



Oregon

Kate Brown, Governor

Board of Massage Therapists

748 Hawthorne Ave NE

Salem, OR 97301

Phone: (503) 365-8657

Fax: (503) 385-4465

www.oregon.gov/OBMT

OBMT Board Meeting Minutes January 12, 2015 *Board Office*

Attendance

Board Members:

David Fredrickson, LMT, Chair
Jon Grossart, Vice Chair
Kathy Calise, Public Member (excused)
Melanie Morin, LMT
Kelley Rothenberger, LMT
Steven Foster-Wexler, LAc, Public Health Member
Meng Chen, Public Member

Staff:

Kate Coffey, Executive Director
Ekaette Udosenata, Policy Analyst
Robert (Bob) Ruark, Compliance Manager
Lori Lindley AAG

Public: No member of the public present at this time

Call to order at 9:10am

Fredrickson called the meeting to order at 9:10 am. Roll call was performed. **Chen, Foster-Wexler, Grossart, Rothenberger, Morin** and **Fredrickson** were present, as well as **Coffey**, Executive Director, **Lindley**, AAG, **Ruark**, Compliance Manager and **Udosenata-Harruna**, Board staff.

Fredrickson asked members of the public to introduce themselves. Public present at this time were:

Adela Basayne

- 1) **Approve Amended Agenda:** **Morin** moved to approve the modified agenda which moves the Oregon Ethics Training to item number three (3) on the agenda. **Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger** and **Fredrickson. Opposed: None. Motion carries.**
- 2) **Approve amended Minutes for November 17, 2014:** **Rothenberger** moved to approve the amended minutes. **Second the motion: Morin. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Morin** and **Rothenberger. Opposed: None. Motion carries.**
- 3) **Oregon Ethics Training:** The Board received training on Ethics from the Oregon Ethics Commission.
- 4) **Directors Report**

Finances – Coffey reported on the status of the Board Budget for the first eighteen months of the 2013-15 Biennium. The board's actual revenue for December 2014 was \$5k more than the revenue projection. The majority of the surplus revenue came from renewal fees. The board spent \$7k less than was budgeted for the month of December 2014. The majority of

the under expenditure was in the category of Payroll expenses.

The board's actual revenue is within a 1% deviation from the revenue projection for the first eighteen months of the 2013-15 biennium. The board underspent expenses by \$77k for the first eighteen months of the 2013-15 biennium. The majority of the under expenditure is in the category of Payroll Expenses and Legal Fees. The board is \$32k over budget in Contract/Professional services as the board has increased the utilization of consultants/contractors. The board is \$3k over budget in the category of Investigation Expense as the board is actively implementing facilities licensing. The board is \$7k over budget in the category of Exam Supplies as we are having the vendor pick-up linens weekly, mobile cameras were purchased, and cameras have been replaced. The board is \$5k over budget in the category of travel expenses as the board has expanded their participation in FSMTB activities and the Compliance Manager is performing additional investigations.

The board will use the biennium to date savings to fund the office move and continue with the implementation of facilities licensing enforcement.

Facilities Move:

The Board received a comparison of five properties. Staff recommendation is the Front Street property as this property allows for a larger facility with a slight increase of cost, is located next to another Semi-Independent board, and allows for both a board room and an exam room. The other facilities would require the board to increase fees for the 2015-17 biennium to cover the increase in facilities costs.

3) Rothenberger moved to give the ED the authority to negotiate a new lease for the Board on the Front Street property: Second the motion: **Chen. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Morin and Rothenberger. Opposed: None. Motion carries.**

2015-17 Biennial Budget Proposal:

The proposed 2015-17 biennial budget proposal funds all expenditures includes an increase for database replacement, facilities, and professional development. The proposed budget uses \$82,796 from the beginning fund balance. The OBMT fund is projected to maintain a balance of \$300k over the course of the biennium as this balance allows the board to retain 90 days of working capital in the account. In addition, there is a CD for \$100k that the board has kept at US Bank that could be used to ensure the 90 days of working capital is maintained.

2015-17 revenues are projected to increase by approximately 2.5%. This is keeping up with the rate of inflation as economists are predicting an average rate of inflation of 2%-3% for the 2015-17 biennium.

2015-17 expenditure projections assume that staff will receive step increases and no cost of living (COLA) increases. The payroll projections for the 2015-17 biennium are less than the 2013-15 board approved budget and is a result of staff turnover. The board has continually underspent in the category of Payroll Expenses during the 2013-15 biennium.

The proposed budget covers all expenses for the 2015-17 biennium and includes \$50,000 for a database replacement, increase of \$5,000 for professional development, and an increase of \$10,000 for rent.

Foster-Wexler Moved to accept the 2015-2017 Biennial Budget proposal as presented in the Director's report: Second the motion: **Morin. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Morin and Rothenberger. Opposed: None. Motion carries.**

Cultural Competency:

The Oregon Health Authority's Cultural Competency rule became effective on January 1, 2015. This rule requires all Health Licensing Boards to report on the number of hours of cultural competency Continuing Education for licensee's no later than 30 days after the close of each biennium.

Compliance Update:

The Compliance section received 14 new cases for the month of December 2014.

There are two contested cases:

- 1) One case of 508 unlicensed practice violations – A motion for summary determination was filed on this case
- 2) One case of not adhering to the provisions of a restricted license - A pre-hearing conference is scheduled

Committee Updates:

Rules – Coffey noted that the board needs to approve the Rules with the effective date of July 1, 2015 for a Rules Hearing.

The Board discussed the proposed rules:

**Oregon Board of Massage Therapists OAR 334
Effective July 1, 2015**

PROCEDURAL RULES

334-001-0012**Budget**

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists' ~~2013-2015~~ **2015-2017** Biennium budget of ~~\$1,746,000~~ **\$1,865,000**.

Stat. Auth.: SB 1127, ORS 183 & 687.121

Stats. Implemented: Section 6, (1) & (2)

Hist.: BMT 2-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2001, f. & cert. ef. 5-29-01; BMT 2-2003, f. & cert. ef. 6-17-03; BMT 2-2005(Temp), f. & cert. ef. 6-24-05 thru 6-30-05; BMT 3-2005, f. & cert. ef. 7-1-05; BMT 1-2007, f. & cert. ef. 6-29-07; BMT 2-2007, f. & cert. ef. 7-3-07; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11, cert. ef. 7-1-11

334-001-0055**Board Member Stipend**

- 1) The Oregon Board of Massage Therapists hereby adopts a board member stipend of ~~\$100.00~~ **\$200.00** per month for each month a board member serves in their appointment
- 2) The Oregon Board of Massage Therapists hereby adopts an additional board chair **and vice chair** stipend of \$375.00 per month for each month that a member serves as board chair.

Stat. Auth.: ORS 182.460 & 687.121

Stats. Implemented: ORS 182.460 & 687.121

Hist.: BMT 1-2010, f. & cert. ef. 4-12-10; BMT 2-2010, f. 7-23-10, cert. ef. 7-26-10; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11

334-001-0060**Definitions**

- (1) "Advantageous" means in the Board's best interests, as assessed according to the judgment of the Board.
- (2) "Award" means either the act or occurrence of the Board's identification of the Person with whom the Board will enter into a Contract.
- (3) "Barter" means partial or complete trade or exchange of massage or bodywork services for any other type of goods or service other than money.

- (4) "Board" means the State Board of Massage Therapists or its authorized representatives as provided by ORS 687.115.
- (5) "Bodywork" means **forms, methods, and styles including massage, that positively influence the body through various methods that may or may not include soft-tissue deformation, energy manipulation, movement reeducation, and postural reeducation.** ~~the use on the human body, for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition of:~~
- ~~(a) Pressure, friction, stroking, tapping, kneading, vibration or stretching by manual or mechanical means or gymnastics;~~
 - ~~(b) Appliances, tools or devices;~~
 - ~~(c) Topical preparations; or~~
 - ~~(d) Hot and cold applications.~~
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- (a) Pressure, friction, stroking, tapping, kneading, vibration or stretching by manual or mechanical means or gymnastics; 8
 - (b) Appliances, tools or devices;
 - (c) Topical preparations; or
 - (d) Hot and cold applications.
- (6) "Boundary" means the limits in a professional relationship which create safety based on the needs of the client.
- (7) "Boundary violation" means an alteration or shift in the limits of a professional relationship so that what is allowed in the relationship becomes ambiguous and/or may not be based on the needs of the client.
- (8) "Caring" means acting in a manner in which things, events, people or relationships matter.
- (9) "Certified Class or program" means a class or program that is approved by the Board and is offered:
- (a) By a person or institution licensed as a career school under ORS 345.010 to 345.450; or
 - (b) By a community college or university approved by the Department of Education; or
 - (c) In another state and licensed or approved by the appropriate agency in that state.
- (10) "Client" means any individual, group of individuals, or organization to whom an LMT provides massage
- (11) "Client vulnerability" means factors which diminish a client's ability to be self-determining.
- (12) "Compensation" means something given or received as payment including but not limited to bartering, tips, monies, donations, or services.
- (13) "Conflict of interest" means any action or decision or recommendation by an LMT at the detriment of a client.
- (14) "Contact hours" means actual hours in class under the instruction of and in the **physical** presence of an instructor; **or an interactive distance learning course.**
- (15) "Contract" means an agreement for purchase, lease, rental or other acquisition or sale or other disposal by the Board of Goods or Services.
- (16) "Contract Price" means, as the context requires;
- (a) The maximum payments that the Board will make under a Contract if the Contractor fully performs under the Contract;
 - (b) The maximum not-to-exceed amount of payments specified in the Contract; or
 - (c) The unit prices for Goods and Services set forth in the Contract.
- (17) "Contractor" means the Person with whom the Board enters into a Contract.
- (18) "Critical Reflection" means a process whereby knowledge and action are connected to each other through the application of careful, conscious, deliberate reflection on:
- (a) Personal practice (perceptions, assumptions, motivations, values, behaviors).
 - (b) Assessment and understanding of a situation.
 - (c) Likely or actual consequences or impact of one's actions.
- (19) "Dual Relationship" means any relationship of a personal or business nature with a client that is in addition to or concurrent with a professional relationship in which the LMT is providing or has provided massage or bodywork services to that same client.
- (20) "Ethics" means a system of valued societal beliefs and behaviors that may be used to guide and evaluate conduct to ensure the protection of an individual's person and rights.
- (21) "Emergency" means circumstances that:

- (a) Could not have been reasonably foreseen;
 - (b) Require prompt execution of a Contract to remedy the condition; and
 - (c) The circumstances create a substantial risk of loss or revenue, damage or interruption of services or substantial threat to property, public health, welfare or safety when the circumstances could not have been reasonably foreseen;
- (22) Equivalent Credit Hours: are those credit hours as determined by the respective educational institution or its certified classes or programs
- (23) **Good moral character means**
- (a) *an applicant has not ever before the date of application, been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, required to be a registered sex offender and other similar offense which has a reasonable relationship to the practice of massage;*
 - (b) *has not ever before the date of application, been convicted of an act involving dishonest, fraud misrepresentation, gross negligence or incompetence or is not currently incarcerated or on community supervision after a period of incarceration in a local, state or federal penal institution for such an act;*
 - (c) *has not ever before the date of application, had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in the United States, or voluntarily surrendered a professional license in lieu of disciplinary action;*
 - (d) *has not ever before the date of the application, had a massage therapy license revoked or suspended by any state or national massage certifying agency.*
- (24) "Goods and Services" or "Goods or Services" means supplies, equipment, materials and services including Personal Services and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the Board is authorized by law to procure.
- (25) "Indorsement" means:
- (a) the process of evaluating and recognizing the credentials of a person licensed in Oregon in another health care specialty that includes in its scope of practice, acts defined as massage; or
 - (b) the process of evaluating and recognizing the credentials of a massage or bodywork practitioner authorized to practice massage or bodywork in another jurisdiction.
- (26) "Informed consent" means a process wherein clients have knowledge of what will occur, that participation is voluntary, and that the client is competent to give consent.
- (27) "Licensee" means any person holding a license, permit, or certificate issued by this Board; an LMT
- (28) "LMT" means a Licensed Massage Therapist.
- (29) "Massage" or "massage therapy" is defined in ORS 687.011.
- (30) "Non-Contact hours" means education hours independently acquired outside the presence of an instructor.
- (31) "Offer" means a response to a request for price quote or response to a Solicitation Document.
- (32) "Offeror" means a Person who submits an Offer.
- (33) **Professional fitness means**
- (a) *an applicant has not ever before the date of application, been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, required to be a registered sex offender and other similar offense which has a reasonable relationship to the practice of massage;*
 - (b) *has not ever before the date of application, been convicted of an act involving dishonest, fraud misrepresentation, gross negligence or incompetence or is not currently incarcerated or on community supervision after a period of incarceration in a local, state or federal penal institution for such an act;*
 - (c) *has not ever before the date of application, had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in the United States, or voluntarily surrendered a professional license in lieu of disciplinary action;*
 - (d) *has not ever before the date of the application, had a massage therapy license revoked or suspended by any state or national massage certifying agency.*

- (341) "Personal power" means recognizing and taking personal responsibility for the inherent power differential between the LMT and the client and recognizing and taking personal responsibility for the impact of professional decisions, actions and behavior on the client.
- (352) "Power differential" means the basic inequality inherent in the professional relationship between an LMT and a client in terms of who has the advantage in the relationship. The LMT is presumed to have the advantage by virtue of the authority which emerges from the role of professional and the vulnerability which is automatically part of the role of client.
- (363) "Practical Work Experience" means experience gained while employed or self-employed providing legal massage/bodywork to the public within the last five (5) years, in another state or jurisdiction.
- (374) "Practice of massage" is defined in ORS 687.011.
- (385) "Professional authority" means the power inherent in the professional role and which is derived from a combination of an LMT's specialized or expert knowledge, societal expectations, stated and unstated client expectations, and an LMT's personal power.
- (396) "Professional relationship" means the relationship established when a LMT contracts with a client, verbally or in writing, to provide any service associated with the practice of massage or bodywork.
- (4037) "Professional role" means assuming the demands and responsibilities of professional authority by taking charge of the conditions which create and maintain client safety and trust in the professional-client relationship.
- (4138) "Scope" means the range and attributes of the Goods or Services described in the applicable Solicitation Document, or if no Solicitation Document, in the Contract.
- (4139) "Solicitation Document" means an Invitation to Bid, Request for Proposal or other document issued to invite Offers from prospective Contractors.
- (4240) "Specification" means any description of the physical or functional characteristics or of the nature of Goods or Services, including any requirement for inspecting, testing or preparing Goods or Services for delivery and the quantities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained.
- (43) "Split Fee" means giving or receiving a commission or payment, either monetary or otherwise, for the referral of patients.
- (441) "Successful Completion" means the written receipt of credit from classes taken at a community college or university or the written receipt of a certificate from a program or private career school.
- (452) "Written" or "Writing" means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

Stat. Auth.: ORS 687.011 & 687.121

Stats. Implemented: ORS 687.011

Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 2-2011, f. 6-29-11, cert. ef. 7-1-11; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

MESSAGE LICENSING

334-010-0018

Criminal Background Checks, Fitness Determinations

- (1) The Board requires a criminal background check of all applicants for a massage therapist license to determine the professional fitness of an applicant. These must be provided on prescribed forms provided by the Board. Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board. The Board must submit fingerprints to the Oregon Department of State Police for checks against state law enforcement data systems and national data sources. Any original fingerprint cards ~~and/or~~ any electronic fingerprint records must subsequently be destroyed by the Oregon Department of State Police.
- (a) The Board requires completed fingerprint cards **or any submitted electronic fingerprint** of all applicants for an initial license; licensees applying to reinstate a lapsed license or licensees applying to reactivate an inactive license; and licensees under investigation to determine the professional fitness of an applicant or licensee.

- (2) These rules are to be applied when evaluating the criminal background of all licensees and applicants for a massage therapist license and conducting professional fitness determinations based upon such history. The fact that the applicant has cleared the criminal background check does not guarantee the granting of a license.
- (3) The Board may require fingerprints of any Oregon licensed massage therapist who is the subject of a complaint or investigation for the purpose of requesting a state or nationwide criminal background check.
- (4) All criminal background checks must include, but not be limited to, all available state law enforcement data systems and national data sources, unless obtaining one or the other is an acceptable alternative.
- (5) Additional information required. In order to conduct the Oregon and National Criminal Background Check and professional fitness determination, the Board may require additional information from the licensee/applicant as necessary, including but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.
- (6) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175(1).
- (7) The Board must determine whether an individual is professionally fit to be granted a license. If an individual is determined to be unfit, then the individual may not be granted a license. The Board may make professional fitness determinations conditional upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure. Except as otherwise provided in section (1), in making the professional fitness determination the Board must consider:
 - (a) Criminal background check;
 - (b) The nature of the crime;
 - (c) The facts that support the conviction or pending indictment or that indicates the making of any false statement;
 - (d) The relevancy, if any, of the crime or the false statement to the specific requirements of applicant's or licensee's present or proposed license, services, employment, position, or permit;
 - (e) Any refusal to submit or consent to a criminal background check including, but not limited to, fingerprint identification;
 - (f) Any other pertinent information requested or obtained as a part of an investigation;
 - (g) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, or permit. Intervening circumstances include but are not limited to:
 - (A) The passage of time since the commission of the crime;
 - (B) The age of the subject individual at the time of the crime;
 - (C) The likelihood of a repetition of offenses or of the commission of another crime;
 - (D) The subsequent commission of another relevant crime;
 - (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
 - (F) A recommendation of an employer.
- (8) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests, court records, Department of Motor Vehicle records, or other information that may be indicative of a person's inability to perform as a licensee with care and safety to the public.
- (9) If an applicant or licensee is determined not to be professionally fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413-470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.
 - (a) If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board must conduct a new criminal background check upon submission of a new request.
- (10) If the applicant discontinues the application process or fails to cooperate with the criminal background check process, the application is considered incomplete.

Stat. Auth.: ORS 687, 676

Stats. Implemented: ORS 181, 183, 687.041, 687.051, 687.081, 670.280

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0033

Fees

- (1) The fees are:
 - (a) \$100 per biennial renewal for initial license;
 - (b) \$50 per biennial renewal for initial license under 12 months;
 - (c) \$150 per biennial renewal for active license;
 - (d) \$50 per biennial renewal for inactive license;
 - (e) \$25 per week, up to a maximum of ~~\$250~~ **\$100**, for any late renewal;
 - (f) \$50 for exam/endorsement application processing;
 - (g) \$150 for each practical examination;
 - (h) \$100 for mailing list;
 - (i) \$10 for license reprint;
 - (j) \$10 for license verification;
 - (k) \$250 Credentialing Review;
 - (l) Current Oregon State Police Criminal Background Check Fee;
 - (m) \$50 initial facility permit;
 - (n) \$250 facility permit transfer;
 - (o) \$10 facility permit reprint and
 - (p) other administrative fees as allowed by law.
- (2) Application and licensure fees are not refundable
- (3) Examination fees are refunded only when requested in writing and either:
 - (a) the applicant is unqualified by Oregon statutes, or
 - (b) applicant requests refund postmarked at least 7 days prior to the exam.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1989(Temp), f. & cert. ef. 7-27-89; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 4-2004, f. 10-22-04, cert. ef. 1-1-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11; BMT 1-2011, f. & cert. ef. 4-21-11; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

SANITATION, FACILITY AND BUILDING REQUIREMENTS

334-020-0005

Facilities and Sanitation

- (1) Permanent and Mobile structures:
 - (a) All permanent structures and mobile facilities where a LMT routinely conducts massage and bodywork must:
 - (A) Be established and maintained in accordance with all local, state and federal laws, rules & regulations;
 - (B) Obtain a facility permit to operate:
 - (i) notify the Board office in writing, within 30 days of relocating the facility;
 - (ii) keep posted and visible to the public, the facility permit with the correct location address;
 - (C) Facilities exempted from the permit process:
 - (i) clinic or facility owned or operated by a person authorized to practice a profession by a health professional regulatory board, as defined in ORS 676.160;
 - (ii) a career school licensed under ORS 345.010 to 345.450; and
 - (iii) clinics of a board approved massage therapy program.

- (D) Provide a finished lavatory that
 - (i) Is well maintained,
 - (ii) Provides a system for sanitary disposal of waste products,
 - (iii) Is capable of being fully closed and locked from the inside,
 - (iv) Supplies hot and cold running water,
 - (v) Is supplied with liquid soap and single use towels,
 - (vi) Is supplied with toilet paper at each toilet, and
 - ~~(vii) Has a sign prominently displayed encouraging hand washing;~~
- (E) Dispose of refuse sewage in a manner described by local and state law; and
- (F) Follow applicable laws pertaining to public spas, pools, baths and showers.
 - (b) All treatment spaces must:
 - (A) Provide for client privacy, both in-house and on-site;
 - (B) Be designated as used only for massage at the time of services;
 - (C) Provide for sufficient heating, cooling and ventilation for client comfort; and
 - (D) Provide illumination during cleaning.
 - (c) The facility and treatment space must be:
 - (A) Cleaned regularly and kept free of clutter, garbage or rubbish;
 - (B) Maintained in a sanitary manner; and
 - (C) Maintained free from flies, insects, rodents and all other types of pests.
- (2) Outcall/On-site
 - (a) Any temporary location where the LMT conducts massage and bodywork, the LMT must provide and utilize:
 - (A) Safe, sanitized and well-maintained equipment, tools and preparations;
 - (B) Sanitary linen practices; and
 - (C) Client privacy practices.

Stat. Auth.: ORS 687.121 Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121 Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0012; MTB 2-1985, f. & ef. 1-23-85; MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0030; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

COMPLIANTS AND DISCIPLINE

334-040-0010

Discipline

The Board may deny, conditionally grant, restrict, suspend or revoke a license or permit, impose probation, reprimand, censure, impose remedial education or corrective actions, and/or impose a civil penalty for any of the following reasons:

- (1) Practicing massage or representing one's self as a massage therapist without a current active license issued by the Board;
- (2) Knowingly or recklessly making any false statement to the Board;
- (3) Has been the subject of disciplinary action as a licensed healthcare professional by this or any other state or territory of the United States or by a foreign country and the Board determines that the cause of the disciplinary action would be a violation under ORS 687.011 to 687.250, 687.895 and 687.991 or OAR Chapter 334;
- (4) Suspension or revocation of a license to practice massage in another jurisdiction based upon acts by the licensee similar to acts described in this section;
- (5) Knowingly or recklessly falsifying an application or continuing education statement or documentation;
- (6) Conviction of a crime in any state or jurisdiction;
- (7) The use of false, deceptive, or misleading advertising, which includes but is not limited to, advertising massage using the term "massage" or any other term that implies a massage technique or method in any private or public communication or publication by a person licensed or not licensed by the Board as a massage therapist;
- (8) Allowing the use of a license by an unlicensed person;
- (9) Presenting as one's own license, the license of another;
- (10) Practicing massage under a false or assumed name without notification to the Board;

- (11) Impersonating another massage therapist;
- (12) Assisting, employing, or permitting an unlicensed person to practice massage;
- (13) Practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive;
- (14) Practicing or offering to practice massage beyond the scope permitted by law;
- (15) The use of intoxicants, drugs, controlled substances, or mind altering substances to such an extent as to impair or potentially impair the licensee's abilities to perform professional duties in a safe manner;
- (16) Practicing massage with a physical or mental impairment that renders the therapist unable or potentially unable to safely conduct the practice of massage;
- (17) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition as required by rules of the Board;
- (18) Refusing to permit the Board or its representatives to inspect the business premises of the licensee during regular business hours;
- (19) Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to:
 - (a) Failure to furnish any requested papers or documents,
 - (b) Failure to provide in writing a full and complete explanation covering the matter contained in the complaint filed with the Board,
 - (c) Failure to respond to subpoenas issued by the Board whether or not the recipient is accused in the proceeding;
- (20) Failing to comply with an order issued by the Board;
- (21) Failure to obtain the required permits for facilities or in violation of OAR 334-010-0010.
- (22) Failure to report to the Board information that a licensee has engaged in prohibited or unprofessional conduct as required in ORS 676.150.
- (23) Unprofessional or dishonorable conduct which includes but is not limited to:
 - (a) Any conduct involving inappropriate physical contact or sexual misconduct which includes:
 - (A) Sexual abuse which is conduct which constitutes a violation of any provision of ORS 163.305 through 163.465;
 - (B) Sexual violation which is sex between the LMT and the client, whether initiated by the client or not, engaging in any conduct with a client that is sexual, or may be reasonably interpreted as sexual, including, but not limited to:
 - (i) Sexual intercourse;
 - (ii) Genital to genital contact;
 - (iii) Oral to genital contact; oral to anal contact;
 - (iv) Oral to oral contact except cardiopulmonary resuscitation; touching breasts or genitals or any sexualized body part for any purpose other than appropriate examination or treatment or where the client has refused or withdrawn consent; or
 - (v) Encouraging the client to masturbate in the presence of the LMT or masturbation by the LMT while the client is present.
 - (C) Sexual impropriety which is any behavior, gestures, or expressions that are seductive or sexually demeaning to a client; inappropriate procedures, including, but not limited to,
 - (i) Disrobing or draping practices that reflect a lack of respect for the client's privacy, deliberately watching a client dress or undress instead of providing privacy for disrobing;
 - (ii) Subjecting a client to an examination in the presence of students, assistants, or other parties without the explicit consent of the client or when consent has been withdrawn;
 - (iii) An examination or touching of genitals;
 - (iv) Inappropriate comments about or to the client, including but not limited to, making sexual comments about a client's body or clothing, making sexualized or sexually-demeaning comments to a client, comments on the client's or LMT's sexual orientation and making a request to date;
 - (v) Initiation by the LMT of conversation regarding the sexual problems, preferences or fantasies of the LMT; or
 - (vi) Kissing.
 - (b) Violating the client's rights of privacy, and confidentiality.
 - (c) photographing or filming the body or any body part or pose of a client without consent.**
 - (de)** Failure to disclose or release information about a client if required by law or on written consent of client.
 - (ed)** Intentionally harassing, abusing, or intimidating a client either physically or verbally.
 - (fe)** Any conduct or practice which could endanger the health or safety of a client or the public.

- (gf) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage.
- (hg) Exercising undue influence on a client, including promotion or sale of services, goods, or appliances in such a manner as to exploit the client for the financial gain or self-gratification of the massage therapist.
- (ih) Routinely practicing in an incompetent manner.
- (ji) Conduct which would also constitute a violation of the Oregon Unlawful Trade Practices Act.
- (kj) Practicing a modality or technique without adequate training or licensure.

Stat. Auth.: ORS 687.081 & 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; Sections (6) - (20)(h) Renumbered from 334-030-0020; BMT 2-1998, f. & cert. ef. 7-22-98; Renumbered from 334-030-0025 by BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

Morin move that the board accept the proposed rules changes and move to rules hearing with the exception of updating the budget to \$1,865,000 from 1,746,000. Second the motion: **Grossart**. **In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Morin and Rothenberger. Opposed: None. Motion carries.**

Proposed Rules to go into effect July 1, 2015

- 334-001-0060 Definitions
- 334-010-0018 Criminal Background Check, Fitness Determinations
- 334-010-0033 Fees
- 344-040-0010 Discipline
- 334-020-0005 Sanitation

5) Board Business

a) **Correspondence** – **Coffey** shared details of correspondence received at the Board office.

- **Letter to the Board by Jimenez** - She strongly opposes the discontinuation of the Oregon Board of Massage Therapists Practical Exam.

The Board directed the ED email Jimenez and thank her for her input.\

- **Letter to the Board by Meats** wanting the Board to refund his license renewal fee of his incomplete renewal application.

The Board directed the ED to email Mr. Meats that there is no provision in rule to refund licensure fees.

- **Letter to the Board by Hollis-Whiate** requesting that the board refund the \$50 late fee that was assessed to the licensee's late renewal.

The Board directed the ED to send her a letter thanking her for her input and informing her that the Board does not have a provision in the rules to refund late fees.

- **Letter to the Board by Seretan** in regards to some matter of concerns and ways that the board can take to address his concerns.

Coffey already thanked Mr. **Seretan** for his letter and the board directed no further action.

Legislative concept 706 – is now SB 298: Coffey updated the board on the status of SB 298, the board agreed to the staff recommendation of: 1) work to gain support of the PT association and if that is not achieved, to request a modification of the bill and remove the name change and endorsement portion of the bill and 2) revise the bill to 625 hours of certified classes instead of 750 that is currently in the bill.

Review of By-Laws – The Board discussed the By-Laws and agreed to have Director Coffey update the By-Laws and bring it back to a Board Meeting.

Law Exam Questions discussion – The Board discussed the law exam questions, made necessary corrections and concluded that the ED move forward with sending to the Programmer to implement an online law exam online.

North Carolina Board of Dentistry – Lindley updated the Board on the case from the North Carolina Board of Dentistry. Lindley will update the Board on the outcome of the case.

Board Laptop Upgrade – Rothenberger updated the board on the functionality of the new board tablet. After hearing Rothenberger's update, the Board concluded that it would procure six (6) more tablets as the Board Netbooks are not functioning properly.

Federation of State Massage Therapy Boards (FSMTB) Policy Clarification – Fredrickson updated the board on the FSMTB Continuing Education recommendations and the role the NCB plays in certification.

BOARDerline Topics – Coffey updated the Board on the BOARDerline topics. The Board concluded that it will no longer send out hard copies in addition to the electronic publication. **Ruark** will write an article clarifying the rules on the matter of practicing while impaired.

6) **Public Comments – Opportunity for the public to address the Board**

Public present: **Adela Basayne**

Basayne noted that she attended the meeting today to introduce herself to the Board as the new massage program director of Carrington College.

Fredrickson thanked and excused the members of the public.

Morin made a motion for a break and **Rothenberger** second the motion. In favor: **Chen, Fredrickson, Foster-Wexler, Morin, Grossart** and **Rothenberger**. Opposed: **None**. **Motion carries.**

Fredrickson called the board into Executive Session at 1:10pm.

EXECUTIVE SESSION

The Board may enter into Executive Session to discuss certain matters on the agenda pursuant to ORS 192.660(2)(f) to consider information or records that are exempt by law from public inspection, ORS 192.501(4) to review test questions, scoring keys and other data used to administer a licensing examination, ORS 192.660(2)(h) consultation with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed, ORS 192.660(2)(k) to consider information obtained as part of an investigation of a licensee or applicant by a health professional regulatory Board and ORS 192.660(2)(i) To review and evaluate the job performance of the Executive Director or staff. Prior to entering into Executive Session, the nature of and authority for holding the Executive Session will be announced.

1. **Executive Session**

a. Compliance (192.660(2)(k))

The Board returned to Public Session at 3:06pm.

2. Action on Executive Session Items**Compliance Cases**

- i. **Case 1718 – Foster-Wexler moved to issue a letter of concern. Second the motion: Grossart . In favor: Chen, Foster-Wexler, Grossart, Morin, Fredrickson. Rothenberger recused herself from voting. Opposed: None. Motion carries**
- ii. **Case 1738 – Morin moved to issue a Notice of Proposed Action for: One violation of OAR 334-040-0010 (19)(a) Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to: (a) failure to furnish any requested papers or documents. For a total civil penalty of \$1,000 and suspend the massage license until compliance is met. Second the motion: Foster-Wexler. In favor: Chen, Foster-Wexler, Fredrickson, Grossart, Morin and Rothenberger. Opposed: None. Motion carries.**
- iii. **Case 1708 – Morin moved to accept the Stipulated Agreement and Final Order negotiated by the ED. Second the motion: Grossart . In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- iv. **Case 1612 – Morin moved to accept the Stipulated Agreement and Final Order negotiated by the ED. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Fredrickson, Grossart, Morin and Rothenberger. Opposed: None. Motion carries.**
- v. **Case 1642 – Morin moved to accept the Stipulated Agreement and Final Order negotiated by the ED. Second the motion: Grossart. In favor: Chen, Foster-Wexler, Fredrickson, Grossart and Rothenberger. Opposed: None. Motion carries.**
- vi. **Case 1719 – Foster-Wexler moved to close no violation found. Second the motion: Grossart. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- vii. **Case 1727 – Morin moved Issue a Notice of Proposed Action for: One violation of ORS 687.021(1)(a) Engaging in or purport to engage in the practice of massage without a massage therapists license. For a total civil penalty of \$1000 and refer to the Chiropractic Board. Second the motion: Grossart. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- viii. **Case 1729 – Morin moved to issue a letter of concern regarding boundaries and recommend the practitioner take a boundaries class. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- ix. **Case 1662 – Morin moved to accept the stipulated Agreement and Final Order negotiated by the ED. Second the motion: Grossart. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- x. **Case 1710 – Morin moved to issue a Notice of Proposed Action for: One violation of ORS 687.021(1)(c) advertising for massage without a Massage Therapists License: One violation of ORS 687.021 (1) (b) Operating a massage facility without a facility permit. For a total civil penalty of \$2000. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xi. **Case 1723 – Morin moved to accept the Stipulated Agreement and Final Order negotiated by the ED. Second the motion: Foster-Wexler. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xii. **Case 1709 – Morin moved to accept the Stipulated Agreement and Final Order negotiated by the ED. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xiii. **Case 1728 – Foster-Wexler moved to Issue a Notice of Proposed for: Two violations of ORS 687.021(1)(c) advertising for massage without a massage therapists license. For a total civil penalty of \$2000. Second the motion: Morin. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion**

carries.

- xiv. **Case 1720 – Foster-Wexler moved to close no violation found. Second the motion: Morin. In favor: Foster-Wexler, Grossart, Morin, Rothenberger, Fredrickson. Chen recused herself from voting. Opposed: None. Motion carries.**
- xv. **Case 1684 – Morin moved to close no violation found. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xvi. **Case 1732 – Foster-Wexler moved to Issue a Notice of Proposed Action for: One violation of OAR 334-040-0010 (23)(g) Exercising undue influence on a client in such a manner as to exploit the client for financial gain of the massage therapists: One violation of OAR 334-040-0010 (19)(a) Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to: (a) failure to furnish any requested papers or documents: One violation of OAR 334-010-0025(8) failure to display license in a location clearly visible to their clients: One violation of OAR 334-010-0025(7) failure to notify the Board office in writing of any change of residence, business, email or mailing address within 30 days of change of address: For a total civil penalty of \$4000. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xvii. **Case 1739 – Grossart moved to close with no violation found. Second the motion: Morin. In favor: Chen, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xviii. **Case 1741 – Foster-Wexler moved to Issue a Notice of Proposed Action for: One violation of ORS 687.021(1)(a) Engaging in or purport to engage in the practice of massage without a massage therapists license. For a total civil penalty of \$1000 and refer to the Chiropractic Board. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Rothenberger. Fredrickson recused himself from voting. Opposed: None. Motion carries.**
- xix. **Case 1742 – Morin moved to Issue a Notice of Proposed Action to suspend Licensee's Massage Therapists License for one violation of: Failure to comply with an Order issued by the Board, until Licensee comes into compliance. Second the motion: Grossart. In favor: Chen, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xx. **Case 1711 – Morin moved to accept the Stipulated Agreement and Final Order negotiated by the ED. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xxi. **Case 1735 – Foster-Wexler moved to Issue a Notice of Proposed Action for: One violation of ORS 676.150 (3) Failure to report an arrest or conviction to the Board. For a total civil penal of \$1000. Second the motion: Morin. In favor: Chen, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xxii. **Executive Session Closed Case Report None – Morin moved to accept the executive session closed case dated January 8, 2015 containing no cases as submitted in Exhibit 1. Second the motion: Grossart. In favor: Chen, Foster-Wexler, Grossart, Rothenberger**

3. Public Compliance Action

- a) **Public Session Closed Case Report – Morin moved to accept the executive session closed case dated January 8, 2015 submitted in Exhibit 2. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

Case No. 1619

Allegation: Unlicensed Practice

Closed: Civil Penalty Assessed

Case No. 1688

Allegation: Unlicensed Practice, And Unlicensed Advertising

Closed: Civil Penalty Assessed

Case No. 1696

Allegation: Unlicensed Practice

Closed: Civil Penalty Assessed

Case No. 1706

Allegation: Unlicensed practice

Closed: Civil Penalty Assessed

Case No. 1649

Allegation: CE Audit Failure: Failure to provide docs to the Board

Closed: Civil Penalty Assessed and Paid

Case No. 1715

Allegation: Unlicensed Practice

Closed: Civil Penalty Assessed and Paid

Case No. 1726

Allegation: Abuse of Alcohol/Drugs/ Conviction of a Crime

Closed: Civil Penalty Assessed

Case No. 1707

Allegation: CE Audit Failure

Closed: Suspended

Public Forum – Opportunity to share thoughts that pertain to agenda items – There were no members of the public present.

4. Announcements

Next meeting will be on March 9, 2015 in Salem, Oregon.

12) Adjourn Meeting – Morin moved to adjourn the meeting. **Second the motion: Rothenberger.** In favor: **Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson.** Opposed: **None.** Motion carries.

The meeting was adjourned at 3:19 pm.