



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

October 10, 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

Public:

Leah Bowder

Terry Tupes

Judy Martin

Lisa Barck Garofalo

Patricia Olson

Pam Pennington

Robert Duran

Todd Pennington

Elizabeth Rogers

Call to Order

Calise called the meeting to order at 9:01 am. Role call was performed. **Bennouri, Collier, Fredrickson, McMillin, Morin** and **Calise** were present.

At this time, there was an introduction of each Board member as well as Kate **Coffey**, Executive Director, and Diana **Nott**, Board staff.

Calise asked each member of the public to introduce themselves. Present at this time were Leah Bowder, Lisa Barck Garofalo, Terry Tupes, Pam Pennington and Todd Pennington.

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

2) Approve Minutes of September 12, 2011 – Bennouri moved to approve the minutes of September 12, 2011 as submitted. **Second the Motion: Fredrickson** **In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise.** **Opposed: None.** **Motion carries.**

3) Director's Report – Coffey provided each Board member with a binder containing the Board's rules and laws as well as other rules and laws pertaining to the Board.

a) Board Action Log – Coffey reviewed the action log with the Board. Some items on the action log are on today's agenda. Board Counsel will provide training in November on public meetings laws. **Coffey** reported that 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. There was discussion of how to appropriately reflect licensure restrictions on the printed license. There was concern over listing the specific restrictions or placing a code on the license, for which the key could be located on the web site or provided upon inquiry. It was also discussed that it would be beneficial to include a notation if there are no restrictions on the license as well. The Board questioned if it was allowable to include restrictions or restriction codes on the physical license. **Coffey** will follow up with

legal counsel and return to the Board with the response.

- b) Finances – Coffey** provided the Board with a budget report which reflects the July through September 2011 Budget to Actuals Report. For the reporting period the Board recognized \$6,000 more of revenue than was forecast. This is due in large part to an increase in examination revenue and initial applications, as well as settlements on civil penalties. **Coffey** noted that initial application fees may be affected by the examination scheduling, which is currently about 45 days out. She is working with the contractor to try to schedule additional days and noted that there may need to be an amendment to the contract to increase exam days and bring that expected examination wait time to 30 days or less.
- c) Compliance Update –Coffey** provided the Board with a Compliance Report from September 1, 2011 to September 30, 2011. The report includes information such as: complaints open at start date (48); active cases at start date (36), number of new complaints received (14); number of cases opened (9); number of complaints closed (9); number of cases closed (6); and number of cases closed with disciplinary action (4).

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 the spring of 2012. There was discussion on the merits of practitioner self-care, but concern on how to appropriately measure such a competency. **Bennouri moved** to have Standard VII read: Demonstrate competency in health sciences necessary to insure client safety. **Second the Motion: Collier In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.** The committee acknowledged the Board's assignment to work on continuing education once the Model Curriculum task has been completed. The next meeting is scheduled for November 4, 2011 from 10:00 am to 12:00 pm at the Oregon School of Massage, Portland Campus.
- b) Scope of Practice Committee – Morin** reported that this committee met on October 7, 2011 at the Oregon School of Massage, Portland campus. The committee was provided two assignments; tiered licensure and temporary licensure. At this time there was a great deal of discussion on tiered licensure, particularly with those that practice structural integration. It was noted that for some time, these practitioners have indicated that they would like to be differentiated from massage therapists. The committee has requested that the Board's legal counsel provide feedback on positive and negative aspects on temporary licensure, as well as information on what other health regulatory professions do for temporary licensure. The committee reiterated their desire to have the Board work on a legislative concept that would change the name of the Board to something more encompassing than simply massage. **McMillin** voiced concern over the timing of a legislative concept for a name change. He is afraid that it will be seen over-reaching and attempting to expand the authority of the Board and that the Board will likely face opposition. He suggests waiting for a session or two before making such an attempt. **Calise** feels the opposite, and that the relationships built with the legislature will assist in such a change. **Fredrickson** stated that he agreed that the timing is poor. **Calise** indicated that the Board may have a better understanding of the national direction after the FSMTB annual meeting later in October. **Morin** reported that this committee will reconvene in January 2012, though the exact date, time and location have not yet been determined.

5) Board Business

- a) Demographics Report –** The Board received a quarterly demographics report of licensees. This includes information on gender, age, ethnicity, years in practice and modalities practiced. The Board was concerned that the numbers reflected for those licensed less than two years might be indicative of a poor retention rate in the profession.
- b) Exam Statistics 3rd Quarter 2011 –** The Board viewed the quarterly statistics for the practical exam for July 1, 2011 through September 30, 2011. There is an overall pass rate of 81%. It was noted that out-of-state candidates perform below average, with a 53% pass rate and that kinesiology is the area that typically causes issues for in state and out-of-state candidates, with 31 of 133 candidates failing this section. **McMillin** asked that the report be amended to remove any schools that have had no students take the exam or to delineate that those schools do not apply, rather than show 0%.
- c) Board Policy Statements – Nott** reported to the Board that it has been determined that the Board should review their current policies to determine what should be placed in rule and what can remain in policy. It was explained that if the Board wants to hold the licensee to a policy and possibly impose discipline for failing to adhere to that policy, then it needs to be in rule. There was discussion on how to best address this matter. **Coffey** will have staff review the policies and draft proposed rules for consideration.

d) **Best Practices Document – Bennouri** provided the Board with the latest draft of the Best Practices Document. There were a few amendments suggested and the Board approved the document, once amended, to be placed on the website.

e) **Compilation of Rules and Laws** – This was provided to the Board earlier in the meeting.

f) **CE Comparison – Coffey** provided the Board with a compilation of continuing education requirements for other health care professionals. There was discussion on the merits of requiring that continuing education courses be certified or approved. **Bennouri** indicated that while she can see the merit, she would encourage the Board to be aware of the licensing population that live in outlying areas and to consider how such a change might impact them. It was indicated that when this task is forwarded to the education committee, they will take that into consideration. **Coffey** indicated that it was the recommendation of the auditor that the Board cease the practice of requiring verification of continuing education. There was a discussion on possibly auditing a portion of renewals. It was determined that staff would work out the logistics of a 10% CE audit. **Bennouri moved** that effective January 2012, licensees will not be required to submit copies of continuing education documentation with their renewal, and that they may be asked to provide these documents upon a Board audit. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

g) **Draft Bylaws – Coffey** provided the Board with draft bylaws for consideration. The Board provided feedback to **Coffey**. This item will return to the Board for consideration in November.

Bennouri moved to take a brief recess at 10:23 am. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.** The Board returned from recess at 10:35 am.

h) **Vision Statement – Collier** provided the following draft Vision Statement: Dedicated to an ongoing and evolving cooperative relationship of regulation between the massage industry, licensees, and the public.

i) **Values Statements** – The Board members provided draft Values Statements. These will be compiled and returned to the Board in November for consideration.

i) **Accessibility – Calise** indicated that her statement was a work in progress: Provide up-to-date information on the internet for both the public and the licensees. Strive to be an approachable resource to the massage industry, licensees, and the public.

ii) **Accountability – Bennouri** indicated her statement is also a work in progress: Accountable for safety, health and welfare of the public, the integrity of the profession and massage therapists, as well as oversight and responsibility in reporting to the Governor and the legislature.

iii) **Collaboration – Fredrickson** indicated that he was considering this statement from an asset based point. Willingness to approach others with openness, to be open to the ideas of others and to be willing to shift off-point. Value the relationships amongst the legislators, the licensees and ourselves. Willing to craft compromise and ask questions, identify outcomes that are desired but be open to influence.

iv) **Communication – McMillin** proposed: Endeavor to listen, reflect and clearly state the role and functions of the Board in its partnership with the licensed massage therapists and the public we serve.

v) **Integrity – Morin** proposed: The OBMT prides itself on conducting its business practices with adherence to soundness of character and ethical principles.

vi) **Transparency – Collier** proposed: Open and honest regulation of massage therapy in the State of Oregon.

j) **FSMTB**

i) **Update** – The Board was provided with updated information for a change of venue for the upcoming meeting.

ii) **Delegate Report** – The Board was provided a copy of a report requested by the FSMTB and provided by **Coffey**. They also reviewed a prepared delegate report, which **Fredrickson** will share with the group at the annual meeting.

6) **BOARDerline – Coffey** reported that the next newsletter is scheduled for an October 2011 publication date. The Board reviewed the suggested articles and assignments. **Bennouri** will prepare something on the proposed rules changes. **Morin** will provide something on license renewal, fall safety and aromatherapy.

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

Tupes explained to the Board that she came to Oregon from another state where she had been practicing for 22 years. She expressed frustration over her denial for examination and the Oregon process. It is her feeling that some of her education has been denied over verbiage, as opposed to actual content. **Collier** asked if this matter should be placed on the agenda, as the Board is unaware of her file and is unable to make any sort of informed determination at this time.

Bowder with the American Massage Therapy Association – Oregon Chapter shared with the Board that the AMTA National Conference is being held in Portland next week. Governor Kitzhaber has proclaimed next week American Massage Therapy Association week. She provided feedback regarding the notice of rulemaking hearing that has recently been sent to the licensing populations. She has gotten a great deal of feedback on the fingerprinting rule. She suggested sending something to the licensees about why the Board feels it is necessary to conduct fingerprint checks and explain if other health licensing Boards conduct such checks. People have shared that they feel it is a step backwards and that it is associating them with the sex trade, not realizing that there are some cases that the Board has seen which make the fingerprinting important. **Calise** asked if they were aware of who the rule would apply to, as it is not meant to be a requirement for all licensees. It was unclear if that was known. It was explained that an individual who lives in Vancouver yet works in Oregon is upset that they will have to go through a fingerprint background check every two years with their renewal. AMTA has not yet decided if they will support or disapprove of the proposed rules changes. **Coffey** asked if licensees are aware that there is already a criminal history check conducted in Oregon via use of the Law Enforcement Data System (LEDS)? It was suggested that a portion of the population may be unaware that those checks are conducted. It was discussed that a major area of concern is fear that the fingerprint cards will be retained as opposed to destroyed as required. It was explained that the newsletter will contain information on the proposed rules changes and the reasons for those changes.

There were no other comments for the Board.

8) Executive Session

- a) Compliance (192.660(2)(k))
- b) Legal Advice (192.660(2)(h))

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 1:13 pm.

9) Action on Executive Session Items

- a) **Case 1232 – Bennouri moved** to issue a Notice of Proposed Action for: One violation of ORS 687.021(1) and OAR 334-040-0010(11), practicing or purporting to practice when the license has been revoked or suspended, lapsed or inactive; six violations of ORS 687.021(2)(a), advertising for massage without a license; six violations of ORS 687.021(2)(b), use of “massage” in the business name without being licensed as a massage therapist; for a total civil penalty of \$11,000; and forward to the Eugene police department for the above named violations. **Second the Motion: Collier In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- b) **Case 1233 – Morin 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 two violations of ORS 687.021(2)(a), advertising for

massage without a license; for a total civil penalty of \$2,500. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

c) **Case 1236 -Bennouri moved** to issue a Notice of Proposed Action for one violation of ORS 687.021(1) and OAR 334-040-0010(11), practicing or purporting to practice when the license has been revoked or suspended, lapsed or inactive; 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: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

d) **Case 1239 - Bennouri moved** to issue a Notice of Proposed Action for eleven violations of ORS 687.041(2) and OAR 334-010-0015(2)(c); for failure to report an arrest as required; and of OAR 334-040-0010(2), knowingly and recklessly making a false statement to the Board; for a total civil penalty of \$500; and, through the next renewal, to require LMT to continue participation in 12-step or treatment program, place LMT on probation and require LMT to participate in Peer Supervision. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

e) **Case 1240 – Bennouri moved** to revoke the LMT's massage license for thirteen violations of ORS 687.041(2) and OAR 334-010-0015(2)(c), for failure to report and arrest as required; and of OAR 334-040-0010(2), knowingly or recklessly making a false statement to the Board. **Second the Motion: McMillin In favor: Bennouri and McMillin Opposed: Collier, Fredrickson, Morin and Calise. Motion fails.**

Collier moved to issue a Notice of Proposed Action for thirteen violations of ORS 687.041(2) and OAR 334-010-0015(2)(c); for failure to report an arrest as required; and of OAR 334-040-0010(2), knowingly and recklessly making a false statement to the Board; for a total civil penalty of \$500; and, through the next renewal, place LMT on probation and require LMT to participate in Peer Supervision. **Second the Motion: Morin In favor: Collier, McMillin, Morin and Calise. Opposed: Bennouri and Fredrickson. Motion carries.**

f) **Case 1252 – Morin moved** to issue a Notice of Proposed Action for six violations of ORS 687.021(2)(a), advertising for massage without a license; for a total civil penalty of \$6,000; and move to seek injunctive relief. **Second the Motion: Bennouri In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

g) **Applicant Inquiry – Bennouri moved** to have Board staff reassess the file with conditional acceptance of the additional transcript provided by Mokoto Kai Healing Arts. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

h) **Executive Session Closed Case Report – Collier moved** to accept the Executive Session closed case report as submitted in exhibits 1-6. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

Case No. 1141

Allegation: Failure to disclose information **Closed:** Based on further review

Case No. 1182

Allegation: Other **Closed:** No action taken

Case No. 1200

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

Case No. 1217

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

Case No. 1224

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

Case No. 1225

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

Case No. 1228**Allegation:** Unprofessional conduct **Closed:** Compliance met**Case No. 1242****Allegation:** No license number in ad **Closed:** Compliance met**Case No. 1243****Allegation:** No license number in ad **Closed:** Compliance met**Case No. 1248****Allegation:** Unlicensed practice of massage **Closed:** Unable to substantiate**Case No. 1249****Allegation:** No license number in ad **Closed:** No violation found**Case No. 1250****Allegation:** No license number in ad **Closed:** Compliance met**10) Public Session Compliance Action –**

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

Case No. 002**Allegation:** Unprofessional conduct **Sandi Lister**
Closed: Final order**Case No. 003****Allegation:** Unprofessional conduct **Paul Tracy**
Closed: Stipulated agreement met**Case No. 069****Allegation:** Unlicensed practice **Brian Westfall**
Closed: Final default order**Case No. 1005****Allegation:** Unprofessional conduct **Ryan Gibbons**
Closed: Stipulated Agreement**Case No. 1068****Allegation:** Unprofessional conduct **Renee Erickson**
Closed: Suspended**Case No. 1125****Allegation:** Unlicensed practice **Janene Kaza**
Closed: Final default order**Case No. 1145****Allegation:** Other **Anna Mann**
Closed: Stipulated Agreement**Case No. 1161****Allegation:** Unlicensed practice **Christopher Horner**
Closed: Final default order**Case No. 1167****Allegation:** Unlicensed practice **Angel Burdisk**
Closed: Stipulated Agreement

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

12) Announcements – **Calise** reminded the Board that the Board should be prepared to vote on Executive Officers at the November meeting. There was a discussion on **Fredrickson** being unavailable for that meeting. **Bennouri moved** to appoint **Fredrickson** as Board chair effective January 1, 2012. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.** The Board will discuss appointment of the Vice Chair in November. **Calise** informed the Board that they will break for lunch at the November meeting.

13) Adjourn Meeting – **Bennouri moved** to adjourn the meeting at 1:26 pm. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**