

“Board Beat”

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The 349th General Business Meeting of the Florida Board of Massage Therapy was held on October 30-31, 2008 at the Renaissance Orlando Hotel in Orlando, Florida.

Board members present included: Dave Quiring LMT, Chair; Lynda Solien Wolfe, LMT, Vice Chair; Andrea Vala, LMT; Jacqueline Kelly, LMT; Lorena Haynes LMT and consumer member, Irene Andriole. Christy Robinson, Acting Executive Director, represented the Board staff. Board counsel for this meeting was Allison Dudley, Esquire. Prosecuting attorney, Sam DiConcilio, ESQ. was also present.

The Florida State Massage Therapy Association was represented by Maureen Gilbert (President) and Lynn Hupp ([Executive Director](#)). Pat Donahue (President) and Joe Ferguson represented the American Massage Therapy Association (FL Chapter). Representatives, including instructors and/or owners, of several massage therapy schools were also present.

According to Board Council, the Circuit judge handling the rule challenge by the NCBTMB should look at this case in January. We should have our answers on which test our massage therapy students will be able to take by February, 2009. Nothing is definite yet, but there is hope that students will have access to the new test (which does not include Chinese Medicine questions) in just 3 to 4 months.

There were 6 **Informal Hearings** discussed. Naturally, some involved therapists working at an unlicensed establishment or somebody operating an unlicensed establishment. (I can't remember any Board meeting in the past 10 years that didn't include these violations.)

The fines for these violations ranged from \$100 to \$350, but the therapists also have to pay costs for these cases, which ranged from \$655 to \$1,163. A reprimand was also placed on all of their licenses. The sad thing is that discipline for these violations is easy to avoid.

If you are a newly licensed therapist, please personally look at the massage establishment license for any business that you plan to work for, before performing your first massage there. The law requires all massage establishments ([including](#) all doctor and chiropractic offices, all spas, etc.) to post the establishment license in a conspicuous place, so you should have easy access to the license.

Chapter 64B7-28.008 Display of Licenses: (3) The owner of each massage establishment shall conspicuously display a current establishment license issued by the Department on the premises.

Don't take anybody else's word that there is a current and valid massage establishment license at the location. Look for yourself! Check to see that the name of the business exactly matches the name on the license. Check to ensure that the address on the license exactly matches the address of the location where you plan to offer your services. Check to see that the license is not expired (there is absolutely no “grace period” for expired licenses). Even if you previously worked for a business and are returning after a brief time away, check the license again. A copy of the massage establishment license is not acceptable, it must be the original. Remember, it must be a “massage establishment license” issued by the Florida Department of Health and the Florida Board of Massage Therapy. Absolutely no other establishment or other license can take the place of this license.

Of course, the therapist must also post their license, or a copy of their license (copies of individual massage therapist [licenses](#) are acceptable), in a conspicuous place at the location.

Chapter 64B7-28.008 Display of licenses (1): Each licensed practitioner shall conspicuously display a current license issued by the Department, or photocopy thereof, at each location at which he or she practices.

I implore all schools to make sure their instructors get this across to their students, since it is such a frequent violation. Of course, students should be exposed to all the statutes pertaining to massage therapy (Chapters 480 and 456) as well as the rules of the Board (64B7 F.A.C.)

Licensed massage therapists should review their laws and rules regularly, since we tend to forget things we haven't studied for awhile and the **rules do change**.

Two therapists had their licenses suspended for not being contracted and/or in compliance with their contract from P.R.N. These therapists must not only follow the recommendations of P.R.N. in order to resume their massage practices legally, one now must pay costs of over \$874 and the other therapist must pay costs of over \$2,156.

One therapist was represented by an attorney, but was not present herself, due to a reported illness. This therapist was charged with insurance fraud and is involved with pre-trial intervention for these charges, as well as violations of the Florida Massage Statutes and Rules. The Board voted to impose a fine of \$2,250 and costs of \$1,984.10.

There were 16 **Settlement Agreements** (cases in which the State Attorney's Office and the respondent have already agreed to terms for the case). Costs for these individuals ranged from a low of \$390.17 to a high of \$2,159.42.

There were 8 **Hearings for Determination of Waiver/Default** (cases where the respondents have been found to have waived their rights to a hearing). Two of these LMTs had a reprimand placed on their license and had fines and costs of \$1,520.10 or \$ 1,605.87 imposed. The other 6 had their licenses revoked, with fines and costs from \$1,320.45 to \$ 8,117.23 imposed. The therapists with the two highest fines and costs were found to be in violation of the statutes and rules prohibiting sexual activity. Another therapist was found to be practicing beyond the "Scope of Practice" of massage therapy. These cases are good examples of the great job both the Board of Massage Therapy and the State Attorney's Office are doing in "protecting the public". These cases also point out the importance of requiring licensure for our profession.

Eight massage therapists and Massage Establishments participated in the **Voluntary Relinquishment** process.

There were approximately 30 **History applications:** therapists originally scheduled to be reviewed, with one being withdrawn before the meeting started. At least 18 of these applicants had their license issued unconditionally. The rest of the applicants had their license issued with conditions, either to have doctor reports sent in or to be evaluated by, and follow the recommendations of, P.R.N.

In past Board meetings, I have heard school owners and instructors express concern about how to properly answer prospective or current students **who** inquired about whether past events in their lives may affect their ability to obtain a Florida **Massage Therapy** license. Currently, neither an instructor, school owner, nor even the staff of the Board of Massage will always be able to answer that question. Based on certain criteria, the staff of the Board may be able **to** state whether the previous situation/set of circumstances/criminal history/etc will be referred to the entire Board or not. Some situations will definitely require the applicant be referred to the full Board, at a scheduled BOMT meeting. The good news for students and applicants is that the Board rarely outright declines to offer a license. There may be conditions that have to be met in order for the license to be issued, but they are usually fairly easy to comply with, if the applicant is serious about wanting to enter this profession. The Board members do not refuse to issue a license arbitrarily. They have a job and duty to "protect the public" and take that responsibility seriously. At the same time, they do not want to prevent anybody from entering this profession if that person can practice without endangering the public.

As has happened several times in the past, the Board had **two** requests from individuals **who** asked the Board to either find that reflexology is not within the “scope of practice” of massage or that they be exempted from the massage laws and rules in order to practice reflexology in the state of Florida. The Board confirmed their previous position, and past Board positions, stating that individuals wishing to practice reflexology in Florida must possess a valid Massage Therapy license.

There was much discussion concerning the massage establishment rule. The Board is considering changes to the establishment application that may make it clearer exactly which portions of a building/address will be covered under each establishment license.

64b7-26.001 Definitions (2) The term establishment means a site or premises, or portion thereof, wherein a licensed massage therapist practices massage for compensation.

This does mean that one establishment license can be sufficient for several or all rooms located at the address stated on the license. There does not have to be any specific business relationship or contractual agreement between the therapists working at that address in order for all of the therapists to be deemed to be working in a “properly licensed establishment”.

There may be valid reasons and benefits for each therapist to have their own establishment license, but there is no law or rule requiring that each have separate establishment licenses when practicing at the same address. If the owner of an establishment or establishment license permits other therapists, located in different rooms or suites (located at the same address) to operate under their establishment license, they may be responsible for or subject to disciplinary action(s) or liability claims due to the actions or inactions of those other therapists. The inspector must have access to any and all areas that will be used for the practice of massage, whether there will be one establishment license, or more than one establishment license.

There was discussion concerning advertisement(s) for massage services. This seems to be very clear and is stated in both **480.0465 Advertisement** and in:

64b7-33.001 Advertisement : (1)Each massage therapist or massage establishment licensed under the provisions of this act **shall** include the number of the license in **any** advertisement of massage services.

This clearly states **any** advertisement, including, but not limited to, all outside signs, must have a license number on the advertisement. Even if the sign/advertisement just states/lists the word “massage” and nothing else, it **must** include a license number! This was openly discussed by the Board and stated clearly that **any and all advertisement of massage** must include a license number, **whether the name of a licensed therapist or name of an establishment is listed on the advertisement or not!**

(2)Any advertisement of massage services in any advertising medium as defined herein **shall** include the license number of each licensed massage therapist and each licensed massage establishment whose name appears in the advertisement.

Section (2) clarifies that **if** a licensed therapist’s name, or the name of an establishment is listed in the advertisement, then their license number must also be listed in the advertisement.

If more than one therapist’s name is listed, each license number must be listed. If more than one business name, or address is listed, then the establishment of each business **name and location** must also be listed in the advertisement.

If an advertisement for massage is not directly associated with either a licensed massage therapist or a licensed massage establishment, then it is a case for the unlicensed activity division [contact information listed later in this article].

There was an interesting letter concerning a request to clarify whether “doctor fish services” (everything from fish pedicures to full body fish massages) was under the jurisdiction of the Board of Massage or not. The description of this service stated that “the customer rinses their entire body off, as opposed to just their feet, and they would soak in a fish filled tub for a chosen length of time. The board found that this does not fall under the scope of Massage Therapy, since it is not “massage”. They also stated that the person making the request for information should refrain from using the term “massage” in their advertisements.

Another therapist wanted to know who defines the massage “scope of practice”. The Board decided to refer this therapist to the Florida Laws and Rules for Massage Therapy (Chapters 456; 480; and 64B7)

A different therapist wanted to know if she could use a specific heat lamp in her massage services. The Board again decided to refer her to the laws and rules. Clearly, the definition of massage includes the use of hydrotherapy and thermal therapy, including the use of heat and cold. The Board is just not going to offer approval or disapproval of any specific product.

A major key in determining whether a therapist can use a product or specific service or modality (whether specifically defined as in the scope of massage or not) is found in

480.046 Grounds for disciplinary action by the board(1)(h) :

Gross or repeated malpractice or the failure to practice massage with that level of care, skill, and treatment which is recognized by a reasonably prudent massage therapist as being acceptable under similar conditions and circumstances.

Just because something falls within the scope of practice of massage therapy does not mean anybody and everybody can safely perform that service. If you have not been adequately trained and/or have not studied and practiced enough to be knowledgeable, proficient and/or experienced enough about a service, modality, product, etc., to offer it safely, you should not perform that activity or use that product [even if it is within our “scope of practice”].

The Board also discussed whether a massage therapist could use Therabands/elastic bands or Theraballs in their massage practice. The Board heard testimony from Michael McGillicuddy, L.M.T. (owner of Central Florida School of Massage; previous President of the F.S.M.T.A.; and provider of continuing education courses), who gave clear evidence of previous and continuous use in the massage industry of these services for as long as 20 years. None of the attending massage school owners, massage instructors, or Board members voiced disagreement with Mr. McGillicuddy’s view/stand that these are indeed within the scope of practice of massage therapists. [remember 480.046 (1)(h)]

The Board discussed correspondence from a therapist concerning performing chair massage at one-time events, holiday events, malls, etc. It has been the Board’s position in the past that most one-time/transient events do not require an establishment license (even though they are not listed in any law or rule as being specifically exempt). The only specifically exempted places/events are:

480.046 Grounds for disciplinary action by the board (1)(n) paraphrased ...may provide massage services, excluding colonic irrigation, at the residence of a client, at the office of the client, at a sports event, at a convention, or at a trade show. The Board decided to inform the person who sent in the correspondence that they could not offer massage at a mall, even at a temporary location and/or for a temporary time, but that the other transient events would not need an establishment license.

The board held a Rule Workshop (which has been going on for about a year) concerning **64B7-32.003: Minimum Requirements for Board of Massage Therapy**. The original rule development for this rule was published 6/27/07 and discussion was held at the previous Board meeting in July, 2008 (tab 93 of the July meeting). Lorena Haynes of the Board has put in a tremendous amount of time and effort into this project. Part of the reason for changing this rule can be found in the fact that distance education is becoming a big part of traditional colleges and many professions, but is not mentioned yet as being acceptable as a part of massage therapy training. Traditional schools in the public school system already utilize distance education for many

courses, including anatomy and physiology. If a massage school accepts a student from the public school system and looks to give them transfer credits, they have no way of knowing whether the anatomy and physiology credits, or any other credits, were obtained through distance education or in a classroom. Public schools which offer massage therapy courses already accept these distance education classes [anatomy and physiology credits] for their massage programs (I know, because I was an instructor at one of these public school programs), as is Ms. Haynes. When distance education for anatomy, physiology, pathology, massage theory, business and related non-hands-on courses are approved for all Florida massage schools, it will provide an even, competitive playing field for all schools, as well as making more opportunities available for students wishing to enter the massage field. The discussion suggested allowing the 150 hours of anatomy and physiology to be completed through distance education. It was also proposed to permit 100 hours of massage theory to be completed through distance education. Obviously, all hands-on requirements will continue to be required to be completed at a massage school. Any therapist or massage school owner or instructor that wishes to participate in this rule making may contact Lorena Haynes. Suggestions are appreciated.

There was also discussion on more clearly defining massage school clinical practices. Ms. Haynes proposed the following be added to the rule:

- (a) All student massages must be performed in the presence of a qualified massage instructor of the school.
- (b) Clients shall be notified that massages are being performed by students.
- (c) Students may not be compensated.
- (d) Any compensation for treatment shall go directly to the school.

Other items that one or more of the participants asked to be clarified in the student clinical rules included:

1a) Can students volunteer their services (when they are not being compensated) at a hospital, as in a cancer massage program, or an infant massage program, etc. and receive school credit for the massages they perform, as long as they are not receiving credit for hours as part of their 500 hour training? [with no school instructor present]

1b) Would it make a difference if the student is not receiving credit of any kind?

1c) Would it make a difference whether the hospital charges a fee [or accepts a donation] for the services or not? [the student will not be compensated in any way]

2) If the promoters or organizers of an event, such as chair massage at the Chiropractic convention or at a sports massage event for the FSMTA, charge a fee for the public to receive a massage, and a student performs the massage, even though the student is not being compensated, is the student [volunteering as part of their school training, or volunteering on their own, not actually representing any school] “practicing massage without a license” and subject to disciplinary action by the unlicensed activity division. Or, since the student is not receiving any compensation, would the student be deemed to not be practicing massage therapy at all (since they are not being compensated)? Would it matter if the organization then donated the money to a charity, paid the monies to participating licensed therapists, or kept the money in their organization? It is given that the student(s) will not be compensated.

3) If a student, whether representing their school or not, volunteers their services at a church, nursing home, or other event that accepts donations, contributions, or actually states a fee for the massages, be deemed to be “practicing without a license” and subject to disciplinary action by the unlicensed activity division? Or, is this student simply volunteering their time and, since they are not being compensated, exempt from being charged with unlicensed activity. What if there is no fee charged, but donations are accepted by the organization?

4) Can a student gain experience at a physicians office, or the office of a Chiropractor or Physical Therapist, by volunteering their time and service [of course the student will not be compensated]? Since the student is completely volunteering their services, will they be subject to discipline from the unlicensed activity division, or are they considered to be exempt from the charge of “practicing without a license” due to not being compensated.

Will it make a difference whether the Physical Therapist or Doctor charges a fee or not?

5) According to the definition of “massage” doesn’t a person have to be compensated in order to be considered to be performing massage?

6a) If a school requires that a student(s) complete a certain number of student clinical massages outside of the school (not part of the required hours), does it matter where the student performs the massages [again, the student will never be compensated]?

6b) If a student performs massages outside of school grounds (again, as part of a school requiring a certain number of outside student clinical massages), will there be specified requirements as to how the school must document these outside massages?

6c) If any person or organization wished to donate money to a school for massage(s) that the schools student(s) provided away from the school, would there be any requirements from the Board? The compensation would go directly to the school. Can we regulate gifts, donations or contributions to a school, for any reason, whether it is related to massage by students, or not?

I personally brought up several of the questions mentioned here concerning the student clinics and received several of the other questions from other school owners and instructors present at the meeting. Currently, there are absolutely no written guidelines for these issues.

Even with all my experience in this area, I do not know the answers to these issues, and am concerned that other instructors and students would be expected to know them.

In the 15 years I have taught massage at massage therapy schools and in the over 10 years I have personally attended Board of Massage meetings, I have never heard definitive answers to these questions. School owners, teachers and students should have clear answers to what is permitted in student clinical activities and what is not permitted. With your help and the efforts of Ms. Haynes and other Board members, we can provide these guidelines.

If you have other questions, ideas, concerns or answers relating to any of these possible rule changes or additions, contact myself or Lorena Haynes. I will forward any correspondence to her. We appreciate your thoughts, concerns and help.

If you have a complaint of unlicensed activity or suspect it may be a case of unlicensed activity, use the following contact information:

DOH [Department of Health] has several resources to combat unlicensed activity:

Consumers are encouraged to use DOH’s Web site: www.doh.state.fl.us/mqa

where they can conveniently view the license information of their health care practitioner.

Complaints may be filed anonymously by completing and mailing the complaint form on the DOH Web site or calling [toll-free] 1-877-HALT-ULA or 1-877-425-8852.

or email us at HALTULA@doh.state.fl.us

To contact the Florida Board of Massage: www.doh.state.fl.us/mqa/massage

E-mail: MQA_Message@doh.state.fl.us

Board of Massage Therapy
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Tallahassee, FL 32399
Phone: (850) 488-0595
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Stay well, practice safely within the law, and always remember the following 3 quotes:

“Ignorance of the Law is no excuse!”

“Education cures ignorance!”

“It is your responsibility to know your Laws!”

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