

## **APPROVED MINUTES**

**South Carolina Massage/Bodywork Panel  
Panel Meeting  
August 23, 2013, 10:00 a.m.  
Synergy Business Park  
Kingstree Building, Conference Room 105  
110 Centerview Drive, Columbia, SC 29210**

**Meeting Called to Order** - Public notice of this meeting was properly posted at the S. C. Massage Therapy/Bodywork Panel office, Synergy Business Park, Kingstree Building and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

### **Pledge of Allegiance:**

All present recited the Pledge of Allegiance.

### **Public Notice:**

Ms. Porter announced that public notice of this meeting was properly posted at the SC Massage/Bodywork Panel office, Synergy Business Park, Kingstree Building, and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

### **Introduction of Panel Members and Other Persons Attending:**

The Panel members introduced themselves. Carolyn C. Porter, Panel Chair, Denise Van Nostran, Jenny Mitchell, Janet Shaw.

**Staff members present:** Mary League, Advice Counsel; Robbie Boland, Inspections; Sharon Wolfe, OIE; Darra Coleman, Chief Advice Counsel; Erin Baldwin, General Counsel; Sandy Lynn Beaty, Investigator; Matteah Taylor, Roz Bailey-Glover, Administrative Staff; and Cecelia P. Englert, Court Reporter.

### **Others participating in the meeting included:**

Debbie Banker, Craig Harkey, Girish Yasnik, Chameko McGee, June Cord, Ryan Gent.

Ms. Porter asked for a moment of silence to honor our troops.

### **Approval of Excused Absences**

Mr. Charlie Stricklin was absent.

### **MOTION:**

Ms. Shaw made a motion to excuse Mr. Stricklin's absence. Ms. Van Nostran seconded the motion which carried unanimously.

### **Approval of the Agenda**

Ms. Van Nostran made a motion to approve the agenda. Ms. Mitchell seconded the motion which carried unanimously.

### **Approval of Meeting Minutes: March 1, 2013**

#### **MOTION:**

Ms. Van Norstran made a motion to approve the March 1, 2013 minutes. Ms. Shaw seconded the motion which carried unanimously.

### **Approval of Meeting Minutes: March 29, 2013**

#### **MOTION:**

Ms. Van Norstran made a motion to approve the March 29, 2013 minutes. Ms. Shaw seconded the motion which carried unanimously.

#### **Chairman's Remarks – Carolyn C. Porter**

Ms. Porter stated that she will be attending the Federation of States Massage Therapists Board (FSMTB) annual meeting on September 18, 2013 in Missouri. Ms. Porter stated that she a member of a taskforce that has been working on a Model Practice Act for Massage Therapy. The taskforce consists of seven people who have been working for over a year to put together the Practice Act that will provide standards for the nation. On September 9, 2013 the taskforce will meet again. South Carolina's regulations will be included Model Practice Act as well as some of Florida's regulations. The task is also asking for comments before the Bill is submitted. The taskforce is still working on the rationale and will complete it on September 9, 2013. At the annual meeting, you can make your comments. All are welcome to attend the annual meeting on September 9, 2013.

#### **Administrator's Remarks, for Information – Matteh Taylor, sitting in for Tracey McCarley**

Ms. Taylor stated that the Panel is required to vote upon who will be attending the Federation of State Massage Therapists Boards (FSMTB) 2013 conference, being held in Baltimore, Maryland at the Sheraton Inner Harbor Hotel on October 10- 12, 2013. There was some discussion. The Panel determined that Ms. Van Norstran and Ms. Shaw will be attending the meeting.

#### **MOTION:**

Ms. Mitchell made a motion to approve two people, to attend the October 10-12, 2013 FSMTB annual meeting. Ms. Shaw seconded the motion which carried unanimously.

Ms. Taylor will provide the Panel members with the documents needed by LLR to approve the travel expense.

#### **General Counsel – Erin Baldwin & Sharon Wolfe – IRC and Disciplinary Process**

Ms. Baldwin introduced Ms. Sharon Wolfe to present information to the Panel on the IRC and Disciplinary Process. Ms. Wolfe delivered a PowerPoint presentation covering the investigative review process. Ms. Wolfe stated that when complaints come in, they are reviewed for potential violations, and if violations are found the case is assigned to an investigator. Ms. Wolfe also introduced Ms. Sandy Lynn Beaty, a new investigator, who will handle investigations for the Panel. Investigators gather pertinent information, exhibits, and witness testimony. A litigation summary report is written by the investigator and turned over to Ms. Wolfe for review. Ms. Wolfe then schedules the case for the next IRC meeting. Ms. Wolfe stated that the IRC meeting would include the attorney, the investigators, Ms. Wolfe, the Panel Administrator and the professional member. Ms. Wolfe stated that most Boards have a professional member assigned to the IRC, but at this time the Massage Therapy Panel does not have a professional member and would need to assign someone to fill that role. Once the person is approved as the public member, they will attend the next IRC meeting. Once the IRC meeting is over, Ms. Wolfe prepares a report for the next Panel meeting and will go over the cases in the report and answer any questions from

the Panel. In some cases, the IRC may be unable to work out terms and conditions of a case in a consent agreement particularly if there are statute violations. At that point those cases will require a hearing which would be handled by the Office of General Counsel for preparation and scheduling with the Panel. No complaints have been sent out for the Massage Therapy Panel at this time. If a dismissal or letter of caution is recommended by the Panel on a case, the Administrator could handle those letters. An investigator cannot have any ongoing contact with Panel members during an active investigation so that the case is not tainted as the Panel cannot have any knowledge of a case before it comes before the Panel for hearing. If someone calls a Panel member, the member should forward the call to the Administrator or suggest the person must complete a written complaint. Again, the Panel member should not hear any details about the complaint otherwise they will need to recuse themselves from the hearing. Ms. Shaw stated that the Panel has both duties for disciplinary and hearing responsibilities. The Panel now has the authority to issue disciplinary sanctions. Ms. Wolfe turned the presentation back over to Ms. Baldwin to cover the consent agreement information.

Ms. Baldwin stated that the Panel has not given LLR the authority to issue consent agreements. Other Boards have given this authority to LLR for cases that are minor, but the public has not been harmed. The individual would be given a public reprimand and a fine and this avoids having to come to a formal Panel meeting. The judgment / sanction for the consent agreement would be made by the investigator and a consent agreement signed by the licensee. The Panel would set up the disciplinary or resolution guidelines for the investigators which authorize the IRC to issue small fines for specific violations. Ms. Porter let Ms. Baldwin know that the Panel is working on assigning someone as a public member to attend the IRC meetings. Ms. Baldwin stated that the IRC public member should not be a current Panel member as this could taint a case. Ms. Baldwin recommended the Panel assign a primary and an alternate person to ensure coverage of the IRC meeting. Ms. Baldwin stated that 95 % of cases are resolved through consent agreements which would avoid a full blown hearing by the Panel. In some cases if a consent agreement cannot be reached, a memorandum of agreement (MOA) is drawn up by the Office of General Counsel (OGC) and offered to the respondent for signature. The MOA is presented at the next Panel meeting. If the MOA is not agreed upon, OGC prepares and schedules to present a disciplinary hearing to the Panel.

Ms. Porter pointed out that if the person is not a massage therapist, the Panel cannot do anything to them for practicing without a license. Ms. Baldwin stated that this was correct. However, the Administrator could still issue a cease and desist telling the practitioner they are in violation. At that point, LLR has the ability to go to the Administrative Law Judge for assistance. Through the Administrative Law Court, action can be taken against the public and sanctions can be imposed up to \$10,000 for restraint order. LLR, however, must be able to prove the case first.

Ms. Baldwin continued the presentation and pointed out that whether the respondent receives a consent agreement or a memorandum of agreement or a full blown disciplinary hearing is held, OGC would provide the respondent with a final order hearing, at which time the appropriate sanctions would be imposed by the Panel. Once the final order is given to the respondent, they may appeal the decision with the Administrative Law Court within 30 days. The Panel is again advised to be cautious and not to have any contact with the respondent. Ms. Baldwin explained that during the disposition process, the Panel members must not be informed about the case to avoid taint. Ms. Baldwin continued with the presentation and explained that selected Panel issues may also come up regarding sanctions allowed in a disciplinary matter, she further described the term "taint" and what must remain confidential, in addition to explaining the requirements for the Freedom of Information Act requests.

Ms. Darra Coleman explained that some Boards have a tailored process, and detailed disciplinary guidelines which can be extensive. Ms. Coleman encouraged the Panel to determine what their guidelines will entail, and that guidelines typically cover types of violations that happen with licensees. The Panel should set aside some time to come up with guidelines or procedures that are fair for everyone. The guidelines will not fit all cases so build in some flexibility regarding practice related issues. Ms. Debbie

Banker let the Panel know that she will send a copy of the National Organization's Ethical Provision directly to Ms. Coleman. Ms. Coleman explained that advice counsel assigned to the Panel is here to assist the Panel with explaining the Panel's authority, LLR's authority, sanctions and public and private information related to licensing.

Ms. Coleman stated that changes to the Practice Act were approved for the Panel on June 7, 2013 and that a few things are different with regards to disciplinary and advisory decisions being combined. There are five to seven members and one public member. Ms. Coleman explained that based on section 40-3-50 there are four things the Panel can do; provide advice and recommend actions regarding statutes and regulations, conduct hearings, mediate consent agreements and complaints and recommend disciplinary actions pursuant to the Practice Act. The Director of LLR has other designated responsibilities, for example; once the Panel decides on a professional member to participate in the IRC, the Panel Administrator will move with the IRC meeting. LLR, through the Director's authority, will then maintain records, accounting, submit notices to licensees, determine license eligibility, regulate exam applications for licensure, prepares administrative grading of examinations or contracts for the services. LLR is responsible for evaluation of continuing education hours, assisting the Panel to promulgate regulations, provides legal advice, draft proposed regulations, file notice of drafting and get the entire process rolling for the Panel. In addition, legal counsel can initiate an action in circuit court per section 40-30-310 (5) and (6) on behalf of the Panel. If the State pursues action through circuit court, sanctions can be imposed at a higher level. It's a similar process through the Administrative Law Court per section 40-30-22. Ms. Coleman also explained sanction requirements under section 40-33-220. Ms. Coleman let the Panel know that some Boards designate an independent hearing officer to hear cases.

Ms. Coleman went on to say that in disciplinary cases, once presented by OGC, the Panel can impose sanctions, a letter of caution, or move to dismiss the case. In addition, a private reprimand can be escalated to a public reprimand with a maximum of a \$500 fine or permanent revocation of a license. The majority of the Panel must agree to the sanctions for an action to be accepted. The Panel should keep in mind that disciplinary actions are public actions unless specified as private. Ms. Coleman also stated that the Panel can take action against a license for the use of fraudulent statements in obtaining a license, fees paid under fraudulent circumstances, lack of ethical competence, convicted of violent crime, practicing under alcohol or drugs, sustained physical disability, and is a pending danger to the public. These are all reasons for grounds under which the panel can deny licensure or impose sanctions.

Ms. Porter thanked Ms. Coleman and Ms. Baldwin for the valuable information provided to the Panel and asked Ms. Coleman to please return to the Panel at another time to complete their presentation and further discuss FOIA's. The Panel is in a time constraint and must adjourn at 12:00 noon and there are still cases to hear. Ms. Baldwin and Ms. Coleman gave their cards to the Panel members.

#### **MOTION:**

Ms. Shaw made a motion to move forward in the Agenda with item #7 and to hold off on the other LLR documents on the agenda. Ms. Mitchell seconded the motion which carried unanimously.

The LLR documents that were not covered are: OIE Massage Case Report for August 23, 2013, budget reports for June 2011 – June 2013, and the 2014 Panel Meeting Schedule.

#### **Panel member, Jenny V. Mitchell had to leave.**

#### **Budget: March – June 2013**

Item will be covered at the next Panel meeting scheduled October 18, 2013.

#### **2014 Panel Meeting Dates**

Item will be covered at the next Panel meeting scheduled October 18, 2013.

**OIE – Sharon Wolfe**

Item will be covered at the next Panel meeting scheduled October 18, 2013.

**Inspection Process – Robbie Boland**

Item will be cover at the next Panel meeting scheduled October 18, 2013.

**Old Business****Review for Approval of Out-of-State Education – Ms. Danielle Stanzione**

The license application for Ms. Stanzione has been resubmitted to the Panel for consideration.

Ms. Stanzione was not present to answer any questions regarding her application. The Panel made no determination about the application and move on to the next case.

**New Business****Review for Approval of a Background Check – Chameko McGee**

Ms. McGee appeared before the Panel and stated that her last offense was fifteen years ago. Ms. June Lordi appeared before the Panel as a character witness for Ms. McGee. Ms. Lordi stated that Ms. McGee was one of her best students and could attest to her character. Ms. McGee completed her training and graduated with honors.

**MOTION:**

Ms. Van Norstran made a motion to approve the license without conditions. Ms. Shaw seconded the motion which carried unanimously.

**Review for Approval of a Background Check – Ryan Gent**

Mr. Gent stated that his offenses took place three years ago. He was put on probation until February, 2014 and required to take a series of drug and alcohol rehabilitation classes. As of January, 2013 his follow-up for probation was complete so he attended Virginia College for Massage Therapy, but his is still on probation. Ms. June Lordi was also present to speak on behalf of Mr. Gent. Ms. Lordi stated that he was an excellent student and ready to serve his customers with a smile. She recommends he be licensed. Ms. Van Norstran was concerned that the problems were happening during his drug and alcohol rehabilitation classes. Mr. Gent stated that the conditions of his probation required him to pass the drug tests. Mr. Gent stated that he was passionate about massage therapy and wants to make a change. He has a job lined up with Health Sources of Greenville under the guidance of a Chiropractor. The practice has opened his eyes to the advantages of Massage and how he can help others. Ms. Porter let Mr. Gent know that they will go into executive session at the end of the meeting and render a determination about his license. He was welcome to wait for the determination.

**MOTION:**

Ms. Van Norstran made a motion to go into executive session for legal counsel regarding the license hearings. Ms. Shaw seconded the motion which carried unanimously.

The Panel returned from executive session where no votes were taken.

**MOTION:**

Ms. Shaw made a motion to deny the license on the grounds of Mr. Gent's ethical fitness to practice massage therapy and until the matter is resolved in February, 2014. Mr. Gent will re-appear before the Panel at the completion of his probationary period. Ms. Van Norstran seconded the motion which carried unanimously.

Ms. Porter let Mr. Gent know that the job of the Panel is to protect the public. He can return to the Panel for the February 21, 2014 session.

#### **Review for Approval of Education – Sharon Corbin**

Ms. Corbin was not present to answer any questions regarding her application. The Panel made no determination about the application and move on to the next case.

#### **Demonstration of Device for Approval in Massage Therapy Practice – Craig Harkey and Dr. Girisk Yajnik**

Mr. Harkey and Dr. Girisk appeared before the Panel to demonstrate a device that can potentially be used for deep tissue massage with vibration. Mr. Harkey stated that each session would typically last 20 minutes and the therapist hand is the application of the device. Ms. Porter invited the remaining audience to observe the demonstration. Dr. Girisk provided a small demonstration on Ms. Porter's hand. Ms. Van Norstran requested that Dr. Girisk and Mr. Harkey provide the Panel with clinical trial evidence that the device worked and wanted a technical explanation on how the device actually helps the client. Dr. Girisk could not provide a technical or clinical explanation on the device, but did state that the University of South Carolina is currently conducting a study with 60 students and the information can be shared with the Panel at a later date. Mr. Harkey stated that the device is currently used by physical therapist in the athletics field. Ms. Shaw wanted to know how the device differed from using ultra sound. Dr. Girisk stated that the device was not a sound wave that penetrates the muscle.

Ms. Van Norstran questioned the effects on the body of the therapist with prolonged use. No statistics were available. Ms. Debbie Banker from the NCB stated that the use of such a device would open issues regarding the use of electrical and impulse equipment in the massage therapy field. There would have to be a change in the laws in order to use such a device in the field of massage therapy and the panel is not willing to change their laws. Dr. Girisk stated that the device works for pain management too.

Mr. Porter stated that there were two Panel members missing today who did not get a chance to see the presentation or render an opinion. Ms. Porter asked both Mr. Harkey and Dr. Girisk to return to the Panel at a later date. Ms. Van Norstran stated that there may be a benefit to the massage therapist for using such a device, but the device would also invite unwanted risks for the therapist too. Mr. Harkey stated that the FDA classifies the device as a vibration device. Mr. Harkey stated that he would return to the next Panel meeting.

Ms. Porter suggested that after the next Panel meeting, a demonstration can be done. Mr. Harkey stated that the unit cost was \$5,000 with a lease option. Ms. Porter stated that the deferred items would be covered in the next meeting.

**Discussion – There was none.**

**Public Comments – There were none.**

#### **Adjournment**

#### **MOTION:**

Ms. Van Norstran made a motion to adjourn. Ms. Shaw seconded the motion which carried unanimously.

**The next meeting of the SC Massage/Bodywork Panel is tentatively scheduled for October 18, 2013.**