



# Oregon

John A. Kitzhaber, MD, Governor

## Board of Massage Therapists

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## BOARD MEETING MINUTES

November 7, 2011

### Attendance

#### Board Members:

Kathy Calise, Chair, Public Member

Heather Bennouri, LMT

Crystal Collier, LMT

Craig McMillin, Public Member

#### Staff:

Kate Coffey, Executive Director

Diana Nott, Compliance Coordinator

Lori Lindley, Assistant Attorney General

#### Public:

Leah Bowder

Erika Baern

Andrea Wiener

Lisa Barck Garofalo

Sinnamon Harris

Peter Szucs

Pam Pennington

Amanda Perkins

Anne Vermilye

Todd Pennington

Marty Dawson

### Call to Order

**Calise** called the meeting to order at 10:03 am. Role call was performed. **Bennouri, Collier, McMillin,** and **Calise** were present. **Fredrickson** and **Morin** were excused.

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 Peter Szucs, Leah Bowder, Lisa Barck Garofalo, Pam Pennington, Todd Pennington, Erika Baern, Anne Vermilye, Marty Dawson, Andrea Wiener, Amanda Perkins and Sinnamon Harris.

- 1) **Approve Agenda – Bennouri** moved to approve the agenda. **Second the Motion: Collier** **In favor: Bennouri, Collier, McMillin, and Calise.** **Opposed: None.** **Motion carries.**
- 2) **Approve Minutes of October 10, 2011 – Bennouri** moved to approve the minutes of October 10, 2011 as submitted. **Second the Motion: Collier** **In favor: Bennouri, Collier, McMillin, and Calise.** **Opposed: None.** **Motion carries.**
- 3) **Director's Report –**
  - a) **Finances - Coffey** provided the Board with a budget report which reflects the August through October 2011 Budget to Actuals Report. Total revenues budgeted was \$273,000 and the actuals are at \$270,000. She explained that the majority of the deficit is in licensure fees. It was explained that there are typically between 70-90 lapsed licenses each month and she did not take that into consideration when preparing the budget. The Board has recognized a savings in payroll expenses due to the compliance manager vacancy. Total investigative expenses are less than budgeted and legal expenses are less than budgeted. The Board has not incurred any deficit spending since the beginning of the biennium.
  - b) **Board Action Log – Coffey** reviewed the action log with the Board:

Board Counsel will provide training in February on public meetings laws.

Discipline on the website is now functioning. Currently, someone can go to the license verification portion of the web site and receive information indicating that the LMT either does or does not have discipline on file. The next step, which is being worked on, is to provide links which will display the orders associated with the discipline. The Board members each received a letter from an upset Licensee with prior Board discipline.

**Coffey** discussed the costs associated with changes to the database to include restrictions on an individual's license. There was discussion and it was determined that the license will state "Restrictions: None" or "Restrictions: Yes."

There was discussion on changing the exam statistics reporting and the cost associated with such change. The concern is that under the current reporting system, schools that have had no students take the practical exam during the reporting period are being reflected as having 0% pass rate. The Board would like to see that changed to N/A. **Coffey** will proceed with this task.

The Rules Committee will meet next year to work on moving current policies into Administrative Rule.

Dale Atkinson will meet with the Board in January.

**Calise** would like to schedule another all-schools meeting.

**Coffey** discussed the current examiner contract and examination scheduling. The current contract and schedule will not meet the needs of the Board. She would like to amend line items in the budget to apply more funds to examination, to increase the number of examination days scheduled and to extend the contract to the end of 2012. This will not impact the total budget, but will instead direct some savings into examination expenses. **Bennouri moved** to amend the budget as proposed by line item. **Second the Motion: Collier In favor: Bennouri, Collier, McMillin, and Calise. Opposed: None. Motion carries.**

**c) Compliance Update Coffey** reported that she completed the national certified investigator training. – **Nott** explained to the Board that the inclusion of discipline on the web has affected the compliance reports. It was discovered that there were some old cases that were not in the current database. Those cases are being added, and the closed case reports for the next couple of meetings may reflect some very old cases as a result.

There was discussion on how to reflect discipline on the web site and what should be reported. It was explained that all disciplinary matters are public record, even instances of unlicensed practice. All discipline is public information and the Board has no authority to refuse to disclose such discipline. Additionally, all matters of discipline are also required to be reported to the federal databank. This includes unlicensed practice of massage. The Board reviewed the format used by another health regulatory Board and provided suggestions to **Coffey** for the OBMT reporting. **Collier** would like the page to reflect that there are no restrictions on a license.

#### **4) Committee Updates**

**a) Education Committee – Garofalo** reported that this committee is on track to complete their review and amendment of the Model Curriculum by February 2012. There was discussion on inclusion of pathologies that should be covered in a curriculum. It would be larger and more inclusive than what is covered in the candidate handbook. The Board agrees that this is an important component to core curriculum education. **Garofalo** asked if the Board would consider allowing other experts to review the model curriculum, once the draft is completed. Such experts could be the Department of Education or the Massage Therapy Body of Knowledge. The Board will consider it.

**b) Committee Interest: Kasey Acker – Acker** submitted an application for membership to the Scope of Practice Committee. There was discussion. **Bennouri moved** to accept the application. **Second the Motion: Collier In favor: Bennouri, Collier, McMillin, and Calise. Opposed: None. Motion carries.**

## 5) Board Business

- a) **Vote on Proposed Rules** – The Board reviewed and discussed the testimony from the Rules Hearing earlier in the morning. There was a great deal of discussion on the fingerprint rules. It was determined that at this time, the Board will only require fingerprinting of all new applicants, of licensees returning from lapsed or inactive status and licensees or applicants under investigation. The Board made other amendments to the proposed rules, which address verbiage and formatting. No other amendments affected intent or content. **Bennouri moved** to accept the proposed rules changes for the OBMT with the following amendments: Page 7 – 334-010-0005(3)(e) All new applicants must submit a completed fingerprint card for a criminal background check. All lapsed and inactive licensees applying for reactivation must submit a completed fingerprint card for a criminal background check; Page 8 – 040-010-0009(1) The Board may grant a license to applicants who are or have legally practiced...; Page 11 – 334-010-0015(6)(e) remove the current item e, renumber (f) to (e), and 334-010-0017(1) change the massage therapists license must be considered to the massage therapist license is considered; Page 12 – 334-010-0018(1)(a) The Board requires a criminal background check of all applicants for an initial license, licensees applying to reinstate a lapsed license, licensees applying to reactivate an inactive license, and licensees under investigation to determine the professional fitness of an applicant or licensee; Page 15 – 334-010-0033(2) examination fees are refunded only when requested in writing...; Page 20 – 334-040-0010(19)(j) Practicing a modality or technique without adequate training or licensure. **Second the Motion: McMillin In favor: Bennouri, Collier, McMillin, and Calise. Opposed: None. Motion carries.**
- b) **Vote on Vice Chair** – **Bennouri moved** to place this item on the agenda, after approval of the agenda and minutes, in January 2012. **Second the Motion: Collier In favor: Bennouri, Collier, McMillin, and Calise. Opposed: None. Motion carries.**
- c) **Vote on 2012 Board Meeting Schedule** – The Board discussed the 2012 Board meeting schedule. They will change the April date to the week prior and expect to travel to Portland. **Collier moved** to approve the 2012 meeting calendar, with the traveling meeting for April 6-7, 2012. **Second the Motion: Bennouri In favor: Bennouri, Collier, McMillin, and Calise. Opposed: None. Motion carries.**

- 6) **BOARDerline** – **Bennouri** will prepare an article on the adopted rules changes. **Calise** will provide an article as outgoing chair. The next publication is scheduled for January 2012.

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

Todd **Pennington** shared that it was good to see what a rules hearing is like and thanked the Board for the opportunity to participate.

There were no other comments for the Board.

## 8) Executive Session

- a) **Compliance (192.660(2)(k))**  
b) **Oregon Practical Exam (192.501(4))**

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 11:12 am and returned to public session at 1:22 pm.



**Case No. 1256**

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**Allegation:** No license number in ad                      **Closed:** Compliance met**Case No. 1262**

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**Allegation:** Sexual violation                                      **Closed:** Duplicate case**Case No. 1263**

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**Allegation:** No license number in ad                      **Closed:** No violation found**10) Public Session Compliance Action –**

**a) Public Session Closed Case Report – Bennouri** moved to accept the Public Session closed case report as submitted in exhibits 1-5. **Second the Motion: Collier** In favor: **Bennouri, Collier, McMillin, and Calise.** **Opposed: None.** **Motion carries.**

**Case No. 087**

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**Allegation:** Unlicensed practice of massage                      **Closed:** Final default order**Case No. 103**

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**Allegation:** Sexual violation                                      **Closed:** Revoked**Case No. 133**

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**Allegation:** Scope of practice                                      **Closed:** Stipulated agreement**Case No. 140**

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**Allegation:** Sexual violation                                      **Closed:** Revoked**Case No. 186**

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**Allegation:** Sexual abuse of a client                              **Closed:** Revoked**Case No. 187**

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**Allegation:** Sexual abuse of a client                              **Closed:** Revoked**Case No. 189**

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**Allegation:** Scope of practice                                      **Closed:** Stipulated agreement**Case No. 194**

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**Allegation:** Unprofessional conduct                              **Closed:** Stipulated agreement**Case No. 197**

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**Allegation:** Noncompliance with a Board Order                      **Closed:** Suspended**Case No. 1149**

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**Allegation:** Unlicensed practice                                      **Closed:** Final default order**Case No. 1165**

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**Allegation:** Unlicensed practice                                      **Closed:** Final default order**Case No. 1166**

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**Allegation:** Unlicensed practice                                      **Closed:** Final default order

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

**12) Announcements** – **Calise** reported that the Board was re-writing and updating the bylaws and would like to discuss with the Board consideration of regional liaisons. This would be a position within the Board structure for past Board members to act as the Board's first point of contact in a particular area of the state. They could hold town halls or respond to inquiries from licensees in the area. This is not a Governor appointed position, but a Board-approved, face-point contact that is not the Board office. **Bennouri** thinks this is a great idea and that it should be drafted into the bylaws. **Collier** agrees that this is a good idea.

**13) Adjourn Meeting** – **Bennouri** moved to adjourn the meeting at 1:32 pm. **Second the Motion: Collier** **In favor: Bennouri, Collier, McMillin, and Calise.** **Opposed: None.** **Motion carries.**