

**MINUTES
DEPARTMENT OF HEALTH
BOARD OF MASSAGE THERAPY
GENERAL BUSINESS MEETING**

**TELEPHONE CONFERENCE CALL
September 12, 2011**

CALL TO ORDER

The meeting was called to order by Ms. Ford, LMT, Chair, approximately 11:00 a.m. Those present for all or part of the meeting included the following:

MEMBERS PRESENT:

Karen Ford, LMT, Chair
Bridget Burke-Wammack, LMT, V-Chair
Lydia Nixon, LMT
Robert Smallwood, LMT
Lisa Oliver, Consumer Member
William Stoehs, Consumer Member

STAFF PRESENT:

Paula Mask, Program Operations Administrator
Alexandra Alday, Regulation Specialist II

COURT REPORTER:

For The Record
Office: 850.222-5491

BOARD COUNSEL:

Lee Ann Gustafson, Esq.
Assistant Attorney General

Please note that the meeting minutes reflect the actual order agenda items were discussed during the meeting and may differ from the agenda outline.

1 **DISCIPLINARY PROCEEDINGS**

2 **RECOMMENDED ORDER**

3 **Tab 1 DOH v. Angel Luis DeJesus DOAH Case No. 11-0935PL DOH Case No. 2007-28753**

4 Mr. DeJesus was not present nor represented by counsel. The Department was represented by S. J.
5 DiConcilio, Esq., Assistant General Counsel. Ms. Gustafson explained the Recommended Order was
6 before the Board for final action and explained the process for reviewing the Recommended Order.

7 Ms. DiConcilio presented the case to the Board for final action in consideration of the DOAH
8 recommended order. The department filed a one count administrative complaint alleging a violation of
9 section 480.046(1)(c), F.S.

10 **Action Taken:** Mr. Smallwood moved to adopt the Administrative Law Judge's findings of fact as the
11 Board's findings of fact. Ms. Nixon seconded the motion which carried unanimously 6/0.

12 **Action Taken:** Ms. Burke-Wammack moved to adopt the Administrative Law Judge's conclusions of law
13 as the Board's conclusions of law. Mr. Smallwood seconded the motion which carried unanimously 6/0.

14 **Action Taken:** Mr. Smallwood moved that the Board's findings of fact and conclusions of law support a
15 finding that the respondent violated section 480.046(1)(c), Florida Statutes, for being adjudicated guilty of
16 a crime which directly relates to the practice of massage and the ability to practice massage.

1 Ms. DiConcilio advised the Administrative Law Judge recommended the revocation of respondent's
2 massage therapy license. The Department recommended to the Board to accept the recommended
3 penalty as submitted by the Administrative Law Judge and be adopted by the Board.

4 **Action Taken:** Ms. Nixon moved to adopt the penalty of revocation as recommended by the
5 Administrative Law Judge. Ms. Burke-Wammack seconded the motion which carried unanimously 6/0.

6 Ms. DiConcilio stated the costs are \$10,231.67 in this disciplinary proceeding recommended the costs be
7 paid within 2 years of being released from prison.

8 **Additional Action Taken:** Ms. Burke-Wammack made a motion requiring respondent pay the total costs
9 of \$10,231.67 within 2 years of being released from prison. Mr. Stoehs seconded the motion which
10 carried unanimously 6/0.

11 **ADMINISTRATIVE PROCEEDINGS**

12 **PETITION FOR HEARING**

13 **Tab 2 Hong Wang**

14 Ms. Wang was not present but was represented by counsel, Alex Yu, Esquire. Petitioner requested the
15 Board reconsider its intent to deny license and upon further review approve license or issue license with
16 conditions.

17 **Action Taken:** After discussion, Ms. Burke-Wammack moved to uphold the Board's decision for denial of
18 licensure based on the unlicensed practice of massage therapy in violation of sections 480.047(1) and
19 480.046(1)(o), F.S., and aggravating factors such as the two applications submitted by the applicant are
20 inconsistent with regard to licensure to other states; the applicant graduated from a massage therapy
21 program no longer approved by the Board; the number of hours credited to the applicant are not
22 consistent with the actual time spent in class; and the pictures and signatures on the applications do not
23 match, even though the driver's license numbers and the social security numbers on the applications are
24 identical.

25 Ms. Ford seconded the motion, which passed 5/1 with Mr. Smallwood opposing the motion.

26 **MESSAGE THERAPIST APPLICANTS WITH OUT OF STATE SCHOOL EDUCATION**

27 **Tab 5 Wool Saeng Ko – California Professional College (CA)**

28 Applicant was not present nor represented by counsel. Applicant's brother, Mr. Ko, was on the call on her
29 behalf.

30 **Action Taken:** After discussion, Ms. Ford moved to deny the application based on applicant's program
31 did not meet the minimum educational requirements in rule 64B7-32.003, Florida Administrative Code,
32 and the California licensing authority does not accept transcripts from the California Professional College
33 as the sole documentation of graduation. Mr. Smallwood seconded the motion, which passed 5/1 with Ms.
34 Burke-Wammack opposing the motion.

1 **Tab 6 Viviana Pineda – National Massage Therapy Institute (PA)**

2 Applicant was present but without counsel.

3 **Action Taken:** After discussion, motion was made and seconded to grant the license unencumbered.
4 Motion failed 3/3 with Mr. Smallwood, Ms. Nixon and Ms. Oliver opposing the motion.

5 **GENERAL DISCUSSION:** The Board then discussed at length applicants with out of state education and
6 licenses.

7 **Action Taken:** Ms. Burke-Wammack moved to accept applicants if the applicant's education is equivalent
8 to Florida and the massage therapy program was approved by that state's Department of Education or
9 that state's licensing authority. Mr. Stoehs seconded the motion which carried 5/1 with Mr. Smallwood
10 opposing the motion.

11 **Additional Action Taken:** Ms. Burke-Wammack moved to delegate authority to Board staff to approve
12 applicants whose education is equivalent to Florida and the applicants' massage therapy program was
13 approved by that state's Department of Education or that state's licensing authority. Mr. Smallwood
14 seconded the motion which carried unanimously 6/0.

15 The Board voted en masse on tabs 4, 7, 8 and 10. All applicants were present.

16 **Tab 4 Mariah Finegan – Cortiva Institute – Boston (MA) (Addendum; Additional Information)**

17 **Tab 7 Sheila Rosenberger – Daymar College – Chillicothe (OH)**

18 **Tab 8 Lisa Schwartz – Center for Natural Wellness School of Massage (NY)**

19 **Tab 10 Beth Viner – New York College of Health Professions (NY)**

20 **Action Taken:** Mr. Smallwood moved to approve the above listed applicants for licensure. Ms. Burke-
21 Wammack seconded the motion which carried unanimously 6/0.

22 *(Tab 6 continued)*

23 **Additional Action Taken:** Ms. Burke-Wammack moved to approve the license. Mr. Stoehs seconded the
24 motion which carried 5/1 with Mr. Smallwood opposing the motion.

25 **Tab 9 Jeannette Sweeney – New York College of Health Professions (NY)**

26 Applicant was present without counsel.

27 **Action Taken:** Ms. Burke-Wammack moved to grant the license unencumbered. Ms. Ford seconded the
28 motion which carried 5/1 with Mr. Smallwood opposing the motion.

29 *(break)*

30 **Tab 26 Paul Walling – U.S. Career Institute (CO) (Addendum; New Item)**

31 Applicant was not present nor represented by counsel.

32 **Action Taken:** After discussion, Ms. Burke-Wammack moved to deny as applicant's education was
33 distance education and not approved by an equivalent licensing authority. Ms. Nixon seconded the
34 motion, which passed 6/0.

2 No action taken as will be included on the October 20-21, 2011 Board meeting agenda.

3 **MESSAGE THERAPIST APPLICANTS**

4 **Tab 12 Kenneth Allen – Exam**

5 Applicant was present without counsel.

6 **Action Taken:** After discussion, Ms. Burke-Wammack moved to grant the license with the condition he
7 undergo a PRN evaluation to determine if he is safe to practice and accept the recommendation of PRN
8 and if recommended for contract to comply with all conditions of the PRN Advocacy Contract. If a contract
9 is not recommended the applicant's license will be placed on probation for a period to run concurrent with
10 the probation imposed by the Tennessee courts. Mr. Smallwood seconded the motion, which passed 6/0.

11 **Tab 14 Karen Earls – Exam**

12 Applicant was present without counsel.

13 **Action Taken:** After discussion, Ms. Nixon moved to grant the license unencumbered. Ms. Burke-
14 Wammack seconded the motion, which passed unanimously 6/0.

15 **Tab 13 Jerita Aaron – Exam**

16 Applicant was present without counsel.

17 **Action Taken:** After discussion, Ms. Burke-Wammack moved to grant the license with the condition of
18 probation status to run concurrent with the criminal probation. Ms. Ford seconded the motion, which
19 carried 5/1 with Mr. Smallwood opposing the motion.

20 **Tab 15 Dariol Ford – Exam**

21 Applicant was present without counsel.

22 **Action Taken:** After discussion, Mr. Smallwood moved to grant the license unencumbered. Ms. Nixon
23 seconded the motion, which passed unanimously 6/0.

24 **Tab 19 Zachary Prusoff – Exam**

25 Applicant was present without counsel.

26 **Action Taken:** Ms. Nixon moved to grant the license unencumbered. Mr. Smallwood seconded the
27 motion, which passed unanimously 6/0.

28 **Tab 17 Constance Miller – Exam**

29 Applicant was present without counsel.

1 **Action Taken:** Ms. Burke-Wammack moved to grant the license unencumbered. Ms. Nixon seconded the
2 motion, which passed unanimously 6/0.

3 **Tab 20 Susan Ruiz – Exam**

4 Applicant was present without counsel.

5 **Action Taken:** Ms. Nixon moved to grant the license unencumbered. Mr. Smallwood seconded the
6 motion, which passed unanimously 6/0.

7 **Tab 21 Terry Yannick, Jr. – Exam**

8 Applicant was present without counsel.

9 **Action Taken:** Ms. Burke-Wammack moved to grant the license unencumbered. Mr. Stoehs seconded
10 the motion, which passed 5/1 with Ms. Nixon opposing the motion.

11 **Tab 27 Jennifer Roberts – Exam (Addendum; New Item)**

12 Applicant was present without counsel.

13 **Action Taken:** After discussion, Ms. Burke-Wammack moved to grant the license unencumbered. Ms.
14 Burke-Wammack seconded the motion, which passed 5/1 with Ms. Nixon opposing the motion.

15 **SECTION 456.0635, F.S., APPLICANTS**

16 **Tab 22 Tiana Digiacomio – Exam**

17 Applicant was present without counsel.

18 **ACTION TAKEN:** After discussion, it was determined applicant did not fall under the provision of s.
19 456.0635, F.S. Ms. Burke-Wammack moved to require a PRN evaluation and if safe to practice based on
20 PRN information, delegate authority to the Executive Director to license applicant; and if a PRN contract
21 is required that she maintain compliance and the Executive Director may license applicant based on this
22 information. Ms. Nixon seconded the motion, which passed unanimously 6/0.

23 **Tab 24 Kari Stoppenbach – Exam**

24 Applicant was not present nor represented by counsel.

25 **ACTION TAKEN:** After discussion, Ms. Ford moved to deny the application based on s. 456.0635, F.S.,
26 and ineligibility for licensure. Applicant will be allowed to withdraw her application within 21 days of the
27 order upon written notification. Ms. Burke-Wammack seconded the motion, which passed unanimously
28 6/0.

29 **Tab 23 David Keene – Exam**

30 Applicant was not present nor represented by counsel.

1 **ACTION TAKEN:** After discussion, Ms. Ford moved to deny the application based on s. 456.0635, F.S.,
2 and ineligibility for licensure. Applicant will be allowed to withdraw his application within 21 days of the
3 order upon written notification. Mr. Smallwood seconded the motion, which passed unanimously 6/0.

4 **MESSAGE THERAPIST APPLICANTS (continued)**

5 **Tab 16 Courtney Max - Exam**

6 Applicant was not present nor represented by counsel.

7 **Action Taken:** Mr. Smallwood made a motion to grant the license unencumbered. There was no second
8 and motion failed. Ms. Burke-Wammack moved to require a personal appearance at one of the next two
9 scheduled Board meetings, October 20-21, 2011 or December 12, 2011 conference call. Mr. Stoehs
10 seconded the motion, which passed unanimously 6/0.

11 **Tab 18 Samir Mora - Exam**

12 Applicant was not present nor represented by counsel.

13 **Action Taken:** Ms. Burke-Wammack moved to grant the license unencumbered. Mr. Smallwood
14 seconded the motion, which passed unanimously 6/0.

15 **PETITION FOR VARIANCE AND WAIVER**

16 **Tab 3 David Flecha – Re: Rule 64B7-28.010, F.A.C.**

17 Mr. Flecha was not present nor represented by counsel. His petition requested a variance/waiver of rule
18 64B7-28.010, F.A.C., and was requested due to financial hardship. The Board determined the petition
19 was unclear and could not determine if it was related to whether the Petitioner was an instructor
20 requesting approval of courses or whether Petitioner was requesting earning credit for self-study in lieu of
21 obtaining continuing education credits from a Florida Board Approved Continuing Education Provider.
22 This petition was requested due to financial hardship.

23 **Action taken:** After discussion, Mr. Smallwood moved to deny as Petitioner cannot be granted continuing
24 education credit for any course he taught as set forth in rule 64B7-28.010(5), Florida Administrative Code;
25 Petitioner did not provide sufficient information to determine if the underlying purpose of the statute had
26 been met; and that the petition was not in substantial compliance with the requirements set forth in Rule
27 Chapter 28-104, Florida Administrative Code, and section 120.542, Florida Statutes.

28 Motion seconded by Ms. Burke-Wammack and passed unanimously 6/0

29 **NEW BUSINESS**

30 **Tab 25 Continuing Education Course Description on CEBroker.com**

31 Mr. Smallwood advised the issue had been resolved and no action was necessary.

32 **Tab 28 Verification Form for Out of State Massage School Education (Addendum; New Item)**

- 1 Mr. Jusevitch submitted this form for the Board's review and approval. The form is to be completed by the
2 Dean, Registrar, or Chairperson of the massage therapy program at the U.S. school which the applicant
3 completed. This form will be attached to the out of state applicant's transcript.
- 4 **Action Taken:** Based on consensus of the Board, the form was approved.
- 5 **Tab 29 Question from Board member, Mr. Robert Smallwood (Addendum; New Item)**
- 6 Mr. Smallwood inquired if the Board can approve a stand alone colon hydrotherapy school. It was
7 determined by consensus of the Board this is allowed.
- 8 Ms. Burke-Wammack referred the Board to page 355, regarding how impressed the applicant was with
9 Board staff. Ms. Burke-Wammack thanked the Board staff for their competency and efficiency. The Board
10 reiterated Ms. Burke-Wammack's comments.
- 11 Ms. Ford advised she will postpone forwarding a letter to the Governor and Senator Joyner regarding the
12 Board's concerns with section 456.0635, F.S. The Board will respond at a later date depending on the
13 outcome of proposed legislation for the 2012 legislative session.
- 14 Adjourned approximately 2:35 p.m.