

BOARD OF MASSAGE THERAPY
Professional & Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

Date: Thursday, December 8, 2011

Time: 9:00 a.m.

Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii 96813

Members Present: Wendee Wilson, Chair, Public Member
Rhonda Scott, Vice Chair, Massage Therapist
Laura Chock, Public Member
Olivia Nagashima, Massage Therapist

Staff Present: Christine Rutkowski, Executive Officer ("EO Rutkowski")
Kenyatta Nichols, Executive Officer ("EO Nichols")
Rodney Tam, Deputy Attorney General ("DAG")
Jennifer Fong, Secretary

Guests: None.

Agenda: The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawaii Revised Statutes ("HRS").

Call to Order: There being a quorum present, the Chair called the meeting to order at 9:05 a.m.

The Chair introduced the Board's new Executive Officer, Kenyatta Nichols. The Chair related that EO Nichols is training now; staff has assured her that there will be a smooth transition.

The Vice Chair placed a tape recorder on the meeting table in front of her.

EO Rutkowski asked the Vice Chair about the tape recorder.

The Vice Chair stated that she was recording the meeting. She stated that she reviewed the laws and rules which state that she can record the meeting. The Vice Chair added that anyone can record the meetings; that she was exercising her right to record the meeting. The Vice Chair further stated that people have commented that they are keeping an eye on the Board. For example, when Makana Richardson

came to one of the Board meetings at the beginning of the year, she expressed some concerns about what's happening. Therefore, the Vice Chair stated that recording the meeting would be a way to quell those types of concerns.

EO Rutkowski stated that there are those who believe that government needs to be watched; something that is not unique to the Board of Massage Therapy. In response, the Board is transparent, in that the Board meetings are open to the public and any member of the public can attend, the agendas are published and the minutes are available for review and are posted on the Board's website.

Ms. Nagashima stated that she does not recall Ms. Richardson expressing the concerns the Vice Chair referred to.

EO Rutkowski acknowledged that the laws and rules do not prohibit the meeting from being taped; however, the Board has not made it part of its program of work to tape record its meetings. EO Rutkowski said that since the Vice Chair is part of the Board/DCCA, issues of concern are whether the staff would be required to transcribe the tape, which, if the answer is yes, would impact workload, in whose custody the tape would be held, whether the Board/PVL would be required to produce copies of the tape, any precedent it would set for the other licensing Boards/Commissions that are administratively attached to DCCA, as well as other issues that have not been considered.

The Vice Chair replied that she previously mentioned that she wanted to tape record, so she gave advanced notice.

The Chair stated that staff takes notes during the meeting and the resulting minutes have been accepted by the Board without substantive changes. Thus, the Chair stated, the Vice Chair's lack of confidence in the staff to record the proceedings accurately is troublesome.

EO Rutkowski asked if the Board members wanted to seek counsel from their attorney on this matter. Ms. Nagashima replied in the negative. Ms. Chock agreed with Ms. Nagashima by nodding her head.

EO Rutkowski requested that the DAG comment.

The DAG said there is nothing in the law to prevent the Vice Chair from tape recording the open session of the meeting. The closed portions, to which the Board is legally allowed, such as when it goes into executive session, cannot be recorded. He added that the minutes are not required to be a verbatim transcript and that all that is required is that the Board provides a true reflection of the discussion and the Board's position on the matters. The DAG stated that it is true that the Vice Chair has the right to tape the meeting, however none of the other PVL boards engage in

this practice. The DAG further stated that the recording would become a government record.

Ms. Nagashima stated that she understands that if a recording is to take place, the Vice Chair should seek the permission of those being recorded. She said that she does not want the meeting to be recorded. Ms. Chock and the Chair agreed that they prefer that the Vice Chair not record the meeting.

The Vice Chair stated that she is motivated to record the meeting because she wants a record of the meeting. She added that concerns are coming from the community as well. However, the Vice Chair stated that in order for the Board to move forward with the agenda, she would not tape today's meeting, however, if she still has concerns, she will tape future meetings. The Vice Chair put the tape recorder away.

EO Rutkowski reminded the members that it is inappropriate for an individual member to discuss board matters outside of the Board meetings; that all questions or inquiries about Board matters should be referred to the Board's office.

The Vice Chair countered that she does not initiate any discussions regarding Board matters and that sometimes people speak to her and she does not want to be rude or cut them off. The Chair underscored that anytime anyone tries to discuss Board matters with any Board member outside of a Board meeting, it is the Board member's responsibility to end the discussion and refer the person to the Board's office.

At this time, the Chair announced that she would be taking the agenda out of order.

Chair's Report:

Announcements

None.

Additions/Additional Distribution

Upon a motion by Ms. Nagashima, seconded by Ms. Chock, it was voted on and unanimously carried to add the following items to the agenda:

Additions

3. Executive Officer's Report
 - a. 2012 Legislative Session
6. Applications

b. Applications

Exam & License – Massage Therapist

- Gail Kaawa

The Chair announced that the following was distributed to the Board members as additional distribution:

1. Chair's Report

c. Approval of the Previous Minutes – November 7, 2011 Meeting

6. Applications

b. Applications

Exam & License – Massage Therapist

- Bonita Hensley

Applications:

Applications

Executive Session:

At 9:24 a.m., upon a motion by the Chair, seconded by the Vice Chair, it was voted on and unanimously carried to move into executive session pursuant to §92-5(a)(1) and (4), HRS, "To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both; and "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;".

EXECUTIVE SESSION

Kyle Coursey – Application for Exam & License – Massage Therapist
Bonita Hensley – Application for Exam & License – Massage Therapist
Gail Kaawa – Application for Exam & License – Massage Therapist

At 9:34 a.m., upon a motion by the Chair, seconded by Ms. Nagashima, it was voted on and unanimously carried to move out of executive session.

The Chair resumed the agenda items in order.

Chair's Report:

Announcements

The Chair reported that DCCA held a training for Board Chairs and that she attended. The meeting included presentations by the State Ethics Commission, Office of Information Practices, Office of Administrative Hearings, Attorney

General's Office and Regulated Industries Complaints Office. The DCCA Director stressed to everyone that their administrative rules need to be reviewed and updated every three years.

Approval of the Previous Minutes – November 7, 2011 Meeting

The Chair asked the members if they had any questions about the previous minutes.

The Vice Chair said she had not finished her review of the minutes.

The Chair deferred the minutes to the end of the meeting.

Executive Officer's Report:

2012 Legislative Session

EO Rutkowski stated that the 2012 Legislative Session is scheduled to begin in mid January. She added that bills pop up without warning or that the Boards are asked to comment on matters that could impact their licensing laws or program of work. With the infrequency with which the Board meets and short minute notices, etc. and difficulty coordinating a meeting, finding a time to gather enough Board members to constitute quorum on short notice, requirement to file an agenda 6 days before a meeting, locating a meeting room, etc. EO Rutkowski suggested that the Board designate and delegate to one Board member the authority to speak on its behalf, work with the EO on the matters and testify at the Legislative Committee hearings.

The Board members agreed by consensus that having a delegate was a good idea.

The Chair stated that due to her employment at the State Capitol, it would not be appropriate for her to be the Board's delegate.

Ms. Chock said that since she resides in Hilo, she would not be available on short notice.

The Vice Chair said that her work schedule precludes her from being the delegate.

Ms. Nagashima stated that it would be difficult for her to testify at the last minute because of her patient schedule, however, she stated that she would do her best and agreed to be the Board's delegate.

Upon a motion by Ms. Chock, seconded by the Chair, it was voted on and unanimously carried to designate and delegate to Ms. Nagashima the authority to speak on the Board's behalf and to testify at the Legislative hearings on behalf of the Board.

Correspondence: **November 1, 2011 National Certification Board for Therapeutic Massage & Bodywork (“NCBTMB”) Letter Regarding Portfolio Review**

The Board was provided with a copy of a letter dated November 1, 2011, from NCBTMB’s CEO and Chair.

EO Rutkowki stated that this is the same letter that was read by Ms. Gillespie at the Board’s last meeting.

Open Forum: None.

Applications: **Ratification List**

Upon a motion by Ms. Nagashima, seconded by Ms. Chock, it was voted on and unanimously carried to approve the attached ratification list.

Applications: **Applications**

Exam & License – Massage Therapist

Kyle Coursey

After discussion, it was moved by the Chair, seconded by Ms. Nagashima, it was voted on and unanimously carried to approve Mr. Coursey’s application.

Bonita Hensley

After discussion, it was moved by the Chair, seconded by Ms. Nagashima, and unanimously carried to approve Ms. Hensley’s request for exam waiver and her application for exam and license.

Gail Kaawa

After discussion, it was moved by the Chair, seconded by the Vice Chair, and unanimously carried to deny Ms. Kaawa’s request for reconsideration on the basis that she has failed to submit documents that the Board previously requested and that the Board reaffirms its January 27, 2011 decision to deny her application for exam and license.

Chapter 91, HRS
Adjudicatory Matters:

None.

New Business: None.

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Unfinished Business: **Rule Revisions – Title 16, Chapter 84, Hawaii Administrative Rules (“HAR”)**

EO Rutkowski reminded the Board that they received a copy of the Vice Chair’s Summary of Comments and Suggestions for Changes to Draft 10 in the August 4, 2011 Board meeting packet. The Rules Revisions Investigative Sub-Committee (“Sub-Committee”) was to consist of the Vice Chair, Ms. Nagashima and other members of the profession. The Sub-Committee was directed to bring its recommended written suggested revisions to the board meeting for discussion.

The Chair requested a report from the sub-committee.

Ms. Nagashima said she coordinated a 11/28/11 meeting via Skype and invited the Vice Chair and five members of the profession. Ms. Nagashima related that everyone accepted the invitation. Therefore, the day before the meeting when the Vice Chair informed her that she had scheduled an appointment and would not participate in the meeting, she was surprised. Ms. Nagashima stated that she proceeded with the meeting with the five members from the profession.

The Vice Chair said that while she was not present, Ms. Nagashima sent her notes on what was discussed during that meeting.

The Chair asked if she had a chance to review what Ms. Nagashima sent her.

The Vice Chair replied that she had not, however, after the meeting, she spoke to other people who had participated.

Ms. Nagashima expressed frustration at the events, and the lack of communication between her and the Vice Chair since the Sub-Committee was created.

The Chair stated that it appears that the Sub-Committee is not following the Board’s directive which was to gather members of the profession, meet, discuss Draft 10 and develop rule revisions to which the group agreed. The Sub-Committee was then to bring to the Board a written report containing the suggestions agreed to by the Sub-Committee by the Board’s designated deadline. The Sub-Committee missed the deadline and the Board granted it an extension. The Sub-Committee has, again, failed to meet the deadline. The Chair asked what the Board’s options are.

EO Rutkowski said the Board has been working on Draft 10 since 1999. The Board could submit Draft 10 into the formal system so that the agreed upon changes can be implemented. If the Board wanted to, it could immediately start discussions on rule revisions in areas that are not addressed in Draft 10. In taking this approach,

the rule revisions could move forward and the Board could continue to work on those areas that need more discussion.

The Chair said Draft 10 was not submitted because some board members were not comfortable with submitting Draft 10 as it is.

The Vice Chair said she does not want to see all of the Sub-Committee's hard work thrown out.

The Chair asked what the Board's options are.

The DAG stated that the Sub-Committee was created and given their directive by a motion. To change the Sub-Committee, the Board would need to make a motion.

The Vice Chair suggested that the Board review at least some of what the Sub-Committee has been discussing.

The Chair replied that the matter before the Board is that the Sub-Committee has not complied with the Board's directive in that the Sub-Committee has failed to submit its recommendations.

The Chair moved to remove the Vice Chair from the Sub-Committee and appoint herself on the Sub-Committee to work with Ms. Nagashima and the industry members. She asked for a second.

The Vice Chair interjected stating that she be allowed to finish commenting. She said that if the Board is considering disbanding the Sub-Committee, the Board can make the decision on the Sub-Committee's suggestions.

Ms. Nagashima disagreed stating that the Sub-Committee has not agreed upon any of the changes discussed and that the Board directed the Sub-Committee to agree on any changes before bringing its recommended changes to the Board.

The Chair stated that for whatever reason, the Sub-Committee has not met nor has it come to a consensus on recommended changes. The Vice Chair has spoken to industry members about revisions to the rules but she has not spoken to Ms. Nagashima, her fellow committee member. She did not participate in the Skype meeting but talked to some of the attendees after the Skype meeting. The Chair, noting that Ms. Chock lives on the Big Island, said she does not feel she can work with the Vice Chair but that she can work with Ms. Nagashima.

The Vice Chair said that it appears the Chair is taking one board member's side over another.

The Chair said her concerns are based on what the Vice Chair said at today's meeting. The Vice Chair herself stated that she could not make the agreed upon meeting and after the meeting, she spoke to industry members without her fellow committee member.

Upon a motion by the Chair, seconded by Ms. Chock, it was voted on and carried by a majority vote to reconfigure the Rules Revisions Investigative Sub-Committee by removing the Vice Chair and appointing the Chair in her place (The Chair, Ms. Chock and Ms. Nagashima voting "Yes", and the Vice Chair voting "No").

EO Rutkowski asked when the Sub-Committee will be providing their recommended written suggested revisions to the board meeting for discussion.

The Chair and Ms. Nagashima said they will provide the Sub-Committee's written suggestions to the Board at the Board's next meeting.

Chair's Report:

Approval of the Previous Minutes – November 7, 2011 Meeting

The Chair asked the members if they had any questions about the previous minutes.

Ms. Nagashima stated that she would like the following change to be made: On page 9, seventh paragraph, the sentence should be "The Vice Chair stated that she is not available during the last two weeks of **December**."

The Vice Chair stated that she would like the following change to be made: On page 2, under "Approval of the Previous Minutes – August 4, 2011 Meeting", sixth paragraph, the sentence should be "The Vice Chair said it was possible, however, she would like the statements to more accurately reflect **the contents**."

EO Rutkowski noted that the Vice Chair was requesting a change to the discussion regarding the approval of the August 4, 2011 Minutes.

The Vice Chair retracted her request for the change.

There being no further discussion or amendments to the minutes, Ms. Nagashima voted to approve the minutes of the November 7, 2011 meeting as amended. It was seconded by Ms. Chock, voted on and unanimously carried.

Next Meeting:

Wednesday, February 1, 2012
9:00 a.m.
King Kalakaua Conference Room
King Kalakaua Building
335 Merchant Street, First Floor

Honolulu, Hawaii 96813

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 10:17 a.m.

Taken by:

/s/ Jennifer Fong

Jennifer Fong
Secretary

Reviewed by:

/s/ Christine Rutkowski

Christine Rutkowski
Executive Officer

1/5/12

[] Minutes approved as is.

[] Minutes approved with changes; see minutes of _____.

BOARD OF MASSAGE THERAPY
RATIFICATION LIST – DECEMBER 8, 2011

MAT APPROVED FOR EXAM

Tasha A Meyer
Manya A Reinier
Sara D Schroepfer
Jessica A Nelson
Cassandra D Knight
Michelle R Robinson

Sachi Suzuki
Nicole M Masuhara
Sarah Runion-Schmidt
Sawittri Labnongsang
Edwina F Aglanao
Sarah L Duran

Bonita A Hensley
Kazuko Iwase
Juan H Kim
Stacey Livingston
Michael T Wagner

MAP APPROVED FOR PERMIT

Nancy Shockley
Debra M Jordan
George S Andrews
Kyong Min Kim
Sung Hui Reitan
Waraporn Keating
Timothy E Starbright
Patricia D Lightcap
Annalisa Alberto

Brian Simcock
Amber L Lane
Chantal A Shibley
Paula T Mason
Reut Cohen
Christopher C K Kaawa Jr
Kurt C L Go
Jeong O Hwang
Lani Dawn Thur-Fine

Kuiokalani W Hanapi
Stuart B Hayter
Deanna M Lloyd
Matthew V Abelaye
Adele R Downing
Christopher D Musslewhite
Karen S Thornton
Ruth A Ruta

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Co & Mo Massage LLC
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