



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

748 Hawthorne Ave NE

Salem, OR 97301

Phone: (503) 365-8657

Fax: (503) 385-4465

www.oregon.gov/OBMT

BOARD MEETING MINUTES

March 11, 2013

Attendance

Board Members:

David Fredrickson, LMT, Chair
Kathy Calise, Public Member, Vice Chair
Melanie Morin, LMT
Kelley Rothenberger, 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:

Michael Jordan	Peter Szucs	Julie Stockfletch	Steve Davis
Heather Bennouri	Erika Baern	Todd Pennington	Erica Jayasuriya
Leah Bowder	Michelle Sherman	Chris Lacy	Emily Joy Dobra
Hannah Bryan	Chandel Paige		

Call to Order

Fredrickson called the meeting to order at 9:08 am. Roll call was performed. **Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson** were present, as well as Kate **Coffey**, Executive Director, Lori **Lindley**, Assistant Attorney General and Diana **Nott**, Board staff.

Fredrickson asked each member of the public to introduce themselves. Present at this time were Todd Pennington, Peter Szucs, Steve Davis, Heather Bennouri, Julie Stockfletch, Michael Jordan and Erika Baern.

- 1) **Approve Agenda – Calise moved** to approve the agenda as presented. **Second the Motion:Morin.**
In favor: Calise, Chapman, McMillin, Morin Rothenberger and Fredrickson. Opposed: None. Motion carries.
- 2) **Approve Minutes of January 14, 2013 – Calise moved** to approve the minutes of January 14, 2013. **Second the Motion: Morin. In favor: Calise, Chapman, McMillin, Morin Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- 3) **Director's Report –**
 - a) **Finances – Coffey** reported on the status of the Board budget through February 2013. For the month of February, the Board received \$1,000 more revenue than budgeted and spent \$11,000 less than budgeted for expenses. To date, for the biennium, the Board has received \$59,000 more revenue than was budgeted and has underspent in expenses by approximately \$125,000. The majority of the under expenditure is in the area of payroll. The Board has underspent in legal fees by \$22,000, however there are eight contested cases scheduled for hearing which could exceed that current savings. The line item of Examiner payments is underspent by \$14,000. This correlates with the decline in Examination Fee revenue, as there are fewer applicants to take the practical exam.
 - b) **Legislative Update – Coffey** reported on SB 387-A engrossed, which would require facilities licensing for any facility that provides massage services and is owned and operated by anyone other than a health care practitioner, to include LMTs, or is not a massage school clinic. This bill has passed out of the Senate and has been referred to

the House committee on Health Care. SB 111 received a public hearing and will not move forward until the definition of bodywork is modified with a consensus on a revised definition of the term. **McMillin** suggested that the parties concerned should be invited to sit down with the Board and discuss the matter. **Coffey** indicated that she was in contact with International Association of Structural Integrators (IASI) to determine if it would be acceptable to them to forego the name change in order to keep the endorsement piece of the legislation. The Board also received a spreadsheet with additional bills which could have an impact on massage in Oregon. **Fredrickson** pointed out HB 2522, which would require coordinated care organizations to provide members with access to chiropractic, naturopathic and nurse practitioner services for primary care and access to licensed acupuncturists, licensed massage therapists and licensed optometrists for specialty care and to pay same reimbursement rate for service to all providers of service, regardless of license or certification of provider. This would be limited to Medicaid services.

Coffey provided the Board with three new policies, which had been inadvertently skipped when the affirmative action plan was submitted to the Governor's Office. These policies are Maintaining a Professional Workplace, Maintaining a Violence-Free Workplace, and Policy on Weapons, Alcoholic Beverages, and Illegal Drugs. **Calise moved** to accept these policies and in the future to accept all DAS policies that pertain only to HR. **Second the Motion: Morin. In favor: Calise, Chapman, McMillin, Morin Rothenberger and Fredrickson. Opposed: None. Motion carries.** It was reiterated that the Board will, as a matter of course, accept only those policies of DAS that pertain to human resources.

c) Board Action Log – The Board action log has been updated to reflect the current status of Board items. Most tasks have been completed.

d) Compliance Update – **Nott** provided the Board with a Compliance Report from January 1, 2013 through February 25, 2013. The report includes information such as: complaints open at start date (44); active cases at start date (41), number of new complaints received (11); number of cases opened (9); number of complaints closed (0); number of cases closed (12); and number of cases closed with disciplinary action (7).

4) Committee Updates – The Board reviewed a list of applicants for committee membership. **Coffey** indicated that there was an additional candidate for the Rules Committee, Eric Polgar. **Calise moved** to accept all applicants as presented, as well as Polgar, for the committees to which they have applied. **Second the Motion: Morin. In favor: Calise, Chapman, McMillin, Morin Rothenberger and Fredrickson. Opposed: None. Motion carries.**

a) Education Committee – **Calise** is the Board liaison to this committee. Lisa Barck-Garofalo is the committee Chair. Members are John Combe, Steve Davis, Peter Szucs, and Nick Chrones. Lisa Barck-Garofalo was awaiting confirmation of the committee appointments before scheduling a meeting.

b) Scope of Practice Committee – **Calise** is the Board liaison to this committee. Nick Chrones is the committee Chair. Members are Jon Grossart, Tina Rea, and Todd Pennington. This committee currently has no assignments from the Board.

c) Rules Committee – **McMillin** is the Board liaison to this committee. Michael Jordan is the committee Chair. Members are Eric Polgar, Todd Pennington, Steve Davis, Heather Bennouri, Barb Pickle, and Tina West. This committee is meeting Friday, March 15, 2013 at 9:00 am at the Board office.

d) Practical Exam Task Force – **Rothenberger** is the Board liaison to this task force. Heather Bennouri is the Chair to this task force. Current members include Glenath Moyle and Jenny Rock. **Fredrickson** has authority of the Board to review other candidates for this task force and finalize their approval. Once additional members have been vetted and approved, they will move forward with scheduling meetings and begin their work.

5) Board Business

a) Sexological Bodywork – Erica **Jayasuriya** presented to the Board on the practice known as sexological bodywork (SB). SB is a practice of somatic education specifically utilized to assist clients with issues around sexual dysfunction. These issues may include body dysmorphia, trauma, postpartum sexual healing, prostate health, and erectile dysfunction. **Jayasuriya** indicated that there were institutions which teach this type of bodywork, located in

California, Vancouver BC, Australia and Switzerland. There is an international association with a code of ethics. She stated that given the medical data currently available which indicates that by approximately age 50, on average half of American men will be experiencing some type of erectile dysfunction. This issue impacts their self-esteem, marriages, personal relations and potentially their health. The current western medical solution is with a pill. She advocates for a somatic approach to the issue. The trouble is that a physician could get into trouble with their licensing Board if they were to refer a patient for this type of work. **McMillin** stated that LMTs are not in a position to perform the diagnostics. He stated that there's no question that the subject is one that is culturally difficult and suggested that she would be more successful if she approaches the legislature. If they determined it were appropriate for a physician to make a referral by prescription then the Board could consider if and how a LMT could perform such work. **Fredrickson** asked if she had approached other boards as well. She had not, as this is a new part of her journey and a new discussion for her. **Chapman** asked what the scope of practice is for a practitioner of SB. **Jayasuriya** stated that it is intimacy education, masturbation coaching, working with general sexual trauma and body dysmorphia as well as many women between the ages of 27-70 who have never experienced an orgasm. She explained that there are some table sessions which are a combination of body mapping, full body massage, developing an understanding of the pelvic base as a space of storage and release and a great deal of education around spinal cord and pain management. There is education of the nervous system and the relationship it plays into the body while teaching the client to have better internal and external awareness and to understand what is a nerve, muscle, ligament or tendon. She explained that this work is done in a very clinical manner, fully gloved and observing all universal precautions. The practitioner is completely clothed and the client is not allowed to touch the practitioner. **Chapman** asked what other types of health conditions might be helped with this type of work, other than ED. **Jayasuriya** replied that while ED is the primary condition which could be treated with this type of work, other issues could include premature ejaculation, women preparing for childbirth, postpartum work, breath connection to pelvis, women who don't know if they've ever had an orgasm, women who indicate that they feel dead in the area and so forth. **Chapman** indicated that there is obviously a need to sexual education which never came from the family where it ought to have, and that society puts out a lot of allure without satisfaction so people can be quite frustrated. However she does not know that this is the right place for a group such as this because massage is an industry that has already historically had issues and still struggles to keep a clear delineation between sexuality and professionalism. She is concerned that including such a practice with massage would be begging to go backwards in history. **McMillin** again suggested that the legislature would be the place to seek assistance. He suggested contacting female members of the legislature to have a dialogue and if the legislature were to mandate the Board address the issue, then it would be done. **Jayasuriya** thanked the Board and applauded them for the work that they've done. She said that her visit today was to plant seeds and that she will take the suggestion to approach the legislature seriously.

b) Demographics Report – The Board received a quarterly demographics report of licensees. This includes information on gender, ethnicity, years in practice and modalities practiced.

c) Review Proposed Rules – The Board reviewed a list of proposed rules for consideration of a July 1, 2013 implementation date. The tentative schedule would be to have the Board move the concepts forward today, have the rules committee meet March 15, 2013, and have the rules notice submitted to the Secretary of State by the end of the day as well. The notice would be placed in the April 2013 Oregon Bulletin, a rules hearing would be held May 16, 2013, the Board would vote on the rules on May 17, 2013 and the implementation would be July 1, 2013.

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

The following rules are being considered for the rules hearing:

- 334-001-0012 BUDGET
 - Adoption of the 2013-2015 board budget
- 334-010-0027 EXEMPT PRACTICES
 - (4) add orthobionomy to the exempted practices
- 334-010-0029 INTERNAL CAVITY
 - update internal cavity with input from LMT community

- 334-010-0010 DISCIPLINE

(3) falsifying CE statements

(5) subject of disciplinary action anywhere (other states/countries)

renumber (4) now (6) and update – delete this state, add any state

- 334-010-0005 APPLICANTS

move (c) CPR requirement and (e) fingerprint requirement from Examination applicant to initial licensure under 334-010-0015(2) and renumber

6) **BOARDerline** – The newsletter currently has a compliance report, quarterly statistics and legislative update. **Bennouri** had indicated she would provide an article on fee splitting and scope of practice, and ethics. It is scheduled to be published by the end of March. **Chapman** stated that she would be sending an article by Wednesday, March 27, 2013.

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

Bennouri asked if HB2187-A, relating to career schools, would give the Board some oversight of schools that teach massage in this state. **Coffey** stated that she would have to look into the matter and get back to her. **Baern** responded that it was her understanding that it refers specifically to the transition from the Oregon Department of Education to the Office of Higher Education, which is the new executive agency to cover career colleges, so this bill is speaking about who has authority during that transition.

Bennouri asked about HB2560, which indicates that someone serving on a Board can't serve on a committee. **Lindley** replied that some Boards have Board members that also function as their committee members. The OBMT does not function in this way. The OBMT has stakeholders as committee members and only one Board member which serve as a liaison. This legislation would not impact the current workings of the OBMT.

Davis stated that he has been in contact with Cover Oregon and believes that massage therapy should be covered. He indicated that the Washington Chapter of the AMTA has been very active in working toward massage being covered in their legislation. He contacted the public relations person for Cover Oregon and was told that it was left up to the insurance to determine who would be covered. He then contacted the insurance commission and was told that Cover Oregon was the entity in charge of that decision. He asked if the Board was doing anything about this. **Fredrickson** responded that there was a representative from Oregon AMTA present, and perhaps she could speak with him on the issue. **Bowder** stated that she would be happy to speak with **Davis** after the meeting. **Fredrickson** stated that as a regulatory agency, the Board has not been involved in the promotion of massage with this project, but suggested that perhaps HB2522 might address a portion of the issue?

Szucs wanted to speak to the Board about SB387. He stated that he has been in contact with **Coffey** about what he believes is an unintentional omission regarding the definition of massage facilities. It currently excludes career schools, but does not include language for universities and community colleges with massage programs. He suggested the wording could say "or Board approved schools." **Coffey** explained that the matter was brought to the AAG and can be addressed in rule. **Lindley** confirmed that it can be performed in rule.

Morin moved to take a brief recess. **Second the Motion: Calise. In favor: Calise, Chapman, McMillin, Morin Rothenberger and Fredrickson. Opposed: None. Motion carries.** The Board took a break from 10:30 am to 10:43 am.

McMillin moved to approve the request for records from OBCE. **Second the Motion: Morin. In favor: Calise, McMillin, Morin Rothenberger and Fredrickson. Chapman was not in the room. Opposed: None. Motion carries.**

Coffey reported to the Board that reservations have been made for the May 2013 Board meeting. Board members will be staying at The Phoenix Inn Friday night. She asked who would need a room for Thursday night as well. **Morin, Rothenberger** and **Fredrickson** stated that they would need Thursday night as well.

The Board entered Executive Session at 10:46 am and returned to Public Session at 2:04 pm.

8) 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.

9) Action on Executive Session Items

- a) **Case 1190** – There was no action taken on this matter.
- b) **Case 1255** – **Calise** moved to grant a 90-day extension. **Second the Motion: Rothenberger.** In favor: **Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson.** Opposed: **None.** Motion carries.
- c) **Case 1445** – **Calise** moved to issue a Notice of Proposed Action for one violation of OAR 334-040-0010(17)(a); Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to: failure to furnish requested papers or documents; and OAR 334-040-0010(18); failing to comply with a Board Order; For a total civil penalty of \$500; and Suspend Licensee's massage license until such time as he comes into compliance with the continuing education requirements of the Board. **Second the Motion: Rothenberger.** In favor: **Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson.** Opposed: **None.** Motion carries.
- d) **Case 1470** – **McMillin** moved to close as unable to substantiate. **Second the Motion: Morin.** In favor: **Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson.** Opposed: **None.** Motion carries.
- e) **Case 1484** – **Morin** moved to issue a letter of concern. **Second the Motion: Calise.** In favor: **Calise, Chapman, Morin, Rothenberger and Fredrickson.** Opposed: **McMillin.** Motion carries.
- f) **Case 1497** – **Calise** moved to close as unable to substantiate. **Second the Motion: Morin.** In favor: **Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson.** Opposed: **None.** Motion carries.
- g) **Case 1504** – **Calise** moved to Issue a Notice of Proposed Action for: one violation of ORS 687.081(1)(i), The State Board of Massage Therapists may discipline a licensee, deny, suspend, revoke or refuse to renew a license, issue a reprimand, censure a licensee or place a licensee on probation if the licensee engages in unprofessional or dishonorable conduct; One violation of OAR 334-030-0005(2)(a), Standard II: Therapeutic Relationship -- the relationship between the LMT and the client. The LMT must: be accountable to his or her clients for the quality and effectiveness of care and services and for creating the basic conditions and boundaries necessary to foster safety and trust in the client-professional relationship; and One violation of OAR 334-030-0005(2)(c), Standard II: Therapeutic Relationship -- the relationship between the LMT and the client. The LMT must: Ensure that their actions with a client are based on understanding and implementing the core values of caring, respect, compassion, appropriate boundaries, and appropriate use of personal power; **for a total civil penalty of \$1,000** and LMT shall be considered on probationary status through 01/31/2016, after which the Board may review his application for

renewal to determine if the probationary period shall be extended; LMT is restricted from providing services to minors, developmentally disabled persons, or other at-risk populations, through 01/31/2016; LMT shall work only at a business or location that facilitates a group practice setting, through 01/31/2016; LMT agrees that any time he engages in the practice of massage, it will be in a manner that facilitates a group practice setting, through 01/31/2016. LMT may not perform massage independent of a group practice setting, which includes a restriction from performing massage from his home or in an office environment when other employees are not on the premises; LMT shall disclose to his employer, or in the case of other settings, organizer, manager or individual responsible for the event, his stipulations for licensure, through 01/31/2016; LMT shall be placed on Peer Supervision, at a cost to LMT, through 01/31/2016; whereby LMT shall meet with his Peer Supervisor at a minimum of one hour per month, for the duration of the probationary period. The LMT may, as part of the Peer Supervision and the determination of the Peer Supervisor, conduct up to one supervised massage session per calendar quarter during the supervision period. The Peer Supervisor will observe the massage session(s) for draping practices, client communication sanitation, massage knowledge and business practices. During non-session meetings, the Peer Supervisor may discuss business practices and trends, client communication, ethics, boundaries and other matters pertaining to the Applicant's practice of massage and other matters of concern to the LMT and his success as a massage therapist; and LMT agrees not to engage in any conduct that would or could impact his ability to safely and competently conduct his massage practice, or compromise the health and safety of the clients served. **Second the Motion: Morin. In favor: Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

h) Case 1510 – McMillin moved to close as unable to substantiate. Second the Motion: Morin. In favor: Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

i) Case 1511 – Calise moved to ratify the consent order. Second the Motion: Rothenberger. In favor: Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

j) Case 1512 – Morin moved to issue a Notice of Proposed Action for: one violation of OAR 334-010-0025(8), Active licensed massage therapists must display their license in a location clearly visible to their clients; two violations of OAR 334-010-0025(9), Active licensed massage therapists are required to include their license number in all advertisements, including but not limited to: written, electronic, televised and audio; one violation of OAR 334-040-0010(10), assisting, employing or permitting an unlicensed person to practice massage; and one violation of OAR 334-020-0050(3)(a), All soiled linens must be immediately placed in a receptacle that closes and prevents cross-contamination; for a total civil penalty of \$4,000 and to **revoke Licensee's massage license and refer to the Oregon Board of Medical Examiners, Acupuncture Board. **Second the Motion: Calise. In favor: Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.****

k) Case 1513 – 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, for a total civil penalty of \$500. **Second the Motion: Morin. In favor: Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

l) Case 1518 – McMillin moved to close as unable to substantiate. Second the Motion: Morin. In favor: Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

m) Case 1519 – McMillin moved to continue for further investigation. Second the Motion: Rothenberger. In favor: Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

n) Case 1506 – Morin moved to approve applicant's application for licensure without stipulations. Second the Motion: Calise. In favor: Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

o) Case 1155 – Calise moved to approve licensee's massage license without further stipulations. Second the Motion: Morin. In favor: Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

p) Case 1407 – Chapman moved to close as unable to substantiate and require proof of continuing education to be provided to Board office within two weeks. **Second the Motion: Calise. In favor: Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

- q) **Executive Session Closed Case Report –Calise moved** to accept the Executive Session closed case report as submitted in exhibits 1-5. **Second the motion: Morin In favor: Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- r) **Practical Exam –** There was no action taken on this matter.

Case No. 1464

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

Case No. 1469

Allegation: Unprofessional/Dishonorable conduct **Closed:** Allegations withdrawn

Case No. 1480

Allegation: Unprofessional/Dishonorable conduct **Closed:** Allegations withdrawn

Case No. 1492

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

Case No. 1493

Allegation: Unprofessional/Dishonorable conduct **Closed:** Based on further review

Case No. 1494

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

Case No. 1499

Allegation: Noncompliance with a Board order **Closed:** Compliance met

Case No. 1501

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

Case No. 1502

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

Case No. 1503

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

Case No. 1507

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

Case No. 1508

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

10) Public Session Compliance Action –

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

Case No. 1321

Allegation: Sexual Impropriety **Jonathan Mattingly**
Closed: Stipulated agreement issued

Case No. 1415 Allegation: Sexual violation	Gustavo Leon Closed: Revoked
Case No. 1447 Allegation: Unlicensed practice of massage	Lin Wang Fleisher Closed: Final default order
Case No. 1449 Allegation: Unlicensed practice of massage	Warren Nistad Closed: Civil penalty assessed & paid
Case No. 1461 Allegation: Unlicensed practice of massage	Min Xu Closed: Final default order
Case No. 1462 Allegation: Work outside of scope of practice	Shizeng Yang Closed: Civil penalty assessed & paid
Case No. 1486 Allegation: False Representation to Board	Moira Rounds Closed: Civil penalty assessed & paid
Case No. 1490 Allegation: Other	Daniel Lutton Closed: Dismissed
Case No. 1511 Allegation: Sexual violation	Jonathan Cook Closed: Surrendered

11) **Public Forum** – Opportunity to share thoughts that pertain to agenda items – There were no members of the public present.

12) **Announcements** – There were no announcements

13) **Adjourn Meeting** – Calise moved to adjourn the meeting. **Second the motion: Morin In favor: Calise, Chapman, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.** The meeting was adjourned at 2:17 pm.