



# Oregon

John A. Kitzhaber, MD, Governor

## Board of Massage Therapists

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### BOARD MEETING MINUTES

March 30-31, 2012

University of Western States

Hampton Hall Conference Room

2900 NE 132<sup>nd</sup> Avenue

Portland, Oregon 97230

503-256-3180

#### Attendance

##### Board Members:

David Fredrickson, LMT, Chair

Heather Bennouri, LMT Vice Chair

Crystal Collier, LMT

Melanie Morin, LMT

Craig McMillin, Public Member

Dr. Carolle Chapman, ND, Public Health Member

##### Staff:

Kate Coffey, Executive Director

Diana Nott, Compliance Coordinator

Lori Lindley, Assistant Attorney General

##### Public:

Pam Pennington

Inga Deckert

Diana Godwin

Todd Pennington

Chris Murphy

William Hallett

Jon Grossart

Jim Heider

Bethany Jones

Peter Szucs

Erika Baern

Thomas Westran

There was an informal Question & Answer forum with the Board from 9:00 am – 10:00 am. The attendees inquired about the Board's work session planned for the following day. The public was invited to attend. The Board requested feedback from attendees regarding Board and staff performance. There was a great deal of interaction between the Board and those in attendance. The Board received valuable input regarding the licensee, student and public perception of the Board. The Board was sincerely appreciative for this open and honest dialogue with the attendees.

#### Call to Order

**Fredrickson** called the meeting to order at 10:04 am. Role call was performed. **Bennouri, Collier, McMillin, Chapman, Morin,** and **Fredrickson** were present, as well as Kate **Coffey**, Executive Director and Lori **Lindley**, Assistant Attorney General. **Calise** was excused.

**Fredrickson** asked each member of the public to introduce themselves. Present at this time were Pam Pennington, Todd Pennington, Jon Grossart, Peter Szucs, Erika Baern, Inga Deckert, Chris Murphy and Jim Heider.

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

**2) Approve Minutes of February 13, 2012 – Bennouri moved** to approve the minutes as presented. **Second the Motion: Morin In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**

### 3) Director's Report –

- a) Finances – Coffey** reported on the status of the Board budget. The budget status report reflects actual revenues and expenditures through February 2012. The Board experienced a \$2,900 loss in February. There were extra expenditures in payroll due to an unemployment bill as well as additional legal fees as the result of a hearing.
- b) Board Action Log –** The Board reviewed the action log. AAG **Lindley** will present to the Board later in the meeting. Schools will be reviewed for approval upon adoption of the revised model curriculum. The revised bylaws will be reviewed at the work session. There is still about one week remaining to receive feedback from the schools regarding the revised model curriculum. **Coffey** is working on the HR policy. Staff is researching alternatives and costs for the database replacement. There has been one database bid received for \$10,000. Due to the cost, the database replacement will likely be an item for the 2013-2014 biennium. An explanation of the CE audit process has been placed on the Board web site.
- c) Compliance Update – Coffey** provided the Board with a Compliance Report from February 1, 2012 to February 29, 2012. The report includes information such as: complaints open at start date (53); active cases at start date (42), number of new complaints received (49); number of cases opened (0); number of complaints closed (40); number of cases closed (02); and number of cases closed with disciplinary action (6). It was noted that a large number of complaints were addressed due to internet advertisements lacking license numbers, which were reflected in the high number of complaints received and closed.

**Coffey** indicated that the peer review audit had suggested the Board consider reducing the number of Board meetings. There was discussion on the July and August 2012 Board meetings and the 2013 projected schedule. The Board determined that they would eliminate the July 16, 2012 Board meeting and move the August meeting to August 6, 2012. When planning for 2013, the Board will attempt to schedule approximately every six weeks.

**Coffey** reported that the FSMTB meeting will be in New Orleans from September 27-29, 2012. The Board will need to consider who the delegate will be this year.

In the supplemental Board packet, the Board members received a proposal for maintenance of core competency from the FSMTB. This is a proposal for a licensure renewal model with a focus on public safety. Board members were asked to provide feedback to **Coffey** by April 23, 2012. She will then compile the feedback and forward it to the FSMTB and copy the Board members on the correspondence.

### 4) Committee Updates

- a) Education Committee – Szucs** reported on the status of the Education Committee. He indicated that the committee submitted version 9 of the Model Curriculum to the Oregon Department of Education for review. The feedback received was that the document was too detailed and required revision. Version ten was subsequently presented at the All Schools meeting on March 9, 2012. The schools have also been presented with the current muscle list and pathology list, and have been asked for comments by April 6, 2012. That information will be collected and reviewed by the committee at the April 13, 2012 committee meeting and subsequently provided to the Board at the May Board meeting. The committee asked for clarification from the Board on the intention of the CE development. There was discussion, and it was determined to allow the FSMTB to release their information and once completed, the committee can then review the process to determine if it suits the needs of the OBMT. **Fredrickson** invited the educators in attendance at the meeting to the Education Committee meeting and to the May Board meeting to provide feedback to the Board.
- b) Scope of Practice Committee – Morin** reported that there was discussion on how to set up rule or statute to accommodate the various practices and address those that might seek exemption. There was discussion on basic training and advanced training as well as endorsements and specializations. There was discussion on the Board's lack of authority to issue certifications or endorsements for special techniques. **AAG Lindley** indicated that the Board would want to have a statute change with clear language which allows such practices. The next Scope of Practice committee meeting will be April 13, 2012.
- c) Rules Committee – Bennouri** reported that the committee looked at the following rules for changes. Licensure: changes proof of CE to verification of CE. Background Checks: There was a change made to fees for an initial license less than 12 months. The breast massage was taken from policy and placed into rule. The internal cavity massage policy

was taken from policy and placed into rule.

### **i) Credentialing Review**

334-010-0009

#### Credentialing Review

- (1) The Board may grant a license to applicants who are or have legally practiced ~~ds~~ 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.

### **ii) Licensure**

334-010-0015

#### Licensure

- (1) An applicant for an initial license or renewal of a license must complete, in its entirety, an original application furnished by the Board.
- (2) An applicant must provide written explanation and copies of all related documentation as requested by the board if:
  - (a) Applicant has ever been investigated, disciplined or denied licensure by this agency or any other governmental agency in any state or jurisdiction of the United States or foreign country;
  - (b) Applicant has surrendered a massage license or other professional license in any state or jurisdiction of the United States or foreign country;
  - (c) Applicant has been arrested, charged or convicted of any type of violation of the law, including both misdemeanors or felonies, other than minor traffic infractions in any state or jurisdiction of the United States or foreign country;
  - (d) Applicant has abused or been treated for the abuse of alcohol, controlled or mind altering substances; or
  - (e) Applicant has suffered from and/or received treatment for a mental, physical or emotional condition, which could impede applicant's ability to safely practice massage.
- (3) Applicants for initial licensure must apply within one year of the successful completion of the practical examination.
  - (a) If an applicant does not apply within one year, the applicant must retake the practical examination.
  - (b) At the time of re-examination, the applicant must meet all current licensing requirements and submit original documents as required by the Board.
- (4) Licenses issued expire on the last day of the licensees' birth month of even numbered years for licensees with even numbered birth years and odd numbered years for licensees with odd numbered birth years. Thereafter, licenses may be renewed every other year upon completion of the application requirements. The application must be returned to the Board postmarked no later than the 1st day of the month of expiration. A delinquent fee must be paid if the completed application and all requirements are not received by the due date.
- (5) Applicants for the renewal of an active license must sign a statement verifying completion of a minimum of 25 hours of continuing education. The Board may require proof of the continuing education hours.

- (6) Applications for renewal of an active license must be accompanied by:
  - (a) Current licensing fee;
  - (b) Any applicable late fees;
  - (c) Proof of current certification in cardiopulmonary resuscitation (CPR);
  - (d) Proof of 25 hours of continuing education; and
  - (e) Any additional documentation required by the Board.
- (7) All applicants for initial, renewal, or reinstated license must sign a statement verifying that they have read, understand, and must comply with all current Oregon Revised Statutes (ORS 687), Oregon Administrative Rules (OAR 334), and policy statements of the Board.
- (8) Licenses issued by the Board must not be transferable.
- (9) A person licensed by the Board may move to an inactive status by completing the form provided by the Board. Upon payment of the appropriate fee, the applicant will be issued an inactive license. During the period of inactive status, the licensee may not practice massage for compensation in the State of Oregon.
- (10) An application to reactivate an inactive license:
  - (a) must be accompanied by:
    - (A) Current licensing fee;
    - (B) ~~Proof~~ **Verification** of current cardiopulmonary resuscitation (CPR);
    - (C) ~~Proof~~ **Verification** of 25 hours of continuing education for each biennium or fraction of the biennium the license was inactive, up to 50 hours; and
    - (D) Completed fingerprint card for criminal background check.
  - (b) An individual who has been inactive or a combination of lapsed/inactive for 6 consecutive years or greater must, in addition, successfully pass the practical examination.

### iii) Background Checks -

334-010-0018

#### Criminal Background Checks, Fitness Determinations

- (1) The Board requires a criminal background check of all applicants for a massage therapist license to determine the professional fitness of an applicant. These must be provided on prescribed forms provided by the Board. Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board. The Board must submit fingerprints to the Oregon Department of State Police for checks against state law enforcement data systems and national data sources. Any original fingerprint cards **and any electronic fingerprint records** must subsequently be destroyed by the Oregon Department of State Police.
  - (a) The Board requires ~~a criminal background check~~ **completed fingerprint cards** of all applicants for an initial license; licensees applying to reinstate a lapsed license or licensees applying to reactivate an inactive license; and licensees under investigation to determine the professional fitness of an applicant or licensee.
- (2) These rules are to be applied when evaluating the criminal background of all licensees and applicants for a massage therapist license and conducting professional fitness determinations based upon such history. The fact that the applicant has cleared the criminal background check does not guarantee the granting of a license.
- (3) The Board may require fingerprints of any Oregon licensed massage therapist who is the subject of a complaint or investigation for the purpose of requesting a state or nationwide criminal background check.
- (4) All criminal background checks must include, but not be limited to, all available state law enforcement data systems and national data sources, unless obtaining one or the other is an acceptable alternative.
- (5) Additional information required. In order to conduct the Oregon and National Criminal Background Check and professional fitness determination, the Board may require additional information from the licensee/applicant as necessary, including but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.
- (6) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175(1).
- (7) The Board must determine whether an individual is professionally fit to be granted a license. If an individual is determined to be unfit, then the individual may not be granted a license. The Board may make professional fitness determinations conditional

upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure. Except as otherwise provided in section (1), in making the professional fitness determination the Board must consider:

- (a) Criminal background check;
- (b) The nature of the crime;
- (c) The facts that support the conviction or pending indictment or that indicates the making of any false statement;
- (d) The relevancy, if any, of the crime or the false statement to the specific requirements of applicant's or licensee's present or proposed license, services, employment, position, or permit;
- (e) Any refusal to submit or consent to a criminal background check including, but not limited to, fingerprint identification;
- (f) Any other pertinent information requested or obtained as a part of an investigation;
- (g) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, or permit. Intervening circumstances include but are not limited to:
  - (A) The passage of time since the commission of the crime;
  - (B) The age of the subject individual at the time of the crime;
  - (C) The likelihood of a repetition of offenses or of the commission of another crime;
  - (D) The subsequent commission of another relevant crime;
  - (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
  - (F) A recommendation of an employer.
- (8) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests, court records, Department of Motor Vehicle records, or other information that may be indicative of a person's inability to perform as a licensee with care and safety to the public.
- (9) If an applicant or licensee is determined not to be professionally fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413-470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.
  - (a) If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board must conduct a new criminal background check upon submission of a new request.
- (10) If the applicant discontinues the application process or fails to cooperate with the criminal background check process, the application is considered incomplete.

#### iv) Fees –

334-010-0033

#### Fees

- (1) The fees are:
  - (a) \$100 per biennial renewal for initial license;
  - (b) \$50 per biennial renewal for initial license under 12 months;**
  - ~~(b)~~**(c)** \$150 per biennial renewal for active license;
  - ~~(c)~~**(d)** \$50 per biennial renewal for inactive license;
  - ~~(d)~~**(e)** \$25 per week, up to a maximum of \$250, for any late renewal;
  - ~~(e)~~**(f)** \$50 for exam/endorsement application processing;
  - ~~(f)~~**(g)** \$150 for each practical examination;
  - ~~(g)~~**(h)** \$100 for mailing list;
  - ~~(h)~~**(i)** \$10 for license reprint;
  - ~~(i)~~**(j)** \$10 for license verification;
  - ~~(j)~~**(k)** \$250 Credentialing Review;
  - ~~(k)~~**(l)** Current Oregon State Police Criminal Background Check Fee; and
  - ~~(l)~~**(m)** other administrative fees as allowed by law.
- (2) Application and licensure fees are not refundable
- (3) Examination fees are refunded only when requested in writing and either:
  - (a) the applicant is unqualified by Oregon statutes, or

(b) applicant requests refund postmarked at least 7 days prior to the exam. .

#### **v) Breast Massage –**

334-010-0028

##### Breast Massage

(1) Prior to performing breast massage to treat certain medical conditions, a LMT must:

- a) be able to present evidence of the completion of specialized contact hours training beyond the minimum competencies, which includes but is not limited to, indications, contraindications, therapeutic treatment techniques, expected outcomes, client safety, client consent, client communication, draping techniques, sanitation, and ethical responsibilities related to breast massage;
- b) be able to articulate a therapeutic rationale which is acknowledged by the client; rationale may include a medical prescription and/or permission to consult with the clients health care provider(s).
- c) acquire prior written and verbal consent before proceeding; the written consent must include clients' option to accept or decline to provide a witness, in addition to the client and LMT.

(2) While performing these procedures a LMT must use appropriate draping techniques at all times. Any temporary exposure of the breast area for the purposes of treatment is acceptable only in respect to appropriate procedures for that treatment. Immediately following treatment of the area, the breast area must be covered again.

(3) Additional prior written consent and the actual presence of a parent or legal guardian is required when treating individuals under 18 years of age.

#### **vi) Internal Cavity Massage –**

334-010-0029

##### Internal Cavity

(1) An internal cavity massage must be performed using gloves and utilizing universal precautions for communicable disease control.

(2) Prior to performing these special procedures, an LMT must:

- a) be able to present evidence of the completion of specialized contact hours training beyond the minimum competencies, which includes but is not limited to, indications, contraindications, therapeutic treatment techniques, expected outcomes client safety, client consent, client communication, draping techniques, sanitation, and ethical responsibilities related to internal cavity massage;
- b) be able to articulate a therapeutic rationale which is acknowledged by the client; rationale may include a medical prescription and/or permission to consult with the clients health care provider(s).
- c) acquire prior written and verbal consent before proceeding; written consent must include clients' option to accept or decline to provide a witness, in addition to the client and LMT.

(3) While performing these procedures a LMT must use appropriate draping techniques at all times. Any temporary exposure of the genital area for the purposes of treatment is acceptable only in respect to appropriate procedures for that treatment. Immediately following treatment of the area, the genital area must be covered again.

(4) Under no circumstances will intravaginal or intra-anal techniques be performed on individuals under 18 years of age.

**Collier moved** to accept the changes and move the rules forward for hearing. **Second the Motion: Morin In favor: Bennouri, Chapman, Collier, Morin and Fredrickson. Opposed: None. Abstained: McMillin Motion carries.**

#### **5) Board Business**

**a) Physical Therapy Association Letter – PT Evaluation Concern –** The OBMT received letters from the Oregon Physical Therapy Board and the Physical Therapy association due to the Board's recent determination regarding CPT codes 97001 (PT Evaluation) and 97002 (PT re-evaluation). Chris Murphy with the Oregon Physical Therapy Association expressed that he was concerned that someone reading a statement of services indicating that a client received a PT evaluation or re-evaluation, might be confused, as the code implies the service is provided by a physical therapist. There was discussion over the lack of any other code for assessment of a client, which is within the massage therapy scope of

practice and a typical protocol for creation of a treatment plan. It was discussed that due to the lack of available codes or acceptance of many codes, many massage therapists utilize the massage or manual therapy codes only. It was noted that the Board did not approve the code, but the acts described within the code, as being within the scope of practice of a massage therapist. The Board has not endorsed or specifically supported the use of any specific CPT codes. The Board received information from *Massage Today*, published April 2003, Volume 03, Issue 04, by Ed Denning, MEd, LMT. The article indicated that the American Medical Association states that a therapist providing the services under 97001 and 97002 must be state licensed to practice physical therapy, as the evaluations and re-evaluations are identified in the code descriptors specifically limited to physical therapy. The advice has been that massage therapists not utilize these codes. This is a discussion on a national policy level. **Fredrickson** reiterated that the Board does not endorse or support the use of any CPT codes, and any codes that massage therapists are using in their billing practices have to reflect the credentials and training of the massage therapist. The Board received a definition of PT evaluation, which includes diagnosis and prognosis. While the majority of the definition is within the scope of practice for a massage therapist, diagnosis is not. The Board had not previously been provided with this definition.

**b) CPT Codes - Collier moved** to place a clarifying notation in the January 2012 minutes, directing individuals to the March 2012 minutes which state that the CPT codes 97001 and 97002 are not within the scope of practice for massage therapists. **Second the Motion: Morin In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**

**c) Board Appeal: Kassy Dagget- FREDRICKSON recused** himself from the discussion. The Licensee contacted the Board as a result of a late fee due to the postcard mailing in lieu of the full packet mailing previously issued by the Board office. The Licensee suggested the Board return to the previous system and provide sufficient warning of any change prior to implementation. Additionally, she has requested a refund of her late fee. The Board discussed the means of prior notification, which included multiple meeting minutes, newsletter articles and posting to the web site. The Board members recognize that a change in process can sometimes cause confusion. There was discussion on if there was any means to offer latitude or leeway on late fees. **AAG Lindley** indicated that the late fee structure is clearly outlined in rule. There is no way to waive a late fee at this time. It would require a rule change. The Board will take the Licensee's suggestions into consideration. They will modify the current postcard. Renewals and late fees can be another newsletter article. It was suggested it remain an ongoing newsletter article.

**d) Request For Exemption**

**i) Breema** – The Board does not feel there is enough information to make a determination at this time. Staff will request additional information for the Board.

**ii) Zen Shiatsu** - The Board does not feel there is enough information to make a determination at this time. Staff will request additional information for the Board.

**Morin moved** to take a break from 11:46 am to 11:58 am. **Second the Motion: Bennouri In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.** The Board returned from break at 11:58 am.

**e) All Schools Report** – March 9, 2012, the All Schools meeting was held at the Oregon School of Massage Salem campus. The Model Curriculum was presented to the school representatives. They were asked to review it and provide feedback to the Board office by April 6, 2012. Staff provided information on the examination and compliance matters as well.

**Collier moved** to amend the agenda, moving the public meetings training to after public comments. **Second the Motion: Bennouri In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**

**f) Scope of Practice Discussion (small tools, supplements, etc.)** – **Bennouri** indicated that she thought this issue had been covered. If a tool is available to the general public, the LMT is trained in the use of the tool, the tool does not require a prescription and it is within the scope of practice of massage, the LMT may use the tool. **Bennouri** indicated that dieticians are licensed in the State of Oregon. If a LMT has a client complete an assessment and reviews the information, is this considered prescribing? It was determined that making a recommendation to clients based on

personal experience and knowledge is acceptable. Making a recommendation based on the evaluation of client's responses on a form would be questionable and the LMT would potentially be subject to the discipline of another Board.

6) **BOARDerline** – The Board reviewed the current newsletter article assignments. Scope of Practice: **Bennouri**; CE Audit Process: **Coffey**; Model Curriculum: Lisa Garofalo; All Schools Meeting: Kathryn Watson; CPT Codes and Insurance Billing: **Bennouri**; Letter RE: Types of LMTs and CE Complaint: Fran More; New Area – Ask The Board: The Board members were asked to provide sample questions that they have been asked to start this section of the newsletter.

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

Jon Grossart stated that there are a number of practitioners that fall under the all-encompassing definition of massage, that do not feel that what they practice is truly massage. He feels the Board does not adequately represent nor protect the vast array of practitioners that the Board regulates. The Rolf Institute does not feel that they fall under massage and should not be governed by massage. Structural integrationists think licensure is important and thought the Board was moving forward with special licensure, realizing that current laws are out of date. **McMillin** responded that the Board is trying to reestablish relationships with the legislature and the Governor's office and improve relationships with the licensees. Grossart feels that if the Board takes an active role to move forward to assist these groups, and stop being passive, it might improve the image of the Board.

Erika Baern indicated that public perception is that the Board is a necessary evil. She asked the Board, why would an individual want to be involved if they think that all the Board does is take their money and discipline them? She asked the Board to provide a bigger picture, to explain what the Board does for the licensee, to explain why the licensee or the student should care about the Board. What is the value to the profession? She explained that in the bigger picture, she appreciates what the Board is doing.

Jon Grossart also feels that the Board should move away from having to place license numbers in advertisements. He feels that it associates LMTs with other professions, such as contractors, where there is a lot of misconduct.

8) **Public Meetings Law Training** – **AAG Lindley** provided basic training to Board members on public meetings laws.

The Board entered Executive Session at 1:32 pm and returned to Public Session at 4:04 pm.

9) **Executive Session**

- a) **Practical Exam (192.501(4))**
- b) **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.

10) **Action on Executive Session Items**

- a) **Practical Exam – McMillin moved** to defer this item to a future Board meeting. In the interim, the Board has given the Executive Director responsibilities and no decisions have been made. **Second the Motion: Morin In favor:**

- Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- b) **Case 1012 – Morin moved to grant the applicant’s license renewal. Second the Motion: Collier In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- c) **Case 1138 – McMillin moved to approve the proposed order stipulated to by the parties. Second the Motion: Morin In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- d) **Case 1354 – McMillin moved to close as unable to substantiate. Second the Motion: Morin In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- e) **Case 1238 – McMillin moved to withdraw the prior notice of revocation for the reason that the license has already lapsed and that any withdrawal be without any prejudice to the Board. Second the Motion: Morin In favor: Bennouri, Chapman, Collier, McMillin, and Morin. Opposed: None. Abstained: Fredrickson Motion carries.**
- f) **Case 1265 – McMillin moved to defer this matter to the May Board meeting, with a request that the LMT appear to discuss this matter with the Board and, at that time, provide any additional information as my be requested by the Executive Director. Second the Motion: Morin In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- g) **Case 1271 – Collier moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in the practice of massage without a license; and three violations of ORS 687.021(2)(a), advertising for massage without a license; for a total civil penalty of \$3,500. Second the Motion: Bennouri In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- h) **Case 1286 – Collier moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1) and OAR 334-040-0010(11), practicing massage while 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, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- i) **Case 1287 – Bennouri moved to issue a Notice of Proposed Action for one violation of OAR 334-040-0010(19)(a)(C)(4), making inappropriate comments about or to a client; for a total civil penalty of \$500; and to require LMT to complete a Board-approved ethics class. Second the Motion: Collier In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- j) **Case 1289 – Morin moved, McMillin amended to issue a Notice of Proposed Action for fourteen violations of ORS 687.021(2)(a), advertising for massage without a license, for a total civil penalty of \$11,500; and to refer to the local authorities for investigation of potential criminal conduct. Second the Motion: Collier In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- k) **Case 1292 – Bennouri 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 \$5,500. Second the Motion: Morin In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- l) **Case 1293 – Bennouri 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 thirteen violations of ORS 687.021(2)(a), advertising for massage without a license; for a total civil penalty of \$14,000 and refer to the District Attorney for prosecution consideration; and refer for injunctive relief. Second the Motion: Morin In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- m) **Case 1362 – Bennouri moved to grant the applicant’s massage license without stipulations. Second the Motion: Morin In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- n) **Case 1363 – Bennouri moved to grant the applicant’s massage license without stipulations. Second the Motion: Morin In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- o) **Executive Session Closed Case Report – Collier moved to accept the Executive Session closed case report as submitted in exhibits 1-13. Second the Motion: McMillin In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**

**Case No. 1260****Allegation:** Sexual impropriety**Closed:** Allegations withdrawn**Case No. 1269****Allegation:** Unlicensed practice**Closed:** No violation found**Case No. 1270****Allegation:** Unprofessional conduct**Closed:** Unable to substantiate**Case No. 1272****Allegation:** Unlicensed practice**Closed:** Letter of concern**Case No. 1283****Allegation:** Noncompliance with an order**Closed:** Based on further review**Case No. 1291****Allegation:** Unlicensed practice**Closed:** Respondent unreachable**Case No. 1295****Allegation:** Unlicensed practice**Closed:** No violation found**Case No. 1297****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1298****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1299****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1302****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1303****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1304****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1305****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1306****Allegation:** Other**Closed:** No action taken**Case No. 1307****Allegation:** Unlicensed practice**Closed:** Compliance met**Case No. 1308****Allegation:** Unlicensed practice**Closed:** No violation found

**Case No. 1309**

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

**Case No. 1311**

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

**Case No. 1312**

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

**Case No. 1314**

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

**Case No. 1323**

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

**Case No. 1325**

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

**Case No. 1326**

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

**Case No. 1327**

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

**Case No. 1328**

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

**Case No. 1329**

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

**Case No. 1330**

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

**Case No. 1332**

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

**Case No. 1333**

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

**Case No. 1334**

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

**Case No. 1335**

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

**Case No. 1336**

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

**Case No. 1337**

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

**Case No. 1338**

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

**Case No. 1339**

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

**Case No. 1340**

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

**Case No. 1341**

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

**Case No. 1342**

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

**Case No. 1343**

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

**Case No. 1344**

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

**Case No. 1345**

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

**Case No. 1346**

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

**Case No. 1347**

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

**Case No. 1348**

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

**Case No. 1349**

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

**Case No. 1350**

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

**Case No. 1351**

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

**Case No. 1353**

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

**Case No. 1355**

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

**Case No. 1357**

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

**Case No. 1359**

**Allegation:** Fail to provide documents

**Closed:** Compliance met

**11) Public Session Compliance Action –**

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

**Case No. 1162**

**Celso Giles Morales**

**Allegation:** Unlicensed practice

**Closed:** Stipulated agreement issued

**Case No. 1207**

**Robert Gebarowski**

**Allegation:** Practicing while lapsed

**Closed:** Final default order

**Case No. 1231**

**Aaron Hess**

**Allegation:** Sexual impropriety

**Closed:** Stipulated agreement issued (Suspended)

**Case No. 1232**

**Nishan Van Atta**

**Allegation:** Practicing while revoked

**Closed:** Civil penalty assessed and paid

**Case No. 1253**

**Shengin Ma**

**Allegation:** Unlicensed practice

**Closed:** Final default order

**Case No. 1258**

**Sara Champion**

**Allegation:** Unprofessional conduct

**Closed:** Stipulated agreement issued

**Case No. 1264**

**Pingxiu Leard**

**Allegation:** Unprofessional conduct

**Closed:** Final default order

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

**13) Announcements – There were no announcements.**

**14) Adjourn Meeting – Morin moved** to adjourn the meeting at 4:13 pm. **Second the Motion: Bennouri In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**

**Day Two**

**Attendance**

**Board Members:**

David Fredrickson, LMT, Chair

Heather Bennouri, LMT Vice Chair

Melanie Morin, LMT

Craig McMillin, Public Member

Dr. Carolle Chapman, ND, Public Health Member

**Staff:**

Kate Coffey, Executive Director

Diana Nott, Compliance Coordinator

**Public:** None

### **Call to order**

**Fredrickson** called the meeting to order at 9:23 am. Role call was performed. **Bennouri, McMillin, Chapman, Morin,** and **Fredrickson** were present, as well as Kate **Coffey**, Executive Director and Diana **Nott**, Compliance Coordinator. **Calise** and **Collier** were excused.

- 1) **Board Bylaws** – The Board reviewed draft bylaws. There were some grammatical suggestions and some minor changes made to be consistent with statutory language. The draft also includes a section on regional liaisons. This position would potentially allow the Board to appoint licensees, in outlying areas of the state, to act as Board liaisons in their community. **McMillin moved** to adopt the bylaws as amended. **Second the Motion: Morin In favor: Bennouri, Chapman, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.**
- 2) **Peer Review Audit**
  - a) **Bi-monthly Board Meetings** – This matter was addressed in the Board meeting the prior day.
  - b) **Key Performance Measures** – The Board discussed suggested key performance measures. The Board feels this is a good thing to do voluntarily. The Board determined to keep the following suggested key performance measures: Compliance – investigations to be completed and to the Board within 120 days; License – licenses to be issued within 21 days of receipt of a completed renewal or licensure application; and Examination – The Board will continue to strive for examination dates that are less than 45 days out from the day that the Board receives a completed examination application. The Board determined that they will not maintain key performance measures on hearings.
  - c) **Consistency in Discipline** – The Board has been provided with a report or electronic file which outlines prior board action by complaint type and action taken.
  - d) **Complaint Form on Web Page** – This suggestion has been completed.
- 3) **Board Mission, Vision, and Values** – **McMillin moved** to adopt the Board Mission, Vision and Values statements as presented. **Second the Motion: Morin In favor: Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson. Opposed: None. Motion carries.** These statements will now be published to the web site.

### **Mission:**

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.

### **Vision:**

Dedicated to an ongoing and evolving cooperative relationship of regulation between the massage industry, licensees, and the public.

### **Values:**

**Accessibility** – 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.

**Accountability** – 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.

**Collaboration** – 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.

**Communication** – 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.

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

**Transparency** – Open and honest regulation of massage therapy in the State of Oregon.

- a) **Five Year Plan** – discussed below
- b) **Ten Year Plan** – not discussed

The Board reviewed the items from their May 2011 work session. Several items were noted to have been completed:

Short Term (one year)

~~Stabilization—maintain relationships with legislature, committees and each other~~ (completed)

~~Committee clarification—structures of committee and Board liaison role~~ (completed)

Communication plan – Develop training for Board members on how to speak with legislators

~~Inclusion of any restrictions printed on the license~~ (completed)

~~Disciplinary action on the web site, tied to the licensee~~ (completed)

Practice or modality printed on license if desired by licensee

Advanced technique listing service for a fee

Policy on advanced techniques

Board member handbook

~~Update Board bylaws~~ (completed)

~~Rulemaking as a result of SB454~~ (completed)

~~Revise Model Curriculum~~ (completed)

~~Credentialing review process~~ (completed)

~~Online renewals~~ (completed)

Professional resources listed on web site

~~Send full Board to FSMTB meeting in October 2011~~ (completed)

Standard civil penalty for failure to accurately report adverse action on renewal forms

Review Oregon Practical Exam for applicability for current industry standards

Long Term (three – five years)

facilities licensing

Tiered licensure

Make multiple/continued violations of unlicensed practice a felony

~~More oversight of schools~~ (statutory authority for oversight of massage schools is with Oregon Department of Education and Community College and Workforce Development)

Approval of continuing education providers

Temporary license to allow individuals to practice while going through licensure process

**Fredrickson** and **Coffey** will meet with the Governor's office next month to discuss legislative concepts.

The Board discussed what the areas of concern are for the Board as well as on a national level. They then determined of those items, what matters may require a rule change and what matters may require a statute change. Of those that require statute change, there was then discussion over what matters were priority to the Board, as those should be the legislative concepts.

The Board finds the following matters of importance for Oregon:

- Tiered licensure
- Certifications of specific modalities or practices
- CE providers
- Core competency hours
- Credentialing review
- Oregon Department of Education
- Exemptions
- Massage vs. Massage & Bodywork (OBMT/OBMBT)
- Facilities licensing
- Specialty endorsements for breast massage, intra-oral massage, intra-vaginal massage, etc.
- Require LMTs to carry liability insurance
- Require LMTs to maintain client records

The Board determined that the priority matters for legislative concepts were name change and the Board's ability to draft rules for issuance of certifications of specific modalities or practices as one concept and facilities licensure as a separate concept.

**McMillin** would like the temporary license for individuals waiting to test to be moved up on the priority list to the one year plan.

The Board would like to discuss the issue of perception at the May meeting.

The Oregon Practical Exam will be placed on the short term list. This may require another working meeting next quarter.

**4) Misc.**

- a) **NCB Exam Modification** – **Bennouri** and **Fredrickson** will look into this matter further.
- b) **Board Member Training** – This matter was not addressed due to time constraints.
- c) **Pregnancy Massage Inquiry** – This matter will be placed on the May agenda.

**Bennouri** moved to adjourn the work session at 12:45 pm. **Second the Motion: Morin** In favor: **Bennouri, Chapman, Collier, McMillin, Morin and Fredrickson.** Opposed: **None.** Motion carries.