



Nevada State Board of Massage Therapy

MEETING MINUTES

LOCATIONS: Pursuant to Governor Steve Sisolak's Emergency Directive 006, there was no physical location for this meeting. Participants were able to join the meeting via Zoom.

<https://zoom.us/j/99858062211?pwd=ZUxVN3JKaGZwVXo4M2VkMzZEakdlZz09>

Meeting ID 998 5806 2211

Password 859088

SIP

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DATES AND TIMES: November 4, 2020 commencing at 9:00 a.m.
Zoom sign-in was available at 8:30 a.m.

MINUTES

Please Note: The Nevada State Board of Massage Therapy (NSBMT) may: 1) take agenda items out of order; 2) combine two or more items for consideration; or 3) remove an item from the agenda or delay discussion related to an item at any time. Reasonable efforts will be made to assist and accommodate individuals with disabilities who wish to attend the meeting. Please contact Sandy Anderson at 775.687.9951 (sjanderson@lmt.nv.gov), in advance, so that arrangements may be made. Public comment will be taken at the beginning and the end of the meeting. 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. Public comment also may be taken at other such times as requested as long as the request that public comment will not interrupt ongoing Board business. 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. The Board reserves the right to limit public comment to three (3) minutes.

Prior to the commencement and conclusion of a contested case or quasi-judicial proceeding that may affect the due process rights of an individual, the Board may refuse to consider public comment (see NRS 233B.126). Please be aware that after the quasi-judicial Board has rendered a decision in the contested case, and assuming this happens before adjournment, the Board may entertain public comment on the proceeding at that time.

1. Call to order and roll call of Board Members. Chair Diane Huleva, Vice Chair Deirdre Strunk, Secretary/Treasurer Elisabeth Barnard, Lorna Benedict, Richard Fields, Robert Oliver, Sommer Plotnick, Bianca Smith, Detective James Downing with the Las Vegas Metropolitan Police Department, Executive Director Sandy Anderson, Deputy Attorney General Justin Taruc Board Counsel and Senior Deputy Attorney General Sophia Long Board Counsel joined the meeting at 11:12 a.m. Sergeant Jorge Marty was unable to attend.
2. Mission Statement of the Nevada State Board of Massage Therapy – To protect the public health, safety, and welfare through effective massage therapy regulation. Insuring that qualified, competent, ethical practitioners are licensed.

Chair Huleva read the mission statement into the record.

3. Introduction of new Board members appointed by the Governor.

Chair Huleva congratulated Vice Chair Strunk and Public Member Fields on their reappointments.

4. Public comment – Members of the public who wish to participate in a public meeting may do so by providing public comment during the two designated public comment periods. Additionally, public comment options may include, without limitation, telephonic or email comment. (Discussion Only) Action may not be taken on any matter brought up under public comment until scheduled on an agenda for action at a later meeting. The Board will not restrict comments based on viewpoint. The opportunity for public comment will be available at the beginning and ending of the meeting.

No written public comments were received prior to the meeting, and no public comment was provided by attendees.

5. Formal Hearing Tarence Fuller – NVMT #5370 – NVMT-C-1978. (The Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person.) (For Possible Action)

Senior Deputy Attorney General Sophia Long served as prosecuting counsel. Mr. Fuller was not present and was not in the waiting room. Legal counsel provided information regarding NRS 622A.350 and respondents that fail to appear. Tereza VanHorn, Management Analyst for the Board, was sworn in and provided testimony that sufficient notice was provided via service to Mr. Fuller at the address on file with the Board.

Motioned by Bianca Smith that Mr. Fuller was given sufficient notice by NSBMT, seconded by Richard Fields. Motion carried unanimously.

Ms. Long submitted Exhibits 1 and 2 including the Register of Actions in the criminal case against Mr. Fuller in District Court where he pled guilty to felony coercion sexually motivated and documents proving Board staff's attempts to contact him.

Based on the evidence Ms. Long asked the Board to find Mr. Fuller guilty of count one and count two.

Motioned by Bianca Smith to accept the allegations against Mr. Fuller and the charging complaint as true and Mr. Fuller is in violation of count one and count two as charged in the complaint, seconded by Lorna Benedict. Motion carried unanimously.

Diane Huleva stated for the record, "My recommendation would be to revoke for life, but all we can do is ten (10) years. God Forbid that he come back before this Board in ten (10) years and all this information is for any potential new Board members. I pray that Mr. Fuller never gets a license in Nevada or anywhere else."

Motioned by Bianca Smith to revoke the license for ten (10) years and assess fines of \$5,000 for each count, seconded by Richard Fields. Motion carried unanimously.

6. Formal Hearing Lijun Shen – NVMT #449 – NVMT-C-2026. (The Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person.) (For Possible Action)

Kirk Kennedy, legal counsel for the respondent, requested this case be continued until the Board's January meeting.

7. Formal Hearing Dan Wang – NVMT #8663 – NVMT-C-2040. (The Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person.) (For Possible Action)

Senior Deputy Attorney General Sophia Long served as prosecuting counsel. Ms. Wang was not present and was not in the waiting room. Legal counsel provided information regarding NRS 622A.350 and respondents that fail to appear. Tereza VanHorn, Management Analyst for the Board, provided testimony that sufficient notice was provided via service to Ms. Wang at the address on file with the Board and that Ms. Wang had not requested a continuance in this matter.

Motioned by Bianca Smith that the Nevada State Board of Massage Therapy provided sufficient legal notice for the Complaint Notice of Hearing, seconded by Rick Fields. Motion carried.

Chair Huleva swore in Christine Brunner. Ms. Brunner provided testimony regarding the inspection and the unlicensed activity citation issued by Ms. Brunner. The report was entered as Exhibit 1, uploaded to Dropbox by Tereza VanHorn, and viewable by all Board members.

Secretary/Treasurer Barnard stated for the record, “As a licensee there is a responsibility upon the licensee to practice within the law. That responsibility includes knowing what the law is while ensuring that the laws are being followed and that unlicensed activity is not being performed by unlicensed people. I would find it challenging to believe that Ms. Wang did not know that this other individual was not licensed properly. I can argue for those violations to be true.”

Bianca Smith stated for the record, “I agree with the dismissal of count 1. With count 2, it is permitting unlicensed person to perform massage, manager or not. Since I work for my license, I am not going to allow somebody that does not have a license to do my job. I do not care where or which employer. With whatever pressure, coercion or if she was the next one in rotation and the manager had to take the appointment. If that person is not licensed to perform massage, then they should not be performing massage. As a licensee, I would not permit an unlicensed person to perform massage. If I am going to be moving forward and accept count 3, because I failed to report the unlicensed activity, I permitted the unlicensed activity.”

Motioned by Bianca Smith that all three counts are true in the Complaint Notice of Hearing and that all counts are relevant to one another, seconded by Lorna Benedict. Motion carried unanimously.

Motioned by Bianca Smith to publicly reprimand for counts one and two, impose an administrative fine for count three of \$500.00, and assess Board costs not to exceed \$1,000.00, second by Richard Fields. Motion carried unanimously.

8. Formal Hearing Kendal L. Priestly – NVMT #10263 – NVMT-S-2041. (The Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person.) (For Possible Action)

Senior Deputy Attorney General Sophia Long served as prosecuting counsel. Ms. Priestly was present. Ms. Long admitted supporting documents into the record which were approved by the Chair.

Chair Huleva swore in Kendal Priestly. Ms. Priestly provided a statement.

Motioned by Elisabeth Barnard that Ms. Priestly was in violation of counts one and two, seconded by Deirdre Strunk. Motion carried unanimously.

Motioned by Robert Oliver to revoke for one (1) year, seconded by Richard Fields. Motion carried unanimously.

9. Application Review. (The Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person.) (For Possible Action)

- a. Review Application of Jinping Chen. (For Discussion and Possible Action)

Board Member Smith recused herself from item 9.a.

Jinping Chen was present and represented by Kirk Kennedy. Translation services were provided by Wai Mei Borgel.

Ms. VanHorn presented the application to the Board. Ms. Chen's reflexology application is before you today due to potential criminal history that could not be approved administratively. Ms. Chen was previously scheduled for June 10, July 1, and August 19, 2020 for a Board application review. Legal Counsel Kirk Kennedy requested a continuance. Ms. Chen was arrested in August of 2005 for burglary in Arcadia, California and in October of 2007 for prostitution in Oakland, California. Ms. Chen plead Nolo for burglary the charge and was given 36 months' probation. The prostitution charge was dropped to disorderly conduct due to insufficient evidence. No fines, fees, or disposition available for charge. Ms. Chen is requesting to be granted a license under NRS 640C.400 or 420 and is before you today for review under NRS 640C.700. Staff's recommendation is to deny this application based on NRS.640C.700(6) & (9).

Both legal counsel and the applicant provided information, and the Board held discussion regarding the application.

Motioned by Sommer Plotnick to work only as an employee, in an establishment that holds a reflexology license, to provide hours that she is going to work, and can only work under the classification for her education. Probationary license for 5 years quarterly reports from her employer. No second was provided.

Motioned by Elisabeth Barnard to deny based on NRS 640C.700(6) and (9), seconded by Lorna Benedict. Sommer Plotnick opposed. Motion carried.

- b. Review Application of Jiazhen Zou. (For Discussion and Possible Action)

Jiazhen Zou was present and represented by Kirk Kennedy. Translation services were provided by Wai Mei Borgel.

Ms. VanHorn presented the application to the Board - Ms. Zou's reflexology application is before you today due to potential criminal history that could not be approved administratively. Ms. Zou was previously scheduled for August 19, 2020 for a Board application review. Legal Counsel Kirk Kennedy requested a continuance. Ms. Zou was arrested on July 24, 2018 for solicitation/engage in prostitution by Las Vegas Metropolitan Police Department. Solicitation/engage in prostitution was later dismissed. Ms. Zou has previously been cited twice by Nevada State Board of Massage for practicing without having a license at the same business location as the arrest. Ms. Zou is requesting to be granted a license

under NRS 640C.400 or 420 and is before you today for review under NRS 640C.700. Staff's recommendation is to deny this application based on NRS.640C.700(4)(6) and (9).

Legal counsel provided comments, and the Board held discussion regarding the application.

Motioned by Bianca Smith to deny based on NRS 640C.700(4)(6) and (9), seconded by Elisabeth Barnard. Motioned carried unanimously.

10. Board Counsel report. (For Discussion)

Ms. Long advised the Board that there are four (4) appeals before the Supreme Court.

- Xinpu Yan vs. NSBMT – Kirk Kennedy filed the opening brief.
- Haili Chen vs. NSBMT – Kirk Kennedy filed the opening brief. The Board's response is due the end of the month.
- Jia Hong Yao vs. NSBMT – Kirk Kennedy's opening brief is due at the end of the month.
- Connie Wright vs. NSBMT – The Board's opening brief is due the end of the month.

Ms. Long thanked the Board for allowing her to attend FARB.

11. Discussion and possible action regarding settlement agreements proposed by legal counsel and/or the Executive Director. (For Discussion and Possible Action)

Additional options were reviewed.

12. Discussion and possible action regarding the information shared at the 2020 Federation of Associated Regulatory Boards (FARB) Regulatory Law Seminar. (For Discussion and Possible Action)

Discussion was held regarding the Board members participation in the FARB Regulatory Law Seminar.

13. Discussion and possible action regarding participation in the 2021 FARB Forum Virtual Conference January 27-29, 2021. (For Discussion and Possible Action)

Motioned by Chair Huleva to approve up to \$5,000 for participation, seconded by Vice Chair Strunk. Motion carried unanimously.

Consent agenda items are shown in italics. The Consent Agenda contains matters of routine acceptance. The Board members may approve the consent agenda items as written or, at their discretion, may address individual items for discussion or change.

14. *Consent Agenda Items – Board members may choose to request any item listed below be pulled for discussion and possible action. Any items not pulled may be approved in a single motion to approve the consent agenda excluding pulled items. (For Discussion and Possible Action)*

- a. *Approval of applications approved and authorized by the Chairperson through September 30, 2020 (see Exhibit A). (For Possible Action)*
- b. *Discussion and possible action regarding review and acceptance of the Fiscal Year 2021 Budget verses Actual through September 30, 2020. (For Possible Action)*
- c. *Discussion and possible action regarding issuing a Board credit card to the Compliance Inspector located in Southern Nevada with a credit limit of \$500.00. (For Possible Action)*
- d. *Discuss, amend and approve Board meeting minutes for August 19, 2020. (For Possible Action)*
- e. *Discussion and possible action regarding authorization to work with Public Works to negotiate lease renewal for Reno office. (For Discussion and Possible Action)*

Secretary/Treasurer Barnard requested that 14.e. be held out for discussion.

Motioned by Elisabeth Barnard to approve 14.a.-d., seconded by Lorna Benedict. Motion carried unanimously.

Discussion was held regarding consent agenda item 14.e.

Motioned by Bob Oliver to approve item 14.e., seconded by Lorna Benedict. Motion carried unanimously.

15. Executive Director Report including but not limited to (For Discussion)

a. Financials and renewals

Executive Director Anderson advised the Board that renewals are tracking at 70% within 2-3 months after expiration. With the adjustments made earlier in the year the Board remains on budget with the reduction in travel costs offsetting the reduced revenue. As of November 3, 2020, the projected profit for Fiscal Year 2021 is \$397K with \$506K needed to carry the Board through Fiscal Year 2022 a \$109K anticipated shortfall.

Some options available to the Board if the impact from COVID-19 continues were shared and additional information was covered during the Fiscal Year 2022 budget approval agenda item.

Vice Chair Strunk shared information regarding the impact of COVID-19 on the larger spas in Las Vegas.

b. Discussion regarding Inspection Team calendar year-to-date key indicators

Investigator Brunner updated the Board regarding the status of inspections statewide and the volume of locations that have not reopened. During a 4-day team inspection effort in Las Vegas, 51 establishments were addressed. Of the 51 establishments, 20 were unsatisfactory due to non-compliance with the COVID-

19 sanitation guidelines issued in May. An additional 25 establishments were out of business, many of which were in close proximity to the strip.

c. Discussion regarding complaints and investigations key indicators

The ED and Investigator have completed and closed 99 investigations in calendar year 2020. Of those 21 cases have been brought before the Board; 17 cases have resulted in citations; 2 cases resulted in test invalidation letters being issued; 18 cases involved violations of the Governor's Directives or guidelines issued during the state of emergency; and 41 cases were closed due to either no violation of law or insufficient evidence to proceed to a hearing. For some of these cases education was provided to the licensee to ensure no repeat offenses.

Additionally, the Executive Director shared information regarding the Legislative Commission which met on October 29th. The agenda included a report from the Sunset Subcommittee regarding Bill Draft Requests. This year the Sunset Subcommittee submitted 5 bill draft requests none of which involved the Board.

16. Discussion regarding the 2020 CLEAR Annual Education Conference. (For Discussion)

Executive Director Anderson addressed participation in the virtual conference.

17. Discussion and possible action regarding approval of the Fiscal Year 2022 proposed budget. (For Discussion and Possible Action)

Financial recommendations for the Fiscal Year 2022 budget were presented accompanied by narrative information regarding the budget line items. Possible cost savings measures were addressed. Chair Huleva recommended that staff research the requirements for noticing licensees regarding license expiration and bring the information back to the Board.

Motioned by Chair Huleva to approve, seconded by Vice Chair Strunk. Motion carried unanimously.

18. Discussion and possible action regarding providing curriculum reviews of massage, reflexology, and structural integration programs for the Commission on Postsecondary Education. (For Discussion and Possible Action)

Discussion was held regarding the impact to staff and costs associated with providing this service to the Commission on Postsecondary Education.

Motioned by Elisabeth Barnard to have Postsecondary Education coordinate curriculum reviews without the assistance of Board staff, seconded by Deirdre Strunk. Motion carried unanimously.

19. Discussion and possible action regarding NSBMT Policy 8.1.1 Board Compensation and items considered business of the Board. (For Discussion and Possible Action)

After discussion, motioned by Robert Oliver to revisit in 6 months, second Lorna Benedict. Motion carried unanimously.

20. Discussion and possible action regarding hiring a lobbyist to assist the Executive Director with the 81st Session. (For Discussion and Possible Action)

Quotes provided by Kathleen Laxalt, Tom Clark, Will and Ernie Adler, and Richard Perkins were reviewed. Three of the lobbying firms presented information to the Board regarding their experience and qualifications to provide the needed assistance.

Chair Huleva disclosed that she worked with Tom Clark at R&R Partners.

Motioned by Bob Oliver to utilize the services of Kathleen Laxalt for this legislative session, seconded by Elisabeth Barnard. Motion carried unanimously.

21. Discussion and possible action regarding the proposal received by the Occupational Therapy Board for participation in a Board Administrative Collaborative. (For Discussion and Possible Action)

Motioned by Robert Oliver that the Board join the Collaborative, seconded by Elisabeth Barnard. Motion carried unanimously.

22. Discussion regarding recommended future agenda items. (For Discussion)

Items recommended included:

- a. How the Board distributes licenses.
- b. Potential reference sheet for Board members.

Chair Huleva addressed the Board regarding the upcoming expiration of her term.

23. Public comment. (Discussion Only) Action may not be taken on any matter brought up under public comment until scheduled on an agenda for action at a later meeting. The Board will not restrict comments based on viewpoint.

David Otto NVMT #103 thanked the Board for a great meeting and shared that it was a pleasure to attend.

24. The meeting was adjourned at 4:16 p.m.

Notices:

Items may be combined for consideration by the board. Items may be pulled or removed from the agenda at any time. Public comment will be taken at the beginning and at the end of the meeting. Regarding public comment no vote may be taken upon a matter raised under this agenda item until the matter itself has been specifically included on a future agenda as an item upon which action may be taken. (NRS 241.020). The Chair may allow comment on individual agenda items at her discretion. Please limit public comments to 3 minutes.

The Nevada State Board of Massage Therapy may address agenda items out of sequence to accommodate persons appearing before the Board or to aid the efficiency or effectiveness of the meeting. Interested

persons may present oral and/or written comments at the time and place of the meeting, or written comments may be sent no later than **Tuesday, November 3, 2020** to sjanderson@lmt.nv.gov or to the following address: **Nevada State Board of Massage Therapy, 1755 E. Plumb Lane, Suite 252, Reno, NV 89502. To request supporting materials, please contact: Sandy Anderson, Executive Director at 775.687.9951 or via email: sjanderson@lmt.nv.gov supporting materials are also available at the Board's office and on the Board's website http://massagetherapy.nv.gov/About/Board_Meetings/Meetings/**

Persons/facilities who want to be on the mailing list must submit a written request every six months to the Board. We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify Sandy Anderson at 775.687.9951 or sjanderson@lmt.nv.gov no later than 48 hours prior to the meeting.

In accordance with NRS 241.020, this public notice and agenda was posted on or before October 29, 2020, at the following locations:

http://massagetherapy.nv.gov/About/Board_Meetings/Meetings/
<https://notice.nv.gov>