

MINUTES

OFFICE OF MASSAGE/BODYWORK THERAPY

Panel Meeting

November 30, 1998

The Koger Executive Center

The Kingstree Building

110 Centerview Dr., Room 108

Columbia, South Carolina

Mr. Randall Bryant, Assistant Deputy Director of the S.C. Department of Labor, Licensing and Regulation, Office of Business and Related Services, called the meeting of the Advisory and Disciplinary Panels (hereafter referred to as "Panels") of the Office of Massage/Bodywork Therapy to order at 2:00 P.M., on Monday, November 30, 1998, at 110 Centerview Drive, Room 108, Columbia, South Carolina, with a quorum present. Members of the Advisory Panel present were as follows: Ms. Kathleen Fuller, of Lugoff; and Ms. Carolyn Talley, of Greenville. Members of the Disciplinary Panel present were as follows: Mr. Joseph Norris, of Columbia; and Ms. Teresa Lewis, of North Augusta. Absent was Ms. Susan M. Jones, of Greenwood, a member of the Disciplinary Panel.

Members of the staff participating at various times in the meeting included: Randall Bryant, OBRS-Assistant Deputy Director; Eddie L. Jones, Program Coordinator; Sarah Clingman, Staff Counsel, LLR-Office of General Counsel; Wendy Harvey, General Counsel, LLR-Office of General Counsel; Raymond Lee and Larry Hall, LLR-Investigators; Lisa Hawsey, Administrator; Shonda Johnson, Administrative Specialist; Blaine Mosher, Administrative Assistant; Dwight Hayes, Administrator-Investigations; Bill Whitby, Coordinator of Investigations; Beth Cumalander, Administrative Assistant; and Carole Chauvin, Administrative Assistant.

Members of the public audience included: Tom Ryan, Palmetto Jujitsu Academy; and Stefan Gerganoff, Inner Light Energetics.

All votes by the Panels reported in these minutes were unanimous unless otherwise indicated.

Mr. Bryant announced that the meeting was being held in accordance with the Freedom of Information Act by notice mailed to The State newspaper, Associated Press, WIS-TV and notice posted on the bulletin boards located at both of the main entrances of the Kingstree Building where the Massage/Bodywork Therapy office is located.

ASSISTANT DEPUTY DIRECTOR'S REMARKS.

Mr. Bryant asked for those present to introduce themselves. Following the introductions, Ms. Cumalander reviewed the information necessary in completing travel support documents for reimbursement of travel expenses. Panel members will receive \$35.00 a

day per diem and are paid 32.5¢ per mile for mileage. Questions concerning travel should be directed to her at 803-896-4493.

Mr. Bryant presented information (attached as Addendum A) to the Panels to give members an overview of the relationship between the two panels (Advisory and Disciplinary) and the S.C. Department of Labor, Licensing and Regulation (LLR). He reviewed the Mission Statement of LLR and the organizational structure of LLR and how the Office of Massage/Bodywork Therapy fits into that structure.

NEW BUSINESS.

1. Request from Tom Ryan, Licensed Massage Therapist

Mr. Ryan is a licensed massage therapist and owner of the Palmetto Jujitsu Academy and Healing Arts Center in Columbia. He is nationally certified with the American Oriental Bodywork Therapy Association (AOBTA) as an instructor for a non-western style of massage called Okazaki Restorative Massage. Mr. Ryan appeared before the Panels to present questions and concerns he had about the current laws governing massage and bodywork therapy. He distributed a handout (attached as Addendum B) to the Panel members wherein he presented the following six (6) questions for the Panel's review and answers or recommendations:

1. How can an oriental national examination be approved and implemented in South Carolina?
2. How can an oriental-style massage school be approved in South Carolina?
3. How can he become a CEU provider in South Carolina teaching an oriental style of massage?
4. How can the AOBTA become a recognized massage organization in South Carolina?
5. How can a massage therapy mentor ship program be created in South Carolina?
6. How can he get three individuals working with him licensed in South Carolina?

Question 1- How can an oriental national examination be approved and implemented in South Carolina?

Mr. Ryan referred to § 40-30-110 (3) which states in part that to be licensed as a massage/bodywork therapist an individual must "have received a passing grade on the National Certification Exam for Therapeutic Massage and Bodywork, or any other national examination for massage/bodywork therapy that meets the educational requirements of this chapter and have been certified by the National Commission for Certifying Agencies, or an examination that meets the standards recommended by the advisory panel as set forth in regulation by the department." This statute grants the authority for the Advisory Panel to approve other types of examinations other than the National Certification Exam in its regulations. Mr. Ryan stated that the current regulations, specifically Regulation 77-100 (2), state that the only exam currently approved is the National Certification Exam for Therapeutic Massage and Bodywork. Mr. Ryan stated this regulation effectively eliminates persons who perform the oriental style massage (non-western) from licensure unless they take a western style massage examination. Ms. Talley asked if there was a

current national oriental exam. Mr. Ryan said that currently there was not a national exam only a style specific exam administered by an approved panel member of the AOBTA. Mr. Ryan stated that oriental massage was based on oriental medicine and the National Certification Exam was based on western medicine and there was a radical difference between the two medicines. Oriental medicine is performed from a holistic standpoint with emphasis placed on learning how energy is moved and used whereas western medicine places more emphasis on knowledge about different body parts. Ms. Talley advised Mr. Ryan that 20% of the National Certification Exam is based on oriental bodywork with the other 80% being mostly Anatomy and Physiology which is taught by Mr. Ryan. Mr. Ryan stated he does teach Anatomy and Physiology but the material taught in his classes is different from the western style classes. Ms. Talley asked Mr. Ryan if the whole oriental association was in favor of licensure. Mr. Ryan stated he could only speak for himself believing that licensure was the wave of the future. Mr. Bryant deferred to Ms. Clingman for legal advice on this matter and Ms. Clingman stated the statutes provide for the Advisory Panel to approve an exam other than the National Certification Exam. Ms. Talley told Mr. Ryan the Advisory Panel was willing to consider such approval but it needed a "model" test to review before approval. Mr. Ryan stated their exams could be used to test an applicant on topics such as business, ethics, and anatomy and physiology but not in a "hands on" situation. He said other massage schools concentrated more on cell structure and minute details whereas his school concentrates on Chi, energy, spirit, etc. Mr. Bryant told Mr. Ryan that the State of South Carolina would not be financially responsible for formulating any exam but suggested Mr. Ryan submit any information he had concerning an exam and the Advisory Panel would review and consider approval of the exam. In addition, Mr. Bryant told Mr. Ryan to poll the members of his associations to ensure they are in favor of licensure and obtain letters of endorsement to present to the Advisory Panel.

Question 2 - How can an oriental-style massage school be approved in South Carolina?

Mr. Ryan stated he had applied to the Commission on Higher Education to get his school approved but had been denied because the school did not teach the National Certification Exam. Mr. Ryan presented a copy of the curriculum (included in handout) of the 500-hour national program for Okazaki Restorative Massage being taught in his school. Pursuant to the discussion previously held concerning approval of a national oriental exam, it was determined that an answer to Mr. Ryan's second question would largely depend upon the outcome of Question 1. If the Advisory Panel approves an exam, then an oriental massage school administering that exam could be considered for approval.

Question 3 - How can he become a CEU provider in South Carolina teaching an oriental style of massage?

Mr. Ryan stated he had applied with the Office of Massage/Bodywork Therapy for approval to be a CEU provider and had been denied since his school was not approved by the Commission on Higher Education. Mr. Hayes stated he had been involved in the beginning stages of the formation of the Office of Massage/Bodywork Therapy and he had worked with the Commission on Higher Education in setting up standards and

requirements for massage therapists. It was determined at that time that the National Certification Exam was the one exam that was acceptable, therefore, the Commission patterned its approval process on the curriculum for the National Certification Exam. Pursuant to that decision, the Office of Massage/Bodywork Therapy Panel adopted a policy to approve only CEU given by approved schools since the Office knew the schools had a legitimate criteria and were closely monitored. Mr. Bryant suggested Mr. Ryan submit another application to the Advisory Panel for review and if it is a legitimate association the Panel would consider approval as a CEU provider.

Question 4 - How can the AOBTA become a recognized massage organization in South Carolina?

Mr. Bryant told Mr. Ryan recognition of AOBTA in South Carolina does not fall under the jurisdiction of the Office of Massage/Bodywork Therapy.

Question 5 - How can a massage therapy mentorship program be created in South Carolina?

Mr. Ryan stated traditionally massage is taught one on one and there is currently no provision in the statutes and regulations for acceptance of post-secondary education; applicants are approved only if they attended an approved school. Mr. Ryan proposed the Panel consider allowing someone to train under a highly qualified individual who has a massage practice but is not interested in being an instructor in a school but who is willing to share his/her knowledge with someone in an apprentice-like situation. Mr. Bryant told Mr. Ryan this would be a legislative matter and suggested he submit a formal proposal to the Advisory Panel who would review the proposal to determine if it would go forward with it legislatively.

Question 6 - How can he get three individuals working with him licensed in South Carolina?

Mr. Ryan stated he had three individuals working with him who had encountered problems in getting licensed as massage therapists. Mr. Bryant told him that after his presentation LLR staff would meet with him to update him on the status of those applications.

2. Review of Massage/Bodywork Practice Act

Mr. Bryant asked if anyone needed clarification of any of the current statutes or regulations. There were no questions.

3. Sarah Clingman, Board Attorney

Ms. Clingman introduced herself and explained she was the advice attorney for the two panels and would be available for any legal advice as needed.

4. Overview of the Disciplinary Process

Mr. Bryant reviewed handouts (attached as Addendum C) regarding the Disciplinary and Complaint process utilized in all the Boards/Commissions/Panels included in the Office of Business and Related Services.

Mr. Bryant stated that all complaints have to be submitted to the office on an approved form (which are confidential) and every written complaint is investigated. Mr. Hayes and Mr. Whitby review the complaints and assign them to the appropriate investigators which may result in an inspection of the facility or additional investigative work. The investigator will perform an investigation and obtain all the information he/she can and will present that information to a review panel consisting of a member of General Counsel, the Administrator of the particular program, and a Board member of that program which, in this case, will be one of the Disciplinary Panel members. This Disciplinary Review Committee (DRC) will review the information and determine if a violation has been committed or not. If there is no violation, the case will be dismissed. If there is a violation, the Investigator will go talk to the Respondent in the case and inform them of the information on file and that there has been a violation of the law. The Respondent has two options: 1) enter into a Consent Order which is a voluntary sanction similar to a guilty plea; or 2) request a hearing before the Disciplinary Panel. After the hearing, the Disciplinary Panel would determine if there had been a violation or not. If the Panel determines there has been no violation then the case is dismissed. If the Panel determines there has been a violation, a Final Order is issued and one of five sanctions or civil penalties is placed against the individual. Mr. Bryant reviewed the five sanctions which are a private reprimand, a public reprimand, probation, suspension, and revocation. Mr. Hayes stated that restrictions can be placed on a person's practice if the Panel sanctions a licensee by putting that person on probation. Those restrictions could include such things as restricting the licensee's practice to a certain place, time, only male or only female clients, etc. The restriction(s) would have to be something appropriate to the disciplinary process.

Mr. Bryant told the Panels there is a Cease and Desist Order that is issued when unlicensed practice takes place or when a flagrant violation of the Practice Act occurs. In addition, LLR can generate complaints due to inspections or advertisements seen in the newspaper, etc. Mr. Lee showed the Panels a video-tape taken by LLR Investigators in response to a call from the Sheriff of Horry County who was having problems with prostitution in "massage" parlors. LLR guided the Sheriff through the process under the Engine Bill so these persons could be charged with an unlicensed practice violation which has a penalty of a year in jail and a maximum fine of \$50,000.00 as opposed to picking them up for prostitution which has a fine of \$200.00 which they can pay and be released that same night.

Mr. Hayes addressed the members of the Disciplinary Panel. The Panel will eventually consist of five (5) members. Panel members are judges. They hear the case, go into Executive Session to discuss the case, and come back into Public Session and make a decision on the case. It is imperative that if someone calls a Panel member and says they have heard of a licensee who may be in violation of the law that the Panel member does not in any way discuss disciplinary problems with them. If the Panel member engages in

discussion of a disciplinary matter prior to a hearing, then that member will have to recuse himself from the Panel. He advised the Disciplinary Panel members to refer persons calling them about possible violations of the law to the Advisory Panel members or the LLR staff.

He addressed the issue of what happens to a case once the Disciplinary Panel makes a decision on that case. Once a decision is made and an Order is issued, the Respondent has thirty (30) days to appeal the decision to the Administrative Law Judge Division if they have legal ground to do so. The ALJ will make a decision to either uphold the Panel's decision or to rescind the decision because it was an illegal decision. If the ALJ upholds the Panel's decision, the Respondent can appeal to the Circuit Court, from there to the Court of Appeals, and from there to the S.C. Supreme Court.

PUBLIC COMMENTS

There were no comments from the public audience.

EXECUTIVE SESSION.

The Panels went into Executive Session to receive legal advice concerning disciplinary matters. No votes were taken while in Executive Session.

RETURN TO PUBLIC SESSION.

Complaints Approval Report

In Public Session, Ms. Lewis made a motion for the Disciplinary Panel to approve the Complaint Cases Report dated November 30, 1998 (attached as Addendum D). Mr. Norris seconded the motion and it was unanimously passed.

Consent Orders

In Public Session, Ms. Lewis made a motion for the Disciplinary Panel to approve the Consent Orders listed on the report dated November 30, 1998 (attached as Addendum E). Mr. Norris seconded the motion and it was unanimously passed.

ADJOURNMENT.

There being no additional business the meeting was adjourned at 4:30 P.M.
/clc