



# Oregon

Theodore R. Kulongoski, Governor

## Board of Massage Therapists

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## BOARD MEETING MINUTES

May 14, 2010

### Attendance

#### Board Members:

Kathy Calise, Public Member, Chair

Heather Bennouri, LMT, Vice Chair

Jeanna Catalano, LMT

Crystal Collier, LMT

David Fredrickson, LMT

Craig McMillin, Public Member

#### Staff:

Frank Peccia, Interim Executive Director

Diana Nott, Enforcement Coordinator

George Finch, Interim Director of Compliance

**Public:** Taunie Murray      Brian Johnson      Kali Alderman      Carolyn Schoenfeld  
Carrie Butler      Genna Southworth

### DAY ONE

#### Call to Order

**Calise** called the Q&A session to order at 9:11 am. **Calise, Bennouri, Catalano, Collier, Fredrickson, McMillin, Peccia** and **Finch** introduced themselves to the attendees.

#### 1) Q&A Session with the Board –

The Board was asked how Oregon reached the current licensing requirements, as it appears to some to be unnecessarily burdensome. It was mentioned that an individual licensed in another state for 20 years may have a difficult time meeting the Oregon requirements, thus being unable to work. **Calise** explained that the education/scope of practice committee had met the previous day and that they were working on a portfolio review process to try to assist therapists from other states in obtaining Oregon licensure. It is expected that the Board will review the results of the committee's work at the June 7, 2010 Board meeting. There was discussion on the current Oregon process and the ability for an applicant to petition the Board for acceptance to sit for the Oregon Practical Examination if they have been licensed and practicing for an extended period of time in another state.

Attendees voiced concerns over rumors of termination or suspension of the massage Board and licensing requirements in Oregon. There was an explanation of the Governor's proposal in May of 2009 discussing potential eliminations, suspension or consolidations of a variety of smaller Boards and Commissions. Since that time, there have been many conversations with the Governor's office and the various Boards mentioned in the speech. There is a desire to restructure state government in an effort to save money and serve the citizens of Oregon in the best possible manner. The Board has been assured by Claudia Black, the Governor's Health Policy Advisor, that the need for regulation and oversight of the massage profession in Oregon is important.

Some questioned why the Governor's office would wish to consolidate the OBMT, as a semi-independent agency that does not draw from the general fund, there was confusion regarding this potential course of action. **Calise** explained that there was a desire to utilize resources such as office support and building space, which can be difficult or problematic for the smaller agencies.

It was asked if there was the intention to remove the Board's semi-independent status. This matter has been looked at during the past legislative session. There had been a great deal of concern over the previous lack of authority for the Governor to address any potential misappropriation in the semi-independent Boards. While the Governor ultimately held the responsibility for the semi-independent Boards, he lacked any authority to address any issues. That matter was resolved during the 2009 legislative session, when the Governor was granted the authority to remove an Executive Director of an agency, which he chose to utilize with the OBMT.

It was voiced that the OBMT needs to do more to promote massage in Oregon. It was explained that the ultimate charge of the Board is for regulation, not promotion. **McMillin** stated that he disagrees to an extent. He feels that this is a fledgling industry that needs positive promotion for a healthy industry in order to be regulated well.

The Board concluded the Question & Answer portion of the meeting and paused for a break at 9:54.

The business portion of the meeting was called to order at 10:07 am.

Role call was performed. **Calise, Bennouri, Catalano, Collier, Fredrickson, and McMillin** were present. **Driscoll** was excused.

2) **Approve Agenda** - **Bennouri** moved to approve the agenda as presented. **Second the Motion: McMillin**  
**In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. Opposed: None. Motion carries.**

3) **Approve Minutes of March 8, 2010 and April 5, 2010** - **Bennouri** moved to approve the minutes from the March 8, 2010 Board meeting. **Second the Motion: Collier** **In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. Opposed: None. Motion carries.**

**Bennouri** moved to approve the minutes from the April 5, 2010 Board meeting. **Second the Motion: Fredrickson** **In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. Opposed: None. Motion carries.**

#### 4) **Directors Report –**

a) **Finances** – The Board received a comprehensive report on current finances for review.

i) **Review of 2009-2011 Budget** – **Peccia** provided the Board with financial information as well as notes to the 2009-2011 forecast. He explained that he was not expecting any decisions to be made by the Board at this time and that he was simply providing background for consideration at the June 7, 2010 meeting. The Board reviewed the year-to-date comparison for three reporting periods; July 2007 – April 2008, July 2008 – April 2009 and July 2009 – April 2010. It was noted that revenue for these reporting periods remained pretty consistent, which could be viewed as a good thing given the current economic state. The Board then reviewed actual expenses and referenced notes that further explained some of the items being addressed. There were two significant vacation pay-outs, which would be considered a non-reoccurring expense. Legal fees were also reduced by a one-time cost directly related to internal issues. When you net those items out and look at the forecast for the 2009-2010 fiscal year, the Board is looking at a loss of approximately \$133,000. Projecting out from July 2010 through June 2011 leaves a total projected loss of \$211,000. There was a staffing adjustment requested for the second year of the biennium and the Board was provided with a justification statement for that staffing adjustment. It is projected that the Board will require an additional OS2 level addition, which will add about \$40,000 to the current expenditures. **McMillin** asked when the Board would hit the critical point, for the decision-making process. **Peccia** reported that the Board is currently out of compliance with HIPDB reporting, causing a great deal of concern. When asked if there are other agencies out of compliance as well, **Peccia** reported that there are others, but the comparison is unknown. Catch up on this project would take several months. There was discussion of holding off on any additional staffing until the new Executive Director is hired. It was decided that it was in the best interest of the Board to work towards staffing sooner rather than

later. There was also discussion of hiring a "special project" person to help reach compliance sooner. It was discussed that careful consideration should be made with a close eye on finances. It was noted that case growth is consistently rising as well. The Board was provided with options for lowering expenses as well as increasing revenue.

Considerations for reducing expenses include:

- ◆ Elimination of the compliance manager position for an annual savings of \$67,600
- ◆ Elimination of the half time support position for an annual savings of \$12,200
- ◆ Elimination of FSMTB dues for an annual savings of \$2,800
- ◆ Elimination of traveling Board meetings and moving to bi-monthly meetings for an annual savings of \$5,000 - \$10,000
- ◆ Curtail use of AG services and eliminate attendance of AG at Board meetings for an annual savings of \$12,000+
- ◆ Hire incoming ED at step 1 of PEM-F level (7,881-6,045) +employer taxes for an annual savings of \$23,000
- ◆ Reduce practical exams to once per week for an annual savings of \$5,000

Considerations for generating additional revenue include:

- ◆ Establish facility licenses
- ◆ Establish fee for issuing a counter-license
- ◆ General fee increase

It was discussed that ultimately, the Board will have to obtain approximately \$225,000 through reduction of expenses as well as generating income.

**b) Review of Report to Governor** – The Board reviewed the 2007-2009 Biennium Semi-Independent Report that was provided to the Governor's office. There was some discussion on verbiage used, as some of the audit report verbiage does not accurately reflect the verbiage used. For instance, the audit report notes "unregistered" practitioners, while it should be "unlicensed" instead. **Bennouri** voiced some concern over a response to the audit report under financial findings which states, "Beginning with the March 8, 2010 Board meeting a financial report became a standard board agenda item." **Bennouri** indicated that this has been a Board agenda item for several years, and she was concerned that the statement as written implies that the Board was inattentive in reviewing financial statements in the past, which is not accurate. It was discussed that the Board has not been inattentive in reviewing financial statements. **Peccia** stated that it was not meant to suggest that the Board did not previously review statements, but was meant to indicate that more specific and detailed information would be provided to the Board from that point forward. **Fredrickson** voiced concern over a portion of the report which indicates that there was a "Change in Executive Director with the intent to streamline office procedures to better serve the public and the Licensees." He feels that this statement implies that the Board took this action, when it was the Governor affected this change. He feels that the statement should be modified to preserve historical accuracy. **Peccia** will research with the Legislative Fiscal Office, the possibility of revising the verbiage and resubmitting or providing a clarifying addendum to the report. **Bennouri** asked what three professional associations were being referenced in the report. Those three organizations are AMTA, OMTA and ABMP. She feels that ABMP should not be included in the list, as there is no state chapter to the organization. There was discussion that the report was late due to extenuating circumstances, and while **Calise** helped to provide input, there was no opportunity for Board full review prior to submittal. The next required report would be completed in advance and should go before the full Board for consideration prior to submittal.

**c) OBMT Compliance Positions: Interim Hire of George Finch** – **Finch** is currently staffed as a limited duration position through July 30, 2010 or until filled. There was discussion on the permanent Executive Director handling the permanent hiring for this position. HR has reviewed the position and feels that it is appropriately classified and compensated. **Nott** was reclassified from Investigator 2 to Compliance Specialist 1. **McMillin** indicated that he does not desire the Board to get into the practice of micromanaging the office, and that **Peccia** should share his impressions with the next Executive Director. This would leave the ultimate decision up to them. It was mentioned that **Peccia** is limited to

1,039 hours. There was some discussion on possibly bringing **Peccia** on as a consultant after the permanent hire. No final determination was made at this time.

**d) PTO vs. Sick Leave & Vacation Time** – **Murray** presented information to the Board for consideration pertaining to the use of PTO vs. Sick Leave and Vacation Time. Currently the represented staff accrues time as sick leave and vacation time. There was concern over disparity if management accrued time as PTO. It was discussed how sick leave and vacation time allows for a transfer of hours between state agencies, whereas PTO would result in a cash pay-out. PTO then leaves the Board with a potential liability, as they have recently seen with two recent pay-outs to management. **Bennouri** expressed that she did not like the separation of hours, as it provides for potential abuse of sick time leave. Ultimately, she prefers the PTO model. There was discussion on various models for time-off and risks and benefits to the Board and employee. The Board would like to see a change addressing the matter of pay-outs. **McMillin** moved to adopt the 5/14/2010 OBMT draft as it specifically relates to vacation time, PTO and sick leave. **Second the motion: Collier**  
**In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. Opposed: None. Motion carries.** There was discussion that an amended, engrossed document would be presented at the June 2010 Board meeting.

**Bennouri** moved to take a short break **Second the motion: Fredrickson** **In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. Opposed: None. Motion carries.**

The Board returned from break at 12:35 pm.

**e) Counter License Discussion** – Staff had encountered a variety of issues when facing the matter of issuing counter licenses and the Board was presented with information on the matter. There was discussion on the various problems encountered, a staff proposal on the matter and the potential negative impact as well as potential benefits to changing the current practice. This matter is to be placed on the June 2010 agenda for consideration of drafting rules on the matter. The Board asked that the Rules Committee meet prior to the June 2010 meeting and draft language for the Board to review.

**f) General Updates** - The Board was presented with a draft travel policy pertaining to what would be allowable and not allowable for reimbursement, training, mileage, etc. **McMillin** would like to see this matter come to the Board for final adoption at the June 2010 meeting. **Peccia** and **Murray** would like to edit the document to more appropriately suit the OBMT. **McMillin** moved to have **Peccia** and **Murray** edit the document and bring it back to the Board. **Second the motion: Fredrickson** **In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. Opposed: None. Motion carries.**

**Peccia** reported that expenses are paid and current. There are time-saving changes being implemented in the Board office, such as mail pick-up and upcoming changes to how deposits are made. **Peccia** will be attending the Semi-Independent Boards Meeting on May 18, 2010 as well as any upcoming Health Related Boards Meetings.

## 5) Committee Updates

**a) Education/Scope of Practice Committee** – **Calise** reported that this committee met on May 13, 2010, to address the portfolio review process. Staff member **Watson** attended the meeting and provided clarity on current requirements and processes. A report should be presented to the Board at the June 2010 Board meeting for consideration. **Calise** indicated that she would like the Board's permission to assign this committee another project. It would be her desire to have this committee compile the required data and address the directive from the Health & Human Services Committee. They are scheduled to meet again July 1, 2010. There was a great deal of discussion on the work of the Education/Scope of Practice Committee and the Multiple Discipline Task Force. Both the committee and the task force will address this matter. Currently, the Education/Scope of Practice Committee has been provided with statistical data that has been reported by licensees. That committee has taken on the task of compiling information pertinent to the top 25 modalities utilized by the LMT population in Oregon. They are to process the data on each modality and provide a report on those modalities and why it is in the public's best interest to regulate those modalities. **Fredrickson** expressed his desire to see any modality that claims to have a therapeutic affect on the body to have oversight. There was discussion on the work of

the MDTF to review the various modalities being regulated and determine the education required to practice those modalities, if there are national organizations overseeing those modalities and determine the best route to take pertaining to regulation or exemption for various modalities. One significant concern that the Board has is if something were to go awry with a practitioner, where does the public turn for addressing that matter?

b) **Rules Committee** – This committee has been reactivated. **Calise** will get the contact information for the previous committee chair and make contact with her. Their first task will be to review verbiage for counter license fees and provide a proposal to the Board for review.

c) **Multiple Discipline Task Force** – This committee paused their work when the directive from the Health & Human Services Committee was introduced. **Collier** will contact **Combe** and request that the Task Force move forward as they have been. The work that this Task Force is doing is invaluable. It was requested that a link to MDTF information be placed on the Board's web site.

## 6) FSMTB

a) **Renewal Cost** – The Board was provided with information on the Federation of State Massage Therapy Boards annual membership cost. The renewal fee is \$2,800. The Board discussed the value in maintaining membership in the organization and the desire to continue to work towards portability and reciprocity for massage in the United States. They will maintain the FSMTB membership.

b) **Annual Meeting** – This matter will be discussed in greater detail at a future meeting. At this point, **Calise** is the chosen delegate for this meeting. There was discussion on the value of having the new Executive Director attend. **Bennouri** expressed interest in attending as the alternate delegate. **Peccia** cautioned sending the alternate delegate, given standard government practice and the current financial status of the Board. Staff is to look into costs associated with sending an alternate delegate and return to the Board with that information for a determination to be made.

## 7) NCBTMB

a) **Acceptance of a Spanish Exam** – The Board received a correspondence from the NCBTMB requesting acceptance of a Spanish version of the examination. At this time, the Board is unable to accept a Spanish version, as ORS 687.051(1)(e) states specifically that "the examination shall be administered in the English language..." **Calise** will respond to the NCBTMB.

## 8) Board Business

a) **Executive Director Hire Update** – **Murray** informed the Board that there are currently 19 applicants for the position. The closing of the announcement is 5:00 pm on May 14, 2010. **Twyla Lawson** will review the applications and sort them for the minimum qualifications. The next step is with the selection panel, which consists of **Calise**, **Bennouri** and **Fredrickson**. They will work with Ms. Lawson to sort through the candidates. It is anticipated that the selection panel will meet within the next two weeks. The Board has not received the survey results at this time. **Murray** addressed a concern with the posted desired attributes. The Board had indicated that they would like to see a candidate that has the ability to positively promote the therapeutic value of the profession. It was discussed that this is ultimately not within the scope of what this Board is statutorily charged to do. Ms. Lawson has requested that the Board not consider this as part of the screening process. **McMillin moved** to allow the screening process to continue with elimination of the last portion pertaining to positive promotion of the therapeutic value of the massage profession. **Second the motion: Bennouri** **In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. Opposed: None. Motion carries.** The Board reviewed the finalized position description and recommended classification level. It was discussed that the new hire would begin at the lower level of F classification. It was also recommended that the Board not go beyond the eighth step in the salary range. **Bennouri moved** to accept the position description. **Second the motion: McMillin** **In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. Opposed: None. Motion carries.**

b) **Extraordinary Service Compensation for Board Chair** - **McMillin** indicated that Chair **Calise** has put in a tremendous amount of time for the Board following the recent changes. It would be his recommendation that she be appropriately compensated for that extraordinary service. **Collier** asked if the Board would consider raising the Board Chair stipend to address the extra duties that the Board Chair takes on. **Calise** reported that she devotes approximately

2-3 hours per day to Board business. There was discussion on the Board Chair having more involvement in Board activities in the long run and that compensating accordingly might be appropriate. **McMillin moved** to approve the principal for additional compensation for Chair **Calise**. **Second the motion: Collier** **In favor: Bennouri, Catalano, Collier, Fredrickson and McMillin**. **Abstained: Calise**. **Opposed: None**. **Motion carries**. Calise is to provide more detail to the Board regarding time spend on Board activities and staff will provide the previously utilized calculation to the Board at the June Board meeting for consideration.

c) **Breast Massage Policy (revise and adopt to reflect current rule numbering)** - The Board reviewed the currently published Breast Massage Policy, initially adopted by the Board June 12, 1998. Due to rules changes, the reflected numbering is incorrect. The Board discussed amending the current policy. **McMillin** requested that Board members submit suggested language to staff and to have this matter readdressed at the June meeting.

d) **HB2118: Dissemination of Licensee Information** - With the passage of HB2118, the Board has now been given the ability to determine what extent of Licensee information is provided upon inquiry. It was explained that prior to passage of HB2118, staff did not disseminate e-mail addresses of licensees. However, it had been the expectation that all other contact information was a matter of public record. There was discussion on allowing LMTs to opt-out of having their contact information released upon inquiry. **Bennouri moved** to immediately make all e-mail addresses of LMTs confidential and maintain the practice of providing home information. Board staff will attempt to contact the LMT population and allow them the opportunity to opt-out of the disclosure. **Second the motion: Collier** **In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise**. **Opposed: None**. **Motion carries**.

e) **LEDS Procedure** – The Board was provided information on the current LEDS procedures.

i) **Exam application/initial license** – Currently, when an individual is approved for the Oregon Practical Examination, a criminal history and DMV check is conducted utilizing LEDS. Staff is finding that a small percentage of applicants are failing to report arrests, DUII convictions or DWS convictions. There was discussion on modification of the current forms to be more specific on the matter of arrests and/or convictions, as well as DUII or DWS matters. Staff is to work on modifying current applications to provide to the Board for review at the June 2010 Board meeting. Staff may provide these modified forms to the Board via e-mail prior to the Board meeting for input.

ii) **Renewal** – Tabled until after forms are reviewed.

iii) **How to advise membership and change forms with adequate notice** – Tabled until after forms are reviewed.

9) **Public Forum** – No public comments.

**Genna Southworth** expressed disappointment over interested parties being unable to obtain e-mail addresses at this time. **Peccia** indicated that this matter would be addressed with database modifications. It is the intention of staff to create a personal e-mail option and a public e-mail option for licensees. This would allow the Board to release approved e-mail addresses to interested parties. However, it is expected to take a full two years before all LMTs have reported, as they will provide the information when they renew their license.

10) **Public Enforcement Action**

a) **Public Session Closed Case Report** – **Bennouri moved** to close the following cases per the closed case report. **Second the motion: Catalano** **In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise**. **Opposed: None**. **Motion carries**.

Case No. 274

Allegation: Sexual Impropriety

Kim Huntsman

Closed: Final Order Issued - Compliance met

Case No. 740

Allegation: Unlicensed Practice

Timothy Parish

Closed: Final Default Order Issued

<b>Case No. 781</b>	<b>Kimberly Payne</b>
<b>Allegation:</b> Unlicensed Practice	<b>Closed:</b> Stipulated Agreement Issued
<b>Case No. 794</b>	<b>Hannah Bigelow</b>
<b>Allegation:</b> Unlicensed Practice	<b>Closed:</b> Final Default Order Issued
<b>Case No. 826</b>	<b>Unknown Carmen</b>
<b>Allegation:</b> Unlicensed Practice	<b>Closed:</b> Respondent Unreachable
<b>Case No. 884</b>	<b>Private Pleasures</b>
<b>Allegation:</b> Unlicensed Advertising	<b>Closed:</b> Non-licensed Person Notified, Warning Issued
<b>Case No. 885</b>	<b>Pussycats</b>
<b>Allegation:</b> Unlicensed Advertising	<b>Closed:</b> Non-licensed Person Notified, Warning Issued
<b>Case No. 904</b>	<b>Ijeoma Monique Onuaguluchi</b>
<b>Allegation:</b> Unlicensed Practice	<b>Closed:</b> Final Default Order Issued
<b>Case No. 925</b>	<b>Patrick Riggs</b>
<b>Allegation:</b> Other	<b>Closed:</b> Stipulated Agreement Issued
<b>Case No. 926</b>	<b>Timothy Wilcox</b>
<b>Allegation:</b> Other	<b>Closed:</b> Stipulated Agreement Issued
<b>Case No. 957</b>	<b>Unknown Lexi</b>
<b>Allegation:</b> Unlicensed Practice	<b>Closed:</b> Respondent Unreachable
<b>Case No. 958</b>	<b>Unknown Jessica</b>
<b>Allegation:</b> Unlicensed Practice	<b>Closed:</b> Respondent Unreachable
<b>Case No. 962</b>	<b>Unknown Gia</b>
<b>Allegation:</b> Unlicensed Practice	<b>Closed:</b> Respondent Unreachable
<b>Case No. 970</b>	<b>Marie Dickerson</b>
<b>Allegation:</b> Unlicensed Practice	<b>Closed:</b> No Violation Found
<b>Case No. 826</b>	<b>Tawny Weaver</b>
<b>Allegation:</b> Unlicensed Practice	<b>Closed:</b> No Violation Found
<b>Case No. 1012</b>	<b>Thomas Westran</b>
<b>Allegation:</b> Other	<b>Closed:</b> Stipulated Agreement Issued

11) Executive Session

a) Law Enforcement (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.

The Board entered into Executive Session at 3:15 pm per ORS 192.660(2)(k) and returned to Public Session at 4:53 pm.

## 12) Executive Session Enforcement Action

- a) **Initial License Applicant AA – McMillin** moved to grant the applicant her initial massage license. **Second the motion: Bennouri** In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. **Opposed: None. Motion carries.**
- b) **Renewal Applicant AB** – This applicant file is deferred to the June 7, 2010 Board meeting to allow for the applicant to appear before the Board.
- c) **Case 791 – Catalano** moved to defer this case for further investigative efforts. **Second the motion: Fredrickson** In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. **Opposed: None. Motion carries.**
- d) **Case 793 – Bennouri** moved to close the case as insufficient evidence. **Second the motion: Catalano** In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. **Opposed: None. Motion carries.**
- e) **Case 833 – McMillin** moved to revoke the LMT's massage license for: four violations of ORS 687.081(1)(b), has made any false representation to the Board in order to induce or prevent action by the Board; four violations of OAR 334-040-0010(2), knowingly or recklessly making any false statement to the Board; one violation of OAR 334-040-0010(17)(a)and(b), failure to cooperate with the Board in any licensing action or disciplinary proceeding including but limited to failure to furnish any requested documents and failure to provide in writing a full and complete explanation covering the matter contained in the complaint filed with the Board; and one violation of OAR 334-040-0010(18), failure to comply with an order issued by the Board and assess against Licensee any costs associated with this disciplinary action pursuant to ORS 687.081(6). **Second the motion: Catalano** In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. **Opposed: None. Motion carries.**
- f) **Case 889 – Collier** moved to close the case as no violation found. **Second the motion: Fredrickson** In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. **Opposed: None. Motion carries.**
- g) **Case 991 – Collier** moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), practicing massage without a license; and one violation of ORS 687.021(2)(a), advertising massage without a license; for a total civil penalty of \$1,500 and forward to the DA for prosecution consideration. **Second the motion: Catalano** In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. **Opposed: None. Motion carries.**
- h) **Case 995 – McMillin** moved to issue a Notice of Proposed Action for five violations of OAR 334-040-0010(1), practicing massage or representing one's self as a massage therapist without a current active license issued by the Board and of 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 \$4,500. **Second the motion: Collier** In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. **Opposed: None. Motion carries.**
- i) **Case 998 – Bennouri** moved to issue a letter of concern and close case. **Second the motion: Catalano** In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. **Opposed: None. Motion carries.**
- j) **Case 1011 – Bennouri** moved to defer this case until the June 7, 2010 Board meeting and ask the applicant to appear before the Board. **Second the motion: Fredrickson** In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. **Opposed: None. Motion carries.**

k) Executive Session Closed Case Report – Bennouri moved to close the following cases from the closed case report. Second the motion: Fredrickson In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. Opposed: None. Motion carries.

**Case No. 756**

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**Allegation:** Conviction of a crime that bears a demonstrable relationship to the practice of massage      **Closed:** Board lacks jurisdiction

**Case No. 802**

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**Allegation:** Sexual impropriety      **Closed:** Letter of concern

**Case No. 850**

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**Allegation:** Unprofessional conduct      **Closed:** No violation found

**Case No. 873**

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

**Case No. 877**

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**Allegation:** Unprofessional conduct      **Closed:** Allegations unfounded

**Case No. 879**

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**Allegation:** Outside of scope of practice      **Closed:** No violation found

**Case No. 880**

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**Allegation:** Unprofessional conduct      **Closed:** Allegations unfounded

**Case No. 914**

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

**Case No. 939**

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

**Case No. 983**

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

**Case No. 984**

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

**Case No. 988**

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**Allegation:** Noncompliance with a Board Order      **Closed:** Compliance met

**Case No. 992**

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**Allegation:** Unprofessional conduct      **Closed:** Allegations withdrawn

**Case No. 996**

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**Allegation:** Noncompliance with a Board Order      **Closed:** Compliance met

13) **Public Forum** – Opportunity to share thoughts that pertain to agenda items – There were no public in attendance at this time.

14) **Announcements** – Board members were reminded that the work session was scheduled for the following day at the Ashland Library.

**Bennouri** moved to amend the April 5, 2010 meeting minutes to reflect, under the executive session pending payment discussion, that **Bennouri** and **Fredrickson** abstained from the vote. **Second the motion: Fredrickson** **In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise.** **Opposed: None.** **Motion carries.**

As this was to be **Catalano's** final Board meeting, **Calise** presented her with a plaque and thanked her for her service as a member of the Oregon Board of Massage Therapists.

15) **Adjourn Meeting** – **Bennouri** moved to adjourn the Board meeting at 4:37 pm. **Second the motion: Collier.** **In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise.** **Opposed: None.** **Motion carries.**

## Day Two

### Attendance for May 15, 2010 Meeting

#### **Board Members:**

Kathy Calise, Public Member, Chair  
Heather Bennouri, LMT, Vice Chair  
Jeanna Catalano, LMT  
Crystal Collier, LMT  
David Fredrickson, LMT  
Craig McMillin, Public Member

#### **Staff:**

Frank Peccia, Interim Executive Director  
Diana Nott, Enforcement Coordinator  
George Finch, Interim Director of Compliance

**Public:** Ray McLaughlin          Carolyn Schoenfeld          Debi Andal

### Call to Order

**Calise** reconvened the meeting at 9:01 am. Role call was performed. **Bennouri, Catalano, Collier, Fredrickson, McMillin, and Calise** were in attendance. **Driscoll** was excused.

**Calise, Bennouri, Catalano, Collier, Fredrickson, McMillin, Peccia** and **Finch** introduced themselves to the attendees. **Debi Andal**, contract investigator, was in attendance at the meeting as well and introduced herself to the attendees.

16) **Public Comment** – Opportunity for the public to address the Board

**Ray McLaughlin** with Geico Insurance introduced himself. He was in attendance to learn what the Board would determine in regards to insurance billing.

17) **Continuation of Board Business/work session**

a) **Scope of Practice Overlap** – Because the Board has seen several scope of practice related complaints, it was suggested that the OBMT schedule a meeting with the Oregon Board of Cosmetology to discuss the various areas of

overlap and how to appropriately address those matters. There was discussion of reaching out and scheduling a meeting after the new Executive Director is hired. A Board representative would attend as well. Because **Bennouri** has been involved with overlapping scope of practice between the two Boards in the past, she would like to attend this meeting. It was discussed that there was confusion over various techniques such as raindrop technique and lymphatic drainage. Staff will provide **Calise** with contact information so that a meeting may be arranged. There was discussion on the various products that a LMT may use within their scope of practice. Some estheticians were voicing concern that LMTs were not always aware of what ingredients are in the products that they use. This is not generally an area of concern with the Board, as LMTs are permitted to use salts, powders, liquids and creams as topical preparations for procedures permitted within their scope of practice.

**b) Insurance Billing** – Various insurance companies were seeking Board input on the status of LMTs as medical providers in the state of Oregon. There was discussion on Personal Injury Protection (PIP) benefits as opposed to private insurance carriers and appropriate fee schedules. The Board asked staff to obtain a Letter of Advisement from legal counsel addressing four main areas of concern:

- i) Are LMTs considered health care providers?
- ii) Do LMTs fall under the PIP insurance guidelines?
- iii) Do LMTs as health care providers fall under the worker's compensation rules?
- iv) Can a LMT offer a cash discount to a client?

The Board has received several complaints pertaining to the matter of insurance billing. A common concern involved circumstances in which a LMT charged an insurance claim at a significantly higher rate than they charge a cash-pay client. Board staff will need to notify stakeholders that this is a matter that the Board is looking into. The Board will re-evaluate this matter at the June 7, 2010 Board meeting, after they have received a Letter of Advisement. The investigator assigned to the current cases shall conclude the cases and present them to the Board for consideration. The Board considered the possibility of having to promulgate rules pertaining to insurance billing. They also discussed drafting a policy on the matter. It was determined that this is an on-going discussion and will be placed on the June agenda.

**c) Disciplinary Action Guidelines** – The Board has been considering a document to assist in making disciplinary considerations. There was concern that creating such a document would corner the Board into making specific decisions on certain matters, where extenuating or mitigating circumstances may call for a different outcome. Staff is to work on creating a formal report which provides information on past case information including allegations, extenuating or mitigating circumstances, Board action taken and any settlement or stipulated agreements made. **McMillin** suggested adding a disclaimer to the document that it is not binding and to publish the document. **Bennouri** agrees with the idea of a disclaimer on the document. It was discussed that such a document would help provide consistency throughout time as well as benefiting individuals that inquire about past criminal matters and their ability to become licensed as a massage therapist in Oregon. **Calise** indicated that it was mentioned at the Health-Related Boards Meeting that the concept of such a guideline is being looked upon favorably. **Finch** voiced concern over potential problems at hearing if the Board chooses not to follow the guideline. **McMillin** suggested that it could be rewritten to try to address the various areas of concern. There was discussion on modifying the database to be able to readily provide the Board with case detail and history. The Board desires to have historical data to them by January 2011. There was some discussion on how to compile the requested data and it was suggested that law students on break may be hired to compile and enter the requested historical data.

**d) Legislative Protocol** – **McMillin** would like to see an approved protocol for the Board prior to the 2011 legislative session. This would help provide the Board members with appropriately addressing matters of proposed legislation, supporting legislation or opposing legislation. The Board will also need to find a way to appropriately address the short-notice circumstances when an Executive Director may be called and requested to appear before the legislature prior to Board collaboration. It was discussed that the legislative protocol would be added to any other internal policies of the Board office.

The Board took a brief break at 11:04 am and returned to the work session at 11:13 am.

**Fredrickson** asked about contacting local legislators to assist in educating them on the changing role of massage in the state of Oregon, as well as the impact for small businesses and schools. **McMillin** agreed that working with legislators for education was important. He clarified that an area of concern would be surrounding any specific legislation to be addressed and how to appropriately do that. Because it is unclear what the committee make-up will be for the next legislative session, it was suggested that Board members reach out to their local legislators and provide education on massage in Oregon.

**e) Intra-bodywork Policy** – This matter was deferred to the June 7, 2010 Board meeting. **Calise** will send an e-mail to all Board members with the current draft policy. **Collier** would like to make this a more general policy and address other areas such as breast massage and treating minors. There was some discussion on the age of consent for medical treatment of minors in the state of Oregon.

**f) Health & Human Services Committee Directive** – This matter was covered at the Board meeting on May 14, 2010. The Board received a copy of the directive in April 2010 and due to financial constraints, will not be hiring an independent consultant.

**g) Compliance Expectations and Staffing: Classification of Positions, Hiring** – The Board received a report of trending enforcement action and compliance matters. The report covers the end of 2007 to current date. There has been a 42% increase in cases looked at each meeting. There was discussion of more efficient use of resources, particularly in the area of unlicensed practice. It was determined that it was better to focus resources on licensed individuals potentially in violation of business practices, ethics, boundaries, etc. as opposed to being so heavily focused on unlicensed practice. There was some discussion on more efficient ways to deal with unlicensed practice as well, including utilizing the Board's subpoena authority. It was discussed that enforcement is not to be seen as a money-making endeavor. There are not enough resources to cover every case and it is recognized that there is going to be a back-log of cases. **McMillin** asked for clarification on the costs involved in the area of compliance. **Peccia** is to return to the Board with a comparison of costs associated with compliance vs. what is recovered through civil penalties.

**h) Staff Responses to Frequently Asked Questions** – The Board was provided with information from staff members on the most frequently asked questions that they receive in the areas of enforcement, exams and renewals. Board members voiced concern on the lack of information that a candidate receives when an exam is failed. It was suggested that the candidate received no information on where they were weak in the exam. **Nott** explained that exam results are provided with the percentage scored in each area as well as the over-all exam score. **Fredrickson** was concerned that there was no further information provided to schools on failed exams, including any explanation as to why a candidate failed or what their specific scores were. **Nott** will check with **Watson** to determine the status of pass/fail reports to schools.

**18) Public Forum** – Opportunity to share thoughts pertaining to agenda items – There were no public comments.

**19) Executive Session** – The Board entered into executive session and returned to public session at 12:22.

**20) Adjourn Meeting** – **Bennouri** moved to adjourn the meeting at 12:23 pm. **Second the motion: Fredrickson. In favor: Bennouri, Catalano, Collier, Fredrickson, McMillin and Calise. Opposed: None. Motion carries.**