



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

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OBMT Board Meeting Minutes

November 17, 2014

Board Office

Attendance

Board Members:

David Fredrickson, LMT, Chair

Kathy Calise, Vice Chair

Jon Grossart, LMT

Melanie Morin, LMT (Excused)

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

Public: Lisa Garofalo Leah Bowder

Call to order at 9:10am

Fredrickson called the meeting to order at 9:10 am. Roll call was performed. **Calise, Foster-Wexler, Grossart, Rothenberger** 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 **Garofalo** and **Bowder**.

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

2) **Approve Minutes for September 22, 2014:** **Rothenberger** moved to approve the minutes. **Second the motion: Grossart.** In favor: **Calise, Fredrickson, Foster-Wexler, Grossart** and **Rothenberger.** **Opposed: None.** Motion carries.

3) Directors Report

Finances – Coffey reported on the status of the Board Budget for the first year of the 2013-15 Biennium. The board's actual revenue for October 2014 was within a 1% deviation from the revenue projection. The board spent \$2k more than was budgeted for the month of October 2014. The majority of the over expenditure was in the category of investigation expenses.

16 Months of the 2013-15 Biennium, the board's actual revenue is within a 1% deviation from the revenue projection for the first sixteen months of the 2013-15 biennium. The board underspent expenses by \$58k for the first sixteen 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 \$29k over budget in Contract/Professional services as the board has increased the utilization of consultants/contractors. The board is \$2k over budget in the category of Computer services as the facilities database was a non-budgeted expense. The board is \$4k over budget in the category of Exam Supplies as we are having the vendor pick-up linens weekly and cameras have been replaced. The board is \$4k 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 this savings to fund the office move, continue with the implementation of facilities licensing, and increased participation in FSMTB.

The proposed 2015-17 biennial budget uses \$67,796 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 Certificate of Deposit 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. **Calise** requested that the category of Professional Development be increased by \$5,000.

The proposed budget includes \$50,000 for a database replacement and fully funds all other board expenses.

Action Plans:

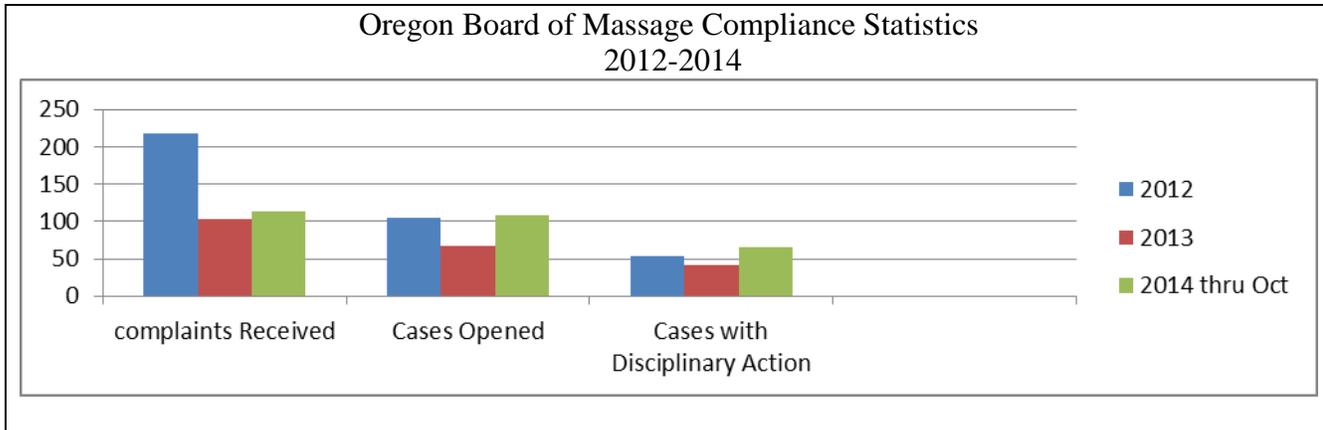
The board reviewed the Board approved action plans from the May 2014 board meeting. The board concluded that it is pleased with its accomplishments thus far. **Grossart** will write an article for the borderline based on the survey results and clarifying what the Board can and cannot do. The board commented on the questions for the on-line law exam and approved the board staff to go forward with the development of the on-line law exam.

Compliance Update:

The Compliance section received 11 new complaints for the month of October 2014. 11 new cases were opened based on those complaints.

There is one contested case (508 unlicensed practice violations) with a hearing date in March 2015. The board received three additional requests for hearing (two unlicensed practice and one license revocation).

When there are complaints or investigations it is important for board members to not become involved in the complaint/investigation as it is imperative that board members remain impartial as to remove any aspect of personal bias. A couple of years ago there was a licensing board that did not like the result of a staff investigation and they redid the investigation to achieve a different result. This caused several board members to be removed and a senior legislator proposed language to limit the powers of the board.



Rules Committee Updates – 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 Rules committee update and concluded that this matter needs to be move to the January board meeting for further discussion and approval for Rules hearing.

Proposed Rules to go into effect July 1, 2015

- 334-001-0060 Definitions
- 334-010-0018 Criminal Background Check, Fitness Determinations
- 334-010-0027 Exempt Practices
- 334-010-0033 Fees
- 344-040-0010 Discipline
- 334-020-0005 Sanitation

Proposed Rules to go into effect on January 1, 2016

- 334-010-0015 Licensure
- 334-010-0017 Lapsed License
- 334-010-0050 Continuing Education

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

Insurance Task Force – Calise reported on the Insurance Task Force kick off meeting and gave the board some insights on the topic discussed and the status of the Task Force. She noted that the first official meeting is scheduled for January 26, 2015 and the Task Force is trying to see if Diana Thompson will be able to attend the meeting and even become a part of the Task Force. In regards to member make up, the Task Force will be comprised of people with expertise in this particular subject area of insurance billing.

5) Board Business

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

- **Letter by Jade** to the Board wondering 1. If the board has considered whether colonic cleanses (aka enemas) would fall within the definition? 2. Whether the Board would consider asking for a statutory change such that insurance companies could not require the massage to be given on the premises of a MD or DO or DC?

The Board concluded that 1. Under the proposed definition of bodywork, colonic cleanses is not considered.
2. The board does not have any jurisdiction in the matter of RNs.

- **Letter to the Board by Zigler** suggesting that the board have two types of licensing.

The Board directed the ED to respond to the letter from Mr. Zigler thanking him for his insights.

Election of Board Chair and Vice Chair :

Grossart moved to elect Fredrickson as Chair: Second the motion: **Rothenberger**. In favor: **Calise, Foster-Wexler, Grossart and Rothenberger**. Opposed: **None**. **Motion carries.**

Rothenberger moved to elect Grossart for Vice Chair: Second the motion: **Calise**. In favor: **Calise, Fredrickson, Foster-Wexler and Rothenberger**. Opposed: **None**. **Motion carries.**

Legislative concept 706 – After further discussion of Legislative Concept 706, the board concluded that it will be meeting with the Governor's office to discuss the content of the concept on 11/18/2014.

Proposed Legislative Concept Amendment – The Board discussed the matter of Tiered license and concluded that Lindley would modify the proposed legislative concept amendment to include the board's consideration of having a three tiered license.

Exam discussion – The Board discussed the matter of the practical exam and concluded that, if legislative concept 706 passes, there is a possibility that the practical exam will no longer be needed as the increase in education hours may create an opportunity for other states to be in the same standard as the Oregon Board of Massage Therapists which in turn, will make the portability of license and reciprocity inevitable.

Third Quarter School Statistics – The Board reviewed and discussed the third quarter school statistics. The Board expressed concern with the 75% passage rate of the Oregon Practical Exam.

Update from the Federation of State Massage Therapy Boards (FSMTB) (FSMTB By-laws, CE recommendations, Licensing Exam) – Grossart Updated the board on the FSMTB. There was a discussion on the fact that you must be a delegate twice in order to be nominated for a committee. The board chair is going to follow-up on this matter and report back to the January 2015 board meeting. The board directed Coffey to add this agenda item to the January 2015 board meeting. **Grossart** discussed the FSMTB Continuing Education proposal and asked if the proposed CE rules should be tabled and the board accept the proposal established by the FSMTB. **Calise** did not want to modify the proposed rules and thought that a lot of work has gone into the draft CE rules and encouraged the board to continue with the CE rules that the Education Committee has worked on. No motion or vote was taken regarding this matter.

Survey Results – The Board reviewed the finding from the survey and discussed the feedback contained in the survey. The Board is grateful for all those who participated in this survey. The Board will like to see another survey conducted for the Bend exam candidates in December. This new survey will be created to get feedback from applicants taking the practical exam in an offsite setting.

BOARDerline – The Board reviewed and approved the fall BOARDerline to be published. As the BOARDerline contains the budget, Coffey asked if the board would approve the rules with the \$5,000 increase to the 2015-17 budget proposal. The board agreed to allow the July 2015 rules to be noticed with the \$5,000 increase.

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

Garofalo noted that, as a committee member, she works at the discretion of the Board. The need to eliminate the idea of contact hours would be a blow to the board and all that it has worked on thus far. As an educator, she would not accept the proposed concept of eliminating the idea of contact hours and make CE solely about public safety hours. **Garofalo** noted that she would recommend having the law exam vetted by a teacher. In addition, she is volunteering Amy Stark to assist the Board in anyway needed with the redesigning of the Board website. **Coffey** thanked Garofalo for volunteering to review the questions and will send the draft law exam questions to Garofalo.

Bowder: would like a copy of legislative concept 706 and will like to see more discussion on the tiered licensure concept.

Fredrickson thanked and excused the members of the public.

Rothenberger made a motion for a break and **Calise** second the motion.

Calise called the board into Executive Session at 12:00pm.

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 3:39pm.

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

- i. **Case 1687 – Rothenberger moved** to issue a letter of concern. **Second the motion: Foster-Wexler. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson recused from voting. Opposed: None. Motion carries**
- ii. **Case 1722 – Calise moved to** issue license without restrictions. **Second the motion: Grossart. In favor: Calise, Foster-Wexler, Grossart and Rothenberger. Opposed: None. Motion carries. Fredrickson recused himself from voting**
- iii. **Case 1714 – Foster-Wexler moved** to grant license renewal and issue a Notice of Proposed Action (Civil Penalties) for; One violation of ORS 687.041 (2) Failure to disclose arrest on application For a total civil penalty of \$1000. **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- iv. **Case 1726 – Foster-Wexler moved** to renew the license with the following restriction with a Stipulated Agreement that, licensee will provide the Board with a release for the board to obtain records of the drug and alcohol treatment required per licensee's criminal probation until November 2016. Licensee is required to remain enrolled in a drug/alcohol treatment program for the duration of this renewal. Abstain from the use of intoxicants. The board requires licensee to release records that includes intake evaluation, diagnosis, discharge summary and any and all treatment records for the duration of the required treatment plan. **Second the motion: Calise. In favor: Calise, Foster-Wexler, Fredrickson,**

Grossart and Rothenberger. Opposed: None. Motion carries.

- v. **Case 1725 – Calise moved to issue license without restriction. Second the motion: Rothenberger. In favor: Calise, Foster-Wexler, Fredrickson, Grossart and Rothenberger. Opposed: None. Motion carries.**
- vi. **Case 1653 – Grossart moved to accept the Stipulated Agreement and Final Order negotiated by the ED. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson recused himself from voting on the case. Opposed: None. Motion carries.**
- vii. **Case 1705 – Rothenberger moved to revoke massage therapists license for: One violation of ORS 687.081(1)(I) violates a provision of ORS 167.002 to ORS 167.027, and one violation of ORS 687.081(1)(I); Consistent with ORS 687.011(11) Engages in unprofessional or dishonorable conduct. One violation of OAR 334-010-0025 (2)(23)(a)(c)(i). Second the motion: Grossart. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- viii. **Case 1709 - Foster-Wexler moved to issue a Notice of Proposed Action for: one violation of ORS 687.021(1)(b) Operating a Massage Facility without a permit; and, One violation of OAR 334-040-0010 (12) Employing unlicensed persons for a total civil penalty of \$2000. Second the motion: Rothenberger. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- ix. **Case 1723 - Foster-Wexler moved to issue a Notice of Proposed Action for One Violation of ORS 687.021(1)(a) Engaging in or Purporting 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, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- x. **Case 1715 – Grossart moved to issue a Notice of Proposed Action for: Two violations of OAR 334-040-0010(12) Employing unlicensed persons. For a total civil penalty of \$2000. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xi. **Case 1724 – 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 without a massage therapists license for a total civil penalty of \$1000. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xii. **Case 1711 – Calise 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: Rothenberger. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xiii. **Case 1692 – Calise moved to accept the Stipulated Agreement and Final Order negotiated by the DOJ. Second the motion: Foster-Wexler. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xiv. **Case 1712 – Calise moved to accept the Stipulated Agreement and Final Order negotiated by the ED. Second the motion: Foster-Wexler. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xv. **Case 1713 – Calise moved to Issue a Notice of Proposed Action for: One violation of ORS 687.021 (1)(b) Operating a massage Facility without a permit; and, One violations of OAR 334-040-0010 (12) Employing unlicensed persons For a total civil penalty or \$2000. Second the motion: Grossart. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xvi. **Case 1656 – Calise moved to accept the Stipulated Agreement and Final Order negotiated by the ED. Second the motion: Rothenberger. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xvii. **Case 1699 – Calise moved to accept the Stipulated Agreement and Final Order negotiated by the ED. Second the motion: Rothenberger. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xviii. **Case 1730 – Foster-Wexler moved to issue a Notice of Proposed Action for not complying with the Board Order and complete the 50 hours by 8/1/2015 and a total civil penalty of \$1000 and allow the licensee to complete community**

service no later than 8/1/2015. **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

xix. **Case 1716 – Grossart moved** to Issue a Notice of Proposed Action for: One violation of ORS 687.021 (1) (b) Operating a Massage Facility without a permit; for a total civil penalty of \$1000. **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

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

Case No. 1615

Allegation: No License Number on Ad and Sexual Impropriety **Closed:** Unable to Substantiate

Case No. 1648

Allegation: Unlicensed Practice **Closed:** Unable to Substantiate

Case No. 1660

Allegation: Unlicensed Practice **Closed:** Unable to Substantiate

Case No. 1675

Allegation: Conviction of a Crime **Closed:** License Granted

3. Public Compliance Action

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

Case No. 1557

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

Case No. 1637

Allegation: Unlicensed Practice, Failure to Obtain a Facility Permit
And Unlicensed Advertising **Closed:** Civil Penalty Assessed

Case No. 1647

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

Case No. 1656

Allegation: Unlicensed practice and Failure to Obtain a Facility Permit **Closed:** Civil Penalty Assessed

Case No. 1659

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

Case No. 1663

Allegation: Unlicensed Practice and Failure to Obtain a Facility Permit **Closed:** Civil Penalty Assessed

Case No. 1679

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

Case No. 1680**Allegation:** Unlicensed Practice**Closed:** Civil Penalty Assessed

Case No. 1683**Allegation:** Failure to Obtain a Facility Permit**Closed:** Civil Penalty Assessed

Case No. 1668**Allegation:** Unlicensed Practice**Closed:** Civil Penalty Assessed and Paid

Case No. 1672**Allegation:** Unlicensed and Failure to Obtain a Facility Permit**Closed:** Civil Penalty Assessed and Paid

Case No. 1662**Allegation:** Unlicensed Practice**Closed:** Final Default Order

Case No. 1689**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

Purchase of Board computer/Netbook. The board discussed the need to replace the current Netbook's as they are not working well and during the September 2014 board meeting two of the devices did not work. The board agreed to purchase one tablet for Rothenberger and have her provide a demonstration during the January 2015 board meeting.

Next meeting will be on January 12, 2015 in Salem, Oregon.

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

The meeting was adjourned at 4:39 pm.