

“Board Beat”

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The 358th General Business Meeting of the Board of Massage Therapy was held on January 21 – 22, 2010 at the Crowne Plaza in Orlando, Florida.

Board members present included Lynda Solien-Wolfe, LMT, Chair; Lorena Haynes, LMT, Vice Chair; Robert Smallwood, LMT; Karen Ford, LMT; Bridget Burke-Wammack, LMT; Consumer Member Irene Andriole; and Consumer Member William Stoehs.

Board staff included Kaye Howerton, Executive Director, Paula Mask, Program Operations Administrator and Chelisa Kirkland, Regulatory Specialist. Allison Dudley, Esquire served as Board Counsel. Sam DeConcilio served as the Departments Prosecuting Attorney.

Meeting Highlights

The bulk of interest in this two-day meeting was information related to the new **Senate Bill 966 titled, Human Trafficking** and the subject of establishment licenses being shared by two or more separate businesses. Three **petitions for declaratory statements** were addressed with one of them leading to a lengthy discussion of **businesses sharing an establishment license**. The other two dealt with scope of practice questions and the idea that massage therapists need to have their work supervised by a M.D. or Chiropractor. Many of the **Rules** that were visited during the last Board meeting were revisited at this meeting without significant change. Board members elected a **new Chair and Vice Chair**, two Board members left the Board and another announced she would soon be leaving. History applicants once again felt the effects of **the new statute 456.0635** while **California-Florida transfer students** may suffer from a lack of oversight in California’s schools.

FL Senate Bill 966 & House Bill 633 - Human Trafficking

The FL legislature finds that many victims of human trafficking are forced to work as prostitutes under the guise of massage therapy. Other victims suffer from labor exploitation while working as massage therapists. SB 966 and its companion HB 633 address this concern. Typically these human trafficking victims are smuggled in from other countries and reside here illegally.

Massage Therapists - SB 966 attempts to prevent the possibility of working as a massage therapist in FL for any undocumented residents or foreign residents lacking authorization to work. A state issued drivers license or ID number would be needed to obtain or renew a massage therapy license. Licensing exams would be given in English only and each applicant would be required to demonstrate their ability to communicate in English. Therapists would be required to report to the Board the license number of a massage establishment before they begin working there.

Massage Establishments - SB 966 also targets those who control the lives of the human trafficking victims. Fingerprinting and criminal background checks would be required for many persons associated with massage establishments including massage establishment owners, administrators/managers, financial officers and anyone having a controlling interest in the establishment. The background check would ultimately involve the FBI and a nation-wide criminal history check. The list of crimes that prohibit such a person from involvement with a massage establishment is too long and varied to be included here. The costs associated with fingerprinting and criminal background checks would be borne by those whose history is in question. Any massage establishment employing a therapist who is not a US citizen would be required to maintain valid work authorization documents on the premises of the establishment. Massage establishments would be required to report to the Board the license number of all therapists before they begin working in the establishment. Cosmetology salons or specialty salons that offer massage services would need to obtain a massage establishment license.

Exemption From Criminal Background Check – A number of parties would be exempt from the need for a criminal background check in relation to a massage establishment. SB 966 notes that victims of human trafficking also suffer from labor exploitation while working in cosmetology salons or specialty salons yet the Bill specifically exempts these salons from criminal background checks when they apply for or hold a massage establishment license. Additionally, the following parties are also exempt from the criminal background check requirement: a public lodging establishment pursuant to Chapter 509, any person licensed as a health care provider by the Fl Dept. of Health and a person, firm or corporation licensed as a health care clinic pursuant to part X of Chapter 400.

Massage Schools - SB 966 suggests that the Board adopt Rules that provide for the disapproval of a Board-approved massage school if the majority of graduates of such a school have engaged in a pattern of misconduct while providing massage services at a massage establishment. The term “pattern of misconduct” means being convicted at least once of violating s. 796.07, relating to prostitution, during any 2-year period.

The Board’s Response - Section one of SB 966 contains language suggesting that Dept. investigators arrest violators however Dept. investigators do not have arrest powers. Section 2 discusses the request for state-issued driver’s license or ID numbers. Federal Law prohibits this request and the Board is already in the process of removing it from current applications. Fingerprinting and criminal background checks would mean more work for Board staff. The Board has discovered schools with a majority of graduates engaging in prostitution but these schools are outside of Fl and are not Fl Board approved schools. As a consequence the language in SB 966 suggesting that the Board adopt Rules to withdraw school approval would be ineffective at dealing with this problem. The Board could however apply the principles of the suggestion to Rules involving endorsement candidates and transfer students. The Board is dissatisfied with the language in SB 966 requiring licensing examinations be in English only. The Board has been working to provide a licensing examination in Spanish. The Board noted that Dept. investigators must be able to communicate with therapists and persons associated with

massage establishments. The Board discussed the need for an English proficiency examination. Requiring therapists to report to the Board the license number of a massage establishment before they begin working there and establishments to report the license number of therapists before they begin working would have a fiscal impact upon the Board as well as increasing the work load for Board staff. Therapists and establishments might find this requirement impedes employment opportunities. Requiring establishments keep work authorization records on site for examination by Dept. investigators would slow down inspections. The Board stated that overall the implementation of SB 966 would result in more discipline cases, more work for Board staff and a fiscal impact upon the Board. Ultimately the Board went on record to state that they support the intent of SB 966 but not the language as it is currently written.

SB 966 vs. HB 633 – The Board stated that these two bills are virtually identical except that HB 633 does not require therapists provide a state-issued drivers license or ID number or proof of US citizenship. HB 633 would have less of a fiscal impact upon the Board.

Petitions for Declaratory Statements

Scope of Practice & Supervision - A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of a law or rule. An ongoing concern for persons requesting declaratory statements is the idea that a massage therapist needs to have their work supervised by a MD or chiropractor. **Licensed massage therapists are not required to have their work supervised directly or indirectly by a MD, chiropractor or anyone else.** Questions regarding scope of practice are also common in requests for declaratory statements. Often the same questions are asked over and over again. The Board answered a request regarding the massage therapist's scope of practice including electric muscle stimulation and ultrasound. **Yes, the massage therapist's scope of practice does include electric muscle stimulation and ultrasound.** As with any scope of practice issue the therapist must however have training in the therapy in question.

Businesses Sharing an Establishment License - A chiropractor requested a declaratory statement in regard to sharing an establishment license with another business located at the same address. The chiropractor rents space within his chiropractic office to a massage therapist. The massage therapist obtained an establishment license of his own. The chiropractor employs a massage therapist to work within his chiropractic business at the same address. The chiropractor questioned whether or not his chiropractic business needed to have an additional massage establishment license. The Board stated that the chiropractor did not need an additional license.

Board members spent a great deal of time discussing the issue of two or more businesses sharing one establishment license. One problem discussed involved Rule 64B7-33.001 which requires establishments to include their license number in advertising. If the number is shared between two or more businesses only one advertisement will have a number that matches the business name on record for the establishment. Establishments are also required to post their license on the premises. Once again a massage business

would have a number and license that does not match their business name. This could prove confusing for therapists attempting to verify licensure before employment. The licensee verification search screen on the Department's website would not serve its intended function if two or more separate businesses share one license.

One Board member presented the scenario that fifteen separate businesses could share one establishment license. Establishment owners are disciplined for any violations made by the therapists working in their establishment. As a consequence, the one establishment owner in this example would be disciplined for violations made by any one of the therapists working in any one of the fifteen separate businesses.

Another Board member felt that each separate business should have its own establishment license and cited the following language in Rule 64B7-26 in support of his position...

64B7-26.001 Definitions.

(1) The term "owner" means the sole proprietor, partnership, limited partnership or corporation that operates the massage establishment.

64B7-26.002 Licensure of Massage Establishments.

(2) The application for licensure shall be submitted in the name of the owner or owners of the establishment. If the owner is a corporation, the application shall be submitted in the name of the corporation and shall be signed by an authorized corporate representative.

This last Board member argued that if someone operates a massage business then by definition they are the owner of a massage establishment and in accordance with 64B7-26.002 they must apply for and hold an establishment in their name or corporate name. Ultimately the Board voted 4 to 3 to maintain their long-standing policy of allowing businesses at the same address to share an establishment license.

Rule Development

In regard to schools with an unacceptable pass rate, the Board is working on language within Rule 64B7-32.003 that will address this problem. The **Spanish exam** will be delayed a little longer. The proposed Spanish exam language for Rule 64B7-25.001 still needs to be developed. The Board counsel stated that the proposed language will be prepared and brought before the Board at the next meeting. **Endorsement candidates** are currently required by Rule 64B7-25.004 to complete the Fl Law requirement at a Board approved massage school. The Board intends to amend the rule so that the hours can be completed through a continuing education provider as well. The Board will be working on reducing fees collected through **Rule 64B7-27 – Fee Schedule**. The sections that will be amended include .006, .007, .008 and .012.

Changes to Board Members Status

The Board elected Karen Ford, LMT as their new Chair and Bridget Burke-Wammack, LMT as the new Vice Chair. Lynda Solien-Wolfe, LMT and Irene Andriole served their last day as a Board member and Lorena Haynes, LMT announced that she would soon be

leaving her position and should not be expected to return as a Board member at the next meeting.

The New Statute 456.0635

In accordance with Statute 456.0635 the Board continues to advise some history applicants at the meeting that they will not be granted a license. Among other concerns, this Statute disallows licensure for any applicant with a history related to narcotics if the sentence or probation or any pleas occurred during a fifteen-year period prior to the date of their licensure application. Aside from problems with narcotics the Statute also addresses Medicaid and Medicare fraud. At the October, 2009 meeting the Board expressed that they did not yet know how 456.0635 would affect current licensees as the Department was developing that policy. The Board gave no update regarding the subject. The list of felonies described in the Statute is so long and varied that they cannot be listed here. Licensees and massage school students with a criminal history should carefully review the statute.

School Owners/Directors – California Transfer Students

An audience member informed the Board that the state of California currently lacks an oversight body for schools. The California Bureau for Private Postsecondary and Vocational Education ceased operation on July 1st, 2007. As a consequence FL schools may not be able to accept for credit any hours completed by transfer students at a California school between July 1st, 2007 and the date that an oversight body is reinstated. School owners and directors are urged to contact the Board office to learn more about a particular student's status in this matter.

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