

# MINUTES OF THE MEETING OF THE BOARD OF MASSAGE THERAPY

June 19, 2015

These minutes were  
approved by the Board on  
August 14, 2015

## 1. ROLL CALL

The meeting of the Board of Massage Therapy was called to order by Hupka, Chairperson, at 9:41 a.m. in the Lower Level Conference Room A, Nebraska State Office Building, Lincoln, Nebraska. Copies of the agenda were mailed to the Board members and other interested parties in accordance with the Open Meetings Law.

Members Present:	Kim Adams Johnson	-	Vice-Chairperson
	Brian Allison	-	Secretary
	Keli Hupka	-	Chairperson
	Adele Schmidt	-	Member
Others Present:	Lisa Anderson, Assistant Attorney General		
	Anna Harrison, Compliance Monitor		
	Kris Chiles, Program Manager, Licensure Unit		
	Nancy Herdman, Health Licensing Coordinator, Licensure Unit		

## 2. ADOPTION OF AGENDA

Schmidt requested that under New Business, Other, that there be an item on Licensure Renewal.

**MOTION:** Adams Johnson moved, seconded by Allison, to adopt the agenda. A roll call vote was taken. Voting aye: Adams Johnson, Allison, Hupka, Schmidt (4). Voting nay: None (0). Absent: None (0). Motion carried.

## 3. APPROVAL OF MINUTES (4-17-15; 6-5-15 work session)

**MOTION:** Adams Johnson moved, seconded by Schmidt, to approve the minutes of April 17, 2015. A roll call vote was taken. Voting aye: Adams Johnson, Allison, Hupka, Schmidt (4). Voting nay: None (0). Abstain: None (0). Absent: None (0). Motion carried.

**MOTION:** Schmidt moved, seconded by Allison, to approve the minutes of June 5, 2015. A roll call vote was taken. Voting aye: Allison, Hupka, Schmidt (3). Voting nay: None (0). Abstain: Adams Johnson (1). Absent: None (0). Motion carried.

## 4. INVESTIGATIVE REPORTS & OTHER CONFIDENTIAL INFORMATION – CLOSED SESSION

**MOTION:** Adams Johnson moved, seconded by Allison, to enter into closed session at 9:46 a.m. to hear discussions of an investigational/confidential nature for the prevention of needless injury to the reputation of the individuals. A roll call vote was taken. Voting aye: Adams Johnson, Allison, Hupka, Schmidt (4). Voting nay: None (0). Absent: None (0). Motion carried.

9:58 a.m. - Anderson departed meeting  
10:02 a.m. - Kevin Griess, Department attorney, entered meeting  
10:27 a.m. - Break  
10:37 a.m. - Meeting resumed  
10:41 a.m. - Harrison out

**MOTION:** Adams Johnson moved, seconded by Schmidt, to enter into open session at 10:42 a.m. A roll call vote was taken. Voting aye: Adams Johnson, Allison, Hupka, Schmidt (4). Voting nay: None (0). Absent: None (0). Motion carried.

## 5. REVIEW AND RECOMMENDATIONS – OPEN SESSION

- Applications, Reinstatements, Out-of-State Training Programs

### **Judith Brown**

**MOTION:** Schmidt moved, seconded by Hupka, to recommend issuance of a massage therapist license with no terms and conditions. A roll call vote was taken. Voting aye: Adams Johnson, Allison, Hupka, Schmidt (4). Voting nay: None (0). Motion carried.

### **Jamie Mitchell**

**MOTION:** Adams Johnson moved, seconded by Hupka, to recommend offering a 6 month probationary massage therapist license, to include the standard terms and conditions and the following: jurisprudence examination, continuing education course in business practices pre-approved by the Board. A roll call vote was taken. Voting aye: Adams Johnson, Allison, Hupka, Schmidt (4). Voting nay: None (0). Motion carried.

### **Lisa Phillips – Reinstatement (early release from probation)**

**MOTION:** Adams Johnson moved, seconded by Schmidt, to recommend denial of reinstatement based on 1) failure to report her June 2014 release from court probation to Department (not reported until February 2015) and did not meet the Department probation requirement of body fluid screens during this time period, 2) out of three body fluid screens scheduled, had one “no show” in March 2015. A roll call vote was taken. Voting aye: Adams Johnson, Allison, Hupka, Schmidt (4). Voting nay: None (0). Motion carried.

10:45 a.m. - Garrett Packett, Health Licensing Coordinator, entered the meeting

Chiles introduced Packett and advised that he was a new staff person who would be working with administrative penalties, reinstatement, renewals, etc.

## 6. UNFINISHED BUSINESS

### **a. Finalize School Renewal Forms**

Schmidt asked about the numbering on the survey referencing the regulation citations. Chiles responded that the specific regulation number/citation was left in because it would provide a reference to individuals as to where they could find the item being asked about. Chiles commented it could be changed to parenthesis.

Schmidt also asked about the list of resources and said she had a note about including the link to the UCA. Chiles responded that she could include the links to the statutes and regulations. Chiles stated she would finalize the form and it would be sent out with the November renewals; report of responses would be compiled.

### **b. Other**

There was no information to report.

10:57 a.m. - 1 public person entered the meeting

## 7. NEW BUSINESS

### **a. United States Supreme Court Decision (North Carolina State Bd. Of Dental Examiners v. FTC**

Chiles stated she had previously forwarded a copy of the Court Decision along with a memorandum from the Department of Health and Human Services Legal Team.

Griess reported that the North Carolina Board of Dental Examiners had sent out cease and desist orders to unlicensed individuals who were provide teeth whitening. The Federal Trade Commission sued and the case was appealed to the Supreme Court. The Supreme Court stated that cease and desist was unlawful

because when a majority of a board were “active market participants” and they took anticompetitive action that there needed to be special rules to prevent situations where members might act to further their own private interests.

Griess stated in Nebraska, Boards, for most situations, are advisory and make a recommendation to the Department or Attorney General’s office. However, in the case of cease and desist orders, Boards issue. He recommended that Boards delay issuing any cease and desist orders until further review of the case and direction for the future.

Schmidt expressed concern and inquired what the Board could do if they could not do a cease and desist. Griess suggested that they make a recommendation to the Attorney General’s office to file a court action, such as an injunction.

Adams Johnson commented that there was a presentation relating to this decision at the Federation of State Massage Therapy Boards and some suggestions presented were 1) changing board membership to include more public members than practitioners, 2) make clearer policy, 3) seek state endorsement and 4) combine boards to dilute the professionals.

Griess commented that one solution may be to change the statutes so that the Board made cease and desist recommendations to the Department and the Department decides.

**b. Correspondence**

There was no information to report.

**c. Other**

Schmidt commented that the renewal forms do not ask massage therapists where they work or ask establishments who work for them and she felt that should be added. Chiles reviewed the renewal requirements in the regulations and indicated that there is no authority to require this type of information as a condition of renewal.

Schmidt asked if on the renewal notice, there could be some note to let massage therapists know the Board was discussing the regulations and encourage them to look at the agendas. Griess commented that it would be better to invite specific groups to participate in the discussions about the regulations. Hupka commented that she thought it would be confusing if something was put on the renewal referring to discussing the regulations. Adams Johnson felt listing something that specific would just result in a lot of calls and questions. Chiles stated she could include on the renewal form (by the person’s signature) to encourage licensees to check out the Massage Therapy website.

11:24 a.m. - Packett departed the meeting  
11:36 a.m. - Hupka departed meeting  
11:45 a.m. - Hupka entered meeting

**8. UPDATES AND REPORTS**

**a. Nebraska Chapter of AMTA**

There was no new information to report.

**b. Federation of State Massage Therapy Boards (FSMTB)**

The public person asked when the study guide for the MBLEx would be out and Adams Johnson responded sometime this summer.

Adams Johnson commented that Board certification was not the same as state licensure and that Board certification was voluntary. There was a discussion about the situation where a person takes the Board certification examination and then applies for a license in Nebraska. Chiles reviewed the regulations and the regulations allow for the Board to determine if an examination is equivalent to those listed in the regulations, thus if the situation arises, the Board could review the examination to determine equivalency.

11:48 a.m. - Allison departed meeting  
11:53 a.m. - Allison entered meeting

**c. National Certification Board for Therapeutic Massage & Bodywork (NCBTMB)**

There was no new information to report.

**d. Statistics: Examination / Licensing / Administrative Penalties / Renewals / Disciplinary and Non-Disciplinary Information / School Report**

Chiles reported the following examination information for January 2015 to present:

- Jurisprudence - probation 4 pass
- Jurisprudence - CEU 4 pass
- Jurisprudence – reciprocity 20 pass, 7 fail
- MBLEx 30 pass, 1 fail

Chiles reported that there were 17 outstanding penalties with 5 being individuals and the rest establishments.

**e. Other**

The public person asked if any new school applications had been received. Chiles responded that she had not received any. The public person stated that their school was seeing a decline in students. Chiles asked if she had any ideas as to why and the person responded that she felt it was the low pay and that students do not want to be entrepreneurs. The public person also stated she was offering continuing education and she was having trouble filling the classes. Chiles commented that few members of the public attend board meetings and she expressed her appreciation for the public person's attendance.

The Board agreed to a work session on 8-14-15 to work on the draft regulations.

**9. ADJOURNMENT**

There being no further business, Hupka declared the meeting of the Board of Massage Therapy adjourned at 12:24 a.m.

Respectfully Submitted,

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Brian Allison, Secretary  
Board of Massage Therapy

Minutes completed by Nancy Herdman, Health Licensing Coordinator