

MINUTES
TENNESSEE MASSAGE LICENSURE BOARD
November 5, 2018

Time: 9:00 a.m. C.S.T.

Location: 665 Mainstream Drive
HRB Conference Center
1st Floor, Iris Room
Nashville, TN 37243

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

Staff Present: Kimberly Hodge, Board Manager
Marc Guilford, Office of General Counsel

The meeting was called to order at 9:17 a.m. by Ms. Marvis Burke, Chairperson. Ms. Burke welcomed and acknowledged 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. Prior to conducting business, Kimberly Hodge conducted a roll call to establish a quorum. A quorum was established.

Minutes

Upon review of the minutes from the August 13, and 14, 2018 Massage Licensure Board meeting, a motion was made by Dr. Bolden, seconded by Ms. Cross, to approve the minutes as written. The motion carried.

Applicant Interviews

Jun Liu

Mr. Liu had applied for a massage therapist license, and was present at this meeting. The translator, Ms. Jiao Hoggard, translated the Board's questions about Mr. Liu's application for a massage therapist license. The Board's concerns included inaccuracies and inconsistencies in Mr. Liu's application, including not listing all the massage schools he had attended; falsely

claiming he had never had an application for a license denied; a misspelling of his name on a notarized document; and the variety of different addresses and locations where Mr. Liu stated that he received mail and lived. These concerns prompted the Board to question whether the documents submitted with Mr. Liu's application were legitimate. The Board heard evidence that Mr. Liu had been practicing without a license, including that he had been observed practicing massage earlier this month at Opry Mills Mall in Nashville, Tennessee. Mr. Liu told the Board that he had not been practicing massage without a license in Tennessee. After hearing from Mr. Liu and hearing all the evidence presented, a motion was made by Ms. Cross, seconded by Mr. Velker, to deny Mr. Liu's application for a massage therapist license. The motion carried.

He Zhang

Mr. Zhang had applied for a massage therapist license, and was present at this meeting. The translator, Ms. Jiao Hoggard, translated the Board's questions about Mr. Zhang's application for a massage therapist license. Mr. Zhang's application had previously been reviewed by the Board at their August 2018 meeting, and was deferred to this meeting to await additional documents from Mr. Zhang and the massage school he stated that he had attended, Elbe Institute. At the August Board meeting, questions had been raised about the legitimacy of Elbe Institute, and whether Mr. Zhang had actually attended this school. At this meeting, the Board heard from Mr. Zhang, and reviewed the attendance sheets and other information provided regarding Mr. Zhang's education at Elbe Institute. The Board believed that Mr. Zhang's signatures on the Elbe Institute attendance sheets did not appear legitimate; therefore the Board did not believe that Mr. Zhang had actually attended classes on at least some of the dates in question. The Board also had concerns about the variety of different addresses and locations where Mr. Zhang purported to receive mail and live. After some discussion, a motion was made by Ms. Cross, seconded by Ms. Jagers, to deny Mr. Zhang's application for a massage therapist license. The motion carried.

Juanjuan Dai

Ms. Dai had applied for a massage therapist license, and was present at this meeting. The translator, Ms. Jiao Hoggard, translated the Board's questions about Ms. Dai's application for a massage therapist license. The Board's concerns included documents submitted with Ms. Dai's application indicating that Ms. Dai took the MBLEx prior to ever attending massage school. Because the MBLEx rules require that applicants complete their massage education prior to testing, the Board viewed Ms. Dai's MBLEx score as invalid for the purposes of obtaining a Tennessee massage therapist license. After some discussion, a motion was made by Mr. Velker, seconded by Ms. Cross, to deny Ms. Dai's application for a massage therapist license. The motion carried.

Hong Shen

Ms. Shen had applied for a massage therapist license, and was present at this meeting. The translator, Ms. Jiao Hoggard, translated the Board's questions about Ms. Shen's application for a massage therapist license. The Board's concerns included documents submitted with Ms. Shen's application indicating that Ms. Shen took the MBLEx only about two weeks after starting massage school, long before completing her massage education. Because the MBLEx rules require that applicants complete specific topics within their massage education prior to testing, the Board viewed Ms. Shen's exam scores as invalid for the purposes of obtaining a Tennessee massage therapist license. Ms. Shen stated that she learned that there was a massage store, in Murfreesboro, TN for sale. She called and spoke to a lady about buying the store and requirements for massage. She paid \$10,000.00 for the store, but was still unsure of the exact name or address of the store. She states that the entire transaction was completed online, and that the deal fell through. She stated that in Ohio, she studied massage and prepared to take the MBLEx by using a website before she went to school for massage. After some discussion, a motion was made by Mr. Velker, seconded by Ms. Cross, to deny Ms. Shen's application for a massage therapist license. The motion carried.

Xiuzhen Huang, LMT – Lucky 7 Healing Center

Ms. Huang applied for a massage establishment license for Lucky Star Massage, 120 Seaboard Lane, Suite A, Franklin, Tennessee, 37067. Ms. Huang was present at this meeting to answer concerns regarding her relationship with the previous owner of this establishment; whether the lease agreement reflects Ms. Huang's name; and the Consent Order attached to this location in August of 2018 in which the previous owner's establishment license was revoked. The translator, Ms. Jiao Hoggard, translated the Board's questions about Ms. Huang's application for a massage establishment license. In response to Ms. Burke's question, Ms. Huang stated that she was able to speak, read, write and understand English. Ms. Huang stated that she had no relationship with Shewei Zhang, the previous owner of Lucky 7 Healing Center at the same location. She then stated that she had worked in Tennessee at Lucky 7 Healing Center, so she thought that was an okay name for her establishment in Alabama when she opened it last November. Upon further questioning, Ms. Huang admitted that she had worked for Mr. Shewei Zhang while he was the owner of the establishment license at Lucky 7 Healing Center. Ms. Huang stated that while she was living in Alhambra, California, she answered an online ad for employment at Lucky 7 Healing Center, and subsequently went to work for Mr. Zhang in his Franklin, Tennessee establishment for less than two months. She then returned to California to work for two months, and then moved back to Tennessee before moving to Alabama and opening a massage establishment named Lucky 7 Healing Center there. Ms. Huang stated that she moved back to Tennessee in November of last year, and that she planned to sell her Alabama massage establishment this week. Ms. Huang further stated that her only relationship to Mr. Zhang was as employer and employee, and that after he sold her his establishment, Mr. Zhang would no longer be involved at all in the business. Ms. Huang then stated that she had worked for Mr. Zhang at his massage establishment in Tennessee from December of 2015 to November of 2017, at which time she opened her Alabama establishment. At this time in the meeting, Mr. Zhang attempted to address the Board, but was not allowed to do so since this was not his

application. Ms. Huang stated that she had asked Mr. Zhang to accompany her to the meeting today since the business still belonged to him, and he was still paying the rent. Ms. Huang stated that when she lived in Tennessee, she had lived at a location rented by Mr. Zhang, and this address was still on her driver's license as her current address. She stated that since that was the address on her identification, she put down that address as her current address on her massage establishment application. Upon reviewing the lease that Ms. Huang was going to sign for the establishment location, it was revealed that she would be subleasing the property from Mr. Zhang, who in turn had subleased from Lian Matagolai, who had previously held a massage establishment license in Nashville that was revoked. The Board's records also showed that prior to revocation of Lian Matagolai's establishment license, that establishment was located at 120 Seaboard Lane, Suite A, Franklin, Tennessee, 37067. Upon a search of Ms. Huang's address on her identification, the Board's records showed that five individuals had applied for licensure using that address; some of these applicants had been denied, and some had their application files closed. A motion was made by Ms. Cross, seconded by Dr. Bolden, to deny Ms. Huang's application for a massage establishment license. The motion carried.

Helen Marie Mathews

Ms. Mathews had applied for a Tennessee massage therapist license, and was not present at this meeting. A motion was made by Mr. Velker, seconded by Dr. Bolden, to proceed in default. The motion carried. Ms. Mathews had appeared before the Application Review Committee, which recommended the Board deny her application for licensure. Ms. Mathews had admitted to practicing massage without a license since 2012, and her employment practicing massage at Sunshine Chiropractic had been terminated in February 2018 for not having a massage therapist license. Ms. Mathews had not listed her work at Sunshine Chiropractic on her application for licensure. A motion was made by Mr. Velker, seconded by Mr. Mullins, to deny Ms. Mathews' application for licensure as a massage therapist. The motion carried.

Robin Gill

Ms. Gill had applied for a Tennessee massage therapist license, and was not present at this meeting. A motion was made by Mr. Velker, seconded by Ms. Cross, to proceed in default. The motion carried. Ms. Gill had come before the Board previously because she had marked "no" on her application when asked about criminal convictions and because she had been referred to Tennessee Professional Assistance Program (TnPAP) and declined a monitoring agreement. Although Ms. Gill's criminal convictions are twenty years old, the evaluators had concerns. At the August 2018 Board meeting, Ms. Gill was approved for a conditional or a clear license to be issued upon evaluation and compliance with TnPAP's recommendations regarding safety to practice. Ms. Gill agreed to alcohol screening through TnPAP, but refused screening for other drugs. Ms. Gill tested positive for alcohol, and revealed to the evaluator that she continued to use cannabis. The evaluator recommended that Ms. Gill's safety to practice be dependent upon an abstinence-only substance abuse program requiring frequent toxicology screenings. Ms. Gill declined TnPAP's offer of a twelve month diagnostic monitoring agreement, and TnPAP

subsequently closed her file. A motion was made by Mr. Velker, seconded by Dr. Bolden, to deny Ms. Gill's application for licensure as a massage therapist. The motion carried.

JoyLee Martinez-Salome

Ms. Martinez-Salome had applied for a Tennessee massage therapist license, and was not present at this meeting. A motion was made by Dr. Bolden, seconded by Ms. Cross, to proceed in default. The motion carried. Ms. Martinez-Salome had appeared at the August 2018 Board meeting and was approved for a conditional or regular license, to be issued upon evaluation and compliance with TnPAP's recommendations regarding her safety to practice. Ms. Martinez-Salome had been referred to TnPAP by the administrative office due to past criminal convictions. She had not contacted TnPAP, and had requested to withdraw her application. A motion was made by Mr. Velker, seconded by Ms. Cross, to deny Ms. Martinez-Salome's application for licensure as a massage therapist. The motion carried.

Jessica Whaley Oliver

Ms. Oliver had applied for a Tennessee massage therapist license, and was not present at this meeting. Ms. Oliver had appeared at the August 2018 Board meeting and was approved at that meeting for a conditional or regular license, to be issued upon evaluation and compliance with TnPAP's recommendations regarding her safety to practice. Ms. Oliver had been referred to TnPAP by the administrative office due to past criminal convictions, and had not contacted TnPAP. Ms. Oliver had stated that she went through a treatment program in Georgia, but at the time of this meeting had not provided any documentation of completion of this program. After some discussion, a motion was made by Ms. Cross, seconded by Ms. Yarbrough, to deny Ms. Oliver's application for licensure as a massage therapist. After further discussion, the motion carried.

Kendra Lenice Thomas

Ms. Thomas had applied for reinstatement of her massage therapist license, and was present at this meeting. She had completed forty-five out of the sixty-eight hours of continuing education required to reinstate her license at the time of this meeting. These extra hours were required for Ms. Thomas to come into compliance with Agreed Citations from previous continuing education cycles. Ms. Thomas stated that she had completed eleven of her remaining twenty-three hours, including two hours of Tennessee massage law and two hours of ethics education, and was actively working to complete the remaining twelve hours. After some discussion, a motion was made by Ms. Cross, seconded by Ms. Yarbrough, to approve a conditional reinstatement of Ms. Thomas's license, requiring that Ms. Thomas provide proof of completion of the remaining twenty-three continuing education hours within the next six months. The motion carried.

Cynthia Foster

Ms. Foster had applied for a Tennessee massage therapist license, and was present at this meeting to answer concerns about her massage education. Ms. Foster had submitted a transcript showing her completion of science hours from 1974 at Phillips County Community College for the Board's consideration in addition to her massage school education, which was forty-seven hours of sciences short of meeting Tennessee's educational requirement for licensure as a massage therapist. After some discussion, a motion was made by Ms. Cross to deny Ms. Foster's application for licensure due to not meeting Tennessee's educational requirements under statute. After more discussion, Ms. Cross withdrew her first motion, and made a new motion, seconded by Dr. Bolden, to allow Ms. Foster ninety days to complete the missing forty-seven hours of sciences from the core curriculum of an approved massage educational program, as required by statute for licensure as a massage therapist in Tennessee, and that if those hours were not completed by that time, Ms. Foster's application file be closed. The motion carried.

Jennifer Lyn Beh-Zimmer

Ms. Beh-Zimmer had applied for a Tennessee massage therapist license, and was present at this meeting to answer concerns about her massage education. There was no evidence in Ms. Beh-Zimmer's application file of her having completed an approved massage education program that met the Board's licensure requirements, and no evidence of National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) certification. After much discussion, a motion was made by Dr. Bolden, seconded by Ms. Cross, that the Board defer Ms. Beh-Zimmer's application until the next Board meeting. The motion carried.

Applicant File Review-Education

There were no applicant files to be reviewed on their education at this meeting.

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

This is an Administrative Report from Kimberly 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 November 1, 2018 there were 4,427 licensed massage therapists and 1,776 licensed massage establishments.

Following is the license status since the last meeting:

THERAPISTS	ESTABLISHMENTS
August 2018	August 2018
Newly Licensed – 42	Newly Licensed – 33
Reinstate Applications – 10	Reactivation Applications – 8
Retired- 18	Retired – 9
New Applications- 32	New Applications- 26
	Address Change Application - 17

THERAPISTS	ESTABLISHMENTS
September 2018	September 2018
Newly Licensed – 46	Newly Licensed – 13
Reinstate Applications – 6	Reactivation Applications – 6
Retired- 20	Retired – 7
New Applications- 28	New Applications- 18
	Address Change Application - 6

THERAPISTS	ESTABLISHMENTS
October 2018	October 2018
Newly Licensed – 42	Newly Licensed – 23
Reinstate Applications – 12	Reactivation Applications – 5
Retired- 16	Retired – 15
New Applications- 50	New Applications - 31
	Address Change Application - 7

Investigation/Disciplinary Reports

This report was brought by Rachel Foutch of the Disciplinary Coordinator’s Office. At this point in the 2018 calendar year, there have been one hundred new complaints opened against massage therapists, and ninety complaints closed. Of those closed, one was closed for insufficient evidence to discipline; forty were sent to the Office of General Counsel for disciplinary action; twenty-four were closed with no action; seven were closed with a letter of concern; and eighteen were closed with a letter of warning. There were currently forty-eight complaints being investigated and/or reviewed, and an investigation was currently monitoring one hundred and thirty-two massage therapists.

Of the one hundred new complaints received for massage therapists, one was about fraud/false billing; two were for drugs; seven were for sexual misconduct; three were for criminal charges; fifteen for unlicensed practice; thirty-four for unprofessional conduct; seven for violation of

order; one for lapsed license; three for criminal conviction; and twenty-seven for continuing education violation.

At this point in the 2018 calendar year, there have been thirty-four new complaints opened against massage establishments, and forty-four complaints closed. Of those closed, seventeen were sent to the Office of General Counsel for disciplinary action; twenty-one were closed with no action; four were closed with a letter of concern; and two were closed with a letter of warning. There were currently nineteen complaints being investigated and/or reviewed, and investigations was currently monitoring twenty-eight massage establishments.

Of the thirty-four new complaints received for massage establishments, two were for sexual misconduct; twenty-three were for unlicensed practice; seven were for unprofessional conduct; and two were for lapsed license.

There was some discussion on whether some areas of Tennessee may be under-reporting complaints on massage therapists or establishments. Mr. Guilford stated that one complaint can generate several more complaints or disciplinary actions, and gave as an example a massage establishment license practicing on a lapsed license that employed ten massage therapists. In this situation, a lapsed license complaint on the establishment could generate as many as eleven total complaints.

Financial Report

The Board's 2018 fiscal year report was brought by Noranda French. Ms. French provided the Board with spreadsheets documenting the expenditures, revenues, current year net, and surplus/deficit numbers, as well as line and bar graphs documenting a comparison of the FY 2016, FY 2017 and FY 2018. A pie chart documenting the Board's revenue sources was also included. The Board's total expenditures for FY 2018 through June 30, 2018 were \$752,593.55; revenue of \$700,299.33; current year net of negative \$52,294.22; and cumulative carryover of \$912,042.60. Ms. French stated that because this is the second year the Board has been in the red, the Board's financial situation will have to be explained to GovOps. She reminded the Board that since 2013, the trend for this Board is to have higher revenues in odd years than in even years, so this current fiscal year may have higher revenues. She offered some possible fee increase scenarios that the Board may wish to consider going forward. Ms. French stated that while the Board's direct expenditures, which include payroll expenditures, travel, and administrative costs, have been right on budget, the reason the Board has been in the red for the past two years was higher than expected enforcement costs, including legal costs and investigation costs. She stated that these costs are necessarily variable and harder to adjust for, since the Board has no control over how many complaints come in, and how much will be required to be expended in investigating and prosecuting each complaint. Ms. French stated that this past fiscal year, investigation costs have increased by \$18,000.00, and legal costs have increased by \$11,000.00. She stated that these higher enforcement costs do seem to be becoming a trend, so the Board should take that into consideration when thinking about generating more

revenue. Ms. French stated that for fiscal year 2018, renewal fees provided 56% of the Board's revenue; initial licensure fees provided 11%; and application fees provided 9% of the Board's revenue. Ms. French stated that an increase in any or all of these fees would be sufficient to put the Board back into the black. In response to a questions from Ms. Cross and Dr. Bolden, Ms. French stated that typically most Tennessee health related boards had at least 50% of their revenue coming from their renewal fees, and that several board's renewal fees hover between 62% and 65% of their total revenue. Ms. French stated that she could compose a table comparing other Tennessee health related board's revenue streams for the Board's consideration. There was much discussion by the Board about how raising fees might affect the profession, and how the carryover fund does not figure in to how GovOps views the Board being in the red. Mr. Guilford and Ms. French reminded the Board that by statute, every board is required to be financially self-supporting by revenue each fiscal year. In response to a question from Dr. Bolden, Mr. Guilford stated that it would be difficult to separate out whether the increase in investigative and legal fees were caused more by complaints on massage establishments or on therapists, since frequently the two were intertwined. For example, several licensed therapists may be investigated for working at a massage establishment that is operating on a lapsed establishment license. There was discussion about how the reserve overflow funds could and could not be used by the Board. Mr. Guilford stated that he expected that the Board would be called to Government Operations sometime in the summer of 2019, and that at the time he received that notice, he would send an email to the Board members letting them know of this. He stated that unfortunately, the Board would probably have about three days' notice of the meeting. Several Board members announced that they would be available to attend. Ms. French assured the Board that she would be available for that meeting as well. In response to questions from the Board, Mr. Guilford stated that in order to have the Board have discretion to use money from their overflow fund to pay for variable expenditures such as enforcement expenditures, a bill would have to be passed to change law. He stated that of course the Board members cannot lobby for any such bill, and that the best chance of such a bill being submitted was for the Board's licensees to contact their state representatives and push for them to enact that change. Ms. French stated that she expected Government Operations to look at not only the past two years' revenue as opposed to expenses, but also the amount in the overflow fund; whether the Board has grown in numbers of licensees (it has grown every year, according to the Director's Reports); the fact that the Board now has some data on the trend of increasing enforcement costs to use in budgeting for future years; and that the Board is already considering available ways to increase revenue going forward. There was more discussion regarding how the reduction in percentage of licensees being audited affected revenue, and how the legal expenditures associated with the 100% audit offset the revenue brought in. The possible impact of the soon to be implemented legislation mandating that initial application fees for licensure be waived for low income applicants was also discussed. Ms. French stated that the impact of this legislation is of course yet to be seen, however many boards are expecting a ten percent revenue loss going forward with the waiver program. In response to questions from Mr. Mullins, Ms. French explained how investigations costs are calculated, and Mr. Guilford spoke to situations in which legal fees are incurred without discipline being placed, and that when discipline is not placed, there is no Board order to assess legal fees against the respondent, therefore those fees become

the responsibility of the Board. Ms. French stated that under the circumstances, the Board might want to wait for the mid-year financial report at the next meeting to make any decisions about increasing revenue. Ms. French stated that before the Spring meeting, she will email to the Board for their consideration pie charts showing revenue sources for the Board's 2013, 2014, and 2015 fiscal years, as well as a comparison table showing the current percentages of revenue for each of the Tennessee health related boards from renewals, initial licensure fees, and application fees. Dr. Bolden stated that he would work on compiling information to compare statistics from other state massage boards to show whether the increase in enforcement expenses is becoming a regional or nationwide trend. The Board thanked Ms. French for bringing this important report.

Continuing Education Audit Report

There was no continuing education audit report at the time of this meeting.

Discuss Legislation

There was no legislation to report at this meeting.

Tennessee Professional Assistance Program (TnPAP) Annual Statistical Report Regarding the Peer Assistance Program

This report for the time frame of July 1, 2018 to September 30, 2018 was brought by Mr. Mike Harkreader from TnPAP. Mr. Harkreader stated that during this time, TnPAP was monitoring eight individuals. Four of these individuals were monitored due to a Board order, and four were non-regulatory. During this time one individual was referred to TnPAP through the Massage Licensure Board administrative office because of their arrest history. Two monitoring agreements became effective. Seven individuals were discharged from the TnPAP program. Of these seven, one was evaluated and no monitoring agreement was recommended; one declined TnPAP's recommendations; one completed their monitoring; and four were found to be noncompliant with their monitoring agreements. One evaluation report was pending. The Board's expenditures for the TnPAP program included \$3,500.00 for toxicology screenings and \$910 for evaluations, totaling \$4,410.00.

Dr. Bolden asked if Mr. Harkreader could provide statistics on how many individuals evaluated by TnPAP are not asked to complete a monitoring agreement. Mr. Harkreader stated that he did not have those statistics but could bring them to the next meeting. Dr. Bolden asked what standard TnPAP uses to evaluate massage therapist clients as opposed to other healthcare practitioners. Mr. Harkreader stated that TnPAP evaluators are not performing in-depth neuropsychological testing; rather, they are looking for "red flags" that would indicate a client would not be safe to practice, and that if no red flags are present, they would most likely state that the client is safe to practice. Mr. Harkreader stated that if treatment is recommended, upon completion of that abstinence-based treatment he would expect that the client would indeed be safe to practice. Dr. Bolden asked whether the length and requirements of the monitoring

agreements for massage therapist clients were the same or different from other healthcare providers. Mr. Harkreader stated that monitoring agreements for massage therapists were probably the most varied among the healthcare professions, and that the length of the agreements were based on the needs of each individual client. Dr. Bolden asked how the new “Fresh Start” law would affect what individuals the Board referred to TnPAP. Mr. Harkreader stated that this would be up to each health related board to decide, according to their own policies and procedures. Mr. Guilford asked if when TnPAP receives a referral from the Board’s administrative office based on the applicant’s criminal convictions, would the evaluation be based on the criminal convictions alone. Mr. Harkreader stated that the type of criminal convictions and how long ago they occurred could be considered as part of an evaluation, along with the results of a current drug test, how honest the client was with the evaluator, whether the client’s pharmacy records match up with what they told the evaluator, and other current information provided to the evaluator. Mr. Harkreader emphasized that each client is evaluated on an individual basis. Dr. Bolden asked if the required substance abuse training provided by TnPAP for massage students could be provided in an easier format to access. Mr. Harkreader said that they would have to get in touch with Birchwood, the company that supports the internet access to the training. Dr. Bolden also expressed that the employer evaluation system through TnPAP is not reliable, and asked if that could be addressed. Mr. Harkreader said he would ask Ms. Eaton to look into that component.

Discuss and take action if necessary on school approvals and/or school program changes.

Daughters of Zion – William & Johnson Career College

Robin Blaisedell, acting program director, was present at this meeting to represent the school. Ms. Blaisedell answered questions from Mr. Guilford regarding her continuing education deficiencies for the 2013/2014 cycle. She stated that she is licensed in Mississippi and Tennessee as a massage therapist, and got the dates for the two states’ continuing education cycles confused. She was ten hours short for the 2013/2014 cycle. Ms. Blaisedell had been licensed as a massage therapist in Tennessee since 2009, and this Agreed Citation was the first discipline on her license. Ms. Blaisedell had retired her license, reinstated it, allowed it to expire, and reinstated it again. It was after one of these reinstatements that Ms. Blaisedell was audited for continuing education for the 2013/2014 cycle. At the time of this meeting, she had signed and returned the Agreed Citation with the fine, and was working on completing the continuing education hours required by the Agreed Citation. Ms. Blaisedell stated that she was current on her 2017/2018 continuing education hours. Ms. Blaisedell stated that she had not herself contacted Tennessee Higher Education Commission (THEC) about their approval of her school and their massage program, nor gone over THEC’s requirements for school/program approval. She stated that she believed she had gone over the Tennessee Massage Licensure Board’s requirements for massage education program approval, and confirmed for herself that her program met those requirements. As the Board went over the documents she had submitted, concerns were expressed about having two different transcripts detailing the educational hours differently and unclear information in the course catalogue regarding sexually based convictions.

Then it was discovered that the Board was reviewing the previously submitted catalogue, and had not had adequate time to go over the new documentation. A motion was made by Ms. Cross, seconded by Mr. Velker, to table the review of the school's application until the February 2019 Board meeting. The motion carried.

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

Mr. Marc Guilford brought this report to the Board. The Office of General Counsel currently had about seventy open cases pertaining to the Massage Licensure Board, compared with about eighty in August and about sixty in May. A number of cases were expected to be resolved at this meeting by settlement agreements and by contested case hearings. This office is continuing to look into a possible rule change to require massage therapists to submit documents showing they have complied with the Board's continuing education requirements when they renew their licenses. At this time logistical concerns were being looked into. In February this and other potential rule changes may be discussed, but there will not be a rulemaking hearing at that time. There was nothing to report on legislation. The next legislative session will begin early next year.

Consent Orders

Craig Roberts, LMT

Mr. Roberts was actively licensed as a massage therapist when a female client of Mr. Roberts reported that he had touched her breasts and groin intentionally during a massage in July 2018. Mr. Roberts denied the allegations and claims that he did not touch the client's breasts or genitals and/or that any touching was unintentional. In light of the costs involved in proceeding to a Contested Case, and because Mr. Roberts did not intend to work in massage therapy in the future, Mr. Roberts wished to voluntarily surrender his massage therapist license. The Consent Order placed Mr. Roberts' massage therapist license in voluntarily surrendered status, which is treated by the Board as revocation; Mr. Roberts is not able to reinstate or otherwise obtain a massage license in Tennessee in the future. The Consent Order did not require Mr. Roberts to pay the costs of investigating and prosecuting this case. A motion was made by Dr. Bolden, seconded by Ms. Cross, to approve this consent order. The motion carried.

John Watson - Pure Life Massage and Wellness

John Watson owned and operated Pure Life Massage and Wellness at 1262 Old Hillsboro Road, Franklin, TN 37069. Mr. Watson allowed Araleya Flores to practice massage on an expired therapist license at his establishment from at least November 2015 through July 2017. Mr. Watson allowed Lavesha Johnson to practice massage on a retired massage therapist license at his establishment from at least November 2015 through July 2017. The Consent Order placed Mr. Watson's massage establishment license on probation until payment is received for a total civil penalty of \$1,500.00 and the actual and reasonable costs of prosecuting this case, not to

exceed \$1,000.00. A motion was made by Ms. Cross, Seconded by Ms. Yarbrough, to approve this consent order. The motion carried.

Shiwei Zhang - Lucky 7 Healing Center

Mr. Zhang owned and operated Lucky 7 Healing Center at 120 Seaboard Lane, Suite A, Franklin, TN 37067. On or about January 4, 2018, at least two unlicensed individuals, Enjuan He and Yanan Chen, were practicing massage therapy at Lucky 7 Healing Center, with a third unlicensed individual, Lin Moore, present. Mr. Zhang stated that he was aware that He and Chen were not licensed. The Consent Order revoked the establishment license for Lucky 7 Healing Center and assessed against Mr. Zhang a total civil penalty of \$2,000.00 and actual and reasonable costs of investigating and prosecuting this case, not to exceed \$3,000.00. A motion was made by Ms. Cross, seconded by Dr. Bolden, to approve this consent order. The motion carried.

Conflict of Interest

Mr. Guilford discussed the conflict of interest policy presented for the Board members to review and sign.

Ratify Agreed Citations for Lapsed Licenses

Adrienne Waits, LMT – 6972

Ms. Waits agreed to pay a civil penalty in the amount of \$100.00 for practicing massage therapy on a lapsed license for four (4) months.

Christina Marie Mobley, LMT – 9327

Ms. Mobley agreed to pay a civil penalty in the amount of \$750.00 for practicing massage therapy on a lapsed license for nine (9) months.

Jianmei Liu, LMT – 10426

Ms. Liu agreed to pay a civil penalty of \$1,100.00 for practicing massage therapy on a lapsed license for eleven (11) months.

Joann Lale, LMT – 5106

Ms. Lale agreed to pay a civil penalty of \$1,250.00 for practicing massage therapy on a lapsed license for eleven (11) months.

John Park Lord, LMT – 9102

Mr. Lord agreed to pay a civil penalty of \$300.00 for practicing massage therapy on a lapsed license for six (6) months.

Lianji Wu, LMT – 7404

Ms. Wu agreed to pay a civil penalty of \$500.00 for practicing massage therapy on a lapsed license for eight (8) months.

Lisa Good, Owner, Nolensville Massage Therapy – 3528

Ms. Good agreed to pay a civil penalty of \$300.00 for operating a massage establishment on a lapsed license for six (6) months.

Tracy Hendry, Owner, Spa Collierville – 3922

Ms. Hendry agreed to pay a civil penalty of \$500.00 for operating a massage establishment on a lapsed license for eight (8) months.

Ratify Agreed Citations for Continuing Education Violations

Robin Vanessa Blaisdell, LMT - 7675

Ms. Blaisdell agreed to pay a civil penalty in the amount of \$400.00 for failing to obtain ten (10) hours of continuing education during the 2013/2014 continuing education cycle.

Angela Leanne Dugan, LMT – 1226

Ms. Dugan agreed to pay a civil penalty in the amount of \$425.00 for failing to obtain eleven (11) hours of continuing education during the 2015/2016 continuing education cycle.

Mingxue Jin, LMT – 10120

Ms. Jin agreed to pay a civil penalty in the amount of \$775.00 for failing to obtain twenty-five (25) hours of continuing education during the 2015/2016 continuing education cycle.

Vickie M. Martinez-Cordero, LMT – 10104

Ms. Martinez-Cordero agreed to pay a civil penalty in the amount of \$775.00 for failing to obtain twenty-five (25) hours of continuing education during the 2015/2016 continuing education cycle.

Jane Quinn, LMT – 4103

Ms. Quinn agreed to pay a civil penalty in the amount of \$225.00 for failing to obtain three (3) hours of continuing education during the 2015/2016 continuing education cycle.

Yi Sun, LMT – 10536

Mr. Sun agreed to pay a civil penalty in the amount of \$200.00 for failing to obtain two (2) hours of continuing education during the 2015/2016 continuing education cycle.

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

Ratification of New Licenses and Reinstatements/Reactivations for Massage Therapists and Massage Establishments

Massage Therapists

Abrams Jaitra Alexis-Sade	Crawford Elizabeth Marie
Austin Joseph Christopher	Cretella Jaimie Marissa
Barraza Carmen Isabel	Cundiff Sabrina Rene
Beetley Kailey Sue	Danna Mikki Rae
Broderick Tiphonie Marie	Diaz Jasmine
Buell Amanda Hope	Dickerson Joslyn Rebekah Elizabeth
Burrows Adam Robert	Dima Linda A
Carlson Lacie Ann	Dong Yue
Caruso Ross Vito	Drawhorn Talus Alexander
Cathey Tabitha Renee	Eccard Amanda Lea
Cole Ariana G. L.	Edgell Weiping Chen
Elgin Phyllis Ann	Holt Ila Malambri
Ellett Sierra Chantel	Howard Elizabeth Sheree
Epstein Heather Jeanette	Howard Tabatha Jenny
Estell Chrysante Yvette	Hyman Lynna Marie
Euston Michael Delmar Jr.	Johnson James Michael
Evangelista Dominick A	Johnston Cynthia Diane
Evans Kristen Elizabeth	Joyner Frank Henderson
Exom Sherelle Lynn	Kobee Tiffany Grace
Ezell April Leanne	Kopsie Jessica Ann Marie
Farrington Amber Rae	Kramer Jennifer Lynn
Fessenden Hannah Paige	Krupa Linda Ann
Franklin Toni D	Leek Marisa Danielle
Gowin Michael Jon	Martinez Jennifer Lynn
Gray Tabitha Marie	May Taylor Danea-Tariah
Grose Francis Elizabeth	Mcbride Delaney Katherine
Grove Susanna Lane	Melson T'Onnie Shanay
Hampton Oriana Kaleen	Milne Catherine Michele
Hansen Emilia Loscerbo	Moors Marcie Denise

Hardiman Brandi Leeann	Moreau Caroline Jenea
Hipp Michelle Patricia	Myers Matthew Adam
Hoff Donna Louann	Nixon Della Sue
Hollenbeck Megan Elizabeth	O'Rourke Allison Marie
Orozco Carrizales Yoletzi Nayeli	Smith Jerred Michael
Parks Patrice Darmarcia	Stotler Dorothy Elizabeth
Parks-Dolan Lynda L.	Sutherland Mary Elizabeth
Payne Ashly Dale	Taylor Lindsay Marie
Peadro Bethanie Ann	Thatcher Kimberly Ann
Perry Elizabeth Ann	Tovar Jose Gabriel
Peters Stephanie Karin	Tutterrow Darla Gayle
Popp Jared Davis	Wang Cuihua
Raley Hailey Jade	Weakland Kathryn Elizabeth
Reed Robin Faith	Webb Katherine Ruth
Robertson Montarrious Vantrez	Wheeler Hannah Elizabeth
Robinson Tauheedah Tawana	White Jr Robert Alfred
Saulsbury Karilena Lynn	Willett Margarette Anne
Shelton Dustin Allen	Willis Kevin Glenn
Shores Alexandria	Wilson Ronna Annette
Skrobanska Iliyana Trendafilova	Young William Ben

Massage Therapists Reinstatements

Boyer Ashley Saree'	Monger Lisa Taylor
Bridges Jennifer Melissa	Mosley Sa'Mia Roshaunda
Britt Rhonda K.	Odosij Michael Kenneth
Campbell Donald Edwin Jr	Perryman Deborah Renee
Dockery Melissa	Poff Clifford David
Felts Mechele Rene	Reuter Janet Louise
Goodrich Leah Denen	Reynolds Christina Michelle
Herrington Bridget Lynn	Robinette-Huffman Jennifer B
Keith Bethany Jo Inez	Rouse Jennifer Dawn
Kivett Jennifer R	Shelton Mary Evelyn
Lale Joann	Shipp Siedel Alverez
Liu Jianmei	Stewart Taucha Michelle
Lonzo Leah Marie	Tate Janis Yvonne
Lord John Park	Tripp Angela Marchelle
Megginson Jessie Elizabeth	Waits Adrienne
Mobley Christina Marie	Waymire Susan Lee

Massage Establishments

Aimee Ashburn Lmt	Chattanooga Wellness Solutions
Ama Spa Inc	Chiro 4 All

Back And Neck Specialists Llc	Combs And Company
Back To Basics Massage Therapy	Cynthia L. Brown Lmt
Benchmark Physical Therapy- N. Peters	
Blessed Hands Therapeutic Massage and Wellness	Debutante Salon And Day Spa
Blue Sky Massage	Designer Wellness
Bodhi MatrX	Escape Day Spa
Carmen M. Brown Lmt	Evolve Massage And Bodywork Llc
Carter Sports Therapy	Flex Up Fitness 247 Llc
Carthage Family Chiropractic Llc	Frank Smith's Orthopedic Manual Therapy Clinic
Carthage Family Chiropractic Llc	Frank Smith's Orthopedic Manual Therapy Clinic
Chattanooga Wellness Solutions	Happy Muscles Therapeutic Massage & Wellness Center
Chiro 4 All	Healing Hands Spa Inc.
Combs And Company	Heart2Hands "The Miracle of Touch"
Cynthia L. Brown Lmt	Ily Day Spa
	Infinite Energy Massage Llc
Debutante Salon And Day Spa	Jeanie Matthews Lmt Ryt-200
Designer Wellness	Joys Of Life Spa Llc
Escape Day Spa	Js Mullen Enterprises Iii Inc. DbA Hand And Stone
Evolve Massage And Bodywork Llc	Kay's Escape
Flex Up Fitness 247 Llc	Kim Shubert Lmt
Frank Smith's Orthopedic Manual Therapy Clinic	Knead The Knots Therapeutic Massage Spa
Knoxville Beauty Collective	Medispa @ Choto
Laforest Massage And Wellness	Megan Martis Massage
M M M Good! Massage & Bodywork Llc	Meijuan Spa Inc DbA Healing Care Center
Magic Hands Inc DbA Mintee Spa	Mending Touch Massage Therapy
Massage & Wellness	Parkhill Sports Performance Llc

Massage Jg	Pure Luxe Salon Spa And Medspa
Massage Specialists Of East Tennessee Llc	Radix Wellness Llc Dba Sundara Wellness Center
Massages By Jen	Restore Massage
Me Brentwood Llc Dba: Massage Envy Brentwood	

Massage Establishments Reactivations

Richard Rust Mt	Studio of Therapeutic Massage
Sage Skincare And Wellness	Tennessee Integrative Health
Selah	The Pink Haired Lmt
Sensation Day Spa Inc.	The Skin Loft Of Johnson City
Serenity Moments Massage	Thompson Cancer Survivor Center
Serenity Salon	True Patient Assistance
Southern Home Massage	Why Knot?
Southern Touch Massage	Ymca Of Metro Chattanooga
Stephanie Mckee Massage Therapy	Yoga Llc
Studio 316 Massage And Bodywork	

A motion was made by Dr. Bolden, seconded by Ms. Cross, to ratify the approval of new licenses and reinstatements/reactivations for massage therapists and massage establishments. The motion carried.

Ratify Approved Continuing Education Courses

D. Scott Baily, LMT – “Tennessee Law and Rules” – Two (2) Hours Course

Dee Vickers, LMT – “Tennessee Law and Rules” – Two (2) Hours Course

Dee Vickers, LMT – “Tennessee Law (Live Webinar)” – Two (2) Hours Course

A motion was made by Dr. Bolden, seconded by Ms. Cross, to ratify approved continuing education courses. The motion carried.

Discuss and Consider Requests for Continuing Education Waivers

Jessica J. Bracken, LMT

After some discussion, a motion was made by Mr. Velker, seconded by Ms. Yarbrough, to deny Ms. Bracken's request for a waiver. The motion carried.

Carl Hopper, LMT

After some discussion, a motion was made by Mr. Velker, seconded by Ms. Yarbrough, to deny Mr. Hopper's request for a waiver. The motion carried.

Mr. Velker expressed a wish to address the requested waivers at the beginning of the Board meeting going forward, since the students from the massage schools who attend the meetings tend to leave after the first morning of the meeting. There was much discussion about the unfortunate practice of many therapists waiting until the last minute to complete their continuing education hours until the very last minute, and the hope that having the massage students see which waivers were approved for which reasons might induce therapists to use the full two year cycle to complete the required hours.

Joe Lewis, LMT

Mr. Lewis was expecting to be unable to complete continuing education requirements due to his military deployment. A motion was made by Ms. Cross, seconded by Ms. Yarbrough, to approve Mr. Lewis' request for a waiver. The motion carried. The Board expressed a wish to include in Mr. Lewis's approval letter an expression of their thanks for Mr. Lewis's service to our country.

Catherine McGlasson, LMT

After some discussion, a motion was made by Mr. Velker, seconded by Dr. Bolden to deny Ms. McGlasson's request for a waiver. The motion carried.

Toni Wright, LMT

A motion was made by Ms. Cross, seconded by Ms. Yarbrough, to approve Ms. Wright's request for a waiver. The motion carried.

Review Board Correspondence

Cindy Savarda, LMT

Ms. Savarda wrote the Board a letter of thanks for the work that they do on behalf of herself and the profession. The Board expressed great appreciation for being thanked.

Consider and Approve Board Staff to attend the 43rd Annual FARB Forum

After some discussion, a motion was made by Dr. Bolden, seconded by Ms. Cross, to approve funding for one person from the Office of General Counsel, Ms. Kimberly Hodge from the administrative office, and two Board members to go to this meeting. The motion carried. A motion was made by Ms. Cross, seconded by Dr. Bolden, to appoint Ms. Yarbrough and Ms. Burke to attend this meeting as the Board members. After some discussion, Ms. Cross amended her motion to include Mr. Velker also going to this meeting as a Board member, if funding could be secured. The amended motion carried.

Receive Reports from Staff, Office of General Counsel, and Board Members that attended the FSMTB and FARB Meetings

Mr. Guilford spoke of his experience attending the earlier FARB meeting. He stated that among other topics discussed was the legal movement moving through the courts that courts should defer less to administrative regulatory agencies when interpretation of regulatory law is in question. He stated that it has long been accepted practice, based on decisions by the United States Supreme Court, for courts to accept interpretation of regulatory law from the appropriate regulatory agency since it was expected that the agency would be expert in the law affecting their purview. Mr. Guilford also stated that there was much discussion on the topics of conflicts of interest; board certifications; and liability of boards and board members for possible anti-trust action in federal court. Mr. Guilford stated that this conference is the most on-point for attorneys that work in their office supporting health related boards.

Ms. Burke spoke about a break-out session she attended at the FSMTB meeting which focused on how the use of CBD oil by massage therapists in their practice is being handled differently in different states. Ms. Burke stated that concerns include the fact that there is no regulation of what percentage THC is in the oil, and that topical use of the oil may affect an employment drug screen.

Mr. Velker spoke about his experience attending the FSMTB meeting. He stated that having served on this Board for some time, he wished that he had attended an FSMTB meeting earlier. He spoke to the realization of how different states vary greatly in how they regulate the massage profession. Mr. Velker also complimented Dr. Bolden, who was serving as president of the FSMTB at the time, Ms. Burke, who attended as Tennessee's Board delegate, and Ms. Hodge, who presented at that meeting on human trafficking as it affects and intersects with the massage profession.

Dr. Bolden stated that this FSTMB meeting seemed to be very on-target for what is currently happening in the massage profession from a regulatory standpoint. He also spoke very well of Ms. Hodge's presentation on human trafficking, and stated that Tennessee is and has been a very big contributor to these meetings. He spoke well of the newly elected FSTMB board members, and looked forward to a productive year with them.

Ms. Hodge thanked Dr. Bolden for his service to the FSTMB as president; Ms. Burke for serving as Tennessee's delegate; and Mr. Velker for his active attendance. She stated that one of the things discovered at the meeting is that for the next two years, applicants for licensure as massage therapists in California will be exempt from taking the MBLEx exam while the California Massage Therapy Council completes their process of approving or un-approving massage schools/programs located in California. There was also talk of California formulating their own state massage licensure exam. Ms. Hodge also spoke to the prevalence of fraud in the massage profession, including hearing from massage school owners who had been approached with requests to provide transcripts for payment, but not requiring the student to actually attend and complete the educational program, or to attend for perhaps two weeks to learn enough to pass the MBLEx, but provide a transcript showing graduation from the full program. Ms. Hodge

states that while there have always been “transcript mills”, the individuals or groups of individuals seeking transcripts without completion of the educational program have become bolder, approaching currently approved massage schools with their requests. Ms. Hodge also reiterated the Board’s position on CBD oil, that licensed massage therapists seeking to use this oil in their practices should seek their own legal counsel on its legality as well as any possible liability issues. Ms. Hodge mentioned that many other states are considering how best to regulate massage establishments, and that Tennessee’s system was often used as an example to other state boards. Ms. Hodge stated that all states seemed to be going through similar instances of fraud in the profession, including human trafficking, prostitution, and unlicensed practice.

Discuss and Consider adopting a Policy Regarding T.C.A. 63-6-712

Mr. Guilford discussed T.C.A. 63-6-712, which went into effect in June of 2018, which permits licensed healthcare professionals, including massage therapists, to earn a percentage or 8 hours, whichever is less, of their continuing education hours by volunteering through a sponsoring organization to do massage. Mr. Guilford stated that most boards have decided to accept 8 hours per two year continuing education cycle earned in this way, and that sponsoring organizations must be listed with the Department per instructions in T.C.A. 63-6-706. The Board chose not to take any action on this item at this meeting.

Discuss and Consider Continuing Education Hours Being Carried Over to the Following Cycle

Ms. Yarbrough had asked that the Board consider giving licensees the option to carry over continuing education hours from one two year cycle to the next cycle. Dr. Bolden expressed that he was against this concept because these hours are required by our rules to prove continued competency. Dr. Bolden theorized that the carrying over of hours from one cycle to the next could foreseeably result in a licensee completing enough hours in one cycle to carry over for several future cycles, thus meaning that this licensee would not actually continue to maintain competency in the profession over time. Mr. Guilford pointed out that any such change would require a rule hearing to change the Board’s existing continuing education rules. Mr. Guilford also pointed out that the Board could limit the number of hours that could be carried over from one cycle to the next. There was much discussion of the number of hours that can already be completed in a distance learning environment and now in a volunteer environment, taking into consideration not wanting to make the continuing education rules any more complicated, the complications inherent in a rule making hearing, and the continuing education hours that therapists choose to complete for specialized certifications. Ms. Hodge spoke to the administrative challenges that would be involved in reviewing carried-over continuing education hours. Mr. Velker suggested the Board consider limiting carried-over hours from only the previous cycle to the current cycle. After much discussion, the Board chose not to take any action on this item at this meeting.

Discuss and Consider How Many Online Course College Credit Hours Can Be Given Towards Continuing Education Hours

Mr. Guilford explained that this was an issue that arose in the administrative office and Ms. Hodge had brought up the question. He stated that the Board's Rules allow continuing education credit to be approved for hours completed in a college credit course related to massage, such as an anatomy class completed for a different health related profession. The question arose that many college classes are now being delivered in an online format, sometimes with interactive components. The Board's Rules limit online continuing education hours to eight hours in any two year continuing education cycle. The question with the college credit classes with interactive components is whether the Board can consider them online only, or as a "live webinar". After much discussion, a motion was made by Ms. Cross, seconded by Dr. Bolden, to make a policy stating that online college coursework pertaining to massage will be accepted as online continuing education, and counted towards the eight hours per 2 year cycle limit for online continuing education. The motion carried. The Board asked that Mr. Guilford put together a policy stating the Board's position on this matter for the website.

Board Elections for the 2019 Board Meetings

Ms. Burke opened the floor for nominations for the 2019 Board positions of Board Chair and Secretary. A nomination was made by Dr. Bolden, seconded by Ms. Cross, of Ms. Jagers for the position of Secretary. A nomination was made by Mr. Velker of Mr. Mullins for the position of Secretary. Ms. Jagers accepted her nomination. Mr. Mullins declined his nomination. A motion was made by Ms. Cross, seconded by several Board members simultaneously, that nominations cease, and that Ms. Jagers be elected to the Board position of Secretary by default. The motion carried.

A motion was made by Dr. Bolden, seconded by Ms. Cross, to nominate Ms. Burke for Board Chair. A motion was made by Mr. Velker, seconded by Mr. Mullins, to nominate Mr. Velker for Board Chair. A motion was made by Dr. Bolden for paper ballots. Ballots were marked, collected by Ms. Hodge, and counted by Mr. Guilford. Mr. Guilford announced that Ms. Burke will serve again as Board Chair for 2019.

A motion was made by Ms. Cross, seconded by Dr. Bolden, to adjourn the meeting. The meeting was adjourned at 4:49 p.m.

MINUTES
TENNESSEE MASSAGE LICENSURE BOARD
November 6, 2018

Time: 9:00 a.m. C.S.T.

Location: 665 Mainstream Drive
HRB Conference Center
1st Floor, Iris Room
Nashville, TN 37243

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

Staff Present: Kimberly Hodge, Board Manager
Marc Guilford, Office of General Counsel

The meeting was called to order at 9:17 a.m. by Ms. Marvis Burke, Chairperson. Prior to conducting business, Kimberly Hodge conducted a roll call to establish a quorum. A quorum was established.

Reconsider Request for Continuing Education Waiver

Carl Hopper, LMT

Ms. Hodge informed the Board that Ms. Mindy Oldham had requested the Board reconsider Mr. Hopper's request for a continuing education waiver, which the Board had voted to deny the previous day, since she had additional information she wished to provide on Mr. Hopper's behalf. A motion was made by Dr. Bolden, seconded by Ms. Yarbrough to reconsider Mr. Hopper's request for a continuing education waiver. The motion carried.

Ms. Oldham, a licensed nurse, licensed massage therapist, and continuing education provider, spoke to the Board about the specific medical and other issues that Mr. Hopper was dealing with since his accident in October of 2018. She also stated that in spite of his injuries severely limiting him, he had attended a one day theory-based class of continuing education, but that he had been unable to find a continuing education provider who would allow him to attend any other class because those classes involved practicing massage, which he is currently physically

unable to do. She asked that the Board reconsider the denial of Mr. Hopper's waiver, now knowing these specifics of Mr. Hopper's condition.

A motion was made by Dr. Bolden, seconded by Ms. Yarbrough, to approve Mr. Hopper's request for a continuing education waiver. The motion carried. Ms. Oldham thanked the Board on Mr. Hopper's behalf.

Contested Cases

The Administrative Law Judge, Kim Summers, introduced herself, explained her role in today's contested case proceedings, and began calling the contested cases for the day.

Gideon Pogue

Mr. Marc Guilford, Assistant General Counsel, represented the Tennessee Department of Health. Mr. Pogue was present at this meeting to contest the Board's denial of his application for licensure as a massage therapist at the Board's May 7, 2018 meeting. Mr. Pogue stated in his opening statement that he had brought with him documentation from a doctor about why he had a positive drug test, and that the criminal charges the Board was concerned about were about ten years old. Mr. Guilford, in his opening statement, agreed that Mr. Pogue had touched on most of the issues involved in this case. He noted that during the application process, Mr. Pogue had been referred to TnPAP, as is usual for an applicant with criminal convictions, and that the TnPAP evaluator was unable to get enough information to make a recommendation on whether Mr. Pogue was safe to practice. Mr. Guilford stated that at the time of this meeting, TnPAP had still been unable to get enough information to make a recommendation on whether Mr. Pogue was safe to practice. Mr. Guilford stated that as the Board reviewed the evidence in this case, they should take into account the new "Fresh Start Act", a copy of which Mr. Guilford would provide, to determine what bearing this legislation has on this case. Mr. Guilford pointed out that at the time the Board chose to deny Mr. Pogue's application at their May 2018 meeting, this law was not yet in effect, but now that it was in effect, it should be considered.

After being sworn in by the Judge Summers, Mr. Pogue began his testimony by recounting his journey through massage school in Utah, and his application process for licensure in Tennessee. Mr. Pogue stated that at the beginning of his application process, his wife had called the Board's administrative office to get information on what he would need to do to apply for licensure. He states that at some point the administrative office questioned whether he was able to speak for himself since his wife had been contacting the office on his behalf. Mr. Pogue stated that he had done everything the administrative office had asked him to do, and then was asked to do them all again. He stated that at some point after he had been pursuing licensure in Tennessee for over five months, he became angry and told the administrative office that he was going to call the Utah licensure board and complain. Mr. Pogue stated that after this, Ms. Hodge called him and told him that he would have to comply with the TnPAP program or she would come to the Board and tell them not to give him a license. Mr. Pogue stated that he felt the Board had no right to make him go through the TnPAP program because his criminal convictions were all ten years or more in his past. Mr. Pogue stated that his education, work history, and licensure as a massage

therapist in Utah should speak for itself as far as his safety to practice, and no evaluation should be required of him. Mr. Pogue submitted a collection of documents to the Board, which were accepted into evidence with no objection.

In response to questions from Mr. Guilford, Mr. Pogue stated that he had been licensed as a massage therapist in Utah in 2015, and that he had practiced massage therapy in Utah until moving to Tennessee in 2017. Mr. Pogue stated that he had a massage business in Utah where his clients came to him at a rented space, and that he was the only massage therapist. Mr. Pogue stated that during his licensure process in Utah, he had been required to disclose his criminal background history, and that after that disclosure Utah did not require any further action regarding his criminal background history before licensing him as a massage therapist. Mr. Pogue agreed that his previous charges included a 2002 charge of aggravated robbery and theft and a charge of attempted witness or juror tampering; a 2008 charge of driving under the influence and a charge of interfering with legal arrest. Mr. Pogue stated that he had undergone a couple of years of required counseling and treatment through the court system after his driving under the influence charge. Mr. Pogue stated that during his application process in Tennessee, he had been referred to TnPAP by the Board's administrative office. He stated that he contacted TnPAP, completed the required urinalysis test, and met with an evaluator. Mr. Pogue stated that after the meeting with the evaluator, he received a phone call that his urinalysis specimen had tested positive. He said that he then brought his prescription from his doctor showing why he had tested positive to the evaluator at TnPAP. He states that the TnPAP office told him that his urinalysis specimen tested positive and was also diluted, and asked that he provide another specimen for testing. Mr. Pogue stated that when he arrived to give the second specimen, he was told this would need to be a hair follicle test, and that they were unable to take enough hair from him to do a hair follicle test. Mr. Pogue stated that he offered another urine or a blood sample, but the testing center refused his offers. He states that shortly after this happened, TnPAP told him he needed to have an inpatient evaluation, which he refused because he could not be away from his family that long.

In response to questions from the Board, Mr. Pogue stated that he had completed the NUCC program in Ogden, Utah, which was an eighteen month program involving four two-hour classes a week. Mr. Pogue stated that he had been sober for nine and a half years. He also stated that he had not told the TnPAP office before his urinalysis test that he had a prescription for tramadol for back pain caused by a car accident, but that he was not aware that it was something that could show up in the test. Mr. Pogue stated that his use of tramadol varies depending on how much exertion he does and how much other remedies, such as cortisone shots, help his pain.

Mr. Guilford entered into evidence with no objection Mr. Pogue's application for licensure as a massage therapist in Tennessee and the denial letter that was sent to Mr. Pogue after the Board's May 2018 meeting. Mr. Guilford also provided the Board members and Mr. Pogue a copy of the recently passed "Fresh Start Act". Judge Summers stated that the Board may but are not required to consider the implications of the "Fresh Start Act" in their deliberations, since Mr. Pogue's application was received before the "Fresh Start Act" went into effect.

Mr. Guilford then called Mr. Mike Harkreader, executive director of TnPAP, who was sworn in by Judge Summers. Mr. Harkreader testified that TnPAP has a contract with the Board to provide an alternative discipline program, or impaired practitioner program. Mr. Harkreader stated that Mr. Pogue contacted TnPAP as a part of his licensure application process, and had an evaluation completed to assess Mr. Pogue's safety to practice massage with regard to possible substance abuse problems, indicated by charges on his criminal background check. Mr. Harkreader explained the usual process for evaluation through TnPAP. He stated that the initial drug testing was done prior to the evaluation, and that in the initial request for services that is completed online prior to any testing or evaluation, the client is asked whether they are on any prescription medication. Mr. Harkreader described tramadol as a opioid-like Schedule IV drug with low abuse for addiction. Mr. Harkreader stated that Mr. Pogue's TnPAP evaluation was done by Arthur Stare, a senior psychologist in Johnson City. Mr. Harkreader stated that even though TnPAP was an abstinence-only program, a client taking tramadol or other prescription medication would not automatically be deemed unsafe to practice without treatment or a monitoring plan. Mr. Harkreader stated that the specimen Mr. Pogue provided for the urinalysis test was dilute, which can indicate something as simple as that the person has been drinking a very large amount of water. However, even the dilute specimen tested positive for tramadol. The cutoff for a positive score is 100, and Mr. Pogue's specimen tested at 1695. Mr. Harkreader stated that according to Mr. Stare's notes on Mr. Pogue's evaluation, Mr. Pogue initially told Mr. Stare that he was very healthy and not on any medications. Later that day, Mr. Stare received the information on Mr. Pogue's testing positive for tramadol with a dilute sample. Mr. Stare called Mr. Pogue to ask him about the test results, and Mr. Pogue then listed a number of prescription medications that he was on. Mr. Pogue later slid under Mr. Stare's office door a list from a pharmacy listing tramadol and several other medications that Mr. Pogue was currently prescribed. Mr. Harkreader stated that on January 4, 2018, he called Mr. Pogue to let him know that Mr. Pogue would need to take the test again, since the first sample was dilute and tested positive for a drug that Mr. Pogue had not informed TnPAP he was using. Mr. Pogue called back and stated that the sample was not dilute, and that he refused to take another urinalysis drug test. Mr. Harkreader stated that TnPAP continued to try to contact Mr. Pogue to set up another test. Mr. Harkreader emailed Mr. Pogue asking him to contact TnPAP to schedule the second drug screen. Mr. Pogue's wife contacted TnPAP to inform them that Mr. Pogue was ill and could not retake the test for a few days. Mr. Pogue then contacted TnPAP to let them know he would not be able to take a second test due to the expense. Later, Mr. Harkreader spoke with an attorney retained by Mr. Pogue. At this time, Mr. Harkreader had received the report from Mr. Stares recommending inpatient evaluation and treatment for Mr. Pogue. Mr. Harkreader told Mr. Pogue's attorney that if Mr. Pogue could go that day for a hair drug test, Mr. Harkreader would request that Mr. Stares re-evaluate Mr. Pogue. Mr. Harkreader explained that the hair test did not test only the follicle, but required a certain amount of hair to complete the test. The report Mr. Harkreader received from the lab that Mr. Pogue went to for the test stated that they were unable to find enough hair on his head or body or enough fingernails to complete a test. Mr. Harkreader stated that under the circumstances, the evaluator felt that he did not have enough information to make a determination of whether or not Mr. Pogue was safe to practice.

In response to questions from the Board, Mr. Harkreader went into greater detail about how specific kinds of evaluators are assigned, and how the application for services form that clients complete online when requesting TnPAP services is used to make those assignments. Mr. Harkreader provided the Board, with Mr. Pogue's permission, a copy of Mr. Pogue's completed online application for services form. In response to questions from Mr. Guilford, Mr. Harkreader expressed that the necessity for a second drug test stemmed primarily from the fact that the original specimen was dilute, and therefore the medical review officer was unable to rule out that other drugs besides the prescribed tramadol could have been present, but not detected because of the dilute. Mr. Harkreader stated that upon notification that an initial drug screen is dilute, the general policy is to require a second screen be completed within the next twenty-four hours.

Mr. Pogue stated that he did not request TnPAP's services voluntarily, but because the administrative office told him he had to do so. He stated that he did not tell the evaluator about the medications he was on in the initial evaluation because he did not think that information was any of the evaluator's business. He did not tell anyone about his prescribed medications at the drug testing center because no one there asked him. He stated that it took months after he submitted his application before he was told he would need to request TnPAP's services, and that this was unreasonable.

Mr. Guilford reminded the Board that the administrative office refers applicants to TnPAP only after determining that the criminal charges that come back on an applicant's background check actually resulted in convictions. Mr. Guilford noted that the information that Mr. Pogue submitted about his convictions was not received in the office until September of 2017. Mr. Guilford submitted a proposed Order denying Mr. Pogue's application for licensure. Mr. Guilford recommended that the Board carefully evaluate the case and make a firm decision to approve or deny Mr. Pogue's license.

After some deliberation, Ms. Burke called for a vote to end deliberations. The vote carried to end deliberations. A motion was made by Ms. Cross, seconded by Dr. Bolden, to uphold the denial of Mr. Pogue's application for licensure as a massage therapist. The motion carried. The Board then considered the proposed Order, which would uphold the Board's previous denial of Mr. Pogue's license. A motion was made by Ms. Cross, seconded by Dr. Bolden, to adopt finding of fact number one. Ms. Cross amended her motion, seconded by Dr. Bolden, to include adopting all findings of fact in the proposed order. The motion carried. A motion was made by Ms. Cross, seconded by Dr. Bolden, to adopt the conclusions of law. The motion passed. A motion was made by Ms. Cross, seconded by Dr. Bolden, to adopt number nineteen in the proposed Order. The motion carried. A motion was made by Ms. Cross, seconded by Dr. Bolden, to delete number twenty in the proposed Order. The motion carried. A motion was made by Ms. Cross, seconded by Ms. Yarbrough, to adopt the remaining numbers in the Order. The motion carried. A motion was made by Dr. Bolden, seconded by Ms. Cross, to adopt the policy statement as written. The motion carried.

Jill Shirrel, LMT

Mr. Marc Guilford, Assistant General Counsel, represented the Tennessee Department of Health. Ms. Shirrel was not present at this meeting, and Mr. Guilford requested that the Board proceed in default in this matter. Judge Summers accepted Mr. Guilford's evidence that the Department had made multiple attempts to contact Ms. Shirrel and to confirm her current address regarding this hearing as legally sufficient for the Board to consider proceeding in default. A motion was made by Dr. Bolden, seconded by Ms. Cross, to proceed in default. The motion carried. Mr. Guilford stated that Ms. Shirrel had been audited for continuing education for the 2013/2014 cycle, and had only completed eighteen out of the required 24 hours, and that none of the eighteen hours covered the required two hours of Tennessee massage law or two hours of ethics. Mr. Guilford presented as evidence Ms. Shirrel's retirement affidavit for her massage therapist license; a printout from the licensure database showing Ms. Shirrel's license number and status; and a packet of documentation compiled during the audit of Ms. Shirrel's 2013/2014 continuing education hours. Mr. Guilford stated that he would call Ms. Hodge to confirm that these documents were from the audit process. Mr. Guilford went over the documents in the audit packet to show that Ms. Shirrel had not provided evidence of more than eighteen hours completed during this cycle, and that since she was not newly licensed, she was required to complete the full twenty-five hours.

Ms. Hodge was sworn in by Judge Summers. As the Director of the Massage Licensure Board, Ms. Hodge confirmed that the printout submitted by Mr. Guilford into evidence was indeed a printout of Ms. Shirrel's licensing information from the licensure database, showing her license number and status. Ms. Hodge confirmed information about the continuing education audit process, and the paper and electronic renewal processes which both require the licensee to sign that they have completed their required continuing education hours before the renewal can be processed. Ms. Hodge went over the documents recording Ms. Shirrel's audit process from the first letter of audit to the Agreed Citation which was mailed out to Shirrel, but never signed or returned. While reviewing the continuing education certificates submitted by Ms. Shirrel, it was discovered that Ms. Shirrel had completed the 2 hours of Tennessee massage law and 2 hours of ethics.

Mr. Guilford submitted a proposed Order to the Board assessing Civil Penalties of \$650.00, actual and reasonable costs of investigating and prosecuting this case not to exceed \$1,000.00, and requiring Ms. Shirrel to complete a total of thirteen hours of continuing education before she can reinstate her license from retired status. Mr. Guilford recommended that the Board remove the portion of the proposed Order that referred to Ms. Shirrel not completing the two hours of Tennessee massage law and two hours of ethics, since it had been established that Ms. Shirrel had indeed completed those hours.

After some deliberation, a motion was made by Ms. Cross, seconded by Ms. Yarbrough, to close deliberations. The motion carried. The Board reviewed the proposed Order. A motion was made by Ms. Cross, seconded by Dr. Bolden, to approve the findings of fact. The motion carried. A motion was made by Dr. Bolden, seconded by Ms. Yarbrough, to approve the conclusions of law. The motion carried. A motion was made by Ms. Cross, seconded by Dr. Bolden, to adopt the proposed Order as written with the deletion of item 11 c. The motion

carried. A motion was made by Dr. Bolden, seconded by Ms. Cross, to adopt the policy statement as written. The motion carried.

Judge Summers adjourned this matter, and announced that this was the last contested case of the meeting.

Consent Order

Jessia Hader. LMT

Ms. Hader reinstated her massage therapist license in February 2017, and was then audited for continuing education compliance with the 2011/2012 cycle. Ms. Hader did not submit any evidence of compliance with the 2011/2012 continuing education cycle. Ms. Hader's massage therapist license is currently expired. This Consent Order requires that for Ms. Hader to be eligible to reinstate her license, she will be required to provide proof of compliance with the 2011/2012 continuing education cycle, or provide proof of completing at least 31 approved continuing education hours, and appear before the Board or its application review committee, and that the Board may assess civil penalties corresponding to however many hours Ms. Hader was short for the 2011/2012 continuing education cycle. A motion was made by Dr. Bolden, seconded by Ms. Cross, to ratify the consent order as written. The motion carried.

Dr. Bolden asked Mr. Guilford if there was any term limits for Board members. Mr. Guilford reported that a Board member can be reappointed by the Governor as many times as the Governor chooses, and that each term is five years.

A motion was made by Dr. Bolden, seconded by Mr. Mullins, to adjourn the meeting. The meeting was adjourned.