



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

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BOARD MEETING MINUTES

September 12, 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:

Leah Bowder

Marty Dawson

Pratiti Fullerton

Pam Pennington

Todd Pennington

Deborah Skell

Peter Szucs

Andrea Wiener

Call to Order

Calise called the meeting to order at 9:02 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 Lori **Lindley**, Board Counsel.

Calise asked each member of the public to introduce themselves. Present at this time were Leah Bowder, Peter Szucs, Pratiti Fullerton, Marty Dawson, Andrea Wiener, Deborah Skell, Pam Pennington and Todd Pennington.

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

2) **Approve Minutes of August 8, 2011 – Bennouri** moved to approve the minutes of August 8, 2011 as submitted. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

3) Director's Report

a) **Finances – Coffey** provided the Board with a budget report which reflects the July and August 2011 Budget to Actuals Report. For the two month period the Board recognized \$9,000 more of revenue than was budgeted. This is due in large part to an increase in examination revenue and initial applications. Total payroll has been lower than budgeted, though the Board has not yet received billing for the job rotation policy analyst. The Board inquired about the bank charges. It was explained that there are fees associated with accepting credit cards and utilizing the check scanner. There is a hope that moving to online renewals and providing an option for e-checks will help reduce these fees.

b) **Board Action Log –** The action log has been updated and completed tasks have been removed. The Board has asked **Lindley** to provide a sample packet of Rules and Laws utilized by another agency, which includes other laws that licensees are required to adhere to. The sample packet was passed to Board members to review.

c) **Compliance Update – Coffey** reported that the Board was made aware of a facility with unlicensed practitioners, where an assault occurred on a client. As a result, the Board has worked with the Governor's Office and Senator Bates to

draft a legislative concept for facilities licensure. The Board was provided a copy of that concept. It was clarified that the intent it not to require facilities licenses for individual LMTs working from their home or doing outcall to client homes. This matter will be discussed and reviewed periodically as preparations occur for the 2012 legislative session.

Coffey provided the Board with a Compliance Report from August 1, 2011 to August 31, 2011. The report includes information such as: complaints open at start date (54); active cases at start date (45), number of new complaints received (12); number of cases opened (6); number of complaints closed (3); number of cases closed (12); and number of cases closed with disciplinary action (10).

Coffey explained to the Board that there is an increasing number of establishments opening, that advertise for reflexology but they are performing massage services, up to and including full body massage. She requested that the Board approve investigation of suspected establishments. Additionally, she suggested that if such steps are taken, Senator Johnson should be notified. There was discussion but no final determination was made.

d) General Update – There are no miscellaneous updates.

4) Committee Updates

a) Education Committee – Fredrickson reported that this committee is on track to complete their review and amendment of the Model Curriculum by the spring of 2012. He commented that the committee chair, Lisa Barck Garofalo, is well organized and that the committee is dedicated to the work that they do. He is very pleased with their progress. A report from the September 9, 2011 meeting was provided to the Board.

b) Scope of Practice Committee – Morin reported that this committee met on September 9, 2011 at the Oregon School of Massage, Portland campus. **Coffey** and Christine West provided training on how laws and rules are made. The committee found this to be insightful and they provided positive feedback. There were several comments made in regards to the proposed removal of the named practices in the exemption language. The group continues to be very passionate and dedicated. They have tentatively scheduled a meeting for October, though if there is no current task from the Board they will cancel it.

c) Rules Committee

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

ii) Rules: Entirety – The Board received a copy of all proposed rules for consideration.

iii) Rules: Consideration of names practices – The Board received a copy of the proposed exemption rule, which includes naming the exempted practices, for consideration.

iv) Legislative Concept – The Board was provided with draft language of a legislative concept for facilities licensure.

While reviewing all proposed rule language, the Board discussed how to appropriately address the concern of how to include a credit hours option in the language. **Szucs** stated that University of Western States reviewed the language of the Oregon Administrative Rule and believes that it meets their desired result.

It was determined to amend 334-010-0005(4) to read: Hours can be calculated in clock hours or equivalent credit hours from an institution that substantially complies with the definition of credit hours in 34 CFR 600.2.

Additionally, the Board will include a definition of Equivalent Credit Hours: are those credit hours as determined by the respective educational institution or its certified classes or programs.

The Board accepted suggestions from the Education Committee on the Credentialing Review. It will read as follows:

334-010-0009
Credentialing Review

- (1) The Board may grant a license to applicants who are or have legally practiced massage and/or bodywork outside of the State of Oregon after successful completion of the practical and jurisprudence examinations, the written examination and upon a credentialing review.
 - (a) Credentialing review must 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 contact hours of prior continuing education in subject areas may apply.
 - (i) Official Transcripts or Certificates of Completion must 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, and Sanitation hours required, 140 hours minimum must be from certified class instruction. Of the 300 hours required up to 120 contact hours of prior continuing education in subject areas may apply. Of the 300 hours required, up to 40 hours of practical work experience may apply.
 - (i) Practical Work Experience must be documented on the approved Board of Massage forms: Credentialing Review and Work Experience Verification Worksheet.
- (2) Credentialing Review applications must be accompanied by:
 - (a) Current Credentialing Review fee; and
 - (b) Any additional documentation required by the Board.

The Board had no changes to criminal background checks.

Morin moved to take a brief recess. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.** The Board entered break at 10:35 am and returned from break at 10:45 am.

There was extensive discussion on the concerns and benefits of naming the exempted practices specifically in the exemption rule. The Board inquired about the practice of Trager. Marty Dawson spoke on Trager. The approved draft rule is as follows:

334-010-0027
Exempt Practices

- (1) Practitioners exempt from the Oregon Board of Massage Therapists licensing authority are defined as practitioners who:
 - (a) Do not claim expressly or implicitly to be massage therapists and who limit their work to the practice of:
 - (A) Using touch, words and directed movement to deepen awareness of existing patterns of movement and suggest new possibilities of movement, as defined per 687.031(1)(j)(i). Examples include the Feldenkrais Method of Somatic Education as defined on May 16, 2011, by the Feldenkrais Guild ® of North America and The Trager ® Approach as defined on May 16, 2011, by the United States Trager ® Association; or
 - (B) Using minimal touch over specific points on the body to facilitate balance in the nervous system, as defined per 687.031(1)(j)(ii). An example includes Bowenwork® and/ or the Bowen Technique as defined on May 16, 2011 by the Bowenwork Academy USA; or
 - (C) Using touch to affect the energy systems or channels of energy of the body, as defined per 687.031(1)(j)(iii). An example includes Polarity Therapy as defined on May 16, 2011 by the American Polarity Therapy Association; and
 - (b) Hold an active certification from a National or International professional organization or credentialing agency
- that:
- (A) Requires a minimum level of training specific to their discipline, demonstration of competence and adherence to an approved scope of practice and ethical standards;

- (B) Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and
- (c) Provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.
- (2) It is the exempt practitioner's responsibility to insure they meet the criteria for being exempt and only practice within their exempt scope of practice. Practitioners may be subject to discipline by the Board if they:
 - (a) Refer to themselves or imply they are a massage therapist;
 - (b) Practice outside of the exempt scope of practice;
 - (c) Practice without an active certification from a National or International professional organization or credentialing agency; or
 - (d) Fail to provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.
- (3) The State Board of Massage Therapists has the authority to verify a practitioners claimed exemption from licensure of ORS 687 under subsection (1)(j) of section 687.031. Verification may include, but is not limited to, consultation with the practitioners certifying organization or agency.
- (4) Practitioners, Disciplines and/or Organizations seeking to be named in the exemption shall contact the Board of Massage Therapists to request a review.

Bennouri moved to move all rules, as amended, forward for rules hearing. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

There was additional discussion on the legislative concept of facilities licensure. **Lindley** will obtain information the ability or inability for unlicensed healthcare practitioners, corporations, etc. to own health care facilities. This topic will be addressed at a later date.

5) Board Business

- a) **2012 Calendar** – The Board reviewed a draft proposed 2012 calendar. There was discussion on the location of the traveling meeting. It was determined that the 2012 Board meeting and work session would be held in Portland in April. The Board may consider coupling the meeting with a continuing education class.
 - b) **Online Renewals** – **Bennouri** met with **Coffey** and the Board was provided with information on the process for implementing online renewals. The Board agreed that the process looked good. **Coffey** requested that the Board move forward with online renewals. They agreed.
 - c) **Best Practices Document** – **Bennouri** was unable to address this task prior to the meeting. She will work on this and have a document for the October 2011 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.

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

Pratiti Fullerton, Marty Dawson and Andrea Wiener thanked the Board for their work.

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 11:51 am and returned to public session at 12:15 pm.

9) Action on Executive Session Items

- a) **Case 1182 – McMillin moved** to close this case as no action taken. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries**
- b) **Case 1238 – Collier moved** to revoke the massage license for multiple violations of OAR 334-040-0010(18), for failure to comply with a Board order. **Second the Motion: Bennouri In favor: Bennouri, Collier, McMillin, Morin and Calise. Opposed: None. Recused: Fredrickson Motion carries.**
- c) **Case 1239 – Bennouri moved** to defer this case to October 2011, to allow for the Licensee to appear before the Board. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- d) **Case 1240 – Bennouri moved** to defer this case to October 2011, to allow for the Licensee to appear before the Board. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- e) **Executive Session Closed Case Report – Bennouri moved** to accept the Executive 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. 1144

Allegation: Failure to disclose information **Closed:** Compliance met

Case No. 1179

Allegation: Professional misconduct **Closed:** Unable to substantiate

Case No. 1226

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

Case No. 1229

Allegation: Unprofessional conduct **Closed:** Board lacks jurisdiction

Case No. 1230

Allegation: Unprofessional conduct **Closed:** Board lacks jurisdiction

Case No. 1237

Allegation: Non-compliance with a Board order **Closed:** Compliance met

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 1-4. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

Case No. 240

Allegation: Unlicensed practice **Dennis Britten**
Closed: Stipulated agreement

Case No. 252

Allegation: Unlicensed practice **John Henningson**
Closed: Civil penalty assessed & paid

Case No. 278 Allegation: Unlicensed practice	Ilima Considine Closed: Civil penalty assessed & paid
Case No. 299 Allegation: Unlicensed practice	Patricia McIntosh Closed: Civil penalty assessed & paid
Case No. 801 Allegation: Unprofessional conduct	Jodi Steffen Closed: Revoked
Case No. 910 Allegation: Unlicensed practice	Hayley Farr Closed: Final default order
Case No. 920 Allegation: Unprofessional conduct	Jesse D Allen Closed: Revoked
Case No. 966 Allegation: Unlicensed practice	Alissia King Closed: Final default order
Case No. 1073 Allegation: Unlicensed practice	Debra Kruckenberg Closed: Final default order
Case No. 1131 Allegation: Unlicensed practice	Tovah Rivkah Kjolsrud Closed: Final default order
Case No. 1150 Allegation: Unlicensed practice	Zachary Newell Closed: Final default order
Case No. 1168 Allegation: Unlicensed practice	Tranetta Dijonne Bradley Closed: Final default order
Case No. 1169 Allegation: Unlicensed practice	Teonia Nicole Hatcher 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) **Strategic Planning** – **Coffey** provided the Board with a draft audit report. The OBMT is required to undergo a biennial audit, as part of the semi-independent status. This year, the Board opted for a review, which went more in-depth into processes as well as finances.

They reviewed and evaluated internal controls, cash controls, revenues and expenses and budgeted revenues and expenditures to actual revenues and expenditures.

They found that, generally, adequate controls were in place at the end of the biennium. They found some areas of weakness in internal controls and provided recommendations.

Recommendations included updating procedures, updating position descriptions, additional payroll verification, change in process for financial reports, further segregation of duties in the cashiering and licensing area, obtaining and securing numbered license stock, change in continuing education submittal to require original certificates, certification of CE courses,

improved documentation for unusual payments and adoption and/or budget amendment by line-item as opposed to over-all budget.

The Board determined that they wish to keep the current financial reporting process. **Coffey** will provide a draft financial report to the Board when packets are mailed and update as changes occur.

Coffey explained that currently, one staff member takes in monies, reviews continuing education and issues licenses. It is the auditor's recommendation that the task of printing licenses be assigned to another staff person. As such, **Coffey** proposed that the Board consider hiring another position. Because the Operations and Policy Analyst temporary position has been of significant benefit to the Board, **Coffey** proposes that the Board permanently hire for that position as opposed to a compliance manager. The Board asked about the salary range for this position. **Coffey** explained that it is higher than an administrative specialist, but below a management position. She further explained that management positions range from A – H. The OBMT compliance manager position was a C. This position is lower than a C. The Board approved hiring for this position.

There was discussion on approving CE providers. **Coffey** will check with other Boards to determine what they require and accept for CE.

- a) **Board Planning Document** – The Board received a document which detailed the subjects from the May 2011 work session, which the Board determined were matters that they would like to have addressed. It was noted that the list was not placed in priority order.

Number	Item	Status
1	Stabilization - Maintain relationships with Legislature	
2	Committee Clarification - structure and board liaison role	Completed
3	Communication Plan - Trng. On how to communicate with Leg.	
4	Inclusion of restrictions printed on license	
5	Disciplinary action on the web site	
6	Practice or modality printed on license if desired by licensee	
7	Advanced technique listing service for a fee	
8	Policy on advanced techniques	
9	Board member handbook	
10	Update Board by-laws	See draft from 2009
11	Rulemaking as a result of SB 454	Completed
12	Revise model curriculum	Assigned to Ed. Committee
13	Credentialing review process	Completed
14	Online renewals	In process
15	Professional resources listed on web site	
16	Send board to FSMTB in October 2011	
17	Standard civil penalty for failure to accurately report adverse action on renewal forms	
18	Review Oregon Practical Exam for applicability for current industry standards	
19	Facilities licensing	
20	Tiered licensure	
21	Make multiple/continued violations of unlicensed practice of massage a felony	

22	More oversight of massage schools	See AG advice
23	Approval of CE providers for a fee	
24	Reciprocity between states	
25	Continuing education arm of OBMT (Board sanctioned/presented CE classes on subjects such as draping, ethics, boundaries, communication, professional standards, etc.)	
26	Temporary license to allow an individual to practice while going through the examination and licensure process	

Each line item was reviewed. After extensive discussion, it was determined that items 4 and 5 were of priority to the Board. **Coffey** will work with the database programmer towards implementation.

Items 6, 7, and 8 are considered to be of a similar body of work and a component to 20. As such, they will be combined.

The Board will include Board Member Training (the first planned to be on public meetings laws) and review of schools (once the Model Curriculum is completed) to the list.

Moved to the Scope of Practice Committee: Items 20 and 26 (noting that items 6, 7 and 8 are a component of 20)

Moved to the Education Committee to address after completion of the Model Curriculum: Items 23 and 25.

b) Mission, Vision, Values

The Board Mission Statement is: The Oregon Board of Massage Therapists regulates and monitors the practice of massage therapy in Oregon. Its role is to balance public safety and the needs of Licensed Massage Therapists by developing, implementing and maintaining the standards of professional conduct and practice.

The Board discussed a vision statement. **Collier** will work on this item and return to the Board in October for consideration.

The Board determined that the primary values of the Board are: Accessibility, Accountability, Collaboration, Communication, Integrity and Transparency. Each Board member was assigned a value to expand upon and return to the Board for consideration in October. The value assignments are: **Calise** Accessibility; **Bennouri** Accountability; **Fredrickson** Collaboration; **McMillin** Communication; **Morin** Integrity; **Collier** Transparency.

c) **DoJ Opinion** – this was covered in Executive Session

d) **Draft OBMT Bylaws** – The Board reviewed a draft copy of bylaws. Feedback was provided. **Coffey** will continue to work on the document and return to the Board in October with a revised copy.

13) Announcements – There were no announcements.

14) Adjourn Meeting – **Bennouri** moved to adjourn the meeting at 2:39 pm. **Second the Motion: Morin** In favor: **Bennouri, Collier, Fredrickson, McMillin, Morin and Calise.** **Opposed: None.** **Motion carries.**