



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

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BOARD MEETING MINUTES

August 08, 2011

Attendance

Board Members:

Kathy Calise, Chair, Public Member

Heather Bennouri, LMT

Crystal Collier, LMT

David Fredrickson, LMT

Melanie Morin, LMT

Craig McMillin, Public Member

Staff:

Kate Coffey, Executive Director

Diana Nott, Compliance Coordinator

Lori Lindley, Assistant Attorney General

Public:

Ginger Thibedeau

Lisa Garofalo

Alisa Fairweather

Marty Dawson

Leah Bowder

Anna Mann

Mary Ann Hawkins

Glenath Moyle

Pam Pennington

Gary Schultz

Call to Order

Calise called the meeting to order at 9:03 am. Role call was performed. **Bennouri, Collier, Fredrickson, McMillin, Morin** and **Calise** were present.

1) **Approve Agenda – Morin** moved to approve the agenda. **Second the Motion: Fredrickson** In favor: **Bennouri, Collier, Fredrickson, McMillin, Morin and Calise.** **Opposed: None.** **Motion carries.**

2) **Approve Minutes of July 11, 2011** – There was discussion on the change to original draft minutes and the version presented to the Board. **Bennouri** was concerned that a portion of the public comment section would cause confusion and asked that it be amended. **Bennouri moved** to approve the minutes of July 11, 2011 as submitted. **Second the Motion: Morin** In favor: **Bennouri, Collier, Fredrickson, McMillin, Morin and Calise.** **Opposed: None.** **Motion carries.**

At this time, there was an introduction of each Board member as well as Kate **Coffey**, Executive Director, and Lori **Lindley**, Board Counsel.

Calise asked each member of the public to introduce themselves. Present at this time were Leah Bowder, LMT, Glenath Moyle, LMT, Mary Ann Hawkins, Lisa Garofalo, LMT, Marty Dawson, LMT, Ginger Thibedeau, LMT, Brenda Turner and Pam Pennington, LMT.

3) **Brenda Turner (OLMIS Information)** – **Brenda Turner**, an Occupational Economist with the Oregon Employment Department Workforce and Economic Research came to speak to the Board today about Oregon Labor Market Information Systems and to gather feedback. She explained that the State gathers information on a variety of industries, including massage, per Federal requirements. A survey of employers is conducted. The survey does not obtain information from self-employed individuals. The survey obtains information on base hourly wage, tips and commission. It does not gather data on overtime or benefits. The hourly wage is converted to an annual wage based on full time employment of 2,080 hours per year. This is the information that is provided in the industry reports.

Collier indicated that she was concerned that the information is not reflected accurately, as the conversion of hourly wage to annual salary based on a 40-hour work week is not typically reflective of how massage therapists operate. There was discussion on the variables that occur in the massage profession as far as rate of pay, number of hours worked and differential in pay based on duties being performed.

Calise indicated that some schools use the data provided my OLMIS in consideration of granting scholarship money and she feels that a more accurate reflection may be beneficial to students and financial institutions granting money.

Bennouri explained that she was informed of an extreme case where the data reported indicates that a massage therapist in the State of Oregon makes \$45,000 per year, and this information is being used in a legal matter. The practitioner truly makes less than half that amount, thus they are being negatively impacted by the information being presented. Additionally, the Federal Government estimates that approximately 57% of massage therapists are self-employed nationally, which causes her to wonder about the statistical validity of the information.

Turner explained that the Federal requirements limit how the information is gathered and reported, though she recognizes that not all massage therapists work full time and there are nuances that are not standard to other professions. She indicated that they may be able to include footnotes. She will provide the Board's feedback to her agency.

The Board thanked her for coming and providing clarity on how the information is gathered and reported and for taking their concerns into consideration.

4) Director's Report

a) Finances – Coffey provided the Board with a budget report. She reported that income received is 9% below budget. Income budgeted was \$67,000 and the Board received \$61,000. She reported that expenses were budgeted for \$56,000 and expenses paid for July were \$39,000. She noted that some expenses had not yet been received, which include the legal fees and the bill for the policy analyst job rotation. **Bennouri** inquired as to why the licensing fee was \$9,000 below expected revenues. **Coffey** replied that she was uncertain but she will look into it. **McMillin** asked how much was in the bank and available. **Coffey** reported that there is approximately 90 days of working capital in the bank. She noted that the Board is continuing to receive positive cash flow.

b) Board Action Log -

Technology & Purchasing Policy – This draft rule is on the Board agenda for review today.

Schools Outreach – **Coffey** continues to reach out to schools.

Video Teleconferencing – **Coffey** has researched the matter per Board request. It was explained that while the netbooks are equipped with webcams, the Board would still need to utilize a service for voice communication. It has been found to be logistically challenging. The Board determined that it was not a priority and that **Coffey** can close out this task.

Examiner Interest – **Coffey** reported that the web site has been updated to indicate that the OBMT is not currently accepting applications for examiners.

Best Practices Document – This item is on the Board's agenda today.

Fingerprinting In-House – **Coffey** researched this matter per Board request. She reported that it would be approximately \$19,000 to obtain the equipment for taking fingerprints at the Board office. The Board determined that this is not feasible and directed **Coffey** to close out this task.

Online Renewals – **Coffey** reported that the infrastructure to conduct online renewals should be ready in September. There was a great deal of discussion on process. It was explained that licensees would not be required to renew online,

but could utilize this as an option. It was expected that the Board office would issue reminder post cards approximately 60 days prior to the renewal due date. **Coffey** asked if the Board wanted to continue to maintain 100% auditing of continuing education. **Bennouri** indicated that the rule states that the application *shall* be accompanied by proof of continuing education. **Coffey** stated that the online application would have them list the classes and that should be acceptable as proof. **Fredrickson** voiced some concern over unscrupulous individuals taking advantage of loopholes if there is a change in requiring proof of continuing education. **Bennouri** will work with **Coffey** on reviewing the process and report back to the Board for consideration. Online renewals will be postponed for the time being.

Late Fees – **Coffey** indicated that she is concerned that when online renewals are implemented, that more LMTs may be filing late. She asked Christine West to compile information on other agencies and their late fee structures. She provided that information to the Board for consideration. She asked the Board if they wanted to reconsider the current late fee structure. There was discussion on the matter. The Board determined that they will maintain the current late fee structure of \$25 per week, up to a maximum of \$250. The Board indicated a desire to provide a renewal notification via postcard 6 months prior to the due date, and a second post card 90-days prior to the due date.

c) Compliance Update – **Coffey** provided the Board with a Compliance Report from July 1, 2011 to July 31, 2011. The report includes information such as: complaints open at start date (47); active cases at start date (40), number of new complaints received (26); number of cases opened (4); number of complaints closed (11); number of cases closed (4); and number of cases closed with disciplinary action (2).

d) General Update – **Coffey** reported to the Board that she has received notification of the pending union contract. The first expected furlough day would be on September 16, 2011. The Board had scheduled a Board meeting and work session for September 16-17, 2011. Due to the implementation of furlough days, the Board would need to consider changing the date. The Board determined that there will be a meeting on September 12, 2011 from 9:00 am – 5:00 pm. The morning portion of the meeting will be to conduct Board business. The afternoon portion of the meeting will be dedicated to strategic planning.

5) Committee Updates

a) Education Committee – **Garofalo** reported that this committee met August 5, 2011 at the Oregon School of Massage, Portland campus. They have been working on the competencies in the Model Curriculum. They expect to have this body of work completed in one to two more meetings. There was discussion of the removal of hydrotherapy from the core curriculum requirements for licensure.

b) Scope of Practice Committee – **Morin** reported that this committee met on August 5, 2011 at the Oregon School of Massage, Portland campus. They have been working on exemption language. There was concern as to why Traeger was not listed in the exempted modalities. They have a desire to continue to assist the Board and are looking forward to receiving further instruction. They are prepared to look at the list of suggestions previously provided to the Board, including a possible name change to the OBMT. They have scheduled the next meeting on September 9, 2011 at the Oregon School of Massage and plan to hold a training meeting to help educate and understand the rules and laws and how they are executed. **Fredrickson** asked who would conduct this training. **Calise** indicated that it has not been determined at this time. **Coffey** indicated that she would put something together.

c) Rules Committee

i) July 25, 2011 Meeting Minutes – The Board received minutes from the prior committee meeting.

ii) Background Checks (v3.2) – The latest revision has been provided to the Board for consideration.

iii) Credentialing Review (v2) – The latest revision has been provided to the Board for consideration. It was suggested the Board clarify the rule on contact hours. There was discussion on removing the quotations around contact hours.

iv) Hydrotherapy – The Board was provided with draft language to address the required removal of hydrotherapy from the core curriculum requirements with the passage of SB 454.

v) Procurement (v2) – **Bennouri** reported that the committee voiced concern that the 4 ½ pages of procurement rules may confuse LMTs. It was suggested that this may be a newsletter article, to explain that these rules are not going to affect the day-to-day practice of LMTs but affect the day-to-day operations of the Board office.

All rules will be forwarded to the AAG for review and return to the Board in September in their final draft form for consideration. **Coffey** obtained permission to forward the expected exemption rules to the AAG as well, due to time constraints. Those rules will also be presented to the Board in September for consideration.

Bennouri asked that the Board also provide other laws that affect LMTs, such as tax requirements, child support requirements, public records, etc. **Lindley** will gather the information for **Coffey**. It is envisioned that these laws will be copied in another color and attached to ORS 687.

Bennouri moved to take a brief recess. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.** The Board entered break at 10:28 am and returned from break at 10:36 am.

d) Committee Applicants –

i) Jaylene Lewis – The Board received an application for committee interest. Ms. Lewis is applying for both the Education Committee and the Scope of Practice Committee. She is both a chiropractor and a massage therapist. **Collier moved** to approve the applicant for both committees. **Second the Motion: Bennouri In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

6) Board Business

a) Temp Rule: Credit Hours – The University of Western States requested that the Board consider instituting a temporary rule to address an urgent need as a result of recent changes to the United States Department of Education requirements. It was explained that in order for institutions to qualify for Federal Financial Aid, certificate programs will need to be measured in credit hours. The Board's current language states that clock hours are required. It was noted that the Board accepts credit hours, with a clock hour conversion, however this does not meet the USDE requirements. **Bennouri moved** to implement a temporary rule. **Second the Motion: Collier In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

OAR 334-010-0005(4)(c) Hours can be calculated in clock hours or credit hours from an institution that substantially comply with the definition of credit hours in 34CFR600.2.

b) October FSMTB Meeting – The Board received information on the FSMTB 2011 annual meeting. There was discussion on Board attendance. It was determined that **Fredrickson** will be the Board delegate. All Board members with interest in attending this meeting are allowed to do so, as it is on the west coast. **Bennouri, Calise, Collier, Fredrickson** and **Morin** are expected to attend. **Coffey** will also attend. **McMillin** will not attend.

Collier reported to the Board that she attended the FSTMB exam committee meeting July 22-24, 2011. She explained the process for reviewing each item. This ensures that member states are part of the process and the exam. It provides a level of transparency into the process.

c) Best Practices Document – **Bennouri** reported that she had researched the possibility of creating a resource section of the Board web site. It was ultimately determined that it was a potential liability and the Board should not move forward on that matter. Instead, the Board can direct individuals to contact their professional associations.

The latest revision to the Best Practices Document was presented to the Board for consideration. The Board provided feedback and this matter will return to the Board in September.

7) Boarderline – **Coffey** reported that the July 2011 newsletter has been issued. She asked the Board for suggestions on future articles. The next publication is scheduled for October 2011. Suggestions included an article on upcoming rules changes (**Bennouri** to work on), safety reminders such as slippery leaves, renewals and late fees and aromatherapy to combat cold and flu season (**Morin** to work on).

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

Glenath Moyle expressed pleasure at the Board's participation in the FSMTB. She invited the Board members to attend the AMTA annual convention in Portland and provided a brochure to each Board member. There is a fee associated with the convention, but the opening ceremonies are open at no cost. She indicated that an individual that participates in the convention from start to finish can obtain up to nearly 40 hours of continuing education.

Leah Bowder provided the Board members with a copy of a proclamation from Governor Kitzhaber, declaring October 10-22, 2011 American Massage Therapy Association Week, in honor of the convention.

Mary Ann Hawkins moved to Oregon in late February and has been denied acceptance to sit for the Oregon Practical Examination. She shared some of her educational and work experience.

Collier moved to place Ms. Hawkins on the Executive Session agenda. **Second the Motion: Bennouri**
In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries. Ms. Hawkins will meet with the Board in Executive Session.

Marty Dawson introduced herself. She is a LMT and a Traeger practitioner. She shared concern about Traeger not being written into the exemption language. She feels that Traeger meets all of the requirements put forth by SB 454 and requests that the Board include it in the exemption language.

Fredrickson indicated that he was not familiar with the educational requirements to become a Traeger practitioner and asked for more information. **Dawson** indicated that the requirements have changed since she initially obtained certification in 1981, so she is uncertain what the current requirements are.

There was discussion on naming specific exempted practices in rule. There was the thought that the individual practices would not be named in rule. The Massage, Bodywork and Somatic Practitioners want each exempted practice to be specifically named in rule.

The Board indicated that they would take the matter into consideration. It was noted that there is no guarantee that any particular practice would be named specifically in rule.

Bennouri moved to take a brief recess. **Second the Motion: Morin** **In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.** The Board took a break at 11:54 am and returned from break at 12:02 pm.

9) Executive Session

a) 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.

The Board entered into Executive Session at 12:02 pm and returned to public session at 1:58 pm.

10) Action on Executive Session Items

a) Applicant Inquiry – The Board took no action on this matter.

- b) **Case 893** (settlement offer) – **McMillin moved** to accept a settlement offer on the condition that \$1,500 be paid by October 15, 2011 and an additional \$1,500 shall be received no later than August 1, 2012, otherwise the full amount as originally noticed will be due and payable immediately. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- c) **Case 1105** (settlement offer) – **McMillin moved** to refuse the Respondent's offer for settlement and to authorize legal counsel to restate the prior Board offer. The Respondent will have 60 days to accept or reject the offer. Failure to receive written response will be considered a rejection of the offer. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- d) **Case 1145** – **McMillin moved** to grant a conditional license with the following stipulations: Licensee shall obey all laws and ordinances; work only in a supervised environment; notify employer of conditions for licensure; notify the Board in advance prior to any change in employment; abstain from the use of alcohol or illegal substances; and through a 12-step or treatment program Licensee shall obtain a sponsor. These stipulations shall be valid through September 30, 2012, to be reviewed approximately 60 days prior to the scheduled renewal. At that time, Licensee will appear before the Board with the sponsor. **Second the Motion: Bennouri In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- e) **Case 1149** – **Fredrickson moved** to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in or purporting to be in the practice of massage without a license, for a total civil penalty of \$500. **Second the Motion: Collier In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- f) **Case 1165** – **Collier moved** to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in or purporting to be in the practice of massage without a license; and four violations of ORS 687.021(2)(a), advertising for massage without a license; for a total civil penalty of \$4,500 and forward to the District Attorney for prosecution consideration. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- g) **Case 1179** – **Bennouri moved** to close the case as unable to substantiate. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- h) **Case 1227** – **Bennouri moved** to issue a Notice of Proposed Action for suspension of Licensee's massage license until the required information is provided to the Board. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- i) **Case 1235** – **Collier moved** to issue a Notice of Proposed Action for six violations of ORS 687.021(2)(a), for advertising for massage without a license, for a total civil penalty of \$5,500. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- j) **Executive Session Closed Case Report** – **McMillin moved** to accept the Executive Session closed case report as submitted in exhibits 1-7. **Second the Motion: Bennouri In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

Case No. 768

Allegation: Professional misconduct **Closed:** Board lacks jurisdiction

Case No. 769

Allegation: Sexual violation **Closed:** Unable to substantiate

Case No. 1120

Allegation: Other **Closed:** Dismissed

Case No. 1175

Allegation: Injury **Closed:** Letter of concern

Case No. 1209

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

Case No. 1212

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

Case No. 1213

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

Case No. 1214

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

Case No. 1215

Allegation: Unlicensed practice **Closed:** Allegations withdrawn

Case No. 1216

Allegation: Unlicensed practice **Closed:** non-licensed person notified

Case No. 1219

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

Case No. 1220

Allegation: Unlicensed practice **Closed:** non-licensed person notified

Case No. 1221

Allegation: Unlicensed practice **Closed:** non-licensed person notified

Case No. 1222

Allegation: Unlicensed practice **Closed:** non-licensed person notified

11) Public Session Compliance Action –

a) Public Session Closed Case Report – Bennouri moved to accept the Public Session closed case report as submitted in exhibits 1-3. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

Case No. 77

Allegation: Unlicensed

Anita Cromer

Closed: Final default order

Case No. 1123

Allegation: Unlicensed practice

Alenka Bravo

Closed: Civil penalty assessed & paid

Case No. 1184

Allegation: Other

Lisa Harper

Closed: Stipulated agreement issued

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

13) Announcements – Calise reminded the Board members that the September meeting was rescheduled to September 12, 2011.

14) Adjourn Meeting – Bennouri moved to adjourn the meeting at 2:05 pm. Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.