



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

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RULES COMMITTEE MEETING

June 20, 2011

OBMT Office

Attendance

Committee Members:

Michael Jordan, LMT, **Chair**

Todd Pennington, LMT

Pratiti Fullerton, LMT

Steve Davis, LMT

Board Members & Staff:

Heather Bennouri, LMT, Board Liaison

Diana Nott, Compliance Coordinator

Christine West, Policy Analyst

Public: There was no public in attendance.

1. **Call to Order** - Jordan called the meeting to order at 9:07 am.
2. **Introductions** – Present today are Michael Jordan, LMT, Todd Pennington, LMT, Pratiti Fullerton, LMT and Bowenwork Practitioner, and Steve Davis, LMT; Board Member Heather Bennouri, LMT and Board Liaison; staff member Diana Nott, Compliance Coordinator; and Christine West, Policy Analyst. Michael Blackmore, LMT was excused. Barb Pickle, LMT was absent.
3. **Minutes - Pennington moved** to approve the minutes from the April 25, 2011 Rules Committee Meeting. **Fullerton** seconded the motion. All parties were on favor. The motion carried.
4. **Agenda** - The committee's added credentialing review to the agenda.
5. **Public Input** – There were no public comments.
6. **Considerations:**
 - a. **Fingerprinting** – The Board reviewed a draft of the recommended fingerprinting rules at the May 13-14, 2011 meeting. A new draft was presented to the committee members. **Bennouri** indicated that she believed the Board's desire was to only fingerprint new applicants and individuals returning from a lapsed status. The draft before the committee today expanded on that requirement, to include individuals working or living outside of the State of Oregon during their prior licensing period. **Bennouri** reiterated that it was her belief that the Board desired only to fingerprint new applicants and individuals returning from lapsed status. Other committee members agreed with this recollection. **Jordan** inquired where the expanded language came from.

West introduced herself to the committee. She has been with the State of Oregon for nearly ten years as a contracts officer and policy analyst. She is currently with the Board on a temporary job rotation to review all rules, laws and policies and to update as needed and draft new ones. The thought behind the expanded fingerprinting was meant to prevent the Board from engaging in a second lengthy rules hearing process if their intent was to move to expanded fingerprinting in the future.

Pennington explained that an attempt to do something similar in the past was met with a great deal of resistance.

Jordan indicated that the current desire is to create rules for a specific set of people as opposed to the LMT community as a whole.

There was discussion on the history of the Board's desire for fingerprinting rules and current processes for criminal history checks through LEDS.

Proposed Fingerprinting Rules :

334-010-0005

Applications

- (1) All applications for examinations, licensure, inactive status, renewal, or temporary permit shall be made on forms provided by the Board. Only applications that are completed and on Board approved forms, without alterations, will be accepted for filing and review by the Board.
- (2) All applications made to the Board shall be accompanied by the required fees.
- (3) Applicants for examination shall submit the following with their application:
 - (a) A copy of a valid government issued photo identification. This identification could be a valid driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;
 - (b) An official certificate or transcript from the administering institutions, instructors, or programs showing successful completion of study and practice in the required subject matter and hours required by the Board.
 - (A) Official copies of transcripts or certificates presented to the Board in an envelope sealed by the program or institution and verified as sealed may be accepted directly from the applicant.
 - (B) If a program or institution granting credit is no longer in business, the Board will accept for review a copy of a certificate of completion, transcript or diploma in the required subject matter and hours. The Board may require additional information to verify the authenticity of such documents.
 - (c) Proof of current certification in cardiopulmonary resuscitation (CPR);
 - (d) A current photograph of the applicant;
 - (e) All new applicants shall submit a completed finger print card for a criminal background check.**
- (4) Transcripts must include a minimum of 500 hours of certified classes. The 500 hours must include the knowledge and skills identified in OAR 334-010-0047 "competencies" and shall be comprised of:
 - (a) A minimum of 200 hours of Anatomy & Physiology, Pathology, and Kinesiology; and
 - (b) A minimum of 300 hours of Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, Sanitation, and Hydrotherapy.

- (5) If for any reason an applicant does not appear to be qualified for admission to take the examination, the applicant shall be so notified and invited to submit additional evidence that he/she is entitled to have his/her case considered or to be admitted to examination.
- (6) All application documents for examination and licensure submitted in a language other than English shall be accompanied by:
 - (a) An accurate translation of those documents into English;
 - (b) A notarized affidavit certifying that the translator is competent in both the language of the document and the English language; and
 - (c) A notarized affidavit certifying that the translation is a true and complete translation of the foreign language original.
- ~~(d)~~(7) Any costs of translation of all documents required by the Board shall be at the expense of the applicant.
- (8) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, then the application is considered incomplete.**

334-010-0018

Criminal Background Checks, Fitness Determinations

- (1) The Board requires a criminal background check for an initial massage therapist license and licensees applying to reinstate or reactivate a lapsed license. The Board also requires a law enforcement data systems check of all applicants.
 - (a) Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board. These will be provided on prescribed forms provided by the Board. The Board will submit fingerprints to the Oregon Department of State Police. Any original fingerprint cards will subsequently be destroyed by the Oregon Department of State Police or the Oregon Board of Massage Therapist.****
- (2) The Board may require fingerprints of any Oregon licensed massage therapist, who is the subject of a complaint or investigation for the purpose of requesting a state or nationwide criminal background check.**
- (3) These rules are to be applied when evaluating the criminal background of all licensees and applicants for a massage therapist license and conducting fitness determinations based upon such history. The fact that the applicant has cleared the criminal background check does not guarantee the granting of a license.**
- (4) All criminal background checks shall include, but not be limited to, all available state law enforcement data systems and national data sources, unless obtaining one or the other is an acceptable alternative.**
- (5) Additional information required. In order to conduct the Oregon and National Criminal Background Check and fitness determination, the Board may require additional information from the licensee/applicant as necessary, including but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.**
- (6) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175(1).**
- (7) The Board shall determine whether an individual is fit to be granted a license. If an individual is determined to be unfit, then the individual may not be granted a license or permit. The Board**

may make fitness determinations conditional upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure. Except as otherwise provided in section (1), in making the fitness determination the Board shall consider:

- (a) Criminal background check;
 - (b) The nature of the crime;
 - (c) The facts that support the conviction or pending indictment or that indicates the making of any false statement;
 - (d) The relevancy, if any, of the crime or the false statement to the specific requirements of applicant's or licensee's present or proposed license, services, employment, position, or permit;
 - (e) Any refusal to submit or consent to a criminal background check including, but not limited to, fingerprint identification;
 - (f) Any other pertinent information requested or obtained as a part of an investigation;
 - (g) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, or permit. Intervening circumstances include but are not limited to:
 - (A) The passage of time since the commission of the crime;
 - (B) The age of the subject individual at the time of the crime;
 - (C) The likelihood of a repetition of offenses or of the commission of another crime;
 - (D) The subsequent commission of another relevant crime;
 - (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
 - (F) A recommendation of an employer.
- (8) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests, court records, Department of Motor Vehicle records, or other information that may be indicative of a person's inability to perform as a licensee with care and safety to the public.
- (9) If an applicant or licensee is determined not to be fit for a license or permit, the applicant or licensee is entitled to a contested case process pursuant to ORS 183. Challenges to the accuracy of completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.
- (a) If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board will conduct a new criminal background check upon submission of a new request.
- (10) If the applicant discontinues the application process or fails to cooperate with the criminal background check process, the application is considered incomplete.

Stat. Auth.: ORS 687 and 676

Stats. Implemented: ORS 181, 183, 687.041, 687.051, 687.081, and 670.280

334-010-0017

Lapsed License

- (1) The massage therapist license shall be considered lapsed if an individual fails to complete the renewal process prior to the expiration of license.
- (2) During the lapsed status, no such person shall practice massage in the State of Oregon.
- (3) An applicant whose license is lapsed may return to active status by including the following with the completed application.
 - (a) Payment of the current fee for activation of the license;
 - (b) Payment of the licensing fee applicable for the period of the lapsed license;
 - (c) Late fee payment;
 - (d) Proof of 25 hours of continuing education for each biennium the license was lapsed and for the current licensing period;
 - (e) Proof of current certification in cardiopulmonary resuscitation (CPR); and
 - (f) A statement indicating whether the applicant has engaged in the practice of massage and bodywork in another jurisdiction during the period of lapsed status.
 - (g) Applicants shall submit a completed finger print card for criminal background check.**
- (4) All information required for restoring a lapsed license must be received within 3 years of the date of lapsing. Thereafter, one must apply as a new applicant.

334-010-0033

Fees

(k) Current Oregon State Police Criminal Background Check Fee; and

(l) Other administrative fees as allowed by law.

- b. Credentialing Review – The committee reviewed draft language for the credentialing review process.

Bennouri expressed concern over language that seems to be inconsistent with language used elsewhere. Specific items of concern include the use of “certified classes” as well as “continuing education contact hours” and “continuing education non-contact hours” in various sections of administrative rule.

There was discussion on how to provide clarity while maintaining intent. There was discussion on language modification and maintaining the integrity of the profession in Oregon while assisting those with experience outside of the State of Oregon.

Proposed Credentialing Review Rules:

334-010-0005

Applications

- (1) All applications for examinations, licensure, inactive status, renewal, or temporary permit shall be made on forms provided by the Board. Only applications that are completed and on Board approved forms, without alterations, will be accepted for filing and review by the Board.
- (2) All applications made to the Board shall be accompanied by the required fee.
- (3) Applicants for examination shall submit the following with their application:

- (a) A copy of a valid government issued photo. This identification could be a valid driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;
- (b) An official certificate or transcript from the administering institutions, instructors, or programs showing successful completion of study and practice in the required subject matter and hours required by the Board.
 - (A) Official copies of transcripts or certificates presented to the Board in an envelope sealed by the program or institution and verified as sealed may be accepted directly from the applicant.
 - (B) If a program or institution granting credit is no longer in business, the Board will accept for review a copy of a certificate of completion, transcript or diploma in the required subject matter and hours. The Board may require additional information to verify the authenticity of such documents.
- (c) Proof of current certification in cardiopulmonary resuscitation (CPR);
- (d) A current photograph of the applicant;
- (4) Transcripts must include a minimum of 500 hours of certified classes. The 500 hours must include the knowledge and skills identified in OAR 334-010-0047 "competencies" and shall be comprised of:
 - (a) A minimum of 200 hours of Anatomy & Physiology, Pathology, and Kinesiology; and
 - (b) A minimum of 300 hours of Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, Sanitation, and Hydrotherapy.
- (5) If for any reason an applicant does not appear to be qualified for admission to take the examination, the applicant shall be so notified and invited to submit additional evidence that he/she is entitled to have his/her case considered or to be admitted to examination.
 - (a) Applicants who are or have legally practiced massage and/or bodywork outside of the State of Oregon may be eligible to apply for the credentialing review process.**

334-001-0060

Definitions

Add:

(24) "Practical Work Experience" means experience gained while employed or self-employed providing legal massage/bodywork to the public within the last five (5) years.

Re-number:

~~(24)~~ **(25)** "Practice of massage" is defined in ORS 687.011.

~~(25)~~ **(26)** "Professional authority" means the power inherent in the professional role and which is derived from a combination of an L.M.T.'s specialized or expert knowledge, societal expectations, stated and unstated client expectations, and an L.M.T.'s personal power.

~~(26)~~ **(27)** "Professional relationship" means the relationship established when an L.M.T. contracts with a client, verbally or in writing, to provide any service associated with the practice of massage or bodywork.

~~(27)~~ **(28)** "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.

334-010-0009

Credentialing Review

- (1) The Board may grant a license after successful completion of the practical and jurisprudence examinations, the written examination and upon a credentialing review.
 - (a) Credentialing review shall be submitted on the approved Board of Massage forms (Credentialing Review), submitted with official transcripts and/or certificates as proof of completion.****

- (A) Of the 200 Anatomy, Physiology, Pathology and Kinesiology hours required, 120 hours minimum must be from “certified class” instruction. Of the 200 hours required, up to 80 hours of prior continuing education may apply.
 - (i) Official Transcripts or Certificates of Completion shall be documented on the approved Board of Massage form: Credentialing Review.
 - (B) Of the 300 Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, Sanitation and Hydrotherapy hours required, 140 hours minimum must be from “certified class” instruction. Of the 300 hours required up to 120 hours of prior continuing education may apply. Of the 300 hours required, up to 40 hours of “practical work experience” as identified in OAR 334-001-0060(24) may apply.
 - (i) Practical Work Experience shall be documented on the approved Board of Massage forms: Credentialing Review and Work Experience Verification Worksheet.
- (2) Credentialing Review applications shall be accompanied by:
- (a) Current Credentialing Review fee and
 - (b) Any additional documentation required by the Board.

334-010-0033

Fees

- (i) \$10 for license verification; and
- (j) **\$250 Credentialing Review;**
- (j) (I) Other administrative fees as allowed by law.

7. Public Input - There was no public input at this time.

The next meeting is scheduled for Monday, July 25, 2011 from 9:00 am – 11:00 am.

The committee expects to review procurement rule language and possibly exemption rule language. .

8. Adjournment – **Davis** moved to adjourn the meeting at 10:35 am. **Fullerton** seconded the motion. All parties were in favor. The motion carried.