



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

748 Hawthorne Ave NE

Salem, OR 97301

Phone: (503) 365-8657

Fax: (503) 385-4465

www.oregon.gov/OBMT

BOARD MEETING MINUTES

March 07, 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
Timothy Driscoll, DC, Public Health Member

Staff:

Kate Coffey, Executive Director
Diana Nott, Compliance Coordinator
Chris Montenaro, Compliance Manager
Lori Lindley, Assistant Attorney General
Kathryn Watson, Exam Coordinator

Public: Todd Pennington Pam Pennington Lisa Garofalo Barb Pickle
Andrea Wiener Leah Bowder

Call to Order

Calise called the meeting to order at 9:05 am. Role call was performed. **Bennouri, Collier, Driscoll, Fredrickson, McMillin and Calise** were present. **Morin** arrived later in the meeting.

At this time, there was an introduction of each Board member as well as Kate **Coffey**, Executive Director, Lori **Lindley**, Board Counsel, Kathryn **Watson**, Exam Coordinator and Diana **Nott**, Compliance Coordinator. Chris **Montenaro**, Compliance Manager, arrived during the Executive Session portion of the meeting.

Calise asked each member of the public to introduce themselves. Present at this time were Lisa Garofalo, LMT, Pam Pennington, LMT, Todd Pennington, LMT and Barb Pickle, LMT.

- 1) **Approve Agenda – Driscoll moved to approve the agenda. Second the Motion: Fredrickson In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin and Calise. Opposed: None. Motion carries.**
- 2) **Approve Minutes of February 7, 2011 – Driscoll moved to approve the minutes of February 7, 2011, as presented. Second the Motion: Bennouri In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin and Calise. Opposed: None. Motion carries.**

Morin arrived at 9:10 am.

3) Directors Report

a) **Finances – Coffey** reported on the finances of the Board. The Board closed February 2011 with a positive balance of \$7,000. **Coffey** believes that the Board has turned a corner, as the \$50 fee increase approved in December 2010 has proven to create adequate funding for the Board office. It was noted that there was a \$4,000 audit expense, as a Change of Director Audit had been conducted, as well as an audit of internal controls. It is expected that the Board will have another audit in July or August of 2011, as is required by statute for the semi-independent agencies (SIBA). **Bennouri** asked if the Board was required to utilize the same auditor as the SIBA group, as it was noted that this audit for the OBMT was less costly than past audits. **Coffey** replied that she had the audit firm present to the SIBA group for future consideration, but that the Board was not required to utilize the same vendor as the group. It was noted that there is an estimated cost of approximately \$7,000 for

required biennial reporting. It was also noted that it will be a review, as opposed to a full audit.

Coffey reviewed the Board action log.

Technology & Purchasing Policy – **Coffey** reported that this has been a low priority at this time and will likely be addressed mid-summer.

Paperless Board Meetings – The Board has purchased a netbook, which **Calise** was testing. This was the first meeting that she had used it. **Calise** reported that there was a significant difference between receiving the large Board packet in the mail and receiving the small envelope with the secured flash drive. She found it worked amazingly well and was very happy with the set up. **Bennouri** asked if it allowed the user to take notes. **Calise** indicated that the netbook did have a function in the program that allow for insertion of comments. The Board approved moving towards obtaining the netbooks and secured flash drives for all Board members.

Internal cavity policy – Because this is an on-going agenda item, **Coffey** will reflect that the action is complete.

Examiner Interest Form & Instructions – **Coffey** and **Watson** worked to create a Request for Quotation, which was reviewed by the Attorney General's office. The RFQ has been placed on the Board web site and in the ORPIN system. It was also sent to all current examiners. The solicitation will close March 17, 2011.

Standards for Discipline & Monitoring – This item was placed on the Board's agenda as item 5d.

Schools Outreach – **Coffey** proposed an agenda for school outreach, which include: introductions, responsibilities of the Board vs. Board staff, discussion of compliance issues, responsibilities of LMTs, and a discussion of the licensing process. The Board agreed that this was the type of information that they would like to see presented to the schools. It was determined that there would be annual visits to schools.

Convene Education/Scope of Practice Committee and Rules Committee – The Rules Committee met on February 14, 2011 and was scheduled to meet again March 21, 2011. They are trying to generate interest for attendance with that committee. The Education/Scope of Practice Committee is awaiting confirmation of a date. **Garofalo** indicated that she was disappointed that the originally planned meeting was unable to happen as it did not get noticed. She was concerned that a different method needed to happen in order to have appropriate notification. She suggested including **Coffey** in the information. A new date won't be set until she has been able to confirm with the other committee members.

Modify Initial Application for Registered Sex Offender Language – The application forms have been modified to require reporting of sex offender registration. There was discussion on whether the character questions were clear in asking about issues in any jurisdiction.

b) Legislative Updates – Coffey provided the Board with a spreadsheet of items with potential impact to the OBMT:

SB 13 – Prohibits semi-independent agencies from borrowing money that could be construed as incurring debt or obligation of the State of Oregon. No fiscal impact to OBMT. There has been no action since February 9, 2011.

SB 41 – Establishes deadlines for responses to public records requests. No fiscal impact to OBMT. There has been no action since January 18, 2011.

SB 47 – Requires governing bodies to make audio, audio-video or digital recordings of all public meetings. Require recordings and related written records to be available within seven working days of meeting or within one working day of request to review or inspect. No fiscal impact to OBMT. There has been no action since January 12, 2011.

SB 96 – Expands the list of professional regulatory boards subject to workforce reporting. There is a potential fiscal impact to the Board. This bill passed the Senate February 2, 2011 and is moving into the House. This would require an increase in licensing fee by \$7.15 per biennium.

SB 97 – Requires additional health professionals to require cultural competency as CE (OBMT is now included). No fiscal impact to OBMT. There has been no activity since February 21, 2011. It is being amended.

SB 136 – Allows certain regulatory boards to issue order punishing violations without issuing a notice of intent. No fiscal impact to OBMT. There has been no activity since January 14, 2011.

SB 454 – Exempts certain practitioners from regulation of the OBMT. Fiscal impact of \$21,150 per biennium. There is a hearing scheduled for March 9, 2011 at 3:00 pm in Hearing Room A. This would require an increase in licensing fee by \$3.00 per biennium.

SB 590 – Provides that after assignment of administrative law judge (ALJ) from Office of Administrative Hearings, chief ALJ may assign different ALJ for hearing upon showing of good cause. No fiscal impact to OBMT. This has been referred for Hearing but there has been no activity.

HB 2155 – OBMT may approve classes taken at accredited college or university as certified class. No fiscal impact to OBMT. This has been passed out of the House and has been assigned to the Senate Committee on Healthcare, Human Services and Rural Health Policy.

HB 2381 – Removes some of OBMT's semi-independence. Amended fiscal impact of \$2,521 per biennium. This was amended and passed out of the House. It will place the Board under the statutes for the Department of Administrative Services (DAS) Human Resources (HR). The Board currently complies with DAS HR policies, and as such there would be no additional licensing fee required.

HB 2389 – Establishes a task force on health professional regulatory boards. No fiscal impact to OBMT. There has been no activity since January 21, 2011.

HB 2394 – Allows health professional regulatory boards to spend without limitation on contested cases. No fiscal impact to OBMT. No activity since February 16, 2011.

HB 2396 – Directs DAS & LFO to establish a streamlined budget process for two health licensing boards. No fiscal impact to OBMT. No activity since January 21, 2011.

HB 2496 – Establishes task force on the consolidation of state government boards and commissions. No fiscal impact to OBMT. No activity since January 21, 2011.

HB 2552 – Requires an agency to ensure that all contractors do not have delinquent taxes. No fiscal impact to OBMT. There was a public hearing held February 17, 2011.

c) **General Update – McMillin** would like to comment on an occurrence noted in the Change of Director Audit. It is his understanding that when the former Executive Director was given notice by the Governor, there was a subsequent transfer of funds from one bank account to another. He wanted to make it clear that nothing inappropriate occurred. He would like the Board to put into effect, something that would allow the Board to continue operating with payroll and move funds as needed. Currently, the Executive Director, Compliance Manager and Board Chair have signature authority for agency funds. **Coffey** will add a cash-handling procedure to the action log, and prepare a policy for Board consideration. This will allow the agency to maintain financial operations if the Executive Director is removed or away.

4) Committee Updates

a) **Education/Scope of Practice Committee – Fredrickson** reported that there is no further update. He is trying for an April meeting.

b) **Rules Committee –** Minutes from the February 14, 2011 Rules Committee Meeting were provided for the Board. **Bennouri** reported that there was discussion on items of varying importance and urgency to prioritize. Of immediate concern was the 2011-2013 biennial budget. The committee has repeatedly asked for participation from stakeholders, yet receive very

little participation or input. At this time, the committee recommended putting forward the proposed \$1,602,000 2011-2013 biennial budget and to remove the definition of "agency", as it is inaccurate in definition yet used clearly in the rules. The committee is seeking input from LMTs and the professional associations to address the other items: Inactive status to Active status when mid-cycle; Fingerprinting; Portfolio Review; Retired License Status; and Definition of Prescription. **Bennouri moved** to move the suggested rules changes forward for public hearing. **Second the Motion: McMillin** **In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise.** **Opposed: None.** **Motion carries.** This rules hearing will be held in conjunction with the Board Meeting and Work Session in May.

c) **Multiple Discipline Task Force – Calise** reported that this task force continues to receive very good input from the LMT and bodyworker community. There are a couple of new members, bringing the total to 12 or 13 participating members. The MDTF was presented with SB 454 and they voted to accept the amendments put forward by the Board. They are working well to come to a consensus. **Fredrickson** asked for clarification on the amendment. Were the members in favor of practitioners applying for exemption? Part of the amendment indicates that the Board may contact the practitioner to determine if they are certified. **Bennouri** asked if it was the intent to replace two LMT Board members with two bodyworkers. **Coffey** indicated that this portion of the amendment was not approved, because there was no definition for bodyworker. That initial thought is no longer part of this exemption or discussion with the MDTF at this time.

5) Board Business

a) **Best Practices Document – Bennouri** reported that there has been no progress on this document at this time. She asked for feedback from the Board as to what should be included in the document. Should it address those items that are already required by Oregon Administrative Rules and/or Oregon Revised Statutes? Should it only include topics that are not clearly described in Rule or Law, but are thought to be important by the LMT community? It was determined that this item will be forwarded to the Education/Scope of Practice Committee for consideration. **Bennouri** will provide what she has compiled thus far to the committee chair.

b) **Breast Massage Policy – Bennouri and Fredrickson** have reviewed this policy and have discussed the desire to clean up language without being cumbersome. They continue to work on this item.

c) **Internal Cavity Massage Policy –** This item is placed on hold while the Breast Massage Policy is revised. It is felt that it is sufficient for public safety right now, and there is no need to address it until the final product of the Breast Massage Policy, so that they may then be in alignment. This will be placed on the May agenda.

d) **Board Appearance Policy – Montenaro** wrote a policy for Board review, to assist the compliance department with determining what circumstances would require an applicant or licensee to appear before the Board to discuss issues of concern relative to arrests or convictions. **McMillin** would like the policy clarified to state the Executive Director as opposed to Staff. There was discussion on allowing the Board the discretion to make determinations or to waive appearance of an applicant. This item will be deferred to April and **McMillin** will get his comments to **Coffey** on this matter.

6) **Boarderline – Coffey** asked the Board members what they would like to see published in upcoming newsletters. Suggested items include legislative updates, compliance issues in terms of accurate reporting and demographics (to address a portion of the demographics with each newsletter such as location of practitioners in one issue, fields of practice in another, gender/age/ethnicity in another, etc.) **Collier** suggested asking the public what they would like to see in future issues. It was suggested that the Board provide historical disciplinary action.

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

Garofalo suggested the following items for newsletter consideration: MDTF report, description of current staff and duties and a solicitation as to what the LMT community believes to be important Best Practices. She will provide a solicitation for the newsletter by March 15, 2011. She also indicated that the Board Appearance Policy may be useful to schools and hopes that the schools can obtain a copy of the policy once it is finalized. She noted that the public agenda included a line item for Mission Statement and Board Goals. This was not addressed in today's meeting. She would appreciate a copy of the amendments to SB 454 to assist with determining if the school would like to participate or not. **Coffey** indicated that it was being worked on with legislative counsel and was not ready, though she would be happy to provide a copy when it was finalized. **Garofalo** indicated that she was requesting a copy now, as time was a concern.

Bowder indicated that she would also like a copy of the amendment to assist in determining if this was something that AMTA could support or not.

Wiener thanked the Board for their consideration and support of SB 454 as proposed to be amended. She requested an official motion from the Board to provide verification of Board support.

Bennouri moved to take a break at 10:03 am. **Second the Motion: Morin In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.** The Board returned from break at 10:13 am.

8) 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 10:15 am and returned to public session at 12:41 pm.

9) Action on Executive Session Items

McMillin moved that the OBMT unanimously endorse the proposed and current amendments to SB 454 and further authorize the Executive Director and Board Chair to continue to work with all interested and affected parties toward passage of the bill as the Executive Director and Board Chair, in their discretion, deem to be in the best interest of the public. **Second the Motion: Morin In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

Bennouri asked that it be noted on the record that while she supports this, she is still very concerned about the abilities and authorities of disciplinary guidelines as outlined of those other associations that will be overseeing these individuals and would like to work, moving forward, in addressing that. **Fredrickson** shares **Bennouri's** concerns and is in agreement with the desire to address those concerns.

a) **Renewal License Applicant AA – Driscoll** moved to renew the applicant's license with the stipulation that she fully comply with the terms of her probation and send in quarterly reports to the Board verifying attendance in AA and probation compliance. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

b) **Renewal License Applicant AB – McMillin** moved to suspend the Licensee's massage license for violations of OAR 334-040-0010(17), failure to cooperate with the Board in any licensing action, and to extend to the Licensee 30 days in which to fully respond in writing to the initial inquiry of this Board. If she fails to respond as required, her license shall be suspended indefinitely. **Second the Motion: Bennouri In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

c) **Renewal License Applicant AC – Morin** moved to suspend the Licensee's massage license for violations of OAR 334-040-0010(17), failure to cooperate with the Board in any licensing action. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

d) **Renewal License Applicant AD – Collier** moved to suspend the Licensee's massage license for violations of OAR 334-040-0010(17), failure to cooperate with the Board in any licensing action. **Second the Motion: Driscoll In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

- e) **Renewal License Applicant AE – McMillin moved** to defer this case to a later date to obtain additional information. **Second the Motion: Driscoll In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- f) **Renewal License Applicant AF – Morin moved** to suspend the Licensee's massage license for violations of OAR 334-040-0010(17), failure to cooperate with the Board in any licensing action. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- g) **Case 1044 – Collier moved** to close with a letter of concern. **Second the Motion: Morin In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- h) **Case 1064 – Bennouri moved** to close as Board lacks authority. **Second the Motion: Morin In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- i) **Case 1105 – Collier moved** to issue a Notice of Proposed Action for one violation of ORS 687.021(1), practicing or purporting to practice massage without a license; and thirteen violations of ORS 687.021(2)(a), advertising massage without a license; for a total civil penalty of \$11,500. **Second the Motion: Driscoll In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- j) **Case 1131 – Morin moved** to issue a Notice of Proposed Action for one violation of ORS 687.021(1), practicing or purporting to practice massage without a license; and two violations of ORS 687.021(2)(a), advertising massage without a license; for a total civil penalty of \$2,500. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- k) **Case 1138 – Bennouri moved** to revoke LMT's massage license for violations of OAR 334-010-0025(3) A massage therapist shall use safe and functional coverage/draping during the practice of massage when the client is disrobed; OAR 334-030-0005(2)(a) The LMT shall be accountable to his or her clients for the quality and effectiveness of care and services and for creating the basic conditions and boundaries necessary to foster safety and trust in the client-professional relationship; OAR 334-030-0005(2)(c) Ensure that their actions with a client are based on understanding and implementing the core values of caring, respect, compassion, appropriate boundaries, and appropriate use of personal power; OAR 334-040-0010(19)(a)(C)(i) Sexual impropriety which is any behavior, gestures, or expressions that are seductive or sexually demeaning to a client; inappropriate procedures, including but not limited to: disrobing or draping practices that reflect a lack of respect for the client's privacy...; and OAR 334-040-0010(19)(a)(C)(iii) Sexual impropriety which is any behavior, gestures, or expressions that are seductive or sexually demeaning to a client; inappropriate procedures, including but not limited to: an examination or touching of genitals. **Second the Motion: Morin In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- l) **Case 1051 – Driscoll moved** to dismiss the case. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- m) **Executive Session Closed Case Report – Bennouri moved** to accept the Executive Session closed case report as submitted, dated March 7, 2011. **Second the Motion: Collier In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

Case No. 896

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

Case No. 921

Allegation: Unprofessional conduct **Closed:** Unable to substantiate

Case No. 1019

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

Case No. 1040

Allegation: Sexual impropriety **Closed:** Allegations unfounded

Case No. 1066

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

Case No. 1072

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

Case No. 1090

Allegation: Unlicensed practice of massage **Closed:** Unable to substantiate

Case No. 1094

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

Case No. 1100

Allegation: Practicing while inactive **Closed:** Board lacks jurisdiction

Case No. 1101

Allegation: unlicensed advertising & practice **Closed:** Compliance met

Case No. 1106

Allegation: Unlicensed advertising & practice **Closed:** Respondent unreachable

Case No. 1113

Allegation: Unlicensed advertising & practice **Closed:** No violation found

Case No. 1114

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

Case No. 1115

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

Case No. 1116

Allegation: Unlicensed practice **Closed:** Unable to substantiate

Case No. 1132

Allegation: Unlicensed advertising & practice **Closed:** Respondent unreachable

10) Public Session Compliance Action –

a) Public Session Closed Case Report – Bennouri moved to accept the Public Session closed case report as submitted, dated March 7, 2011. Second the Motion: Collier In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.

Case No. 893

Allegation: Unlicensed advertising of massage

Qingmei Chen

Closed: Final default order issued

Case No. 913

Allegation: Billing fraud

Christina Bauer

Closed: Revoked

Case No. 947

Allegation: Unlicensed practice of massage

Rosanna Queens

Closed: Final default order issued

Case No. 1014

Allegation: Sexual abuse of a client

Andrew McDonald

Closed: Surrendered

- 11) **Public Forum** – Opportunity to share thoughts that pertain to agenda items – There were no public in attendance at this time.
- 12) **Announcements** – There were no announcements.
- 13) **Adjourn Meeting** – Bennouri moved to adjourn the meeting at 12:50 pm. **Second the Motion: Morin**
In favor: Bennouri, Collier, Driscoll, Fredrickson, McMillin, Morin and Calise. **Opposed: None. Motion carries.**