



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

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BOARD MEETING MINUTES

October 15, 2012

Attendance

Board Members:

David Fredrickson, LMT, Chair
Heather Bennouri, LMT Vice Chair
Melanie Morin, LMT
Kelley Rothenberger, LMT
Kathy Calise, Public Member
Craig McMillin, Public Member
Dr. Carolle Chapman, ND, Public Health Member

Staff:

Kate Coffey, Executive Director
Diana Nott, Compliance Coordinator
Lori Lindley, Assistant Attorney General

Public:

Rhonda Gerych	Abby Nartker	Lisa Garofalo	Jan Jones	Pam Pennington
Jim Berns	Todd Pennington	Michael Jordan	Steve Davis	Kirsten Schumaker
Leah Bowder	Sarah Goland	Andrew Black	Anna Mann	Anna Conner
Janice Kelly				

Call to Order

Fredrickson called the meeting to order at 9:08 am. Role call was performed. **Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson** were present, as well as Kate **Coffey**, Executive Director and Lori **Lindley**, Assistant Attorney General.

Fredrickson asked each member of the public to introduce themselves. Present at this time were Kirsten Schumaker, Lisa Garofalo, Michael Jordan, Jan Jones, Rhonda Gerych, Jim Berns, Abby Nartker, Todd Pennington and Pam Pennington.

- 1) Approve Agenda – Calise moved** to approve the agenda as presented. **Second the Motion: Bennouri**
In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson **Opposed: None.**
Motion carries.
- 2) Approve Minutes of August 06, 2012 – Bennouri moved** to approve the minutes of August 06, 2012 as presented.
Second the Motion: Bennouri **In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson** **Opposed: None. Motion carries.**
- 3) Director's Report –**
 - a) Finances – Coffey** reported on the status of the Board budget through September 2012. The Board reviewed quarterly information as well as biennium to date information. To date for the biennium, the Board has received \$23,000 more revenue than budgeted for and has under spent in expenses by \$95,000 to date. As discussed at prior meetings, the Board is over in the investigation expense category, as the fingerprint fees were not budgeted at the beginning of the biennium.
 - b) Board Action Log –** The Board action log has been updated to reflect the current status of Board items. The scope of work for the examination consultant has been put on hold until the exam committee has been convened and determined what it is that they will want. **Bennouri** has agreed to chair that committee after her tenure as a Board member has come to an end (February 2013).

Coffey reported that Legislative Concepts 390 (would allow for massage facility licensing) and 796 (would allow for endorsements) have been approved by the Governor's office. In addition, Legislative Concept 603 has been sponsored by the Oregon Military Department and approved by the Governor's Office and would allow for the issuance of temporary licenses to the spouses of military personnel.

Coffey also reported that the Board currently has \$778,000 in outstanding accounts receivables, with the majority of this being outstanding civil penalties assessed from disciplinary action. Board staff currently engages in a process of active pursuit of obligations owed to the Board, which may include wage garnishment, property liens, negotiation of settlement agreements, or referral of accounts to the Oregon Department of Revenue or to a private collections agency. These actions have resulted in increased revenue to the Board. However, the more aggressive nature of collections is a paradigm switch and **Coffey** wanted feedback from the Board on this course of action. **Bennouri** stated that if the individual is a Licensee, she would like to see the Board make attempt to work with the individual prior to taking these aggressive steps. She feels that the Board should support a Licensee as opposed to going after them by any means possible. After discussion, it was determined that the Board will work with Licensees and bring them before the Board before taking aggressive collection action. However, accounts held by unlicensed, suspended, surrendered or revoked individuals with outstanding civil penalties may continue under the current collections system.

c) Compliance Update – Nott provided the Board with a Compliance Report from July 1, 2012 to September 30, 2012. The report includes information such as: complaints open at start date (46); active cases at start date (38), number of new complaints received (38); number of cases opened (23); number of complaints closed (17); number of cases closed (27); and number of cases closed with disciplinary action (14).

4) Committee Updates

a) Education Committee – Lisa Garofalo reported on the October 5, 2012 Education Committee meeting and the most current revised Model Curriculum. It varied slightly from the version the Board reviewed in August, with small changes to verbiage, spelling, or grammar and it did not impact content or intent. The pathology list did return two conditions that had been mistakenly removed in the earlier revision. The committee is now on hiatus until February 2013. The Board thanked the committee for their hard work and thanked **Garofalo** for serving as chair and keeping the committee moving forward and organized.

b) Scope of Practice Committee – Calise reported that this committee also met October 5, 2012. They have been tasked with considering endorsements to be placed on the massage license, to indicate that a LMT is specialized in a particular type of massage or bodywork. This committee is also on hiatus until next year, as their work is directly tied to legislative session and passage of LC 796. In the meantime, they will continue to work on their white papers for various modalities.

c) Rules Committee – Bennouri reported that the committee met and the Board was provided rules for review in their supplemental packet. There was discussion on verbiage for some of the rules content. The committee also returned to the Board with questions on the practice of Breema, as they were tasked with reviewing it for exemption consideration but they felt that they needed additional information. She reported that there were several questions that the committee brought forth. The requirements for exemption indicate that the exempted organization indicate which category they fit in for exemption. In order to qualify for exemption, it was the feeling of the committee that an exempted practice would fall into one category. The Breema application indicated all categories. No definition date was provided to indicate a starting point, which the other exempted practices have done, as it shows in their exemption rules. The information provided was conflicting with research done by the committee and by the Board staff. The practice resembles Thai Yoga Massage, and the visuals provided caused the committee to have a difficult time clearly separating it from massage. In the end, the committee felt there was not a clear reasoning provided for the exemption request, and as such they returned to the Board seeking further clarification and guidance. **Bennouri** would like to request further information from the Breema association to bring back to the Board before moving forward on this item. The request was granted. **Calise moved to forward the rules as amended for hearing in November. Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

Definitions

- (1) "Advantageous" means in the Board's best interests, as assessed according to the judgment of the Board.
- (2) "Award" means either the act or occurrence of the Board's identification of the Person with whom the Board will enter into a Contract.
- (3) "Barter" means partial or complete trade or exchange of massage or bodywork services for any other type of goods or service other than money.
- (4) "Board" means the State Board of Massage Therapists or its authorized representatives as provided by ORS 687.115.
- (5) "Bodywork" means the use on the human body, for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition of:
 - (a) Pressure, friction, stroking, tapping, kneading, vibration or stretching by manual or mechanical means or gymnastics;
 - (b) Appliances, tools or devices;
 - (c) Topical preparations; or
 - (d) Hot and cold applications.
- (6) "Boundary" means the limits in a professional relationship which create safety based on the needs of the client.
- (7) "Boundary violation" means an alteration or shift in the limits of a professional relationship so that what is allowed in the relationship becomes ambiguous and/or may not be based on the needs of the client.
- (8) "Caring" means acting in a manner in which things, events, people or relationships matter.
- (9) "Certified Class or program" means a class or program that is approved by the Board and is offered:
 - (a) By a person or institution licensed as a career school under ORS 345.010 to 345.450; or
 - (b) By a community college or university approved by the Department of Education; or
 - (c) In another state and licensed or approved by the appropriate agency in that state.
- (10) "Client" means any individual, group of individuals, or organization to whom an LMT provides massage
- (11) "Client vulnerability" means factors which diminish a client's ability to be self-determining.
- (12) "Compensation" means something given or received as payment including but not limited to bartering, tips, monies, donations, or services.
- (13) "Conflict of interest" means any action or decision or recommendation by an LMT at the detriment of a client.
- (14) "Contact hours" means actual hours in class under the instruction of and in the presence of an instructor.
- (15) "Contract" means an agreement for purchase, lease, rental or other acquisition or sale or other disposal by the Board of Goods or Services.
- (16) "Contract Price" means, as the context requires;
 - (a) The maximum payments that the Board will make under a Contract if the Contractor fully performs under the Contract;
 - (b) The maximum not-to-exceed amount of payments specified in the Contract; or
 - (c) The unit prices for Goods and Services set forth in the Contract.
- (17) "Contractor" means the Person with whom the Board enters into a Contract.
- (18) "Critical Reflection" means a process whereby knowledge and action are connected to each other through the application of careful, conscious, deliberate reflection on:
 - (a) Personal practice (perceptions, assumptions, motivations, values, behaviors).
 - (b) Assessment and understanding of a situation.
 - (c) Likely or actual consequences or impact of one's actions.
- (19) "Dual Relationship" means any relationship of a personal or business nature with a client that is in addition to or concurrent with a professional relationship in which the LMT is providing or has provided massage or bodywork services to that same client.
- (20) "Ethics" means a system of valued societal beliefs and behaviors that may be used to guide and evaluate conduct to ensure the protection of an individual's person and rights.
- (21) "Emergency" means circumstances that:
 - (a) Could not have been reasonably foreseen;
 - (b) Require prompt execution of a Contract to remedy the condition; and
 - (c) The circumstances create a substantial risk of loss or revenue, damage or interruption of services or substantial threat to property, public health, welfare or safety when the circumstances could not have been reasonably foreseen;
- (22) Equivalent Credit Hours: are those credit hours as determined by the respective educational institution or its certified classes or programs

- (23) "Goods and Services" or "Goods or Services" means supplies, equipment, materials and services including Personal Services and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the Board is authorized by law to procure.
- (24) "Indorsement" means:
- (a) the process of evaluating and recognizing the credentials of a person licensed in Oregon in another health care specialty that includes in its scope of practice, acts defined as massage: or
 - (b) the process of evaluating and recognizing the credentials of a massage or bodywork practitioner authorized to practice massage or bodywork in another jurisdiction.
- (25) "Informed consent" means a process wherein clients have knowledge of what will occur, that participation is voluntary, and that the client is competent to give consent.
- (26) "Licensee" means any person holding a license, permit, or certificate issued by this Board; an LMT
- (27) "LMT" means a Licensed Massage Therapist.
- (28) "Massage" or "massage therapy" is defined in ORS 687.011.
- (29) "Offer" means a response to a request for price quote or response to a Solicitation Document.
- (30) "Offeror" means a Person who submits an Offer.
- (31) "Personal power" means recognizing and taking personal responsibility for the inherent power differential between the LMT and the client and recognizing and taking personal responsibility for the impact of professional decisions, actions and behavior on the client.
- (32) "Power differential" means the basic inequality inherent in the professional relationship between an LMT and a client in terms of who has the advantage in the relationship. The LMT is presumed to have the advantage by virtue of the authority which emerges from the role of professional and the vulnerability which is automatically part of the role of client.
- (33) "Practical Work Experience" means experience gained while employed or self-employed providing legal massage/bodywork to the public within the last five (5) years, in another state or jurisdiction.
- (34) "Practice of massage" is defined in ORS 687.011.
- (35) "Professional authority" means the power inherent in the professional role and which is derived from a combination of an LMT's specialized or expert knowledge, societal expectations, stated and unstated client expectations, and an LMT's personal power.
- (36) "Professional relationship" means the relationship established when a LMT contracts with a client, verbally or in writing, to provide any service associated with the practice of massage or bodywork.
- (37) "Professional role" means assuming the demands and responsibilities of professional authority by taking charge of the conditions which create and maintain client safety and trust in the professional-client relationship.
- (38) "Scope" means the range and attributes of the Goods or Services described in the applicable Solicitation Document, or if no Solicitation Document, in the Contract.
- (39) "Solicitation Document" means an Invitation to Bid, Request for Proposal or other document issued to invite Offers from prospective Contractors.
- (40) "Specification" means any description of the physical or functional characteristics or of the nature of Goods or Services, including any requirement for inspecting, testing or preparing Goods or Services for delivery and the quantities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained.
- (41) "Successful Completion" means the written receipt of credit from classes taken at a community college or university or the written receipt of a certificate from a program or private career school.**
- (42) (44) "Written" or "Writing" means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

334-010-0027

Exempt Practices

- (1) Practitioners exempt from the Oregon Board of Massage Therapists licensing authority are defined as practitioners who:
- (a) Do not claim expressly or implicitly to be massage therapists and who limit their work to the practice of:
 - (A) Using touch, words and directed movement to deepen awareness of existing patterns of movement and suggest new possibilities of movement, as defined per 687.031(1)(j)(i). Examples include the Feldenkrais Method of Somatic Education as defined on May 16, 2011, by the Feldenkrais Guild® of North America and The Trager® Approach as defined on May 16, 2011, by the United States Trager® Association
- Association; or**

(B) Using minimal touch over specific points on the body to facilitate balance in the nervous system, as defined per 687.031(1)(j)(ii). An example includes Bowenwork® and/or the Bowen Technique as defined on May 16, 2011 by the Bowenwork Academy USA; or

(C) Using touch to affect the energy systems or channels of energy of the body, as defined per 687.031(1)(j)(iii). An example includes Polarity Therapy as defined on May 16, 2011 by the American Polarity Therapy Association; and

- (b) Hold an active certification from a National or International professional organization or credentialing agency that:
- (A) Requires a minimum level of training specific to their discipline, demonstration of competence and adherence to an approved scope of practice and ethical standards;
 - (B) Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and
- (c) Provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

(2) It is the exempt practitioner's responsibility to insure they meet the criteria for being exempt and only practice within their exempt scope of practice. Practitioners may be subject to discipline by the Board if they:

- (a) Refer to themselves or imply they are a massage therapist;
- (b) Practice outside of the exempt scope of practice;
- (c) Practice without an active certification from a National or International professional organization or credentialing agency; or
- (d) Fail to provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

(3) The State Board of Massage Therapists has the authority to verify a practitioners claimed exemption from licensure of ORS 687 under subsection (1)(j) of section 687.031. Verification may include, but is not limited to, consultation with the practitioners certifying organization or agency.

(4) Practitioners, Disciplines and/or Organizations seeking to be named in the exemption shall contact the Board of Massage Therapists to request a review.

334-010-0029

Internal Cavity

(1) An internal cavity massage must be performed using gloves and utilizing universal precautions for communicable disease control.

(2) Internal Cavities consist of nasal cavities, oral cavities, auricular cavities, anal cavities, and vaginal cavities.

(3) ~~(2)~~ Prior to performing these special procedures, an LMT must:

- (a) be able to present evidence of the completion of specialized contact hours as training beyond the minimum competencies, which includes but is not limited to, indications, contraindications, therapeutic treatment techniques, expected outcomes, client safety, client consent, client communication, draping techniques, sanitation, and ethical responsibilities related to internal cavity massage;
- (b) be able to articulate a therapeutic rationale which is acknowledged by the client; rationale may include a medical prescription and/or permission to consult with the clients health care provider(s)-;
- (c) acquire prior written and verbal consent before proceeding; ~~written consent must include clients' option to accept or decline to provide a witness, in addition to the client and LMT.~~
- (d) intra-anal and intra-vaginal written consent must include clients' option to accept or decline to provide a witness, in addition to the client and LMT.**

(4) ~~(3)~~ While performing these procedures a LMT must use appropriate draping techniques at all times. Any temporary exposure of the genital area for the purposes of treatment is acceptable only in respect to appropriate procedures for that treatment. Immediately following treatment of the area, the genital area must be covered again.

(5) ~~(4)~~ Under no circumstances will intravaginal or intra-anal techniques be performed on individuals under 18 years of age.

334-010-0046

Class Certification

(1) A class or program certified under ORS 687.051 must be offered by:

(a) In State Schools:

- (A) ~~(a)~~ A person or institution licensed as a private vocational school under ORS 345.010 to 345.074 or the equivalent licensing authority of another jurisdiction; or**

- (B) ~~(b)~~ By a community college or university and approved by the Division of Vocational Education or the Department of Education, or the appropriate agency of another jurisdiction; or
- (C) ~~(c)~~ By a college accredited either by the Northwest Association of Secondary and Higher Schools or a like regional association or by a college in Oregon approved by the Oregon Office of Educational Policy and Planning for the purpose of granting degrees; ~~and or~~
- (D) ~~(d)~~ Approved by the Board.

(b) Out of State Schools:

- (A) Must be accredited by the governing body where the school is located; or**
- (B) By a college accredited either by the Northwest Association of Secondary and Higher Schools or a like regional association for the purpose of granting degrees.**

- (2) In order for a class or program to be approved, the person or institute offering the class or program must apply to the Board. The application packet must contain, but not be limited to:
 - (a) A completed Board application;
 - (b) Verification of content meeting the Model Curriculum;
 - (c) Course descriptions and syllabi;
 - (d) The institution's Code of Ethics and fraternization policy;
 - (e) The method of evaluation to determine the student's successful completion of a class;
 - (f) The attendance requirements for students to successfully complete each class;
 - (g) Minimum qualifications for selecting instructors.
- (3) The authorized representative of the certified class or program must notify the Board at least 60 days prior to any significant changes to information provided in the application process.
- (4) A certified class or program must renew their certification on a regular basis as determined by the Board.
- (5) Certification of the class or program may be revoked by the Board if it is determined that the requirements have not been or are no longer being met.
- (6) Denial or revocation of a class or program certification by the Board, if otherwise not resolved, must be heard by the Board pursuant to ORS 183.411 to 183.497.

334-040-0010

Discipline

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

- (1) Practicing massage or representing one's self as a massage therapist without a current active license issued by the Board;
- (2) Knowingly or recklessly making any false statement to the Board;
- (3) Suspension or revocation of a license to practice massage in another jurisdiction based upon acts by the licensee similar to acts described in this section;
- (4) Conviction of a crime in this state, or jurisdiction;
- (5) The use of false, deceptive, or misleading advertising, which includes but is not limited to, advertising massage using the term "massage" or any other term that implies a massage technique or method in any private or public communication or publication by a person licensed or not licensed by the Board as a massage therapist;
- (6) Allowing the use of a license by an unlicensed person;
- (7) Presenting as one's own license, the license of another;
- (8) Practicing massage under a false or assumed name without notification to the Board;
- (9) Impersonating another massage therapist;
- (10) Assisting, employing, or permitting an unlicensed person to practice massage;
- (11) Practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive;
- (12) Practicing or offering to practice massage beyond the scope permitted by law;
- (13) The use of intoxicants, drugs, controlled substances, or mind altering substances to such an extent as to impair or potentially impair the licensee's abilities to perform professional duties in a safe manner;
- (14) Practicing massage with a physical or mental impairment that renders the therapist unable or potentially unable to safely conduct the practice of massage;
- (15) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition as required by rules of the Board;
- (16) Refusing to permit the Board or its representatives to inspect the business premises of the licensee during regular business hours;
- (17) Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to:

- (a) Failure to furnish any requested papers or documents,
- (b) Failure to provide in writing a full and complete explanation covering the matter contained in the complaint filed with the Board,
- (c) Failure to respond to subpoenas issued by the Board whether or not the recipient is accused in the proceeding;
- (18) Failing to comply with an order issued by the Board;
- (19) Unprofessional or dishonorable conduct which includes but is not limited to:
 - (a) Any conduct involving inappropriate physical contact or sexual misconduct which includes:
 - (A) Sexual abuse which is conduct which constitutes a violation of any provision of ORS 163.305 through 163.465;
 - (B) Sexual violation which is sex between the LMT and the client, whether initiated by the client or not, engaging in any conduct with a client that is sexual, or may be reasonably interpreted as sexual, including, but not limited to:
 - (i) Sexual intercourse;
 - (ii) Genital to genital contact;
 - (iii) Oral to genital contact; oral to anal contact;
 - (iv) Oral to oral contact except cardiopulmonary resuscitation; touching breasts or genitals or any sexualized body part for any purpose other than appropriate examination or treatment or where the client has refused or withdrawn consent; or
 - (v) Encouraging the client to masturbate in the presence of the LMT or masturbation by the LMT while the client is present.
 - (C) Sexual impropriety which is any behavior, gestures, or expressions that are seductive or sexually demeaning to a client; inappropriate procedures, including, but not limited to,
 - (i) Disrobing or draping practices that reflect a lack of respect for the client's privacy, deliberately watching a client dress or undress for self gratification instead of providing privacy for disrobing;
 - (ii) Subjecting a client to an examination in the presence of students, assistants, or other parties without the explicit consent of the client or when consent has been withdrawn;
 - (iii) An examination or touching of genitals;
 - (iv) Inappropriate comments about or to the client, including but not limited to, making sexual comments about a client's body or clothing, making sexualized or sexually-demeaning comments to a client, comments on the client's or LMT's sexual orientation and making a request to date;
 - (v) Initiation by the LMT of conversation regarding the sexual problems, preferences or fantasies of the LMT; or
 - (vi) ~~Kissing of a sexual nature.~~
 - (b) Violating the client's rights of privacy, and confidentiality.
 - (c) Failure to disclose or release information about a client if required by law or on written consent of client.
 - (d) Intentionally harassing, abusing, or intimidating a client either physically or verbally.
 - (e) Any conduct or practice which could endanger the health or safety of a client or the public.
 - (f) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage.
 - (g) Exercising undue influence on a client, including promotion or sale of services, goods, or appliances in such a manner as to exploit the client for the financial gain or self-gratification of the massage therapist.
 - (h) Routinely practicing in an incompetent manner.
 - (i) Conduct which would also constitute a violation of the Oregon Unlawful Trade Practices Act.
 - (j) Practicing a modality or technique without adequate training or licensure.

5) Board Business

- a) **International Association of Structural Integrators Exam Request – Kirsten Schumaker** presented information to the Board, as to why the IASI examination should be considered as a qualifying written examination option, as it is utilized by the structural integration community. There was discussion on the psychometric design, the job task analysis, the hourly requirements, and who may qualify for the exam. After discussion **Bennouri** requested additional time to review the information. There was discussion and it was felt that this would be appropriate. **Bennouri moved** to defer this matter to the November Board meeting. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**
- b) **Request for Exemption – Ortho-Bionomy –** The Board viewed a live demonstration of an Ortho-bionomy session for approximately one hour. They requested additional information from the presenters, and this matter will return to the Board when the information has been collected.

- c) **Model Curriculum Vote** – Bennouri moved to accept the revised Model Curriculum, with an implementation date of July 1, 2013. **Second the Motion: Bennouri In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.** Nott inquired as to when schools may start applying under the new curriculum. It was determined that schools may start modifying their programs right away if they choose. The approved Model Curriculum will be sent to the Oregon Department of Education as well.
- d) **Petition for Physician Assistant** – The Board reviewed the requirements for becoming a physician assistant to determine if the science requirements are equal to or greater than those required to be a massage therapist. They are. **Bennouri moved** to add Physician Assistant to the list of professions that qualify for licensure by health indorsement. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.** (Note: Health Indorsement applicants are required to take the Oregon Practical Examination. They do not need to provide the 200 hours of health sciences and they do not have to take a written exam.)
- e) **FSMTB Annual Meeting Report** – Fredrickson reported on his attendance at the FSMTB annual meeting. He stated that as an Oregon representative, he was favorably received. He feels that the organization is maturing and he is proud to be associated with it. They covered a great deal of information, the presentations were great, and the communication was wonderful. **Calise** echoed **Fredrickson's** positive statements. There are common issues amongst the states, such as human trafficking and facilities concerns, and she feels that the Board should consider trying to get a Board member onto the FSMTB Board, as well as onto other association Boards. With Oregon's unique structure and having been at the forefront of the massage industry for many years, it would be a benefit for Oregon to participate in organization opportunities. There was a discussion on what makes the OBMT different from other massage Boards: the semi-independent status; having the budget structure that the agency has; having the compliance function that the agency has; having the practical exam; having faith, trust and good rapport with the executive branch; working with the Department of Justice; There was discussion on how more and more states are losing functions, including their ability to investigate, and as such the Board and professionals should be vigilant in protecting that.
- f) **Request for Consideration of Fingerprinting** – The Board received an e-mail correspondence requesting consideration of circumstances for LMTs that have their license lapse by only a short period of time, yet they are required to provide fingerprints and prevented from working until the background check was been returned. The correspondence voiced concerns that the background check could potentially take up to six weeks, and that no LMT can afford to be out of work for six weeks. **McMillin** stated that the background check is a requirement imposed by the legislature for all health professional licensing agencies. The Board has no latitude not to require it, but he does understand the concern about being out of work for so long. **Calise moved** to forward this matter to the Rules Committee for consideration. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**
- g) **Request for consideration of expired status** – The Board received written correspondence from a LMT requesting the Board consider creating an officially retired status for LMTs that would allow them to keep and use their LMT designation. Board staff have fielded multiple requests for this, where the caller is inquiring for things such as writing books, teaching, or just because they've used it their entire life and they want to maintain that designation even though they no longer practice. Sometimes they want to retire or sometimes they are inactive. Currently there is no official status, and if an individual informs the Board staff that they are retired, they are treated as though their license has lapsed. **McMillin moved** to send this matter to the Rules Committee for consideration. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**
- h) **Plain language Candidate Handbook** – The Board reviewed a draft copy of a revised candidate handbook, which would be rolled out with the new Model Curriculum and published July 1, 2013. **Bennouri** indicated that she had comments on it and she would work directly with staff to address those. **Coffey** explained that the handbook was provided to an editor at Lane Community College, who reviewed and amended it to meet State required plain language rules. It was subsequently reviewed by other schools for feedback. It is written at an 8th grade level as required by the State
- i) **Draft Certified Schools Application** – The Board reviewed a draft amended certified schools application. **Calise** stated that it needs to be updated further and she will work with staff on those issues. Of particular concern are the

current requirements for fraternization policies. It will be amended and returned to the Board in November.

j) **3rd Quarter Exam Statistics** – The Board reviewed the statistics for the Oregon Practical Exam, for the reporting period of the 3rd quarter 2012. **Bennouri** noted that there is an Oregon school which has fallen below the out-of-state school over pass rate of 67%. **Fredrickson** remarked that while at the FSMTB meeting, he found it interesting that some considered the Oregon Practical Exam discriminatory, based on the passing rates, yet the MBLEx first time pass rate is only 72% nationwide.

6) **BOARDerline** – The Board reviewed current newsletter assignments. **Bennouri** has agreed to provide articles on continuing education for Board meeting attendance, scope of practice, ethics class (to be provided at a later date) and Groupon. **Morin** agreed to provide an article on massage and recent body art. **Fredrickson** will provide an article on the recent FSMTB meeting. **Chapman** stated that she would provide an article on a health related topic as well.

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

Jan Jones thanked **Nott** for informing her about the Board meeting and inviting her to attend. She found it to be enlightening. She is new to the state and she was curious about the standards for continuing education providers and for excellence in continuing education. **Bennouri** replied that the Board is looking into considering setting requirements for providers of continuing education, and she would be happy to have a conversation with Jones about current CE requirements for renewal and the history of CE requirements in Oregon.

Steve Davis stated that he is a participating member of the Rules Committee and Education Committee, as well as a LMT and a yoga instructor. He indicated that he has some thoughts for the Board which he will put into a letter to the Board. He stated that it has been educational being present today.

Bennouri moved to take a brief recess at 11:43 am. **Second the Motion: Chapman** **In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson** **Opposed: None. Motion carries.** The Board returned from recess at 12:03 pm.

The Board entered Executive Session at 12:04 pm and returned to Public Session at 4:05 pm.

8) **Executive Session**

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

The Board will now meet in 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 192.660(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, applicant, or other persons alleged to be practicing in violation of law pursuant to ORS 676.175 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.

Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of executive session, the Board will return to open session and welcome the audience back into the room.

9) **Action on Executive Session Items**

- a) **Case 1145 – Calise moved** to grant the licensee's massage license renewal without further stipulations. **Second the Motion: Morin** **In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson** **Opposed: None. Motion carries.**
- b) **Case 1466 – McMillin moved** to grant the applicant's conditional license to practice massage with the following stipulations: Applicant shall be considered on probationary status through 04/30/2015, and that all stipulations that follow

are through the probationary period, after which the Board may review her application for renewal to determine if the probationary period shall be extended; Applicant agrees not to engage in any conduct that would or could impact her ability to safely and competently conduct her massage practice, or compromise the health and safety of the clients served; Applicant shall work only at a facility or business that facilitates a group practice setting; Applicant agrees that any time that she engages in the practice of massage, it will be in a manner that facilitates a group practice setting; Applicant shall disclose to her employer, or in the case of other settings, organizer, manager or individual responsible for the event, her stipulations for licensure; Applicant shall be required to obtain a minimum of 6 contact hours of continuing education in the subject of ethics, each calendar year, to be reported with each massage license renewal; at renewal, applicant shall be required to submit a fingerprint card and the appropriate background check fee, as well as all other renewal requirements; in addition, the probationary period shall be tolled if applicant moves outside of the State of Oregon, and upon her return to Oregon she shall resume her probationary status and time; applicant shall report any change of home, mailing or work address and all associated contact information to the Board within 10 days of such change. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, McMillin, Morin, and Rothenberger Opposed: Fredrickson.**

Motion carries.

c) Case 1468 – Morin moved to grant the applicant's conditional license to practice massage with the following stipulations: Applicant shall be considered on probationary status through 12/31/2015, and that all stipulations that follow are through the probationary period, after which the Board shall review his application for renewal to determine if the probationary period shall be extended; Applicant shall successfully complete all requirements of his criminal probation; Applicant may not consume or possess alcohol or illegal drugs; Applicant shall, at a minimum once weekly, attend a 12-step or other alcohol or treatment program and provide written verification to the Board on a monthly basis; Applicant agrees not to engage in any conduct that would or could impact his ability to safely and competently conduct his massage practice, or compromise the health and safety of the clients served; Applicant shall work only at a facility or business that facilitates a group practice setting; Applicant agrees that anytime that he engages in the practice of massage, it will be in a manner that facilitates a group practice setting; Applicant shall disclose to his employer, or in the case of other settings, organizer, manager or individual responsible for the event, his stipulations for licensure; Applicant shall be placed on peer supervision; the Board may, upon 30-days prior notification, amend, modify, extend or reduce the period and terms of probation; in addition, the probationary period shall be tolled if applicant moves outside of the State of Oregon, and upon his return to Oregon he shall resume his probationary status and time. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, McMillin, Morin, and Rothenberger Opposed: Fredrickson. Motion carries.**

d) Case 1321 – Calise moved to issue a Notice of Proposed Action for one violation of ORS 687.081(1)(i) and OAR 334-040-0010(19)(a)(B), unprofessional or dishonorable conduct for sex between the LMT and client; for a total civil penalty of \$1,000; and place Licensee on probation for one year from the date of the Order; and require Licensee to complete the Board ethics protocol with their peer supervisor; and require LMT to complete a minimum of 30 contact hours from a Board-approved course to cover the subject of ethics, communication and boundaries. **Second the Motion: Bennouri In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

e) Case 1368 – McMillin moved to issue a letter of concern to the LMT about her general demeanor and conduct in the presence of clients. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

f) Case 1390 – Calise moved to ratify the stipulated agreement. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

g) Case 1391 – Bennouri moved to issue a Notice of Proposed Action for: three violations of OAR 334-010-0025(3)(a)(A)(C)(D), A massage therapist must use safe and functional coverage/draping practices during the practice of massage when the client is disrobed. Safe and functional coverage/draping means: LMT explains, maintains and respects coverage/draping boundaries, genitals and gluteal cleft of male and female clients and the breast area of female clients are not exposed, and Massage or movement of the body does not expose genitals, gluteal cleft or breast area; one violation of OAR 334-010-0025(3)(a)(B), Client gives informed consent; two violations of OAR 334-020-0005(1)(b)(A), All treatment spaces must: provide for client privacy, both in-house and on-site; one violation of OAR 334-020-0050(2), the use of soiled linens is prohibited; one violation of OAR 334-020-0050(3)(a)(c)(d)All soiled linens must be: immediately placed in a receptacle that closes and prevents cross-contamination, laundered in a manner that eliminates the risk of spreading parasites, communicable diseases and infections, and laundered in a manner that removes residue of topical

preparations; two violations of OAR 334-020-0055(1), all therapists must practice communicable disease prevention and control; one violation of OAR 334-030-0001(3), All persons licensed under ORS 687 are charged with having knowledge of the existence of these Standards of Professional Conduct and must be deemed to be familiar with their provisions and to understand them. Such knowledge must encompass the understanding that the practice of massage is a privilege as opposed to a right; one violation of OAR 334-030-0005(1)(b)(c)(g), The LMT must act within the context of professional practice standards, codes of ethics, and relevant statutes and regulations, and consider factors related to safety, effectiveness, and cost in planning and providing care and services, be accountable for his or her actions and commitments and assume personal and professional responsibility to do his or her best; one violation of OAR 334-030-0005(3)(a)(b), the LMT must use critical reflection in the assessment of professional and clinical situations for the development and provision of care and services, and evaluate the quality and effectiveness of his or her professional practice activities; and one violation of OAR 334-030-0005(1)(e) the LMT must develop and incorporate respect for diverse client backgrounds in regard to a client's clinical diagnosis, lifestyle, sexual orientation, race, gender, ethnicity, religion, age and socioeconomic background when planning and providing services; for a total civil penalty of \$12,000. **Second the Motion: McMillin In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

h) Case 1415 – McMillin moved to revoke Licensee's massage license for two violations of ORS 687.081(1)(i), unprofessional or dishonorable conduct by; OAR 334-010-0025(3)(a)(C), a massage therapist must use safe and functional draping practices during the practice of massage when the client is disrobed; safe and functional draping means: genitals and gluteal cleft of male and female clients and the breast area of female clients are not exposed; OAR 334-0400010(19)(a)(B)(iv)sexual violation... touching breasts... for purpose other than appropriate examination or treatment; OAR 334-040-0010(19)(a)(C)(i), disrobing or draping practices that reflect a lack of privacy for the client...; OAR 334-040-0010(19)(d), intentionally harassing, abusing or intimidating a client; and forward to the District Attorney for prosecution consideration. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

i) Case 1440 – Morin moved to continue this matter until the November meeting. Second the Motion: Calise In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.

j) Case 1442 – Bennouri moved to issue a Notice of Proposed action for: one violation of ORS 687.051(6), to be eligible for inactive status, a licensed massage therapist must not be practicing massage in the State of Oregon; and OAR 334-040-0010(11), practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive; for a total civil penalty of \$1,000. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

k) Case 1444 – Calise moved to issue a Notice of Proposed Action for: one violation of OAR 334-040-0010(10), assisting, employing or permitting an unlicensed person to practice massage; one violation of OAR 334-020-0005(c)(A)(B), the facility and treatment space must be cleaned regularly and kept free of clutter, garbage or rubbish and maintained in a sanitary manner; one violation of OAR 334-020-0015(1)(c), all equipment and tools used in conjunction with a treatment on a client must be cleaned between each use; one violation of OAR 334-020-0015(2), cushions on tables and chairs as well as bolsters and pillows, must be covered with impervious material that is cleaned after every use; for a total civil penalty of \$4,000; and suspend Licensee's massage license for 120 days from 12/01/2012 through 03/31/2013. **Second the Motion: McMillin In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

l) Case 1447 – Calise moved to issue a Notice of Proposed Action for: one violation of ORS 687.021(1), engaging or purporting to be in the practice of massage without a license; for a total civil penalty of \$500. **Second the Motion: McMillin In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

m) Case 1449 – Bennouri moved to issue a Notice of Proposed Action for: one violation of ORS 687.021(1), engaging or purporting to be in the practice of massage without a license; for a total civil penalty of \$500. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

n) Case 1461 – Morin moved to issue a Notice of Proposed Action for: two violations of ORS 687.021(1), engaging or purporting to be in the practice of massage without a license; and one violation of ORS 687.021(2)(a); for a total civil

penalty of \$3,000; and forward to local law enforcement, district attorney and federal investigators. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

o) Case 1462 - Calise moved to issue a Notice of Proposed Action for: one violation of OAR 334-040-0010(2), practicing or purporting to practice beyond the scope permitted by law; for a total civil penalty of \$1,000. **Second the Motion: Bennouri In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

p) Case 1467 - Bennouri moved to issue a Notice of Proposed Action for: one violation of ORS 687.081(1)(b), made a false statement to the Board; and OAR 334-010-0010(2), knowingly or recklessly making a false statement to the Board, pursuant to OAR 334-010-0050(5), if the Board finds indications of fraud or falsification of records, investigative action must be instituted. Findings may result in disciplinary action up to and including revocation of licensee's license; for a total civil penalty of \$1,000; and suspend licensee's massage license until she has provided her continuing education as required and met any other renewal requirements that may be lacking. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

q) Case 1474 – Calise moved to grant the application for massage license. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

r) Executive Session Closed Case Report – Bennouri moved to accept the Executive session Closed Case Report as submitted in exhibits 1-9. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.**

Case No. 1371

Allegation: Unprofessional conduct **Closed:** Letter of concern

Case No. 1395

Allegation: Unlicensed practice of massage **Closed:** Based on further review

Case No. 1403

Allegation: Unlicensed practice of massage **Closed:** Letter of concern

Case No. 1408

Allegation: Sexual impropriety of massage **Closed:** Unable to substantiate

Case No. 1424

Allegation: Unlicensed practice of massage **Closed:** Respondent unreachable

Case No. 1425

Allegation: Unlicensed practice of massage **Closed:** Compliance met

Case No. 1430

Allegation: Work outside of scope of practice **Closed:** No violation found

Case No. 1437

Allegation: Other **Closed:** No action taken

Case No. 1438

Allegation: Non-compliance with a Board order **Closed:** Compliance met

Case No. 1439

Allegation: No license number in ad **Closed:** Compliance met

Case No. 1443	Allegation: Unlicensed practice of massage	Closed: Unable to substantiate
Case No. 1446	Allegation: Failure to provide documents to Board	Closed: Compliance met
Case No. 1448	Allegation: Unprofessional conduct	Closed: Unable to substantiate
Case No. 1450	Allegation: Unlicensed practice of massage	Closed: No violation found
Case No. 1451	Allegation: Unlicensed practice of massage	Closed: Respondent unreachable
Case No. 1452	Allegation: Unlicensed practice of massage	Closed: No violation found
Case No. 1453	Allegation: Failure to disclose information on application	Closed: Compliance met/Warning issued
Case No. 1455	Allegation: No license number in ad	Closed: Compliance met
Case No. 1456	Allegation: No license number in ad	Closed: Compliance met
Case No. 1457	Allegation: No license number in ad	Closed: Compliance met
Case No. 1458	Allegation: No license number in ad	Closed: Compliance met
Case No. 1459	Allegation: No license number in ad	Closed: Compliance met
Case No. 1460	Allegation: No license number in ad	Closed: Compliance met
Case No. 1463	Allegation: No license number in ad	Closed: Compliance met
Case No. 1465	Allegation: No license number in ad	Closed: Compliance met

s) **Practical Exam** – The Board took no action on this matter.

10) Public Session Compliance Action –

a) **Public Session Closed Case Report** – **Bennouri** moved to accept the Public Session closed case report as submitted in exhibits 1- 5 **Second the Motion: Calise** In favor: **Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson** **Opposed: None. Motion carries.**

Case No. 1006	Doreatha Martin
Allegation: Unlicensed practice of massage	Closed: Final default order
Case No. 1259	Rachel Boyer-Thomas
Allegation: Unprofessional conduct, conviction of a crime abuse of alcohol/drugs	Closed: Revoked
Case No. 1265	Patrick Riggs
Allegation: Sexual violation	Closed: Stipulated agreement issued
Case No. 1273	Adam Roberts
Allegation: Sexual impropriety	Closed: Revoked
Case No. 1274	Mark Jones
Allegation: Sexual impropriety	Closed: Stipulated agreement issued
Case No. 1287	Paul Pozorski
Allegation: Unprofessional conduct	Closed: Final default order
Case No. 1289	Guan Lihong
Allegation: Unlicensed practice of massage	Closed: Final default order
Case No. 1292	Rebecca Guberman
Allegation: Unlicensed practice of massage	Closed: Stipulated agreement issued
Case No. 1293	Alexandria Renee Carter
Allegation: Unlicensed practice of massage	Closed: Final default order
Case No. 1316	Li Hoa Zhang
Allegation: Unlicensed practice of massage	Closed: Final default order
Case No. 1318	Wendy Larson
Allegation: Unlicensed practice of massage	Closed: Civil penalty assessed
Case No. 1367	Guan Lihong
Allegation: Unlicensed practice of massage	Closed: Stipulated agreement issued
Case No. 1390	Jennifer Reeves
Allegation: Sexual impropriety	Closed: Stipulated agreement issued
Case No. 1397	Ying Tang
Allegation: Unlicensed practice of massage	Closed: Final default order
Case No. 1400	Shaykeisha Latreace Hardin
Allegation: Unlicensed practice of massage	Closed: Final default order
Case No. 1417	Francisco Pacheco Jr.
Allegation: Other	Closed: Stipulated agreement issued

11) Public Forum – Opportunity to share thoughts that pertain to agenda items –

12) Announcements – **Coffey** reminded Board members that there is a Rules Hearing prior to the next Board meeting. Monday, November 26, 2012 at 9:00am. The Board meeting will follow, beginning at 10:00am. Board members are not required to attend the Rules Hearing, but may attend if they choose.

13) Adjourn Meeting – **Morin moved** to adjourn the meeting. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson Opposed: None. Motion carries.** The meeting was adjourned at 4:22 pm.