a year of the Board repeatedly seeing this applicant, after being repeatedly told by the Board and the Board's administrative office what he needs to do with the TnPAP program, Mr. Pogue continued to try to circumvent the process. Ms. Cross stated that Mr. Pogue was not honest in his first TnPAP evaluation or in his only submitted sample for drug testing through TnPAP, and that TnPAP has bent over backwards trying to accommodate Mr. Pogue for a second testing and evaluation. Ms. Cross stated that she was concerned that Mr. Pogue had not only refused to cooperate with TnPAP, but had also shown signs of a possible anger issue, which was almost as concerning to Ms. Cross as the possibility of a drug issue. Ms. Cross stated that repeatedly hanging up and being verbally abusive to the Board's administrative staff and the Board's professional assistance vendor was not acceptable, and showed signs that definitely warranted a full fitness to practice evaluation. Ms. Cross stated that she was considering making a motion to close Mr. Pogue's application file.

The Board heard from Mr. Guilford about the history of Mr. Pogue's two applications for licensure. A motion was made by Ms. Cross to deny Mr. Pogue's application for licensure as a massage therapist. In response to a question from Dr. Bolden, Mr. Guilford stated that the Fresh Start Act went into effect on July 1, 2018, and that Mr. Pogue's current application was received in the Board's administrative office in January 2019. Mr. Guilford reminded the Board that at their contested case hearing in November 2018, the judge's legal guidance to the Board was that because Mr. Pogue's previous application had been received before the Fresh Start Act went into effect; the Board was not bound by that legislation in considering that application at that time. Mr. Guilford stated that in the Board's final order on that application, the Board talked about many of the same issues that the Fresh Start Act directs that boards consider.

Ms. Hodge stated that the board had been very clear at this meeting and about Mr. Pogue's application in particular that they do not want to deny any applicant a license to practice massage, but that they had to determine that each applicant was safe to practice before approving any application for licensure. Ms. Hodge noted that the Board had deferred a decision on the previous applicant's application to the next Board meeting, and reminded the Board that there were many options for the Board in this matter. Ms. Hodge asked Mr. Pogue whether, if the Board were to allow him more time, Mr. Pogue would be willing to go and have the hair or nail drug testing required by TnPAP, Mr. Pogue would be willing to do that. Mr. Pogue responded that he had already done that twice, and the lab had told him they couldn't do the test. Mr. Pogue stated that this was why today he had brought the Board documentation of his drug test results from two other non-TnPAP approved labs. Mr. Pogue stated that he did not want his application to be deferred, that he wanted it to be either approved or denied at this meeting.

Ms. Burke asked Mr. Pogue questions about the documentation of drug test results from other labs that he had submitted at this meeting. Mr. Pogue repeatedly talked over Ms. Burke as she asked him why, if he had a prescription for Tramadol, he did not test positive for Tramadol on either of those two tests. Mr. Pogue said he didn't know, but he thought maybe Tramadol only stayed in the system for one day. Mr. Guilford stated that it was common practice with drug testing that if the sample tested positive for a drug that the person had admitted to taking, the result for that drug would be listed as negative on the final results. Mr. Guilford stated that he had seen it done that way before, so the Board should not conclude from this result that Tramadol was not present in Mr. Pogue's system at the time of the drug test. Ms. Cross restated her motion to deny Mr. Pogue's application for licensure.

In answer to a question from Ms. Burke, Mr. Guilford stated that the Fresh Start Act did apply to Mr. Pogue's new application, and that it would apply to any denial by the Board that would stem from Mr. Pogue's previous criminal convictions. Ms. Cross stated that her motion to deny Mr. Pogue's application did not stem from his criminal convictions, but from his repeated attempts to circumvent the TnPAP evaluation process and the treatment of the Board's staff and vendor



indicating possible anger issues and lack of coping skills that Ms. Cross felt needed to be evaluated to determine Mr. Pogue's fitness to practice.

After much further discussion, Ms. Cross withdrew her motion to deny Mr. Pogue's application for licensure. A motion was made by Mr. Velker to approve a conditional license for Mr. Pogue to practice massage therapy, which would issue upon Mr. Pogue's completion of an evaluation through TnPAP and completion of any resulting TnPAP requirements to ensure Mr. Pogue's fitness to practice. The motion carried.

The Board took a brief break. When the Board reconvened, a roll call was conducted by Ms. Hodge. All Board members had returned, and a quorum was re-established.

Dr. Bolden read aloud Ms. Dale Hill's letter of resignation from her post as Regulatory Board Administrator 2 for the Massage Licensure Board as of September 30, 2019. Ms. Hill has put in 37 years of service to the State of Tennessee, and thanked the Board for the honor and pleasure of working with the Board for the past 16 years. Ms. Hill promised to continue watching the Board meetings on Live Stream. Ms. Burke expressed the Board's appreciation of Ms. Hill's service to the Board, and congratulated her on her well-deserved retirement.

**Discuss and Consider Request for Continuing Education Waiver**

There were no requests for continuing education waivers at this meeting.

**Administrator/Director's Report**

This is an Administrative Report from Kimberly Ms. Hodge, Board Director. The information contained in this report will keep the Board aware of all essential activity pertaining to licensure for Massage Therapists and Massage Establishments.

**STATISTICAL REPORT**

As of August 8, 2019 there were 4,439 licensed massage therapists and 1,763 licensed massage establishments.

Following is the license status since the last meeting:

<b>THERAPISTS</b>	<b>ESTABLISHMENTS</b>
<b>May 2019</b>	<b>May 2019</b>
Newly Licensed – 45	Newly Licensed – 35
Reinstate Applications – 4	Reactivation Applications – 3

Retired- 8	Retired – 4
New Applications- 41	New Applications- 20
	Address / Responsible Person Change Application - 4

<b>THERAPISTS</b>	<b>ESTABLISHMENTS</b>
<b>June 2019</b>	<b>June 2019</b>
Newly Licensed – 59	Newly Licensed – 25
Reinstate Applications – 6	Reactivation Applications – 4
Retired- 11	Retired – 10
New Applications- 41	New Applications- 12
	Address / Responsible Person Change Application - 8

<b>THERAPISTS</b>	<b>ESTABLISHMENTS</b>
<b>July 2019</b>	<b>July 2019</b>
Newly Licensed – 36	Newly Licensed – 15
Reinstate Applications – 6	Reactivation Applications – 3
Retired- 6	Retired – 6
New Applications- 33	New Applications - 13
	Address / Responsible Person Change Application - 6

### **Financial Report**

Ms. Hodge stated that there will be no financial report until the Board’s November 2019 meeting

### **Continuing Education Audit Report**

This report was brought by Ms. Kimberly Hodge. From January 1, 2019 through June 30, 2019, 109 massage therapists were audited for continuing education. Of those audited, 81 licensees were compliant, and 28 licensees were non-compliant. This resulted in 74% compliance and 28% non-compliance rates.

Of those licensees who were non-compliant, 12 were deficient in the required number of continuing education hours, and 16 failed to contact the compliance unit even after receiving “Second Notice of Audit Letter” via certified mail.

## **Tennessee Professional Assistance Program Statistical Report Regarding the Peer Assistance Program**

This report was brought by Mr. Mike Harkreader of TnPAP. From July 1, 2018 to June 30, 2019 TnPAP monitored 6 massage therapists. Of these therapists, two were monitored as a result of a conditional license granted by the Board, and four were non-regulatory. During this time, TnPAP had 12 total referrals from the Board administrative office due to arrest history. Of those 12 referrals, 10 were massage therapist license applicants and 2 were massage establishment owner applicants. During this time, TnPAP had 3 monitoring agreements become effective and 20 discharges. Of those discharged, 18 were massage therapists and 2 were massage establishment owners. Of those discharged, 4 massage therapists and 2 massage establishment owners were evaluated and no monitoring agreement was found necessary; 5 massage therapists were evaluated and declined the resulting recommendations; 5 massage therapists had completed their monitoring agreements; and 4 massage therapists were discharged for non-compliance with their monitoring agreements.

During this time, the Board paid \$12,900.00 for toxicology screens and \$4,225.00 for evaluations, bringing the total Board expenses for TnPAP services to \$17,125.00.

Mr. Harkreader stated that about 83% of monitoring agreements are diagnostic in nature, meaning that they are seen as an extension of the evaluation process. Mr. Harkreader stated that this type of monitoring agreement is used when an evaluator sees a lot of red flags in an evaluation, but the evaluator is still not comfortable giving the person a substance abuse disorder diagnosis. Mr. Harkreader stated that the thought behind a monitoring agreement with substance testing for a set period of time is that if there is no substance abuse disorder, the person will be able to continue passing repeated substance testing over time. If the person begins testing positive, then they probably need to be re-evaluated and may need further treatment.

In response to a question from Mr. Guilford, Mr. Harkreader stated that the percentage of monitoring agreements that were diagnostic in nature is higher for the Massage Licensure Board than for other health related boards, although TnPAP has begun to see a general uptick in the need for diagnostic monitoring agreements overall.

### **Discuss and Take Action If Necessary on the Impaired Professional Assistance Program's (TnPAP) Two Hour Online Video for Approved Tennessee Massage Schools**

The Board reviewed correspondence from Dr. Bolden and Ms. Maj Lis Nash of Mind Body Institute, LLC, regarding difficulties that massage schools have had using the two hour online video for TnPAP, which the Board requires all students to complete as part of the schools' core curriculum. Ms. Elizabeth from Birchwood, the company that provides technical support for the video, addressed the Board's questions. Ms. Cross pointed out that Birchwood was at a previous Board meeting, and had assured the Board that the concerns about access to the video and being

able to complete the end of video exam would be fixed. Dr. Bolden stated that he had used the directions on the website, and the students were unable to access the video, even following those directions explicitly. He stated that the passwords to the content was being changed with no notice to the schools, and that in spite of the school emailing the company to get the correct passwords, and that he had not at this time received a response from the company.

Ms. Elizabeth stated that if the Board wanted each student to prove that they watched the video, each student needed to access the video individually, watch it individually, and take the following test individually, even if they had already watched the video at their school, the individual logins and passwords were necessary. She further stated that one day recently, they had system problems and the site was down, but that other days it should have functioned normally. She stated that the company emailed all the schools detailed instructions for schools to use the program, but that only seven of those emails were opened, so apparently the other schools had not reviewed this information. Dr. Bolden pointed out that the schools' emails on the public website may be incorrect. Mr. Velker brought up that the same video is used for continuing education, and Ms. Elizabeth stated that the continuing education course was another reason that an individual password and login for each student was required, and a code that gives a 100% discount on the cost of the continuing education course. Ms. Elizabeth stated that if the school would send the company the number of seats (students) will be viewing the video and taking the test, the company can grant access to that many seats. She noted that several schools had done that, however not all the seats had been used. Ms. Burke asked if the company tracks the number of people who tried to access the video using those logins and codes, and was unable to login. Ms. Elizabeth stated that the system was not tracking that data that the company would only be aware that there is an issue if they contact the company directly. Ms. Elizabeth stated that this content could be provided to the schools by DVD, or on a more public online platform such as YouTube, depending on what the Board wanted to do.

Ms. Hodge pointed out that the Board's educational Rules require that not only the schools but also the professional assistance program must keep records on the students who completed the program. She noted that the schools could make a policy of providing TnPAP with a list of students who completed the course at each school.

After further discussion, and after hearing from Mr. Guilford, Ms. Oldham of Cumberland Institute of Holistic Therapies, Steve Sommers of Cumberland Institute of Holistic Therapies, Maj Lis Nash of Mind Body Institute, Ms. Elaine Eaton of TnPAP, Ms. Elizabeth of Birchwood, the Board decided to leave the continuing education course as it stood, and to allow approved Tennessee massage schools to access the course from an online platform to use as a required part of their curriculum, and that the schools be required to keep written records of the students' completion of the course, but that there will be no requirement for TnPAP to keep those records.

### **Ratify Agreed Citations for Continuing Education Violations and Lapsed Licenses**

**Robert Maxwell Anderson, LMT #9932**

Mr. Anderson agreed to pay a civil penalty totaling \$200 for failing to obtain two (2) hours of continuing education for the cycle of 2015/2016.

**Terry Ruth Brown-Flynn, LMT #11685**

Ms. Brown-Flynn agreed to pay a civil penalty totaling \$325 for failing to obtain seven (7) hours of continuing education for the cycle of 2015/2016.

**Jacob Adam Hopkins, LMT #7750**

Mr. Hopkins agreed to pay a civil penalty totaling \$200 for failing to obtain two (2) hours of continuing education for the cycle of 2015/2016.

**Minyang Wang, LMT #9633**

Ms. Wang agreed to pay a civil penalty totaling \$200 for failing to obtain two (2) hours of continuing education for the cycle of 2015/2016.

**Feng Wei, LMT #10746**

Mr. Wei agreed to pay a civil penalty totaling \$325 for failing to obtain seven (7) hours of continuing education for the cycle of 2015/2016.

A motion was made by Dr. Bolden, seconded by Ms. Cross, to ratify the agreed citations for continuing education violations and lapsed licenses. The motion carried.

**Ratify Approval of Initial Licenses and Reinstated Licenses**

**Massage Therapists**

Presley Michael Vernon	Cantrell Cassandra Lynn
Albertson Amanda Lynn	Cavazos Ashley Nicole
Allred Lindsey Nicole	Chen Jianping
Almendarez Mary Elena	Cherep Shannon Elizabeth
Bane Lindsay Jean	Childress Diane Nannette
Baro Richard Nathan	Cook Amber Rose
Baroff David Lawrence	Cross Amy Helen
Bates Jacob Tyler	Crossland James Leonard Watts
Blakeney Amanda Kristen	Curlin-Barrett Cynthia
Bruzzese Krystal Campos	Curran Chelsie Baker

Danielson Dorothy Desirea	Long Bethany Ann
Davis Grace Marie	Masters Mary Jeanne
Debenedetto Nicole L	Mccullough Mechelle Lee
Devoe Jamie Leigh	Mccurdy Jonathan Tyler
Domasig Lauren Danae Woods	Mcginty Caeleigh Grace
Drews Jennifer Anne	Mckelvey David Anthony
Driver Allison Diane	Mcneely Martha Christine
Etherton Selena Joy	Mcphail Mark Earl
Farren Alisa Sinclair	Metcalf Catherine Alisha
Fay Andrea Marie	Millsaps Alicia Karen
Frymire Phomaly	Miyake Crystal Lynn
Furniss Donna	Morrison Paul Robert
Gaber Brooke Lynn	Mounger Makayla Beth
Gaw Ronda Ann	Murphy Victoria Lea
Gibson Stephanie Lynn	Nelson Erin Katherine
Glasgow Kayla Mackenzie	Newman Keri Lyn
Graham Christopher Scott	O'Brien Curtis Andrew
Greynolds T'Aun T.A	Oliver Paula Kae
Guditis Kathryn Ann	Olson Molly Rose
Guerra Tasha Nicole	Pace Ashley Anne
Gulledge Randall Keith	Parker Katherine Mclendon
Hagen Michelle Larae	Payne Shana Ferguson
Haire Kelly Aschauer	Peters Angela Renee
Harshaw Regina Eleonore	Polo Maria Isabel
Harvey Stella Marie	Presley Christin Kay
Heck Chelsea Michael	Preston Kasee Cherie'
Hermerding Olivia Jane	Reedy Meagan Briana
Hood Holly Victoria	Reyes Blake Manuel
Jarrett Deaneisha Brielle	Richardson Brittani Leona-Nicole
Jones Cameron Dekent	Roberts Amanda Lynn
Jones Diana Marie	Roberts Jessica Dawn
Jones Kimberly J'Nyne	Russell Lester Leon
Jones Minyuiet D	Sanders Jeana Lynnette
Jones Stacy Lee Edward	Schmader Mary Elizabeth
Keeran Penny Diane	Smiley Ian Worner
Kelly Sarah Michelle	Smith Haley Valen
Konemann India Gray	Speaker Jeanah Marie
Ladera Lisa Marie	Speranza Rachel Dawn

Ledford Tiffanie Deanne	Stanley Christopher Dewayne
Su Jingli	Vickers Janna Marie
Sulfridge Sarah Ann	Wagle Anna Kristina
Sutherland Katherine Murrey	Wagoner Cora E
Terry Alyssa Nicole	Welcker Deborah Edith
Thompson Anna Grace	Williams Cheyenne Faith
Thorson Viktoriia	Williams Sherrell Raushanah
Trundle Austin Blake	Wisecarver Stephanie Chantel
Vanlandingham Brenda	Wood Maria Ann
Vanover Courtney Dianne	Wu Wenya
Vedros Katrina Lynne	Yang Xiaoye
Verran Kalieh Marie	Zheng Xuemei

### **Massage Therapist Reinstatements**

Beckett Kaylie L.	Prather Helen Elizabeth
Berry Tanechia Je'Mille	Prescott Amy Elizabeth
Carter Ashley Marie	Prather Helen Elizabeth
Cost Marnie J.	Prescott Amy Elizabeth
Decastro Cicero	Reaves Angela Curl
Judd Katie Beth	Sesler Amber Noel
Martin Durreon Delorenze	White Serene Jolie
Mcclain Michael Marian	Williams Jessica Lynn
Moolenaar Kenya Levonne	Wright Bridgette N.

### **Massage Establishments**

A Massage Escape Ii
Anita And Co. Salon-Spa
Asian Massage
Bliss Salon
Bluewater Massage & Bodywork 3
Calla Lily Day Spa And Salon
Cas Massage
Catherine Ann Thomas
Coral Salon & Spa
Cumberland Therapeutic Massage
Diane N. Childress
Dillard'S Salon & Spa

Eden Massage
Fort Campbell Massage
Hands To Health Massage
Hcz Llc DbA Golden Hands Spa
Healing Hands
Healing Hands Restorative Massage Llc DbA Healing Hands Massage
Health Restoration Massage
Heart In Hands Massage Therapy
Heritage Salon @ Brentwood
Integrative Health Massage Therapy
Intuitive Harmony Medicine
Kallai Massage
Laser Therapy Body Inc.
Linda R. Parker DbA Touched By Lynn
Luna Rose Co. Llc
Massage By Andrea Yeager
Me Bellevue Llc
Molly Clark Therapy
Murphy Massage Therapy And Spa
Oakwood Womens Therapeutic Massage
Onsite Partners Inc.
Oriental Meridian Massage
Quiet Creek Massage @ Thrive Yoga & Wellness
Salon H
The Blissful Womb Inc.
The Bodywork Collective
The Chattanooga Workspace
Therapeutic Arts Massage
Thrive Wellness Llc
Tina J Driver Lmt
Tn Hemp Company Llc DbA Tn Hemp Co.
Unum
Volume Salon

**Massage Establishments Reactivations**

Healing Touch Therapeutic Massage
Light Of Life Massage Therapy
Maximum Massage
Rebekah Anne Harris Lmt



The Crystal Palace
Therapeutic Massage For Relaxation And Wellness
Westley Waters Lmt

A motion was made by Dr. Bolden, seconded by Ms. Cross, to ratify the approval of initial licenses and reinstated licenses for massage therapists and massage establishment. The motion carried.

**Ratify Approved Continuing Education Courses**

There were no approved continuing education courses to ratify at this meeting.

**Review Board Correspondence**

**Kathy Cabral, LMT – Use of Vibration/Percussion Tools (ie: Hypervolt and Massage Genie)**

Ms. Cabral asked the Board if it is within the scope of practice for a massage therapist to use vibration/percussion tools such as the Hypervolt and Massage Genie, and if it is within the scope of practice for a massage therapist to use the technique known as “cupping”. Ms. Cabral also asked about thumbsavers, bamboo massage, bongers, and ashiatsu. Dr. Bolden stated that percussion tools were within the scope of practice. Mr. Mullins stated that his establishment used the Hypervolt and thumbsavers, and that if the Massage Genie was similar to the Hypervolt, that those would be within the scope of practice because they are essentially percussion devices used to affect soft tissue. Ms. Yarbrough stated that she has used cupping in her massage practice. Dr. Bolden stated that he has used thumbsavers as a massage therapist, and has used bongers and other percussion tools as examples in his massage classes, but that he and his students do not use them in practice. After hearing from Ms. Hodge and Mr. Guilford, and after much discussion, the Board chose to take no action on this correspondence at this time. The Board did direct the letter writer to watch the Board’s recorded discussion on this matter at this meeting, and did say that a massage therapist should be properly trained to use any tools they use in their practice of massage.

**Lita Minor, LMT – Central Data Bank of Clients for Massage Therapists to Access**

Ms. Minor wrote asking the Board to consider compiling a central data bank to host the information on “bad actor” massage clients, and thereby let other massage therapists know about the bad actions of these people. Dr. Bolden pointed out that the Board does not have authority over the general public, only over licensed therapists and establishments, therefore the Board could not investigate such claims and maintain such a database. Dr. Bolden stated that any assault or harassment by a client on a massage therapist should be reported to the police. After

some discussion, and hearing from Ms. Cross, Ms. Burke, and Ms. Hodge, the Board chose not to take action on this issue since it is not in the Board's scope of authority.

### **Blake Mundell & Steve Mason, LMT's – Dry Needling**

Mr. Mundell & Mr. Mason asked the Board if the practice of dry needling is within the scope of practice for massage therapists. Ms. Hodge noted that she had provided for the Board a copy of the state Attorney General's Office opinion on the issue, which stated that Mr. Mundell was present at this meeting, and asked the Board to speak to the prohibition on invasive procedures, and why there were no continuing education courses for massage therapists on dry needling. Ms. Burke and Mr. Guilford stated that the practice of dry needling fell under the scope of practice of physical therapists, acupuncturists, and chiropractors, but not massage therapists. Ms. Burke stated that this is the reason there are no continuing education courses offered to massage therapists on dry needling. Mr. Guilford stated that historically, the Attorney General's Office had held that dry needling was acupuncture, but that the physical therapists and chiropractors had changed the law governing their professions to allow them to practice dry needling. Mr. Guilford further stated that the current law governing massage therapist does not allow massage therapists to practice dry needling. The Board took no action on this matter, since the law was very clear.

### **Lisa D. Wilkerson – Requesting Exemption from MBLEx Exam**

Ms. Wilkerson had taken the MBLEx exam twice after using the study guide and practice test that are made available on the MBLEx website. Ms. Wilkerson stated that she had spoken to a person from the FSMTB who told her that it was no fair that she was able to pass the practice test and not the actual exam, and encouraged her to ask the Board to let her waive the requirement to pass the MBLEx exam to become licensed as a massage therapist in Tennessee. Ms. Hodge acknowledged that the requirement for passage of an approved test is required by statute, therefore the Board did not have the option to waive that requirement.

Dr. Bolden stated that there are many different types of MBLEx review programs from different professional organizations, and that none of those exact questions would ever be on the MBLEx exam. He stated that the MBLEx study guide test includes retired questions from the exam itself, but that publishing the actual questions on the MBLEx itself would not serve the purpose of protecting the public. Dr. Bolden stated that memorizing the study questions would not benefit the test takers.

After some discussion, the Board agreed that they did not have the authority to override the state law to exempt anyone from passing the MBLEx exam as a requirement of licensure as a massage therapist in Tennessee.

### **Karen McKinney – Establishment License**

Ms. McKinney asked the Board to consider the use of “Pop Up” locations for short chair massage at events, parties, and festivals. Ms. McKinney was present to answer the Board’s questions about whether she needed an establishment license for this business, since it did not have a permanent location. Ms. McKinney stated that she would offer massage as often as once a week after building up a client base and getting an establishment license for a regular location. She clarified that until that time, she would be simply booking massage therapists to go to other locations. The Board stated that her current business model of booking massage therapists to go to other locations did not need a massage establishment license.

The Board took a brief break. Upon returning from the break, a roll call was conducted by Ms. Hodge. All the Board members had returned, and a quorum was re-established.

### **Receive Report and/or Requests from the Office of General Counsel**

Mr. Marc Guilford of the Office of General Counsel presented this report. Mr. Guilford stated that his office has 63 cases currently open, down from 84 cases in May 2019. He stated that he had a number of consent orders to present, and a number of contested cases for the Board to hear on the second day of the meeting. Mr. Guilford stated that there will be no rulemaking hearing at this meeting, but that his office was preparing for a rules hearing about the reciprocity amendment the Board had decided upon. Mr. Guilford did not have anything to add to the legislative liaison’s report, since the legislature was not in session and not expected to return to session until January 2020.

### **Consent Orders**

#### **Aimee Messmer, LMT #2023**

Ms. Messmer worked at an unlicensed massage establishment, Smiley Chiropractic, for about 10 years. The consent order placed her license on probation, assessed a civil penalty of \$1,800.00, and costs not to exceed \$1,000.00. A motion was made by Dr. Bolden, seconded by Ms. Cross, to approve the consent order. The motion carried.

#### **Jennifer Rouse, LMT #7484**

Ms. Rouse worked for 13 months while her massage therapist license was expired, and during that time worked out of her home with no massage establishment license at that location. The consent order assessed a civil penalty of \$2,350.00 to address both practice on a lapsed massage therapist license and practicing at and owning an unlicensed massage establishment, and costs not to exceed \$2,000.00. A motion was made by Dr. Bolden, seconded by Ms. Cross and Ms. Yarbrough, to approve the consent order. The motion carried.

## **Agreed Orders**

### **Chasity Horner, LMT #2268**

Ms. Horner was previously disciplined by the Board in 2016 for a continuing education issue, requiring Ms. Horner to pay costs and complete a certain number of continuing education hours within a year. Ms. Horner paid the costs and fines, but did not complete the required number of continuing education hours within that year, her deadline being May 2017. Ms. Horner did send in copies of the required continuing education hours certificates, which show that Ms. Horner did not complete the hours until 2018. The agreed order places Ms. Horner's massage therapist license on probation, requires that she submit proof of compliance with the current continuing education cycle of 2019/2020 just after the end of that cycle to the disciplinary coordinator's office, and requires Ms. Horner to pay costs not to exceed \$1,000.00. A motion was made by Dr. Bolden, seconded by Ms. Cross, to approve the agreed order. The motion carried.

### **Suna Zhang - Royal Spa, ME #4780**

Suna Zhang, not a massage therapist, owned and operated Royal Spa at 132 St. Andrews Drive #E, Murfreesboro, TN 37128 in November of 2017 when there were found unlicensed individuals practicing at the location. The establishment has closed. The agreed order placed the massage establishment license in voluntarily surrendered status, which is treated by the Board as a revocation, and required the owner pay costs not to exceed \$1,000.00. A motion was made by Dr. Bolden, seconded by Ms. Yarbrough, to approve this agreed order. The motion carried.

### **Aiyan Meng, LMT #12048 - Healing Arts Spa, ME #4497**

Ms. Meng owned and operated Healing Arts Spa at 4820-B Old Hickory Blvd, Hermitage, TN 37076. She said she moved out of the area, and entrusted another person to operate the establishment for her. After entrusting the establishment to this person, she never visited the establishment, didn't know who worked there, and didn't know exactly where the establishment was located. Ms. Meng received payments from the person in charge, and paid to have renovations done. In July 2017 after the establishment had been operating for about 5 months, unlicensed individuals were found practicing there, and then the establishment closed. Ms. Meng relocated to Missouri to be with family and stated that she has no intention to come back to TN. This agreed order would voluntarily surrender Ms. Meng's massage therapist and massage establishment licenses, and assess costs not to exceed \$3,000.00. A motion was made by Dr. Bolden, seconded by Ms. Cross, to approve the agreed order. The motion carried.

### **Molly Cerra, LMT #6779**

Ms. Cerra was short 25 hours of continuing education for the cycle of 2011/2012. When she renewed her license, she stated falsely that she had completed all her continuing education. Ms.

Cerra did not submit any certificates during the continuing education audit of her license. The agreed order suspended Ms. Cerra's license until she completes the hours that she was short, and then placed it on probation until payment of civil penalties totaling \$1,550 and costs not to exceed \$1,000.00. A motion was made by Dr. Bolden, seconded by Ms. Cross, to approve the agreed order.

### **Review, Discuss, and Take Action Regarding the Criminal Conviction Policy**

Ms. Hodge asked the Board to clarify their policy that requires the administrative office to require applicants for licensure to be evaluated by TnPAP based upon the results of their criminal background checks. The current policy stated that any applicant with a felony conviction within the previous 10 years, a misdemeanor conviction within the previous 5 years, or multiple convictions regardless of the time elapsed, the applicant would automatically be required to obtain a TnPAP evaluation and recommendation before coming before the full Board for a decision on their licensure application. Ms. Hodge noted that as of the Board's last meeting, it is stated in the policy that under certain circumstances, the Board Manager, in consultation with the Board attorney, can make an exception to the policy on a case by case basis. Mr. Velker stated that he felt the current policy is fine. Ms. Hodge addressed the fact that the Board had repeatedly asked why an applicant was sent to TnPAP, when the administrative office had been simply following the Board's own policy in the matter, and reiterated her request for the Board to clarify its policy. Dr. Bolden suggested that if an applicant had been evaluated by TnPAP, and TnPAP determined that there was no need for further treatment or a monitoring agreement, that the application could be approved by the administrative office instead of requiring the applicant to come before the Board at a Board meeting. After hearing from Ms. Hodge and Mr. Guilford, and after much discussion, a motion was made by Ms. Cross, seconded by Dr. Bolden, to alter the current policy regarding applicants with criminal convictions so that going forward, if an applicant had been evaluated by the Board's professional assistance program and as a result signed a monitoring agreement with that program, or if no monitoring agreement was determined to be necessary, that the administrative office may approve the applicant's license without having the applicant come before the Board before approval. Ms. Cross clarified that her motion included issuing a conditional license if a monitoring agreement is entered into, the condition of licensure being that the licensee comply with the conditions of the monitoring agreement. The motion as clarified carried.

A motion was made by Dr. Bolden, seconded by Mr. Velker, that if an applicant answers "no" either purposely or by mistake to the question on the application that asks if they had ever been convicted of a felony or misdemeanor, but a conviction appears on their criminal background check, that the Board empowers the administrative office to instruct the applicant in how to correct that situation just as the Board would if the applicant appeared before the Board, meaning that the applicant will need to complete a new application and pay a new application fee. After some discussion, Dr. Bolden clarified that it was his intent with this motion that if the applicant submits a new application and a new application fee, that the administrative office may then

approve the application without the applicant being required to appear before the Board. The motion carried.

**Review, Discuss, and Take Action If Needed Regarding the Peer Assistance Contract That Ends June 30, 2020**

Ms. Hodge called the Board's attention to the documentation provided regarding the current contract, and introduced Ms. Painter, who dealt with contracts, and Ms. Jennifer from the administrative office to answer questions about the process of obtaining a contract. Ms. Painter confirmed that the Board would have to go through a competitive process which is a request for grant proposal (RFGP), which expires May 31, 2020. Ms. Painter stated that an RFGP would be put out onto a website, and that the document itself goes over the process. Ms. Painter stated that the process has changed, in that grant proposals are only accepted online now. Ms. Painter stated that there will be an issue date, a disability accommodation request deadline and a notice of intent to propose. The Board will have the option of a pre-proposal teleconference, where people can call in and ask questions of the Board and a person from the grant proposal program. There is a written questions deadline for people to submit questions about the grant proposal process and get answers from program representatives. Ms. Painter stated that the answers to these questions will be posted online with the RFGP. Ms. Painter stated that once the proposals were received, she would meet with the evaluators while they go over the proposals. The results of the evaluation would have to be signed off by the Commissioner, Ms. Painter would then draw up the contract to be signed by the vendor, and then they would have an effective start date for the contract.

Ms. Painter stated that in the past, the Board has had a 5 year contract, but that contract could be written as a 2 year contract with three 1 year extensions. Ms. Painter stated that if at any time after the first 2 years, the Board wished to get a new professional assistance program, the RFGP program would have to start all over again. Ms. Painter stated that five years is the longest that a contract can be. Ms. Painter stated that her department is taking steps now to make sure a competitive contract is in place by June 2020.

In response to a question from Ms. Cross about the possibility of having a back up provider, Mr. Guilford stated that this would be a different process, involving two companies deciding to make a joint bid in the competitive process. Ms. Cross clarified that she was interested in having a different option for applicants to go to if they are not pleased with the current provider. Mr. Guilford stated that he was unaware of any Board that has contracts with two providers. Mr. Guilford stated that what he has seen in other boards, when an applicant was unable to work with the contracted provider, is that the applicant will find their own provider to make their case for licensure with the Board. Ms. Painter stated that the Board would have to justify the funding for a secondary provider, and establish a process for determining what applicants go to which provider under what circumstances. Mr. Velker stated that he felt it should be the responsibility of the applicant to find other evaluation, and that the Board could consider that.

Ms. Painter pointed out that if the Board opted for a two year contract with three 1 year extensions, each time a one year extension was considered, the cost of the services would be re-negotiated with the provider, which means that the cost to the Board could go up three times within a five year period. Ms. Hodge encouraged the Board to take home the packet of information provided, and be ready to discuss any changes to the upcoming contract at the November 2019 Board meeting. Ms. Hodge requested that the Board members get any questions to her at least three weeks before the November 2019 Board meeting so that she could get input from Ms. Painter to present at the meeting.

After much discussion, a motion was made by Mr. Velker, seconded by Ms. Cross, to offer a 2 year contract with three 1 year extensions. After further discussion, the motion carried.

The Board took a brief break. When the Board reconvened, a roll call was conducted by Ms. Kimberly Wallace. A quorum was re-established.

### **Receive, Review, and Discuss Update from Establishment Task Force on Criteria for When an Establishment License Is Needed**

Mr. Mullins brought this report. Mr. Mullins stated that the task force had been focused on coming up with a consistent definition of a massage establishment. Mr. Mullins read into the record a letter about the task force's findings. The letter stated that an establishment is fixed or permanent, meaning either the location or the consistency in the location. A mobile facility is a location where the massage therapist is working out of a bus, boat, or RV, or any facility that can move or be moved. Open to the public would not mean a situation where clientele was limited to a set list of people in a closed environment, such as providing massage at an office only for the employees of the business at that location. For compensation would mean receipt of money, goods, or services you might otherwise pay for; this would include barter. In order to need a massage establishment license, all of these conditions would have to be present. If any one of these conditions are not met, then the massage services are considered an outcall. The task force recommends creating a committee to review applications to determine if a massage establishment is required. Mr. Mullins thanked the members of the task force: Steve Sommers, Charles West, Donna Lewis, Laurie Schrader, Marc Guilford, and Kimberly Hodge.

Mr. Mullins stated that these are suggestions and points of discussion for the Board to consider. The Board heard from Mr. Guilford Ms. Hodge, Charles West, and Steve Sommers. After much discussion, a motion was made by Ms. Cross, seconded by Ms. Burke, to designate Mr. Mullins to be the Board member consultant for any questions on whether a massage establishment license is needed in a specific situation. Mr. Guilford suggested that the secondary consultant, should Mr. Mullins not be available, should be the Board chair. Ms. Cross added to her motion that the Board chair should be the backup for Mr. Mullins. This amended motion was seconded by Ms. Yarbrough. The motion carried.

## **Receive, Review, and Discuss Update from Online Education Curriculum Task Force**

Mr. Mullins brought this report. Mr. Mullins stated that the task force discussed new recommendations for licensure by reciprocity. These recommendations include completion of an approved massage curriculum of at least 500 hours from an approved school, at least 10 hours of ethics and 5 hours of law from a core provider, minimum 3 years of practice and a license in another state, proof of completion of home state continuing education requirements in the previous cycle, a discussion of the required hours for the cycle a therapist is applying in. The committee discussed different options for number of hours.

Mr. Mullins stated online hours in the core curriculum were also discussed. The committee suggested the Board increase the required hours from 500 to 650, and that the number of online hours should not exceed 30 percent of the total hours. The committee also suggested that none of the following subjects/courses may be taught in an online format: kinesiology; hands-on coursework; ethics; law; and any other course where the Board seems fit to require in-class participation or observation. Dr. Bolden stated that the 500 hour educational requirement was statutory, and could not be changed by a rule-making hearing. Ms. Hodge stated that Ms. Maj Lis Nash was already working on getting the statute changed. Mr. Mullins referred the Board to the ELAP suggestions to be used as a guide, not an absolute. Mr. Mullins emphasized that it would be up to the individual schools whether or not to offer online education. Mr. Mullins thanked those who were influential on this matter, including Maj Lis Nash, Mindy Oldham, Charles West, Laurie Schrader, Kimberly Hodge, and Marc Guilford. After much discussion, and hearing from Ms. Hodge, Ms. Nash, and Mr. Guilford, the Board took no action on this report at this meeting, but Mr. Guilford stated that the reciprocity recommendations should find their way into the next rule-making hearing for the Board. Mr. Guilford stated that he and Ms. Hodge had been discussing the difficulty for the administrative office of determining which hours completed at a school are online, and which are not, particularly with out of state private massage schools. Ms. Hodge stated that the administrative office is currently spending sometimes 2 to 3 hours evaluating out of state education for some applications, and that evaluation of whether a class is conducted online or in the classroom will have to be determined by the statement of the school that submits the transcript.

## **Discuss and Take Action If Necessary on School Approvals and/or School Program Changes**

### **Massage Institute of Cleveland – Nadia Vazquez**

Ms. Vazquez and her husband applied to be the owners and directors of the Massage Institute of Cleveland, an existing Tennessee massage school. The materials they submitted were reviewed and approved by Dr. Bolden and Ms. Burke as the Board's consultants. Mr. and Ms. Vazquez



were present at this meeting to answer any questions the Board had about their application. After a brief discussion, a motion was made by Dr. Bolden, seconded by Mr. Velker, to approve Ms. Vazquez and her husband's application to be the owners and directors of the Massage Institute of Cleveland. The motion carried.

### **Discuss Contract With Linguistica for Applicants with Limited English Proficiency to Receive Interpretation Services**

Ms. Hodge explained that the Title VI coordinator for the Department has informed the administrative office that individuals who have limited English proficiency and who mark on their applications that they do not speak English fluently that the Board is to provide assistance to them. This would include that when the administrative office sends out our deficiency letters to these applicants, that the office then contacts the applicant and have an interpreter interpret the deficiency letter to them to make sure that they understand the letter. Ms. Hodge provided the Board with documentation of the fee for this service. Ms. Hodge stated that this would come out of the Board's budget. Mr. Guilford explained that Title VI was connected to the Civil Rights Act of 1964, which was federal legislation that states that entities that already receive federal money must comply with those requirements. Mr. Velker asked why the administrative office cannot simply send a translation of the English deficiency letter into the applicant's first language along with an English copy. Ms. Hodge stated that per the contract, written document translation would cost eleven to seventeen cents per word. Ms. Hodge stated that some of the deficiency letters probably have up to 400 words, if not more. Ms. Hodge stated that should the Board choose to do that, the endeavor could quickly become very expensive. Ms. Hodge also stated that frequently deficiency letters go out more often than once a month, so having each one translated and sent out could mean that an additional English deficiency letter was already on the way to the applicant by the time the first letter was sent for translation, translated, and mailed out. Ms. Hodge stated that for those reasons, it seemed more efficient and cost-effective to do the interpretation by phone. Ms. Hodge stated that the phone interpretation cost was 50 to 55 cents per minute. Dr. Bolden noted that this is another cost that the Board has no control over. Ms. Hodge explained that in most other health related boards, an English proficiency test is required for licensure, so the requirement for translation or interpretation would not apply to those boards. Mr. Guilford stated that at the moment, English proficiency is not required by the Board's Rules, but that he would be open to a rule-change that would require it. Mr. Guilford stated that some other states do have an English proficiency requirement in their licensure requirements for massage therapists.

### **Discuss and Appoint Massage Board Member(s) and Administrative Staff to Attend the 2019 Federation of State Massage Boards Annual Meeting**

Mr. Velker nominated Ms. Hodge to go as the delegate to the meeting, and Ms. Burke as the alternate delegate. Ms. Hodge reminded the Board that the Board had expressed, in the past two meetings, that travel was the only item in the budget that the Board has control of, and that the

Board had expressed the desire to cut back on travel to control spending. Mr. Velker then nominated Ms. Cross, Mr. Mullins, and Ms. Hodge to attend the meeting. After much discussion, Ms. Hodge conducted a roll call vote to see who would be attending as a delegate. The Board was evenly split between Ms. Burke and Ms. Hodge to attend as a delegate. After further discussion, the Board agreed that Ms. Burke, Ms. Hodge, and Mr. Mullins will be attending the meeting.

### **Discuss and Take Action If Needed Regarding Rulemaking Hearings, Rule Amendments, and Policies**

No action was taken on this item at this meeting.

### **Public Comments and Receive Future Agenda Items**

#### **Laura Embleton, National Government Relations Liaison for ABMP**

Ms. Emberton sent over some information about establishment licensing and endorsement licensing in different states. Ms. Emberton spoke about Colorado's endorsement licensing, where hours worked as a massage therapist in another state can substitute for hours of education. Dr. Bolden asked about how other states would license him, since at the time he attended massage school, no exam was required for licensure. Ms. Emberton said she was not sure. Ms. Emberton discussed how Indiana was about to implement licensure for massage therapists in that state. Ms. Burke asked what documentation other states were using as proof of hours worked as a massage therapist. Ms. Emberton stated that tax returns, appointment calendars, statements from employers, and other documentation would be accepted, and then it would have to be verified. She stated that licensure by endorsement was all about people moving into the state. Ms. Emberton stated that massage therapists should not be paying to get rid of human trafficking. Ms. Emberton stated that Colorado wanted to implement licensing of massage establishments, but that she managed to keep just about everybody who was already practicing exempt. Ms. Emberton spoke about 18 massage establishments being shut down in the town of Aurora, and that the owners just moved their businesses a mile away across the border into Denver. In response to a question from Mr. Guilford, Ms. Emberton acknowledged that the fee massage therapists paid was nominal, and that the people who were doing illegal things were the ones being shut down. Ms. Emberton states that she has drafted language for Colorado that is very much like what Tennessee has.

Ms. Emberton also mentioned a rule that after a massage establishment is shut down, no other similar business is permitted to open at that location for at least 2 years. Mr. Guilford stated that a similar rule is on his "rule making wish list", and Ms. Cross agreed that this would be a good idea. Mr. Guilford stated that he would share his list with the Board at the next meeting for discussion.

Mr. Guilford brought forward Mr. Velker's idea of having some time for public comments closer to the beginning of meetings rather than the end. He stated that some people plan to comment, but cannot stay until 7:40 p.m. Ms. Burke stated that comments should be taken after applicant interviews, especially with the need for the translator to be present for those interviews. Ms. Hodge agreed that comments should be done after the applicant interviews, and possibly move some reports to later in the day. Ms. Cross stated that the positive side of having comments later in the day was that Ms. Emberton spoke about the things that the Board had addressed earlier in the meeting. Ms. Emberton responded that having comments later in the day did seem to make sense to her.

Mr. Mullins stated that he wanted to change his vote for FSMTB delegate from Ms. Hodge to Ms. Burke, so Ms. Burke will be the official delegate to the meeting. A motion was made by Ms. Cross, seconded by Dr. Bolden, to adjourn the meeting. The meeting was adjourned.

Minutes  
Tennessee Massage Licensure Board  
August 13, 2019

Time: 9:00 a.m. Central Standard Time  
Location: 665 Mainstream Drive  
HRB Conference Center  
1<sup>st</sup> Floor, Iris Room  
Nashville, TN 37243

Members Present: Marvis Burke, LMT, Chairperson  
Ed Bolden, LMT  
Bill Mullins, LMT  
Virginia P. Yarbrough, LMT  
Christi Cross, Public Member  
Michael Velker, Public Member

Members Absent Cynthia Jagers, LMT, Secretary

Staff Present: Kimberly Hodge, Board Manager  
Kimberly Wallace, Unit 3 Director  
Marc Guilford, Office of General Counsel

Judge Steve Darnell presided over the contested cases at this meeting. Mr. Marc Guilford of the Office of General Counsel represented the Department in these cases. Judge Darnell established a quorum of the Board members, and gave his charge to the Board members before beginning the cases.

**Contested Cases**

**Natalie Gilbert, LMT**

Ms. Gilbert was present at this meeting and was not represented by counsel. Ms. Gilbert was currently licensed as a massage therapist in Tennessee when she failed to obtain 23 hours of required continuing education for the 2013/2014 cycle. Ms. Gilbert states that she thought that her courses for her BA of Business degree at Lipscomb University would more than complete her continuing education requirements for her Massage Therapist licensure. Mr. Bolden asked her if she was taught the continuing education requirements in school, and Ms. Gilbert said she did. Mr. Bolden also asked if she applied for approval of the courses 45 days prior as stated in the Rules and Gilbert stated she did not. Mr. Bolden raised the fact that the criteria required for application of course approval was not met, and that the transcript and Ms. Gilberts description

of the courses is not sufficient to approve. Ms. Gilbert contests that according to the rule in 2012, she was not required to obtain prior approval of classes as long as it was taken at an approved institution. The proposed order places Ms. Gilbert's massage therapist license on suspension until Ms. Gilbert submits proof of completion of 21 hours of continuing education and an assessed civil penalty of \$300 plus costs. A motion was made by Mr. Velker to dismiss the case and approve the courses. Mr. Mullins seconded his motion to accept. The motion carried. A motion was made by Mr. Bolden and second by Mr. Velker to support the Board's current policy statement. The motion carried.

### **Gary Genna, LMT**

Mr. Genna failed to obtain 5 Continuing education hours in the 2015-2016 cycle. Mr. Genna worked on an expired license as an Associate Professor and Director of Massage Therapy Program at Roane State in Oak Ridge, Tennessee from March 2017 through August 2017. Mr. Genna states he did not know that the license had expired. He has no previous history of discipline. The proposed order required that Mr. Genna complete 11 hours of approved continuing education and pay civil penalties totaling \$550.00, plus the actual costs of prosecuting the case, and placed Mr. Genna's massage therapist license on probation until all civil penalties and costs are paid. A motion was made by Dr. Bolden, seconded by Ms. Cross; the motion carried.

### **Bryan Reynolds**

Mr. Reynolds was not present at this meeting. This contested case was deferred by the Office of General Counsel to the November 2019 Board meeting.

### **Hu Nan**

Hu Nan was not present at this meeting. This contested case was deferred by the Office of General Counsel to the November 2019 Board meeting.

### **Hu Hu Wang**

Hu Hu Wang was not present at this meeting. This contested case was deferred by the Office of General Counsel to the November 2019 Board meeting.

### **Tibeth Turnbloom, LMT**

Ms. Turnbloom was not present at this meeting. A motion was made by Ms. Cross moved to proceed in default, seconded by Mr. Bolden. Proof of service was made by counsel. Ms. Turnbloom was audited for continuing education of the 2016-2017 cycle, but failed to submit any hours. She had renewed her license since then. The Proposed Order required suspension of her massage therapist license, completion of hours, and civil penalties and costs as pursuant in

Rules. In questioning by Ms. Hodge, documents from the state licensing database were identified which verified that Ms. Trunbloom renewed her license 12/16/2017. Her signature on the renewal form did verify that she falsely certified completion of her continuing education hours. Ms. Trunbloom has been previously disciplined. The proposed order would suspend Ms. Trunbloom's massage therapist license until 25 hours of approved continuing education are completed; it would then place her license under probation until civil penalties of \$1,150.00 and costs are paid. A motion was made by Dr. Bolden to accept the order in totality, seconded by Ms. Yarborough; the motion carried.

### **Crystal Washington, LMT**

MS Washington was previously disciplined in 2017. Civil penalties were not paid but the CE hours have been completed promptly in June 2019. The Proposed Order required by January 1, 2021 completion of 2019-2020 continuing education requirements, and payment of case costs not to exceed \$500.00. A motion was made by Ms. Cross, seconded by Ms. Yarborough to accept the proposed order as written. The motion Carried.

The Board took a break for lunch. Upon their return, roll call was performed and meeting was called to order by Ms. Hodge.

### **Receive, Review, and Discuss Update from Online Education Curriculum Task Force**

Mr. Bolden was elected as Chair to conduct the meeting. Mr. Mullins, Ms. Cross and Ms. Yarborough were elected at the last meeting to serve on the Task Force Committee. Mr. Velker will serve with board members in case of uneven decision counts. CE Broker and CE Registry were the recommended products for CE tracking. The goal of the committee was to gather information to make a recommendation to the Board regarding the choice of CE product.

Marsha Mann of Partner Success Manager represented CE Broker. CE Broker is not mandated by other Boards to use. Unit Director of Veterinary Board Kimberly Wallace states that the Veterinary board has opted to CE Broker over CVET offered by the AAVSB . They have been able to link the LARS system to CE Broker. CE Broker has been implemented without having any challenges encountered thus far. A representative spoke for CE Registry by FSMTB.

After hearing from the parties above, notation by Mr. Mullins was made that both CE Registry and CE Broker have value and should be available by choice of the Massage Therapists to use. No recommendation was made as to enforce CE Broker or CE Registry.

A motion to adjourn the meeting was made by Mr. Mullins, second by Ms. Cross. The motioned was carried.

## **Minutes Ratified at November 7, 2019 Board Meeting**