



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

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OBMT Board Meeting Minutes
May 16-17, 2014
Rogue Community College-North Café
3345 Redwood Hwy
Grants Pass, Oregon 97527

Attendance

Board Members:

David Fredrickson, LMT, Chair
Kathy Calise, Vice 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
Lori Lindley AAG (present over the phone on 5/16/2014 and absent on 5/17/2014)

Call to order

Fredrickson called the meeting to order at 10:00 am. Roll call was performed. **Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger** and **Fredrickson** were present, as well as **Coffey**, Executive Director, **Lori Lindley**, AAG (present over the phone on 5/16/2014 and absent on 5/17/2014), **Ruark**, Compliance Manager and **Udosenata**, Board staff.

Public:	D. Angus Vail	Trout America	Peter Frothingham	Donneta Grizzell	Tina Haemmerlein
	Tara Humbert	Genna Southworth	Lisa Garofalo	Susan Boyce	April Neufeld
	Courtlandt Jennings	Mandi R Feetham	Tiffany Clarkin	Roxanne Few	Victoria Wood
	Hannah Finear	Colton Songszer	Brittney Boren	Serra Huggins	Taylor kight
	Brandi Ewart	Amanda Rhein	Jenny Garcia	Cheyenne Vazquez	Andrea Urias
	Sarah Moses	Amber Liebes	Cheryl Andersen	Marronne Arasmith	Nicole Mitchell
	Maya Smith	Alese Kester			

Fredrickson asked members of the public to introduce themselves. Public present at this time were **Vail, Humbert, Jennings, Finear, Ewart, Moses, Smith, America, Southworth, Feetham, Songster, Rhein, Liebes, Kester, Frothingham, Garofalo, Clarkin, Boren, Garcia, Andersen, Grizzell, Boyce, Few, Huggins, Vazquez, Arasmith, Haemmerlein, Neufeld, Wood, Kight, Urias, and Mitchell.**

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

Fredrickson thanked and excused the members of the public

Fredrickson called to enter into Executive Session at 10:05am.

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.

2. Executive Session

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

The Board returned to Public Session at 11:27 am.

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

3. Lunch, Tour, and interaction with Massage School Students

4. **Q and A with the Board** - The board conducted a question and answer session with the massage school students and other members of the public. During this session McMillin asked the public what they thought about the Oregon Practical Exam. One person expressed that massage therapy is a profession based on physical touch and people need to prove that they can do this safely. Another noted that the Board should have a practical exam because "we have to show skills not just in a written exam but in a practical exam as well. The practical exam demonstrates a person's skills in a manner that is safe for the public. The practical exam allows a person to demonstrate practical skills not just knowledge base."

The Board enters into Public Session at 1:33 pm.

5. **Approve Minutes from March 17, 2014: Calise moved** to approve the minutes with amendment to include the correction for the names of Lisa Garofalo and Jan Jones. **Second the motion: Morin. In favor: Calise, Fredrickson, Foster-Wexler, Grossart, McMillin, Morin and Rothenberger. Opposed: None. Motion carries.**

6. Board Business

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

- **Fredrickson** noted that the Board is going to discuss and vote on proposed rules changes and the Board has a lot of correspondence related to the proposed changes particularly in the CEU area. The board also had considerable feedback based on the categories being suggested for continue education and the methods in which they are provided. He would like to give members of the public, that are present today, an opportunity to provide the Board Feedback on the proposed rules and CEU's.

Fredrickson *gave a little background on where continuing education stands today in the United States*. He noted that the continuing education environment is being looked at by national trade organizations in our profession and the state of Oregon is making a decision within that context. It has been suggested strongly in two successive state audits of our agency that our CEU requirements are too lax. Not in numbers but from which they come and the suggestion has been to

provide categorical support to the basic core curriculum training and other health care modalities and issues related to our professional business. He asked for the people to speak on the topic of the proposed rules and Continuing Education.

- **Letter by Frothingham** to the Board regarding the significant reduction in CEs if a person is licensed for a significant amount of time. After 25 years of licensure, the person would have gotten a significant amount of experience. Mr. Frothingham feels that this may be in support of Massage schools; however, it does not benefit the practitioner. Including Ethics as a focus of the Board to provide safe massage for the public is an appropriate topic of discussion and he is open for discussion or questions. Back to the CEU in general, for someone living in eastern Oregon, it is an enormous financial burden on the people.
- **Letter by Vail** - The things that he found frustrating about this experience is that he was never quite sure of what the justification for the changes in rule is. Therefore, it was difficult to fashion a response that was addressing the source of concerns. The first rumor that he heard was that it had to do with ethics violations such as human trafficking; blog post of HIPPA violation was a possible reason for the ethic instruction, and general lack of professionalism and increase in ethic instruction generally and now he finds out that in fact none of those were the reason that it was an external audit. He wishes he knew this information prior to the meeting so he could have crafted a response that would have addressed the concerns of the Board directly. His main concern is that, unless we know clearly what the Board is trying to respond to, it's difficult for him to know whether it's a good idea to be governed that way.
- **Fredrickson** noted in point of clarification, the suggestion from the committee on ethics is not in direct response to the audit request. The audit request is that we have specific categories of continuing education requirements and that the ethics piece was something that the committee members thought appropriate to add in specific number of hours as part of the renewal process. These two are not directly linked.
- **Vail** stated that he is still unclear as to exactly what the problem is that the Board is trying to address by increasing the instructions in ethics. The numbers that we had and that he saw in any case indicated that 99.65% practitioners had no ethical problems last year. I do not see how increasing instruction in ethics is going to improve that percentage.
- **Fredrickson** noted that the Board will clarify Mr. Vail's confusion and believes that Mr. Vail's number is too high.
- **Letter from Haemmerlein** stated that she has been licensed for 12 years and graduated from RCC. My question is, I read the proposal, and it was for all LMTs to do the 6 hours of ethical CEU. Then I get the BOARDerline and it says for inactive and lapsed, so which one is it? Is it for everyone or lapsed?
- **Coffey** noted that the Board in March did choose not to approve the CEU requirement for renewals. At first it was for all renewals. In the March 2014 board meeting the board voted to only go forth with the ethics requirements for Lapsed and Inactive to Active renewals. The board wanted further discussion of the CEU proposal that impacted active renewals.
- **The Board** clarified to **Haemmerlein** that the BOARDerline is correct. And noted that the proposed rule change for today is not for all LMTs and the Board is here to discuss whether Ethics should apply to everyone.
- **Haemmerlein** asked if the massage profession is getting so unethical that everybody must take 6 hours of ethics? All LMT's that she knows are ethical and she does not get why 6 hours. She can see maybe 2 hours, because most classes that you do see on Ethics are 1 or 2 hours in length. Requiring 6 hours of ethics is excessive. She felt money is also a major consideration. She would like to spend money for CEU's on topics she would like to take not what she has to take. If it is free great, as long as it is within a short driving distance. 2 hours of ethics would be good.

- **Calise** noted that the Board is not implying in any way shape or form that everyone/LMT in the State of Oregon is unethical. She is speaking for herself not the Board. In my personal opinion, LMTs are all in a profession that is changing and growing and that awareness of the situations that you are in as a massage therapist between your client and therapists' relationship we are well aware of and we like to give you the opportunity to explore other things. It's not just Ethics, its communication. Communication is the key piece and maybe that is where everybody is getting confused. We view all our thinking as ethical, the board recommendation is to allow ethics, boundaries and communication. The Board wants to make sure that communication is happening and that there is an understanding of professional relationship between client and therapist. The Board understands that there are many therapists in the States that have been therapist for a very long time and we all have to remember that we are writing policy for all massage therapists and there are young massage therapist that are coming into play and these young people are growing up in a world where they are technology natives where touching is even new to some of them it's a progression but primarily we are responding to national standards. The FSMTB is wanting to set standards as they are trying to move towards reciprocity.
- **Southworth** disclosed for the record that she is Fredrickson's spouse and former co-owner of Ashland Institute of Massage at which she taught ethics for 8.5 years. She thought the number of hours is high. She loves ethics and would like to see the ethics requirement in continuing education for a couple of simple reasons. Yes, students get taught ethics at school; they do not understand ethics until their boots hit the ground. The questions, the calls, the letters that I would get years after a student graduated were "now I get what you were talking about". Another piece of it is that ethics is not just about laws, ethics is about decision making, about values and how we choose to walk this path in the world. As life changes, as we age, as everything else happens, different ethical issues arise. An ethical issue is simply, I have a value and I am presented with a situation that is in conflict with that value. Our values change over time. So those dilemmas can change overtime and especially in this field. She is a strong proponent of ethics and is open to less than 6 hours of Ethics and would recommend at least 3 or 4 hours as reasonable and let it be in person. Ethics is a living process especially in the field of massage. Another thing that she will like to speak to is a bit of conundrum. It is a bit self-serving and will disclose that she loves teaching Ethics and would like to provide training for people based on her credentials. Even though she teaches at RCC, she is not associated with the Massage program in any way therefore she is one of those people out there that may want to provide training but the way that the proposal is written, she does not qualify to teach the subject of ethics. Continuing education plays a role in public safety and having someone with the background, ability, and capability to provide appropriate CEs and yet there is not a process for that. I would be someone who would not fall in this category. How does the Board plan to manage this, someone's background and capability is important to the people and the proposed rule needs to go back to the drawing board?
- **Neufield** Board member of American Massage Therapists Association Oregon Chapter. She expressed that after taking a look at the BOARDerline this month, and saw the long list of the practitioners that were cited for presumably ethics violations of some sort or another. I know someone on this list, someone that I use to work with on the list and it just makes me think and come to realize that although some of the LMTs who have been practicing for a long time, think they are all very smart ethical people. This list caused her to reflect, on her experience versus the experience of recent graduates who are just coming out of school. She wonders if there is something LMTs can do to teach and learn from each other in regards to ethics. The list alarms her and believes there is a need for ethics training.
- **Fredrickson** disclosed that he is a continuing education provider who teaches Pathology, and Anatomy & Physiology so he has a potential conflict of interest in being a part of this discussion. **Fredrickson** noted that the cases that he has seen during his four years of service to the Board in his opinion are all ethical issues. Whether it is misuse of information, fraud, abuse, or decisions of power/control. Particularly now as we get into electronic information; sharing of pictures and data; where information is posted and who you talk about and what side, etc. These are issues that impact the level of professionalism and public perception as well as public health and safety. Our role as Board members is public health and safety. It is the role of our trade associations in terms of promotions and reflection on

the profession. I personally feel that, ongoing ethical training for the therapeutic health professions is an excellent idea. As licensed health professionals within the State of Oregon it is important for us to consider this.

- **Grizzell** – Massage therapist from central point. She thinks that the 6 hours of ethics is a great idea. She knows people that have had ethical violations and they are a really good people. She does not know how it happened and she wants to know how to protect herself and does not want to be in that position even though she feels that she is completely ethical. Would this count toward the 25 hours of required CE hours? It would be nice to be able to access more classes in Medford or Grants Pass because there are not enough classes offered in this area.
- **Garofalo** – from the Oregon School of Massage and the chair of the Education Committee that drafted this continuing education rule change. When this draft went to the rules committee, and the rules committee put it into rule, they removed language that we as the education committee felt was important to have and she is just wondering the reason behind that. We wrote the suggested rules as licensees must document 6 contact hours in professional ethics, boundaries and/or communication every renewal period. The intent of the Education Committee was about the therapeutic relationship, how can we help ourselves to deal with communication or boundaries?
- **Frothingham** - Back to CEUs in general, one of the concerns that I have is the 25 hour requirement. For those therapist that practice in Portland, the majority of licensed people, but for someone who is living in Eastern Oregon, there is an enormous expense involved in trying to get 25 hours. It seems like an unfair burden for people who have made a free choice to reside in a place that is not an hour from an urban center where classes are offered and the proposal does increase the possibility of getting that online.
- **America** – Noted that there are some practitioners that offer discussion groups for CEs in the Ashland area that are relatively inexpensive. He recommended that practitioners need to help themselves in taking classes early rather than waiting for the last minute to scramble for whatever is available. He is in favor of ethics because it is something that they will use rather than taking something that is irrelevant simply to satisfy CE requirements.
- **McMillin** – noted that the Board always has the ability in disciplinary proceedings to require ethics. His background as an attorney is to take 15 hours every year and he reports every 3 years. He did not enjoy taking classes over and over again; however, ethics is important. Most cases appear to have a lot to do with communication and some have to do with anti-social conduct. You will not avoid the anti-social conduct by anti-social people in any organization, it's going to be a percentage game and you are not going to avoid that. When we read about somebody in the Salem newspaper abusing client after client as a massage therapist, we are not dealing with ethics problem we are dealing with an anti-social human being. I am not sure that it is an overwhelming problem. However, I think that the Board should graduate the amount of ethical communication training based upon the inexperience of therapists. Some students graduate and have never dealt with a patient. I think the idea here is that the younger newer members should probably be asked and expected to have more training and I don't think there is anything wrong with requiring ethics and/or communications, among others. Perhaps it should take one hour in this and one hour in that in a period of two or three renewals. This is entirely up to the practitioner. The more I thought about it, I came to the realization that this is not arbitrary. I do not care if the federation wants a hundred hours. The boards responsibility is to the licensed massage therapists in the State of Oregon. If the LMTs come when we cannot get reciprocity because we do not have enough ethics, then it will be on the LMTs not the Board. You have to come and say okay we will go along with it if we want to be a part of that and if we want to take our license to another state. We should not be guided on what the Federation wants. We make our own decisions and if the LMTs want to participate in reciprocity then they will need to take the steps required by the FSMTB.
- **Boyce** – a transplant from California and has been a massage therapist for 38 years. I can see where it will be a good idea to have refresher ethics because it just occurred to me how this could happen even though I have been working

for 38 years. When you get to a socio economic level, the expectations of the client at a certain level is high and the lower socio economic demographic, it is a lackadaisical thing. It can happen and it is not that difficult, you know better but you can slip because of the expectation of your client.

- **Fredrickson** noted that it is important that people understand that ethics and communication while required in the core competences of the state of Oregon Core Curriculum, there is not an hourly requirement for Ethics and/or Communication as they are lumped into a three hundred hour category titled “massage, bodywork, communication, ethics and other.” Each school can tailor their curriculum so that the quality of education in ethics coming out of specific schools is really based on protocols from that school.

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

The Board returns to public session at 3:24 pm

- **Letter from Jennings** requesting the Board to relinquish him of the responsibility for the remainder of his civil penalty.

On the matter of Jennings, the Board concluded that they will need to review the investigation file and deferred this to the July Board meeting.

CEU Rules – The Board agreed to move the discussion of legislative initiative to the July, 2014 Board meeting.

Calise moved that due to the discussion and opposition that we have to our proposed rules change and CE requirements, that we not adopt the proposed rules that were noticed in the May 2014 bulletin to allow the Board enough time and opportunity to discuss the matter further and send the CEU discussion to a CEU task force made up of Garofalo, Calise, and board staff. **Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

7. Action on Executive Session Items

Facility Compliance Cases

- Case 1631 – Foster-Wexler moved** to issue Notice of Proposed Action for: One violation of ORS 687.021 (1) (b) for Operating a Massage Facility without a permit issued by the Board. One violation of OAR 334040-0010 (12) for assisting, employing, or permitting an unlicensed person to practice massage. And; One violation of ORS 687.021 (1)(c) Advertising for massage without a license or permit for a civil penalty of \$3000. **Second the motion: Calise. In favor: Foster-Wexler, Calise, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- Case 1639 -- McMillin moved** to issue Notice of Proposed Action for: One violation of ORS 687.021 (1) (b) for Operating a Massage Facility without a permit issued by the Board. One violation of OAR 334040-0010 (12) for assisting, employing, or permitting an unlicensed person to practice massage. And; One violation of ORS 687.021 (1)(c) Advertising for massage without a license or permit for a civil penalty of \$3000. **Second the motion: Rothenberger. In favor: Foster-Wexler, Calise, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- Case 1641 -- Calise moved** to issue Notice of Proposed Action for: One violation of ORS 687.021 (1) (b) for Operating a Massage Facility without a permit issued by the Board. One violation of OAR 334040-0010 (12) for

assisting, employing, or permitting an unlicensed person to practice massage. And; One violation of ORS 687.021 (1)(c) Advertising for massage without a license or permit for a civil penalty of \$3000. **Second the motion: McMillin. In favor: Foster-Wexler, Calise, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

- iv. **Case 1637 -- Foster-Wexler moved to issue Notice of Proposed Action for: One violation of ORS 687.021 (1) (b) for Operating a Massage Facility without a permit issued by the Board. One violation of OAR 334040-0010 (12) for assisting, employing, or permitting an unlicensed person to practice massage. And; One violation of ORS 687.021 (1)(c) Advertising for massage without a license or permit for a civil penalty of \$3000. Second the motion: Calise. In favor: Foster-Wexler, Calise, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

Compliance Cases

- i. **Case 1640 – Calise 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. Second the motion: Rothenberger. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries**
- ii. **Case 1630 – 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. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- iii. **Case 1634 – Grossart 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 with a massage therapists license, and; One violation of ORS 687.021 (1)(b) Unlawful advertising; For a total civil penalty of \$2000. Second the motion: Calise. In favor: Calise Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- iv. **Case 1633 – McMillin moved to take no action due to mitigating factors as licensee has come into compliance on 4/10/2014. Second the motion: Grossart. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin and Rothenberger. Fredrickson is abstained from the vote. Opposed: None. Motion carries.**
- v. **Case 1645 – 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 therapists license, and; One violation of ORS 687.021(1)(c) advertising for massage without a license; For a total civil penalty of \$2000. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- vi. **Case 1646 – 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 therapists license, and; One violation of ORS 687.021 (1)(c) advertising for massag without a license; For a total civil penalty of \$2000. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- vii. **Case 1636 – 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 therapists licens, and; One violation of ORS 687.021 (1)(c) advertising for massage without a license; For a total civil penalty of \$2000. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- viii. **Case 1622 - McMillin moved to close no violation found, unable to substantiate the complaint. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- ix. **Case 1628 - Calise moved to Issue a Notice of Proposed Action (Suspension) pursuant to ORS 25750 through 25.783. Second the motion: Grossart. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

- x. **Case 1638 - Calise moved to issue a Notice of Proposed Action (Suspension) pursuant to ORS 25.750 through 25.783.. Second the motion: Grossart. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xi. **Case 1620 - McMillin moved to accept the Stipulated Agreement and Final Order negotiated between the ED and the Licensee. Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Grossart. Opposed: None. Motion carries.**
- xii. **Case 1621 - McMillin moved to accept the Stipulated Agreement and Final Order negotiated between ED and Licensee. Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xiii. **Case 1617 – Foster-Wexler moved to close case, Unable to Substantiate. Second the motion: Grossart. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xiv. **Case 1650 – McMillin moved to ask for appearance at the July Board meeting. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xv. **Case 1649 – Foster-Wexler 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: Failure to furnish requested papers or documents; For a total civil penalty of \$1000; and Suspend Licensee’s massage license until such time as the Licensee comes into compliance with the continuing education requirements of the Board. Second the motion: Grossart. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xvi. **Case 1642 – 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 therapists license, and; One violation of ORS 687.021(1)(b) Unlawful advertising; For a total civil penalty of \$2000. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

Supplemental Packet

- xvii. **Case 1651 – Rothenberger moved to approve applicants request to renew license without restriction and issue him a letter of concern regarding his criminal conviction/arrests. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xviii. **Executive Session Closed Case Report – Foster-Wexler moved to accept the executive session closed case report for May 16, 2014 as submitted in Exhibit A. Second the motion: Grossart. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

Case No. 1627

Allegation: Unlicensed Practice

Closed: Based on Further Review

Case No. 1643

Allegation: Work Outside of Scope of Practice

Closed: Based on Further Review

Case No. 1523

Allegation: Unlicensed Practice

Closed: No Violation Found

Case No. 1595

Allegation: Conduct or Practice Injury

Closed: Duplicate Case

Case No. 1583

Allegation: Failure to Provide Documents to Board

Closed: Compliance Met

Case No. 1584

Allegation: Noncompliance with an existing Board Order	Closed: Compliance Met
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Case No. 1629

Allegation: Noncompliance with an existing Board Order	Closed: Compliance Met
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8. Public Compliance Action**a) Public Session Closed Case Report – None**Case No. 1561

Allegation: Other	Closed: Final Default Order
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Case No. 1544

Allegation: Sexual Impropriety/Unlicensed Practice	Closed: Final Default Order
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Case No. 1559

Allegation: Unlicensed Practice	Closed: Final Default Order
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Case No. 1599

Allegation: Unlicensed Practice	Closed: Final Default Order
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Case No. 1625

Allegation: Conviction of a Crime	Closed: Stipulated Agreement
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Case No. 1621

Allegation: Unlicensed Practice	Closed: Civil Penalty Assessed & Paid
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Public Session Closed Case Report – Foster-Wexler moved to accept the executive session closed case report for May 16, 2014 as submitted in Exhibit B. Second the motion: Grossart. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

Proposed Rules Changes for January 2015 Implementation:

- a) **Insurance Billing** : The Board will ask Lori Lindley to propose some rules
- b) **Fee Splitting**: The Board will ask Lori Lindley to propose some rules
- c) **Continuing Education Requirements**: Garofalo will work directly with Calise and Board staff on this.
- d) **Define Professional Fitness**: Send to Rules Committee
- e) **Professional Conduct**: Send to Rules Committee
- f) **Client Records** – Morin will write an article for the next BOARDerline
- g) **Hand Washing Signs** – Remove this requirement from the rules

Calise move that the Board forward the discussion for proposed rules changes on to the Rules Committee. **Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

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

Day Two: May 17, 2014

Call to order

Calise called the meeting to order at 9:07 am. Roll call was performed. **Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson** were present, as well as **Coffey**, Executive Director, **Ruark**, Compliance Manager and **Udosenata**, Board staff.

Public:	Anthony Belisle	Mandi Feetham	Peter Frothingham	Roxanne Few
	Tiffany Clarkin	Delta McConnell	Lisa Garofalo	April Neufeld

Fredrickson asked members of the public to introduce themselves. Public present at this time were **Belisle, Feetham, Few, Frathingham, Garafalo, Clarkin, Newfeld, and McConnell.**

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

2. Directors Report

Finances – Coffey reported on board received \$5k additional revenue than was budgeted for the month of April 2014. The majority of the excess revenue was in the category of licensure fees. The board spent \$1k less than was budgeted for the month of April 2014. The majority of the under expenditure was in the category of legal expenses. The board is overspent in the category of contract/professional services by \$3,000 due to the printing of the newsletter. The category of Investigation Expenses is overspent by \$1,500 as the compliance section is actively investigating facilities that do not hire Licensed Massage Therapists.

Biennium to date - Coffey reported that the board received \$12k less revenue than was budgeted for the first ten months of the 2013-15 biennium. The board underspent expenses by \$21k for the biennium to date. The majority of the under expenditure is in the category of Payroll Expenses. The board is \$5k over in legal expenses and there are two cases scheduled for a contested case hearing. The board is \$5k over in the category of contract/professional services due to the printing of the newsletter as it is sent out twice a year. The board is slightly over budget in the categories of Bank Charges, Dues/Subscriptions, Exam Supplies, Postage, and Travel expenses.

Board Office - Coffey stated that the lease for the current office space will expire on June 30, 2015. This provides an opportunity for the board to perform some comparative shopping and determine if there is space available that would be more conducive to board operations. The board office currently has an inadequate meeting room to hold board meetings; no break/lunch room for staff; inadequate file room; poor ventilation; aged building where circuit breakers get overloaded; and no designated lobby/waiting area.

Recommend the board review other facility options and include those costs in the 2015-17 budget. The board agreed and recommended she look at other available space in the Salem area.

Licensing Data Base - Coffey updated the Board that after researching database replacements there are three avenues the board can take: Oregon Enterprise-wide solution - The State of Oregon is researching an Enterprise-wide solution for all health licensing boards. The Marine Board and Real Estate Board have recently implemented the CAVU E-License programs. The cost ranges anywhere from \$100,000 upwards to \$250,000 depending on the solution selected. This is a robust system that includes upgrades and maintenance plans. Confuzer - Our current IT provider is in the process of implementing CRM for 6 other health professional regulatory boards. The cost has been \$60,000 to \$80,000 depending on the number of servers purchased. OBMT Contract – The board create an RFP and contract with the prevailing bidder. We would need to contract with the state for an IT project manager to create the RFP and ensure it was implemented correctly. Costs range from a per transaction charge up to \$250,000.

Recommend the board include the cost of a new database in the 2015-17 biennial budget.

The Board discussed the database upgrade and concluded to budget \$100000 for the 2015-2017.

Compliance Update - Ruark updated the Board that the compliance section is actively pursuing enforcement of facilities that do not hire LMT's. The first request for hearing was filed this month by a facility owner and will probably be settled by a motion for summary determination. During the month of April the compliance office became actively involved with an altered transcript. The applicant alleged that the school that issued the transcript was no longer in business; however, upon additional research the school was still in business and had no record of the student's attendance at that school. **Ruark** further noted that there are 8 facilities that has been disciplined and one facility has requested a contested case hearing.

Quarterly exam statics – the board discussed the quarterly exam statics and are pleased with the Board effort to make the exam more appealing. The board requested a comparison of statics with the previous year and discussed sending out a general letter to the schools on the areas the Board sees improvements and the areas that need improvements. They will review the 2nd quarter statics at the July 2014 board meeting and determine which schools to send a letter.

Action plans – the Board discussed the actions plans.

- **Simplify Licensing Process** - The Board reviewed the licensing sequence and recommend that the board staff identify barriers of the licensing process. The board decided that there needs to be a timeline added to the sequence of license. The board is satisfied with the progress made with the ED towards completing the action plans.
- **Cost and Distance of Testing** - The ED corresponded with both the NCB and FSMTB as both these exams are administered by Pearson Vue and there is not a testing center in Central Oregon. Both the NCB and FSMTB did not appear concerned about having only five testing sites within Oregon.
- **Evaluate and Disseminate new online scheduling** – Completed and operational
- **Review Candidate Handbook for Clarity** – Foster-Wexler stated he would look at the handbook and provide Coffey with suggestions.
- **Online Law Exam** – The board instructed Coffey to create an on-line version of the law exam so students would not have to take the exam using paper and as a result, speed up the licensing process.

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

Reconvene the public meeting at 10:56am

Action Plan Discussion – Cont.

- (1) Define the Exemption Process - The board concluded to establish task force to in define the exemption process. Calise volunteer to be the liaison for this task force.
- (2) Strengthen board relationship with other trade association has been significantly improved. Fredrickson noted that the board is grateful especially with the board.
- (3) Educate the board on legislative process. The board recommends inviting some of the legislature to board events especially to board meeting and it is extremely important for them to put a face to the board.
- (4) Invite a governor's office representative to the board meeting.
- (5) Invite LMTs ambassadors – the board decided to keep this on the action plan.
- (6) Establish criteria and process for CEUs.

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

Reconvene the public meeting at 11am

Practical Exam Task Force Report – Rothenberger reported that the Practical Exam Task Force has spent the last few months discussing the merits and the limitations of the OBMT Practical Examination. The task force has evaluated the current examination and begun to prioritize content areas for revision.

Prior to beginning any significant revision to the exam the task force requests that the Board discuss and formally decide if Oregon should continue to require successful completion of a practical examination to obtain a massage therapy license. The task force has listened to public comment from a variety of sources. Massage practitioners who had successful/safe practices in other states and have not been successful in passing the Oregon Practical Exam after moving to Oregon have been vocal critics of the practical examination. We have also listened to representatives from massage schools and LMT's. There have been two Oregon massage schools that recommended discontinuing the practical examination. Some Oregon LMT's have expressed a desire to keep the practical exam. However, there appears to be considerable opposition to the practical exam and the task force could not find any evidence that the exam in its' current form would provide assurance that a person who passes the exam will be a safe practitioner. Instead, this current exam is heavily based in kinesiology and ensures an applicant knows the insertions, origin, actions, and range of motion or randomly selected muscles. The committee agrees that kinesiology insertion and origin are components of an effective therapist but not necessarily a safe therapist.

The Exam Task Force has identified content areas for safe practice. If the board chooses to continue the practical examination, the examination will be restructured to evaluate competency in these content areas. The committee has not yet determined how the content areas would be tested in a revised practical exam; however, they have listed the following as areas for consideration.

- Shortened exam to not exceed 30 minutes
- Minimize the number of examiners to no more than two
- Increased transparency to ensure students are tested on knowledge not exam protocols/processes
- Avoid redundancy with the written exam – do not test content in the practical exam that is thoroughly tested in on the written exams
- Avoid questions that would cause failure if applicant does not know that area (i.e. if applicant does not know a particular pathology and all the questions regarding communication are on that pathology)
- Increase access to the exam by having it in multiple locations
- Accommodate modalities that do not require draping
- Include contraindication areas/points from many modalities

- Allow applicant to specify how they want the examiner to dress (the accommodates modalities that work with clients who are clothed)
- Evaluate the examination to ensure it meets standards for the American with Disabilities Act (ADA).

Frothingham agreed with Kelly's report and recommends that the muscles tested should only be major muscles. If the practical continues, he hopes that the number of muscles that are being tested would be addressed as most therapists don't memorize all the muscles only the major muscle groups.

Rothenberger asked if Frothingham feels that the practical exam should be continued.

Frothingham responded that the board needs to determine if the practical actually tests an applicant's ability to safely practice massage.

McMillin suggested turning the practical exam to the schools. Set up a task force to standardize the practical exam. The exam would need to be integrated in a way that is not influence by the schools. Suggest the board transfer the exam to the schools.

Clarkin noted that there is a clear check list that the students must follow to become licensed. In addition, she does not want to be in a position where the schools will have to legally defend the practical exam as that is a concern stated by the board.

Fredrickson – noted that if the board changed the practical exam the consistency of programs among the schools would change. The practical exam standard that we have ensures that people are tested equally. Although there is a clear impediment for people coming from out of state.

The Board concluded that there is a need to discuss this with all the massage schools.

McMillin moved to create a joint task force with the schools to determine the feasibility of transferring the exam to the schools. The task force would need to look at the competency and consistency across the schools. **Second the motion: Foster-Wexler. In favor: Fredrickson, Foster-Wexler, Morin, Calise, McMillin and Rothenberger. Opposed: Grossart. Motion carries.**

Educational hours for licensure

ELAP recommendation – The Board will like to see increase in number of required hours and will like to see the board name changed to include Bodywork.

Calise moved that the Board move forward with a legislative initiative for increasing the minimum required hours from 500 to 800 hours and change the Board name to include Bodywork. **Second the motion: Morin. In favor: Fredrickson, Foster-Wexler, Morin, Calise, McMillin and Rothenberger. Opposed: None. Motion carries.**

CE discussion:

Garofalo stated that she will like specific input from the board regarding the six hours required by the board for ethics, communication and boundaries.

The Board clarified Garofalo's question and decided to require four contact hours in the subject matter of ethics, boundaries, and communication. The ethics requirement will include active renewals, inactive to active, and lapsed license to active renewals. The board concluded that it will leave the option open to any provider. Providers need to be approved by the board.

Fredrickson inquired as to the content area as he noticed that energy work was not clearly listed as a category. **Coffey** replied that the AG's office stated that it is not defined and is not specifically mentioned in the statutory definition of massage.

Coffey stated that most of the energy modalities would fit into the massage and bodywork category as they are recognized as a bodywork modality.

Practical Exam RFP:

McMillin moved to award the contract to Peggy's Biz and allow the ED to negotiate the contract for a period not greater than one year and subject to ratification by the Board. **Second the motion: Morin. In favor: Fredrickson, Foster-Wexler, Morin, Calise, McMillin and Rothenberger. Opposed: None. Motion carries.**

Survey questions:

The Board reviewed the survey and added one question "what if anything do you believe the OBMT should be doing differently and recommended adding a link of the video to take the person straight to the video. The Board approved to put forward the survey.

Announcements

Next meeting will be on July 21, 2014.

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

The meeting was adjourned at 1:27 pm. On 5/17/2014