



BOARD MEETING MINUTES
 Thursday, May 2, 2002
 Roth's Conference Center
 West Salem, Oregon

Attendance

Board Members:

Michael Jordan, L.M.T., Chair
 David Frostad, L.M.T.
 Jacqueline Kern

Cathy Law
 Stephanie Manriquez, L.M.T.
 Lisa Oxman, L.M.T. (via telephone)

Staff: Bev Holzman, Executive Director
 Michelle Sherman, Office Manager

Public:

Sharon Jakeways; OMTA
 Teresa Miller; AMTA-OR
 Andrea Weiner; FGNA
 Paul Gerhards
 Nick Chrones; LCC

Robert Bike; OMTA
 Jessica Slavic
 Diana Godwin; FGNA
 Ted Adams

Lisa Barck-Garafalo; OSM
 Francesca Meier
 John Chester, MD; FGNA
 Leslie Giese

Jordan announced that pursuant to ORS 192.660 (1)(f) and ORS 192.660 (1)(h) the Oregon Board of Massage Therapists will now meet in Executive Session for the purpose of considering records that are exempt by law from public inspection. These records are relevant to test questions, scoring keys, and other examination data used to administer the qualifying examinations and consultation with legal counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. 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 the Executive Session the Board will return to open meeting and welcome the audience back into the room. The Executive Session convened at 10:07 A.M. Ended at 1:05 P.M.

- 1) Executive Session
Lunch
- 2) Call to order–
Jordan called the public meeting to order at 1:15 P.M. He introduced and welcomed new board member Cathy Law.
- 3) Approve Agenda (the order of agenda items was changed to accommodate availability of board members)
Jordan presented the following changes to the agenda:
Add item 6) f) – Update on building purchase
Add item 9) e) – Board representation at AMTA/OMTA conferences

DRAFT

Add item 9) f) – Health Indorsement Application; Physician’s Assistant: Steven Hillyer

Add item 10) a) – Indorsement Application; Kerith Hartman

Oxman moved to approve the agenda with the aforementioned changes. **The motion carried.**

- 4) **Frostad moved** to adopt an internal policy to grant the Executive Director the authority to negotiate Stipulated Agreements for the Board, such negotiations to take place through consultation with the Board’s legal counsel. Oxman opposed. **The motion carried.**

- 5) Public Forum

An opportunity for the public to address the Board and ask questions.

Lisa Barck-Garafalo/Oregon School of Massage: She asked for the status of the proposed rule changes regarding CEUs. Holzman stated the staff is working on those and there will be another rules hearing later on this year.

Nick Chrones/Lane Community College: He asked for the history of the legislative concept. Jordan explained currently board does not have authority to require testing for competency, and this is a tool that could be important for law enforcement investigations. Holzman stated the board’s legal counsel also recommended this concept. It is a draft concept and will be presented to legislature for approval. Public comment or written comments can still be sent to the Board office. The draft had to be submitted quickly to meet the April 15 deadline for submittal of legislative concepts. Oxman wanted to state for the record that the board did not vote on this at the last meeting and to make sure the public has an opportunity to review and respond. Jordan stated the board had followed the requirements so far in this process.

Holzman stated those in opposition or in favor of the proposed legislation can contact their legislators. As recommended by Frostad, the concept and the accompanying information will be posted on the website.

[Editor’s Note: upon review of the legislative concept schedule I learned the final request for bill revision is November 1, 2002 or 10 business days after the agency receives the first bill draft from legislative counsel, whichever is later. The Agency is allowed only one revision after its first draft.]

Sharon Jakeways: Oregon Massage Therapy Association: OMTA is concerned that the legislative concept leaves a great deal of room for abuse by whomever is enforcing it. It could allow someone to use it as a tool against an LMT and the Board would require a competency evaluation based upon a frivolous complaint.

- 6) Approve March 5, 2002 Board meeting minutes.

Oxman requested an addendum to item 10) e) as follows: Oxman requested a special phone meeting scheduled for April 10, 2002 in order to formally discuss the proposed draft and vote whether or not to submit a legislative concept. The other board members did not feel a special meeting was necessary.

Oxman moved to approve the minutes with the above stated revision. **The motion carried.**

- 7) Report of Executive Director

- a) Public Board member, Judith Basker, resigned.

Holzman noted that with Basker’s resignation, the Board has an opening for a public member.

- b) March 2002 exam

Holzman stated there was an 88% pass rate. She provided the following information regarding administration of the NCBTMB exam: Due to the disappointing turnout of people who wished to take the exam in January, the exam would not be offered again in Oregon prior to August 1, 2002. After August 1, 2002, there will be four sites in Oregon provided through Premetric Testing. The sites will be: Portland, Eugene, Salem and Milwaukie. Holzman will provide more information on the future sites as it becomes available.

- c) Financial Report
Holzman stated the Board has adequate funds to continue its work. Frostad stated he met with Shel Sherman, the Office Manager, and is satisfied with the Board's financial status.
- d) Correspondence Report
GC02008: A lady wrote in to file a complaint against an LMT who had provided therapy to her mother – her mother had been ill and died of cancer. Frostad: if an LMT is working with someone whose conditioning is worsening that LMT should possibly not continue working with that person – the lady could have a valid complaint. Holzman stated the LMT said she did recommend several times that her client seek medical attention, however she could not force the client to do so. Since the client is deceased it would be difficult to investigate the case.
GC02009: An applicant wrote and requested a refund of her March 2002 \$100 examination fee as she was moving to Mexico instead of Oregon. Holzman stated she conferred with the Board's legal counsel; he said the Board's statutes and rules do not allow for provision of a refund. Oxman asked the board to consider issuing the refund anyway. **Oxman moved** to reconsider in the case of GC02009 and refund at least a portion of the fee. Frostad felt it would be unsettling to make a decision against advice from the Board's legal counsel. Oxman voted in favor – the remaining members were opposed. **The motion did not carry.**

Frostad moved to clarify OAR 334-010-0033, which covers Fees, through consultation with the Board's legal counsel and to include the proposed rule change in the next rules hearing. **The motion carried.**

- e) Summary of attendance at the *Strategic Leadership Forum* in Los Angeles
Holzman stated she appreciated the opportunity to attend and would like to give a one to two hour presentation to the Board on what she learned at the next retreat/work session.
- f) Update on building purchase
Jordan and Holzman opened discussion on the purchase of a house located at 4457 Rickey Street SE in Salem. The house could be converted into a nice office location for the Board. Holzman submitted an offer for the house; one of the contentions was the purchase was subject to Board approval. Holzman requested the assistance of at least one board member in the procurement of property for the board. **Oxman moved** to support the Board's initial proposal and to continue with the process and negotiations for the house. Jordan will work with Holzman; they will keep the board apprised of the activity in relation to purchasing the house. **The motion carried.**

- 8) Committee Reports
 - a) No Reports
- 9) Action on Executive Session Matter(s)
 - a) Law Enforcement Cases

Case No. 7-01-127 – Offer to practice massage when unlicensed.

Frostad moved to issue a Notice Of Intent to issue a civil penalty of \$500 each for one violation of ORS 687.021(1) and one violation of ORS 687.021(2), for a total of \$1000, and to assess Respondent with all the costs of this disciplinary proceeding, including attorneys fees. Jordan abstained. **The motion carried.**

Case No. 7-01-133 – Working outside scope of practice.

Oxman abstained, as there is a potential for bias because she knows the licensee. **Manriquez moved** to issue a Notice of Intent to place the licensee on probation with supervision because of conduct that was outside the scope of practice and endangered the public safety and to refer the case to the Board of Chiropractic Examiners. Jordan abstained. **The motion carried.**

Case No. 1-02-139 – Unprofessional conduct of a sexual nature.

Kern moved to issue a Notice of Intent to censure a licensee for alleged violations of ORS 687.081(1)(i) and OAR 334-030-0025(19)(a)(C). Jordan abstained. **The motion carried.**

Case No. 7-02-145 – Unlicensed practice of massage.

Frostad moved to issue a Notice Of Intent to assess a civil penalty of \$500 each for one violation of ORS 687.021(1) and one violation of ORS 687.021(2), for a total of \$1000, and to assess Respondent with all the costs of this disciplinary proceeding, including attorneys fees and to refer the case to the Board of Chiropractic Examiners. Jordan abstained. **The motion carried.**

Proposed Settlements:

Case No. 2-00-076 – Unlicensed practice of massage. Assessment of civil penalties issued in a Final Order dated January 10, 2002.

Law abstained, as there is a potential for bias because was a former client of the Respondent.

Oxman moved to counter Respondent's March 7, 2002 request for reconsideration. **The motion carried.**

Case No. 5-00-088 – Unprofessional conduct of a sexual nature. A Notice of Proposed Action to revoke license, assess civil penalties and recover costs of the Board's disciplinary proceeding was issued on June 12, 2001.

Kern moved to counter Licensee's April 11, 2002 Response to the Proposed Settlement Agreement. Jordan abstained. **The motion carried.**

Case No. 7-01-132 – Unlicensed practice of massage. A Notice of Proposed Action to assess civil penalties was issued on December 13, 2001.

Oxman moved to counter Licensee's March 1, 2002 Response to the Proposed Settlement Agreement as follows. Jordan abstained. **The motion carried.**

b) Exam Appeals

Manriquez moved to deny the appeal of applicant no. 2023. **The motion carried.**

10) Old Business

a) Ray Lindley, Oregon Depart of Education, to discuss model curriculum

Lindley addressed the Board regarding the curriculum that was previously presented. ODE (Oregon Department of Education) does not require a model curriculum. Lindley presented the advantages of a model curriculum: OBMT has 23 entry level competencies, the model curriculum could help all schools be on the same page as to understanding what the entry level competencies are and how to measure them. Lindley stated the ODE has assisted the Cosmetology Board with a model curriculum.

Cosmetology students take their practical exam at the school; the Board reviews the exam process about once a year and based upon that review submits a report to the ODE. If

there are corrections or revisions to the exam process the ODE will assist the Board and the school in correcting any areas of concern. The ODE will be happy to assist the OBMT in writing a model curriculum. This would require the Board to clarify what it wants measured and how a student can demonstrate the required competencies. If the OBMT is concerned about the material on the NCBTMB exam, an addendum to that exam could be written to address that issue. The ODE would have to implement a rule change to work with OBMT to monitor a model curriculum; Lindley did not think that would be a problem. Frostad asked how would it change the requirements for the OBMT and ODE. Lindley replied: the OBMT states what the curriculum is and the ODE helps to monitor it. The ODE plan would have schools administer the practical exam - not the Board. The Scope of practice and model curriculum should be reviewed every five years. Currently the OBMT does not have a model curriculum, it has entry level competencies. There is a wide variation in how the schools teach the entry-level competencies. Jordan emphasized the OBMT has no authority over the schools – the ODE does. ODE requires schools to have a 50% or better pass rate to maintain their state license or they are placed on “at-risk” status. Would a model curriculum improve communication between the board and schools as to what is expected? It is possible, because communication has been one of the concerns the schools have had with the OBMT.

What about CE (continuing education) requirements for instructors? Lindley: The ODE has a general recommendation that every teacher in every school has 30 hours of CE every year. The ODE could set up a CE requirement for massage teachers if the board wanted. Are there disadvantages to a model curriculum? Lindley: Yes, schools don't want to be accountable and it takes some of the freedom away from the teachers. What about community colleges? Would they be covered? Lindley: No the ODE has no regulation over community colleges but their requirements are covered in the OBMT rules.

The Board directed Holzman to send the latest print (10/21/01) of the Model Curriculum to the schools and other interested parties. The Board will review it first and then ask for input from other sources. Chrones asked that the Board give the schools a chance to comment before making a final decision. This will be placed on the agenda for the next board meeting.

b) Discussion on Feldenkrais

Jordan clarified that the FGNA (Feldenkrais Guild of North America) is asking the board to make a determination that the work done by the FGNA practitioners is not subject to OBMT statutes. Jordan stated that whether the work does or doesn't meet OBMT requirements, the Board should not write an exclusion for them. If a Feldenkrais practitioner is concerned about the work that he/she is doing, they should consult with their own legal counsel. If a Feldenkrais practitioner, or any other practitioner, is found to be engaged in activity that constitutes the practice of massage without a license, that person could be subject to disciplinary action by the Board. If a Feldenkrais practitioner is not involved in activity that meets the definition for massage then he/she would not be subject to the OBMT's statutes and rules.

Andrea Weiner presented the standards for a Feldenkrais practitioner. In the past, the staff told people who called the board office that Feldenkrais was considered to be the practice of massage. This was based on a directive from Holzman to the staff. Since that time, Holzman and Weiner have both researched Board meeting minutes and found nothing in writing to support that statement. The FGNA is asking the Board to determine, based on the presented information, that Feldenkrais is not the practice of massage.

Diana Godwin, Attorney said her concern was the Board staff stating that Feldenkrais was the practice of massage.

Holzman will direct the staff to provide the following information to queries about the practice of massage: The Board regulates massage therapists and people who make physical contact with a client that falls under the definition of massage, the Board does not regulate techniques. If you are concerned about the legal liabilities in relation to the work you refer to, it is recommended that you

consult with your own legal counsel.

Weiner presented draft language for the board to consider. Jordan stated that if the FGNA wants Feldenkrais to be regulated, the proper avenue would be to approach the legislature.

Frostad asked that the Scope of Practice Committee review the definition of gymnastics. As currently stated in OAR 334-010-0025, a Feldenkrais practitioner *could* fall under that definition. Law asked what if a person practices Feldenkrais and gets in trouble for doing massage? That person would have violated our statute as a person, not as an entity such as FGNA.

John Chester asked what about a Naturopath or some other health provider that practices massage? Some health providers are permitted to practice massage as part of the statutory definition of their scope of practice.

c) Legislative Concept 96800/01 – Competency Evaluations

Frostad moved to continue the process for implementing the proposed statute. **The motion carried.** Holzman will do her best to keep everyone apprised of the deadlines to submit changes to the draft. She recommended that people provide their comments quickly if they wish the Board to consider them.

d) Retreat; Stipends

Oxman opened the discussion, which involved the retreat location (currently in Fossil, Oregon) and the costs involved. There was a large discussion around the payment of stipends at a retreat. With a seven member board, the cost for the stipends alone is \$2100. Manriquez stated she thinks stipends are appropriate for the day of board meetings but not necessarily for the retreat. **Frostad moved** to have a 3 day retreat that includes a board meeting in Bend. The Board is to cover expenses and members will be issued a stipend for the day of board meeting only. More discussion followed. **Frostad amended the motion** to issue stipend for \$150 total for the 3 day board meeting/retreat. **The motion carried.**

Oxman left the meeting at 2:20 P.M. before completion of the discussion on the retreat.

e) AMTA/OMTA Conference Attendance

Frostad asked what is the purpose or benefit to the Board for a member to attend either conference? Holzman stated she attended an AMTA conference a few years ago and did not find her attendance to be beneficial to the Board. The conferences are mostly focused on the individual practitioner and the provision of continuing education credits. Jordan has attended the OMTA conference on his own for the past two years and at his own expense. He plans to attend the 2002 OMTA conference, and although he does not expect the Board to provide the costs for him to attend, he will happy to provide a report. Jordan does not see the need for the Board to pay the cost of representation at either conference. Law asked what other avenues are available for people to write or air their concerns? They can write to board and/or attend meetings and make comments during public session. The OMTA has monthly meetings. After discussion, it was decided it would only be beneficial to provide representation at these conferences or meetings if there is a specific item for the board to address. This item was tabled and will be brought to the next meeting if necessary.

- f) Health Indorsement Application; Physician's Assistant, Steven Hillyer
Frostad moved to accept the indorsement application and to require that Hillyer take and pass the practical exam to qualify for licensure. **The motion carried.**

11) New Business

- a) Indorsement Application; Kerith Hartman
DF moved to accept her education and examinations as meeting the Board's requirements and to issue a license with no further examination. **The motion carried.**

- b) Vote on Proposed Rule Changes
Manriquez moved to make the temporary rule regarding the NCBTMB exam a permanent one and to adopt the proposed rule changes with the following exceptions: the proposed rule on the 300 hour educational requirements for health indorsement and the proposed rule that will require an LMT to provide his license number on advertising material are to each have an effective date of January 1, 2003. **The motion carried.**

- c) Discussion on allowing volunteering for hospice to count towards CEUs.
Move to next meeting.

12) Public Comments

None

13) Announcements

None

14) Adjourn

The meeting was adjourned at 4:25 P.M.