



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

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OBMT Board Meeting Minutes

March 17, 2014

Board Office

Attendance

Board Members:

David Fredrickson, LMT, Chair

Jon Grossart, LMT

Melanie Morin, LMT

R. Craig McMillin, Public Member

Kelley Rothenberger, LMT

Steven Foster-Wexler, LAc, Public Health Member

Staff:

Kate Coffey, Executive Director

Ekaette Udosenata, Policy Analyst

Robert (Bob) Ruark Compliance Manager

Public:

Neil Pinholster

Todd Pennington

Jan Jones

Regina Callahan

Lisa Garofalo

Nicholas Chrones

Mary Seamster

Wendy Hodsdon

Erica Baern

Adela Basayne

Call to order

Fredrickson called the meeting to order at 9:08 am. Roll call was performed. Calise (excused), Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson were present, as well as Coffey, Executive Director, Ruark, Compliance Manager and Udosenata, Board staff.

Fredrickson asked members of the public to introduce themselves. Public present at this time were Baern, Basayne, Callahan, Chrones, Garofalo, Hodsdon, James, Pennington, Pinholster, and Seamster.

1) Approve Agenda: Grossart moved to approve the agenda. Second the motion: Morin. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

2) Approve Amended Minutes for January 13, 2014: Grossart moved to approve the minutes with amendment of removing LMT from public member names. Second the motion: Morin. In favor: Fredrickson, Foster-Wexler, Grossart, McMillin, Morin and Rothenberger. Opposed: None. Motion carries.

3) Directors Report

Finances – Coffey reported on the status of the Board finances from July 2013 through February 2014. February 2014 the Board received \$5k less revenue than was budgeted for the month of February 2014. All categories of revenue were slightly less than budgeted with the exception of civil penalties as the Board is actively pursuing those amounts owed to the Board. The Board spent \$1k less than was budgeted for the month of February 2014. The majority of the under expenditure was in the category of payroll expenses. The Board is overspent in the categories of legal fees, computer expenses, and examiner payments. The large expenditure in exam supplies is the payment of

\$2000 to ODOT for the Oregon Practical Exam video. The category of In-State travel is slightly over spent by \$900 as the compliance manager is spending a portion of his time investigating complaints and has incurred travel expenses. This results in an increase in travel expenses and should result in future decreases of investigation expenses.

Biennium to date, the Board received \$16k less revenue than was budgeted for the first eight months of the 2013-15 biennium. The Board underspent expenses by \$27k for the biennium to date. The majority of the under expenditure is in the category of Payroll Expenses. The Board is \$8k over in legal expenses and there was one case scheduled for a contested case hearing but it was settled.

Removal of Public Records – Coffey updated the Board that the Feb. 2014 legislative session contained a bill that was heard in the House Health Care Committee. This bill would allow removal of discipline records from the Dental Board's public web-site. Several health licensing professional associations began lobbying the committee to allow other health professional licensing agencies for inclusion into this bill. Rep. Greenlick, Committee Chair, instructed the Dental Board and the health licensing associations to meet over the summer and come up with a recommendation for the 2015 Legislative Session that would be inclusive of all health licensing boards. A task force is being formed to determine what the recommendation should be to the House Health Care Committee for the 2015 legislative session.

Secretary of State Audit Report – Coffey updated the Board on the Secretary of State Audit Report on Health Professional Regulatory Boards. There are two recommendations 1) criminal background checks and 2) the Governor's Office to provide additional operational support and board member training. The Oregon Board of Massage Therapists has already implemented criminal background checks for both initial licenses and renewals. The Governor's office has put together a task force and Coffey has been invited to be a part of the task force to come up with reporting requirements to increase the oversight provided by the Governor's offices.

Compliance Update – Coffey updated the Board that during the month of February 2014 the board entered into three settlement agreements for the voluntary surrender of a license. These three cases were of interest to the media and have resulted in news articles. In each of these cases the Compliance Manager was able to negotiate a surrender of license in lieu of emergency suspension. If they are exonerated of the criminal charges then they may apply to have their license reinstated.

Fredrickson congratulated Robert Ruark on his exceptional work in effecting changes in a short period of time and protect public interest and the reputation of the Board.

4) Committee Updates

- a) **Rules Committee - Kate reported** on the progress of the committee and updated the Board on the changes made to the CE recommendation at the February Rules Committee Meeting. She provided a summary document detailing the tasks that the committee worked on to the Board. The Rules committee came up with modification of criminal background check as the state is moving to electronic fingerprints, modified contact hour definition to include in the physical presence of instructor or an interactive distance learning course per Education Committee recommendation and made a definition for noncontact hour as there was none before. Licensure section modified to reflect the changes for electronic fingerprints. To reactivate a license, the Rules committee recommended 6 contact hours in ethics. The late fee has been modified to cap at \$100 for late fees. **Coffey requested** the Board to make a decision on what action the Board would like to take.

Fredrickson noted that most of the other State Health Licensing Boards that require CE do not allow CEs for business classes. The massage industry is growing in professional recognition and it is positive for the board to ask its Licensees to take classes in business to support this and in insurance billing as **Fredrickson** believes that this is justification in including this.

The Board discussed and approved everything on the proposed rules change with the exception of the Continue Education. The Board agreed that the CE portion of the rules will be discussed at the May, 2014 Board Meeting.

McMillin moved to approve all of the proposed change except for section (334-010-0050) that deals with Continue Education: **Second the motion: Morin. In favor: Fredrickson, Foster-Wexler, Grossart, McMillin and Rothenberger. Opposed: None. Motion carries.**

b) Practical Exam Task Force - Rothenberger updated the Board on the progress of the exam task force and noted that the task force is working on developing an exam that will be applicable. The task force is leaning towards creating something that can be evaluated in that term and also looking at the legalities and still in the process of narrowing down the options. The exam task force will provide the Board with a written report for the May Board Meeting.

5) Board Business

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

- **Letter by Hanna Wharton** to the Board regarding the waving of late fees. The Board reviewed and discussed the letter from Hanna Wharton and concluded that the Board cannot wave the late fees as requested from Hanna Wharton.
- **Letter to the Education committee by Stephenie Knutson** regarding the continue education and ethics and importance of body centered therapy or psychotherapy for CE. The Board concluded that they will discuss this matter during the May Board meeting.
- **Letter from the Real Estate Commission and the Chiropractic Board** to the Board requesting investigation reports.

McMillin move to give the ED authority to approve both request from the licensing agencies; **Second the motion: Morin. In favor: Fredrickson, Foster-Wexler, Grossart, McMillin and Rothenberger. Opposed: None. Motion carries.**

b) Legislative Initiative for 2015 – The Board agreed to move the discussion of legislative initiative to the May, 2014 Board meeting.

c) Cranialsacral Therapy – The Board listened to the presentation from both the Biodynamic Craniosacral Therapists Association of North America (BCTA/NA) and the Milne Institute Inc.

Neil Pinholster Noted that he has been a bodywork practitioner for 37 years. He is a member of the Biodynamic Craniosacral Therapy Association of North America (BCTA/NA) and at the present time, cannot practice cranialsacral because he is not a licensed massage therapist even though, he has over 2000 hours of formal studies and more than 10000 clinical sessions. He noted that, AMTA defines massage therapy as a manual soft tissue manipulation of which, the practitioner applies manual techniques with the intension of positively affecting the health and wellbeing of the client. He noted that biodynamic therapy uses very light touch, less than the weight of a nickel. Patient is fully clothed during Biodynamic Cranial Sacral Therapy (BCST) and it does not fit in the classification of Massage Therapy. He noted that, in the AMTA government relation overview, it stated that, a baseline massage therapy practice act should

provide exemption from licensure for any person whose practice is not conducted in a way to imply that, it is the practice of massage therapy or does not hold out to the public that, the practice is massage therapy. He stated that, nothing in the article should construed to prevent or restrict the practice of any person in the state who uses touch to effect the energy system of the human body while, they are within the scope of practice of a profession with establish standard and ethics provided that the services are not designated or implied to be massage or massage therapy. A practitioner must be recognized by or meet the established standard of either a professional organization or credentialing agency that represent or certify a respective practice based on a minimum level of training, demonstration of competency and inherit diploma through ethical standards. The BCTA is a professional organization with clear standard of practice and ethic codes and clear procedure of handle grievance. He noted that he is here today to request consideration for exemption of biodynamic cranialsacral therapy only not for all cranialsacral practitioners.

Representatives from the Milne institute noted that there are distinctions between the different types of cranialsacral. They requested that they would like people who have taken the two year program to be recognized not just the massage therapists who have taken a few cranialsacral classes. Having esteem recognition by the Board for the people who have gone through a rigorous training to acquire the certification will be greatly appreciated. The program is hands on, centered and a very high caliber training. They also noted that, they have in place grievance process to address issues and misconducts. They are here today to ask for exemption for Milne institute visionary cranial sacral certified practitioner to be exempt from the Oregon Board of Massage Therapists.

The Board discussed and concluded that the two representatives need to demonstrate to the Board the modalities in question. The Board cannot exempt any modality that uses any form of touch without witnessing a demonstration. The Board agreed to give the representatives time to show their work and be given due process and consideration at the July, 2014 Board meeting.

Grossart motion to take a short break; Second the motion: Foster-Wexler. In favor: Fredrickson, Foster-Wexler, Grossart, McMillin and Rothenberger. Opposed: None. Motion carries.

Fredrickson reconvene the meeting at 10:11am

- a) **Strategic Plan - Coffey updated** the Board on all the action plans and went over the action plans. The board discussed the licensing process and survey questions and agreed to move the proposed survey and licensing process to May 2014 Board meeting.
- 6) **BOARDerline** – the Board discussed possible topics for the BOARDerline. Renewal due date, 2014 Legislative update effective July 1, 2014, Facility Permit update, Compliance Information/data, and an introduction of the New Compliance Manager. The next BOARDerline will be published in April or May of 2014.
- 7) **Public Comments** – Opportunity for the public to address the Board

Chrones (3887) noted that he is present on behalf of the massage program and faculty at Lane Community College (LCC). He is here today to request that, the Board consider a legislative initiative to increase the required hours or move the hours into the rules so that, the Board can be more responsive to what is going on in the profession.

Garafolo noted that she is disappointed that the CE rules have been moved to a later implementation date. Will like feedback from the Board on any decision made in regards to Continuing Education.

Baern requested that when the Board considers exemption, the Board should ask very clearly what is stimulating the request for exemptions. Instead of splintering modalities, the Board can find a way to bring people in and avoid

exempting people because, they simply do not want to be a massage therapist or take the practical examination. She also questioned if there are things that the Board can do, to maintain the integrity of the Board and bodywork professions. She recommended that the Board need to talk to groups seeking exemptions to ensure that measures are taken to encourage groups to remain inclusive not exclusive.

Fredrickson thanked and excused the members of the public

Fredrickson called to enter into Executive Session at 10:45pm.

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. Practical Exam (192.501(4))
- b. Compliance (192.660(2)(k))

The Board returned to Public Session at 2:29 pm.

2. Action on Executive Session Items

Practical Exam Appeal

- i. Exam Appeal AA – McMillin moved no action and current score remains. **Second the motion: Morin. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- ii. Exam Appeal AB -- McMillin moved no action and current score remains. **Second the motion: Morin. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- iii. Exam Appeal AC -- McMillin moved no action and current score remains. **Second the motion: Morin. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

Compliance Cases

- i. Case 1436 – Rothenberger moved Grant request from Licensee's Peer Supervisor to release licensee from Probation and Peer Supervision and to amend the stipulated agreement and final order in case 1436 to indicate licensee shall be placed on probation through 04/16/2014 versus 07/31/2014. **Second the motion: Morin. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries**
- ii. Case 1580 – McMillin moved Accept the Stipulated Agreement and Final Order negotiated between the ED and the Licensee. **Second the motion: Morin. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- iii. Case 1614 – Rothenberger moved to issue license to applicant without stipulations. **Second the motion: Grossart. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- iv. Case 1593 – McMillin moved to accept the order of surrender of license. **Second the motion: Morin. In favor: Foster-Wexler, Grossart, McMillin, Morin and Rothenberger. Fredrickson is abstained from the vote. Opposed: None. Motion carries.**
- v. Case 1624 – Rothenberger moved to Issue license to applicant without stipulations. **Second the motion: McMillin. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

- vi. Case 1601 – **McMillin moved** to close with no violation found. **Second the motion: Morin. In favor: Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- vii. Case 1625 – **Foster-Wexler moved** to issue license to applicant with stipulation. **Second the motion: Rothenberger. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- viii. Case 1605 - **Foster-Wexler moved** to issue a letter of concern to Licensee, reminding the Licensee of the laws that govern the release of client records and the importance of confidentiality and preservation of client records. **Second the motion: Grossart. In favor: Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- ix. Case 1606 - **Morin moved** to close, unable to substantiate. **Second the motion: Rothenberger. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- x. Case 1608 - **Morin 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 therapist license for a total civil penalty of \$1000. **Second the motion: Rothenberger. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xi. Case 1609 - **McMillin 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 therapist license, and; One Violation of ORS 687.021 (1) (c) Advertising massage without a license for a total civil penalty of \$2000. **Second the motion: Morin. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Grossart is abstained from the vote. Opposed: None. Motion carries.**
- xii. Case 1610 - **McMillin moved** to issue a Notice of Proposed Action for: One violation of ORS 687.021 (1), engaging in or purporting to be in the practice of massage without a license; For a total civil penalty of \$1000. **Second the motion: Grossart. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xiii. Case 1611 – **McMillin moved** to accept the Stipulated Agreement and Final Order of Voluntary Surrender. **Second the motion: Morin. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xiv. Case 1613 – **Morin moved** to close case with no action taken. **Second the motion: Rothenberger. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xv. Case 1618 – **Foster-Wexler moved** to accept the Stipulated Agreement and Final Order for Voluntary Surrender. **Second the motion: Morin. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xvi. Case 1619 – **Morin moved** to issue a Notice of Proposed Action for: One Violation of ORS 687.021 (b) for operating a Massage Facility without a permit issued by the Board. One Violation of OAR 334-040-0010 (12) for Assisting, employing, or permitting an unlicensed person to practice massage for a civil penalty of \$2000. **Second the motion: Grossart. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xvii. Case 1620 – **Morin moved** to issue a Notice of Proposed Action for: One Violation of ORS 687.021 (b) for operating a Massage Facility without a permit issued by the Board. One Violation of OAR 334-040-0010 (12) for Assisting, employing, or permitting an unlicensed person to practice massage for a civil penalty of \$2000. **Second the motion: Grossart. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xviii. Case 1621 – **Morin moved** to issue a Notice of Proposed Action for: One Violation of ORS 687.021 (1) (a) Engage or purport to engage in the practice of massage without a massage therapists license for a civil penalty of \$1000. **Second the motion: Grossart. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xix. Case 1616 – **Morin moved** to close case with no violation found. **Second the motion: McMillin. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xx. Case 1626 – **McMillin moved** to accept the Interim Consent Order of Licensee and continue investigation. **Second the**

motion: Rothenberger. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

xxi. Case 1529 – Foster-Wexler moved to accept the Stipulated Agreement and Final Order negotiated between DOJ and the Licensee. Second the motion: Morin. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

xxii. Executive Session Closed Case Report – Morin moved to accept the executive session closed case report as submitted in Exhibit A. Second the motion: Foster-Wexler. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

Case No. 1528

Allegation: Other **Closed: No Violation Found**

Case No. 1607

Allegation: Failure to pay child support **Closed: Compliance Met**

Case No. 1520

Allegation: Failure to provide documents to the Board **Closed: Compliance Met**

Case No. 1552

Allegation: Failure to provide documents to the Board **Closed: compliance Met**

Case No. 1534

Allegation: CE Audit Failure **Closed: Duplicate Case**

Case No. 1595

Allegation: Conduct or Practice Injury **Closed: Duplicate Case**

Case No. 1483

Allegation: Other **Closed: Respondent Unreachable**

Case No. 1590

Allegation: Unlicensed Advertising **Closed: Respondent Unreachable**

3. Public Compliance Action

a) Public Session Closed Case Report – None

Case No. 1541

Allegation: Unlicensed Practice **Closed: Civil Penalty Assessed and Paid**

Case No. 1556

Allegation: Unlicensed Practice **Closed: Final Default Order**

Case No. 1571

Allegation: Unlicensed Practice **Closed: Final Default Order**

Case No. 1589

Allegation: Unlicensed Advertising/Practice **Closed: Final Default Order**

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 May 16 and 17, 2014 in Grants Pass, Oregon.

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

The meeting was adjourned at 2:40 pm.