

BOARD MEMBERS:

April Whiting
 Michael Smith
 Diane Huleva
 Robin Graber
 Walter Lopez
 Sandra Anderson
 Sgt. Andrew McDermott



Nevada State Board
 of Massage Therapists
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MINUTES

The Nevada State Board of Massage Therapists (NSBMT) is scheduled to hold its regularly scheduled meeting;

DATE: **December 31, 2015**

START TIME: **9:00 am**

LOCATION:

Reno Location
Ed and Mary Alice Pine Board Room
 1755 E. Plumb Lane, Suite 130
 Reno, NV 89502

The mission of the Nevada State Board of Massage Therapists is to, through licensing and regulating the practice of massage, protect the public health, safety and welfare by ensuring that only qualified competent Massage Therapy Practitioners are licensed in the State of Nevada. It is our goal to balance the needs of the public with those of Licensed Massage Therapists, through development, implementation, enforcement, and continued improvement in the areas of therapist education, public safety, boundaries and ethics, in compliance with the highest standards set forth within the Massage Therapy Profession.

Note: Public Comment Will Be Taken at the Beginning and the End of the Meeting.

9:07 a.m.

1. Public Comment

None

2. Roll Call of Board Members

Board Members Present: Michael Smith, April Whiting, Diane Huleva, Robin Graber, and Sandra Anderson

Staff Present: Colleen Platt-Board Counsel, Lisa Cooper-Executive Director, Tereza Van Horn-Executive Assistant, Christy Brunner- Field Inspector II

3. Rescind actions taken on December 18, 2015, for Agenda Item # 8e. (For Possible Corrective Action)

- a. "Acceptance or Rejection of Resignation of Executive Director, Lisa Cooper.

Motion: Diane Huleva made a motion to rescind her initial motion on December 18, 2015, item 8e which stated: Louis Ling will review all of the application's that are submitted through the State website. Louis will randomly send each application to either Robin or Diane for review and scoring. The deadline to apply will be January 19, 2016. Robin and Diane will narrow down the applicants by February 9, 2016 and Robin will be the point person and will make the final determination of which applicants will be invited to interview at the Board Meeting on February 26, 2016. Part of the job posting will require that the candidate that is selected will be subject to a fingerprint background check.

Second: Sandra Anderson

Motion Carries Unanimously

Motion: Sandra Anderson made a motion to rescind her initial motion on December 18, 2015 item 8e. Motion was to accept Lisa Cooper's resignation effective January 4, 2016 and she will become an Independent Contractor in the Executive Director position starting January 5, 2016. The Board will pay out Lisa's sick pay provided that she does not use any sick time between December 18, 2015 and January 4, 2016. In return, Lisa Cooper will perform the Executive Director duties at the rate of \$50.00 per hour for each hour spent in the office until a replacement has been selected and trained for two weeks or April 30, 2016, whichever is sooner.

Second: Robin Graber

Motion Carries Unanimously

4. Review of resignation of Executive Director, Lisa Cooper and possible acceptance/rejection/modification of the terms of resignation (For Possible Action)

Diane Huleva, Secretary/Treasurer – Lisa, I have a question. In your resignation letter, it states you would stay as an employee right?

Lisa Cooper, Executive Director – Correct.

Diane Huleva, Secretary/Treasurer – The effective date will be two weeks after the first day of employment of the newly hired Executive Director, or until April 30, 2016?

Lisa Cooper, Executive Director – Correct.

Diane Huleva, Secretary/Treasurer - Ok. In your resignation letter you are including your full sick time and vacation time payout. What does that include?

Lisa Cooper, Executive Director – According to State Law, I would get my vacation payout when I left. I just put that in my resignation letter so all Board Members are aware of what is coming. At the Board Meeting on December 18, 2015, the Board had agreed to pay me my sick time. So I had put that in there as well.

Diane Huleva, Secretary/Treasurer – What is the total expense of your vacation and sick time payout?

Lisa Cooper, Executive Director – I would have to calculate the total.

Sandra Anderson, Board Member – So how many hours of vacation time do you have coming?

Lisa Cooper, Executive Director – At this point, I have over 300 hours of vacation time.

Sandra Anderson, Board Member – How many hours of sick time do you have? Are you still at the 240 hours or are you still accumulating?

Lisa Cooper, Executive Director – Currently, I am at 245. I am still accumulating from January 1, to whenever my last day would be.

Sandra Anderson, Board Member – Complete payout would be \$23,980.00. Is that the impact to the budget at this point?

Lisa Cooper, Executive Director – As of right now, yes.

Sandra Anderson, Board Member – Unless you take any time between now and your last day of employment?

Lisa Cooper, Executive Director – Correct, but I am still accruing until the end.

Sandra Anderson, Board Member – You are earning five hours per pay period?

Lisa Cooper, Executive Director – Sick time is five hours per pay period. Vacation is six hours per pay period.

Sandra Anderson, Board Member – Do you anticipate taking any sick or vacation time within the next two months?

Lisa Cooper, Executive Director – I have some time planned next week. At this time, nothing else is planned or anticipated.

Sandra Anderson, Board Member – At this time, if you did not potentially use any time, the Board would be looking at a payout of \$25,000.00?

Lisa Cooper, Executive Director – Somewhere around there.

Diane Huleva, Secretary/Treasurer – Regardless, your vacation time would have to be paid out?

Lisa Cooper, Executive Director – Correct.

Motion: Diane Huleva made a motion to accept resignation with full vacation and half of sick time payout.

Second: Robin Graber

Discussion: Michael Smith, Vice Chairperson - I am fully willing to accept all this. However, I do not accept or understand the statements of #3, 4, and 5. (Item 3: Staff is to report directly to the Executive Director, and the Executive Director alone. Item 4: If a Board Member has an issue/concern about any administrative duties performed by a Staff Member, the Board Member must bring those issues/concerns to the Executive Director's attention. Item 5: A Board Member is not permitted to discipline, train or act in any capacity of the Executive Director to a member of the Board Staff) I do not understand what those are there for.

Diane Huleva, Secretary/Treasurer – I cannot answer for Lisa, but I am assuming it is to keep the Board and Staff running?

Lisa Cooper, Executive Director – Correct.

Michael Smith, Vice Chairperson – But what is different between then and now? Why is this needed now? This seems to be out of context, and what are they there for?

Robin Graber, Board Member – Looks to me like it is a clarification of protocol which I have no problem with #3, 4 and 5, given the current circumstances and the state of our Board and administration. I actually appreciate the clarification.

April Whiting, Chairperson – Lisa, do you want to say anything?

Michael Smith, Vice Chairperson – Why is the clarification needed, is my question?

Robin Graber, Board Member – When is it ever not needed?

Michael Smith, Vice Chairperson – Why is it needed, is my question.

Robin Graber, Board Member – Mine is when is it ever not needed.

Michael Smith, Vice Chairperson – Let's start with my answer first, please.

April Whiting, Chairperson – So with everything going the way it has, it is probably easier. That way we do not have any issues going forward. I am just speaking as to what I think it is.

Michael Smith, Vice Chairperson – I am willing to accept this. And if we can do this offline, and discuss #3, 4 and 5 offline, I would be willing to drop my discussion. This apparently is between me and Lisa. I do not want to interrupt the resignation letter, but I do want to address this.

Lisa Cooper, Executive Director – I keeping trying to answer and I keep getting talked over, so I have just been quiet. I was informed that Louis Ling had said this was acceptable, for the Board Members to interact in training of the Staff. The purpose of the Board is not to do these things. It was never ok in the past, it is not ok to do now, it is not ok in the future. So I just wanted to make sure that was clarified, that those things are not part of the Board Member's duties.

Michael Smith, Vice Chairperson – I have a complete disagreement with #3, 4 and 5. I will discuss this afterwards.

April Whiting, Chairperson - Let's put this out on the table. Before everything happened at the last meeting, Louis Ling did direct Michael Smith that he needed to go work with the Inspectors. So that is what was said to us. Then things went in a different direction.

Lisa Cooper, Executive Director – We do have Legal Counsel available here today, if the Chair would like to discuss this.

April Whiting, Chairperson – I just think we need to have everything run smoothly right now. It's probably better to be cautious to prevent mistakes. I think it is a good thing to have clarification.

Michael Smith, Vice Chairperson - I want my disagreement to be noted.

Diane Huleva, Secretary/Treasurer – I am fine with the clarification.

Motion: Diane Huleva made a motion to accept resignation with full vacation and half of sick time payout.

Second: Robin Graber

Motion Carries Unanimously

5. **Discussion/adoption of procedure for search for Executive Director position, including possible appointment of Board Members to review and score applications and prepare final list of applicants for interviews. (For Possible Action)**

Sandra Anderson, Board Member – It seems to me that this is the exact same thing as before, just without the names of those Board Members. Is that correct?

Lisa Cooper, Executive Director – That is correct.

Motion: Michael Smith made a motion to adopt procedure for search for Executive Director.

Second: Robin Graber

Motion Carries Unanimously

April Whiting, Chairperson – Now we need to appoint two Board Members that will be working in conjunction with the Board’s General Counsel for the Executive Director search.

Robin Graber, Board Member – I would still like to remain the appointed main contact.

Motion: Sandra Anderson made a motion to elect Robin Graber and Diane Huleva as the two appointed Board Members for the Executive Director search.

Second: Michael Smith

Motion Carries Unanimously

April Whiting, Chairperson – Robin, you still want to be the appointed main contact for applicants?

Robin Graber, Board Member – That is correct.

Motion: Robin Graber made a motion to be the main point of contact for Executive Director search, followed by Diane Huleva to assist in the search.

Second: Michael Smith

Motion Carries Unanimously

Colleen Platt, Board Counsel – We need to adjust the deadline dates for the process of the Executive Director search. The job will be posted by January 5, 2016. Application close date is January 19, 2016. Review of all applications will be done by February 9, 2016. All final applicants will be interviewed at the February 26, 2016 Board Meeting.

Colleen Platt, Board Counsel – No motion needed.

6. Review/discuss/acceptance of employment of a second Board General Counsel and possible adoption of scope of work for Board General Counsel: (For Possible Action)

a. Keith Marcher-Present

Diane Huleva, Secretary/Treasurer – As of right now, what does Colleen with the Platt Law Group do for the Board?

Lisa Cooper, Executive Director – She is our General Counsel.

Diane Huleva, Secretary/Treasurer – Can we change her to Board Counsel?

April Whiting, Chairperson – I would like Colleen Platt as Board Counsel.

Michael Smith, Vice Chairperson – I would also like Colleen Platt as Board Counsel.

Sandra Anderson, Board Member – I also would like to have Colleen Platt represent the Board as our Counsel.

Colleen Platt, Board Counsel – At this point, the contract is worded in such a way, it states whenever you need my assistance, I am here to assist. The problem is if I prosecute cases, then someone else will have to sit as Board Counsel during those days. That way if there are any legal questions, the secondary Counsel would be able to assist. If you want me to continue prosecuting for you, then that is the role I will continue to do.

Lisa Cooper, Executive Director – The way we did it before with Louis Ling and Keith Marcher, it depended on what the case was. If there was a case that needed a lot of hours, then it would go to Louis because he charged a cheaper rate. If there were not that many hours, then we would give it to Keith as he charged a higher rate.

Colleen Platt, Board Counsel – I am going to remain your Counsel.

Michael Smith, Vice Chairperson - If we are going to roll with the A and B items, then we need to know how this is going to roll.

Colleen Platt, Board Counsel - If you hire another Counsel, which is what this Agenda is talking about, you have before you these two options. You have Keith Marcher and the Attorney General's Office. Then you have the ability to adapt a scope of work for that attorney. This is where you guys get to decide what that person is going to do. If it is going to be a shared duty with me, we already have a contract in place. However, if you want to utilize my services, it is already there. You need to identify the scope of service for the new attorney, that's if you decide to hire one. You would do that now.

Diane Huleva, Secretary/Treasurer – Got it. Thank you.

Sandra Anderson, Board Member – How much does Keith charge per hour?

Keith Marcher, General Public – I would offer the same rate as Colleen, \$100.00 per hour.

Sandra Anderson, Board Member – How much does the Attorney General's Office charge?

Lisa Cooper, Executive Director – They are at \$142 and change.

Sandra Anderson, Board Member – Personally, I have seen Keith in action here at the State. I would like to have Keith be our second Counsel.

Michael Smith, Vice Chairperson – I would like to disagree and go with The Attorney General's Office.

Robin Graber, Board Member – I am in favor of Keith Marcher.

Michael Smith, Vice Chairperson – I would like to keep the Attorney General's Office as second string, and that way we can keep Colleen Platt fully involved. And I completely disagree with Mr. Marcher's stances. I have to mention the outburst at last week's meeting, I found contemptable and explicitly unacceptable. Why would we want to hire somebody that calls out the Board?

Keith Marcher, General Public- I was not calling out the Board, Michael. I was calling out your attorney. I think he created a lot of confusion and chaos. It could have been avoided and I was frustrated about that. This has been my Board since its inception in 2005.

Michael Smith, Vice Chairperson - This has been my Board for the last seven to eight years as well Mr. Marcher.

Keith Marcher, General Public – Ok, well that is fine.

Michael Smith, Vice Chairperson – It is very personal for me as well Mr. Marcher, if you want to cross that line, Sir.

Keith Marcher, General Public – I am not crossing any line. I am just telling you why I said what I said. It has nothing to do with you; it had to do with your Counsel.

Michael Smith, Vice Chairperson – I am simply stating, I do not agree with Mr. Marcher and I am stating why.

April Whiting, Chairperson – Enough said. That is fine.

Michael Smith, Vice Chairperson – Thank you

Robin Graber, Board Member – We can hear you loud and clear.

Diane Huleva, Secretary/Treasurer – Sandy, was that a motion on the table?

Sandra Anderson, Board Member – I was just entertaining it. I do not know if I meant it as a motion. I do see both sides, having the Attorney General's Office represent us for the financial stand point. I can see having Keith, as he has experience with the Board.

Michael Smith, Vice Chairperson – So does the Attorney General's Office. It worked before, it will work again.

April Whiting, Chairperson – Does anyone have any questions for Keith?

Keith Marcher, General Public – The Attorney General’s Office has experience because I was the Chief then.

Diane Huleva, Secretary/Treasurer – Are you on your own Keith?

Michael Smith, Vice Chairperson – Are we interviewing this gentleman?

Robin Graber, Board Member – He is on the Agenda Michael.

Lisa Cooper, Executive Director – He would be an employee.

April Whiting, Chairperson – Keith is on the Agenda, so we can talk to him, Michael.

Michael Smith, Vice Chairperson – If we could ask him to make questions or take questions when he is asked instead of speaking out of turn. That would be awesome. He knows how this works.

Robin Graber, Board Member – We just asked him.

April Whiting, Chairperson – Go ahead and answer the question, if you would like.

Keith Marcher, General Public – I do not know what the question is.

Diane Huleva, Secretary/Treasurer – Are you on your own as an independent or are you working with the Platt Law Group?

Keith Marcher, General Public – I am not working under the Platt Law Group. I am retired from the State of Nevada effective in September of 2015. So yes, I am just on my own.

Lisa Cooper, Executive Director – He would be an employee, like Louis was.

Keith Marcher, General Public – I would be an employee, but for full disclosure, and I spoke with Colleen and Lisa and with Public Employee Retirement System, I would only be allowed to work at a part time capacity, which I think this would work.

Sandra Anderson, Board Member – When was your termination date with the State of Nevada?

Keith Marcher, General Public – My retirement date was September 18, 2015.

Sandra Anderson, Board Member – In order to employ you, I understand Louis kept saying we do not have to abide by State Laws, but the NRS does have an exclusion for former State of Nevada employees. You do have to go before the Board of Examiners.

Keith Marcher, General Public – I do not think that is right. We could have Colleen double check it.

Colleen Platt, Board Counsel – Sandy, it is not a contract, he would be an employee. Independent contracts do not go to Board of Examiners, because there is a provision that exempts Boards and Commissions from that requirement. If they are under \$50,000 then they go directly to the Clerk of Board of Examiners. They do not go before the entire Board of Examiners. This statute was put into place in 2013.

April Whiting, Chairperson – Anything else or any other discussion? Anyone want to make a motion?

Motion: Robin Graber made a motion to hire Keith Marcher as a part time employee as second Board Counsel or as needed.

Second: Diane Huleva

All in Favor: Diane Huleva, Robin Graber, Sandra Anderson

Opposed: Michael Smith

Motion Carries

b. Attorney General's Office- Not present

7. Rescind action taken on December 18, 2015, for Agenda Item #7a.

a. Board Meeting Minutes

No Action

8. Discuss/Amend/Approve Board Meeting Minutes (For Possible Action)

a. October 16, 2015

No Action

9. Review/Approve Board Meeting Dates for 2016

No Action

10. Public Comment

Billie Shea, General Public – Great meeting today, I wish you all the best. I hope you all can put aside your personal differences and work together as a team. I think you made some really good decisions today, and I think with two legal counsels that you have on board, you will go a long way. Thank you and Happy New Year.

11. Future Agenda Items

- a. Senator Spearman Project: Volunteer Massage for VA Administration
- b. Continue working on new database Administration, Inspection & Board Meeting
- c. Purchase/Rental of Vehicles for Inspection department
- d. Training of Board Members for Inspection department
- e. Job Descriptions

- f. SOP Manual
- g. 360 Reviews
 - i. H&H Strategic Partners, LLC
 - ii. Quantum Workplace
- h. Sanitation Regulations
- i. Current FuZuBa Curriculum
- j. Invitations to each school to attend Board Meetings
- k. Check the language on Continuing Education forms

12. Adjournment No Later than 4:30 PM (For Possible Action)

Motion: April Whiting made a motion to adjourn at 9:50 am.

Second: No second

Note:

1. Items may be taken out of order
2. Items may be combined for consideration by the Public Body
3. Items may be pulled or removed from the Agenda at any time.
4. The Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. (NRS 241.030)

Public Comment Agenda Item: There is a time designated at the beginning of the meeting and the end of the meeting for Public Comment. Members of the general public may bring matters not appearing on this Agenda to the attention of the Board or make comment on specific Agenda Items. The Board may discuss the matters not on the Agenda, but may not act on the matters at this meeting. If the Board desires, the matters may be placed on a future Agenda for action. In consideration of others who may also wish to provide Public Comment, please avoid repetition and limit your comments to no more than three (3) minutes.

Prior to the commencement and conclusion of a contested case or a quasi judicial proceeding that may affect the due process rights of an individual the Board may refuse to consider Public Comment.

Accommodations & Supporting Material: Nevada State Board of Massage Therapists will make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. Should special arrangements for the meeting be necessary or to obtain supporting material, please notify the Nevada State Board of Massage Therapists in writing as soon as possible at:

NSBMT
 Attn: Lisa Cooper
 1755 E. Plumb Lane Suite 252
 Reno, NV 89502

Or by phone
 (775) 687-9955

The Agenda was posted at the following places:

Grant Sawyer Building, 555 E. Washington Avenue, Las Vegas, NV
 Nevada State Library, 100 South Stewart Street, Carson City, NV
 Attorney General's Office, 100 N. Carson Street, Carson City, NV
 Attorney General's Office, 5420 Kietzke Lane, Suite 202, Reno, NV 89511
 Carson City Public Library, 901 North Roop Street, Carson City, NV
 Department of Public Safety, 500 Wright Way, Carson City, NV
 Nevada State Board of Massage Therapists Website
 Nevada State Board of Massage Therapists, 1755 E. Plumb Lane Suite 252, Reno, NV 89502
 Nevada Public Notice Website – www.notice.nv.gov