



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

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RULES COMMITTEE MEETING

March 15, 2013

OBMT Office

Attendance

Committee Members:

Michael Jordan, LMT, Chair

Tina West, LMT

Todd Pennington, LMT

Steve Davis, LMT

Eric Polgar, LMT

Board Members & Staff:

Kate Coffey, Executive Director

Christine West, Policy Analyst

Craig McMillin, Board Liaison

Absent: Barb Pickle, LMT

By Phone: Heather Bennouri

Public: Erica Jayasuriya and Carol Grey by phone

Call to Order - Jordan called the meeting to order at 9:00 am.

Introductions – Present today are Michael Jordan, Tina West, Todd Pennington, Eric Polgar, and Steve Davis; Board member Craig McMillin and staff Kate Coffey and Christine West.

Public Input – Carol Grey (by phone) is in favor of requiring written consent only for intra-vaginal and intra-anal work.

Erica Jayasuriya is in favor of written consent for intra-oral, intra-vaginal and intra-anal work.

Rule Assignments: Review Discipline, Review Exemption, Review Budget, Review Applications, Review Internal Cavity Massage.

After much discussion, the committee agreed to send the following versions of the rules to the Board and to the Rules Hearing for adoption (~~strike through~~ represents deletions, **bold** represent new additions):

334-001-0012

Budget

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists' ~~2011-2013~~ **2013-2015** Biennium budget of ~~\$1,602,000~~ **\$1,746,000**.

334-010-0005

Applications

- (1) All applications for examinations, licensure, inactive status, renewal, or temporary permit must be made on forms provided by the Board. Only applications that are completed and on Board approved forms, without alterations, must be accepted for filing and review by the Board.
- (2) All applications made to the Board must be accompanied by the required fee.
- (3) Applicants for examination must submit the following with their application:
 - (a) A copy of a valid government issued photo identification. This identification could be a valid driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;

- (b) An official certificate or transcript from the administering institutions, instructors, or programs showing successful completion of study and practice in the required subject matter and hours required by the Board.
 - (A) Official copies of transcripts or certificates presented to the Board in an envelope sealed by the program or institution and verified as sealed may be accepted directly from the applicant.
 - (B) If a program or institution granting credit is no longer in business, the Board must accept for review a copy of a certificate of completion, transcript or diploma in the required subject matter and hours. The Board may require additional information to verify the authenticity of such documents.
- ~~(c) Proof of current certification in cardiopulmonary resuscitation (CPR);~~
- ~~(c) (d) A current photograph of the applicant;~~
- ~~(e) All new applicants must submit a completed fingerprint card for a criminal background check. All lapsed and inactive licensees applying for reactivation must submit a completed fingerprint card for a criminal background check.~~
- (4) Transcripts must include a minimum of 500 hours of certified classes. The 500 hours must include the knowledge and skills identified in OAR 334-010-0047 competencies and must be comprised of:
 - (a) A minimum of 200 hours of Anatomy & Physiology, Pathology, and Kinesiology; and
 - (b) A minimum of 300 hours of Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, and Sanitation. Hydrotherapy may be included as part of the 300 hours.
 - (c) 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.
- (5) If for any reason an applicant does not appear to be qualified for admission to take the examination, the applicant must be so notified and invited to submit additional evidence that he/she is entitled to have his/her case considered or to be admitted to examination.
 - (a) Applicants who are or have legally practiced massage and/or bodywork outside of the State of Oregon may be eligible to apply for the Credentialing Review Process.
- (6) All application documents for examination and licensure submitted in a language other than English must be accompanied by:
 - (a) An accurate translation of those documents into English;
 - (b) A notarized affidavit certifying that the translator is competent in both the language of the document and the English language; and
 - (c) A notarized affidavit certifying that the translation is a true and complete translation of the foreign language original.
- (7) Any costs of translation of all documents required by the Board must be at the expense of the applicant.
- (8) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, then the application is considered incomplete.

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 for an initial license and all lapsed and inactive licensees applying for reactivation must submit a completed fingerprint card for a criminal background check.**
- (3) All applications for licensure must be accompanied by proof of current certification in cardiopulmonary resuscitation (CPR).**
- ~~(4)~~**(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.
- (5)(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.
- (6)(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.
- (7)(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.
- (8)(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.
- (9)(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.
- (10)(8) Licenses issued by the Board must not be transferable.
- (11)(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.
- (12)(10) An application to reactivate an inactive license:
- (a) must be accompanied by:
 - (A) Current licensing fee;
 - (B) Verification of current cardiopulmonary resuscitation (CPR);
 - (C) 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.

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; **and Registered Practitioners of Ortho-Bionomy® as defined on December 28, 2012 by the Society of Ortho-Bionomy International**; 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.

334-010-0029

Internal Cavity

- (1) ~~An internal cavity massage must be performed using gloves and utilizing universal precautions for communicable disease control.~~ **All Internal Cavities massage must be performed utilizing universal precautions for communicable disease control.**
- (2) Internal Cavities consist of nasal cavities, oral cavities, auricular cavities, anal cavities, and vaginal cavities.
- (3) **Internal cavity massage that must be performed using gloves:**
 - (a) Anal cavities and
 - (b) Vaginal cavities.
- (4) **Internal cavity massage that must be performed using gloves or finger cots:**
 - (a) Nasal cavities and
 - (b) Oral cavities.
- (5)(3) Prior to performing these special procedures, a LMT must:
 - (a) be able to present evidence of the completion of specialized contact hours as 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;~~

~~(d) intra-anal and intra-vaginal written consent must include clients' option to accept or decline to provide a witness, in addition to the client and LMT.~~

(6) Prior to performing internal cavity massage a LMT must obtain 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.

~~(7)~~(4) 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.

~~(8)~~(5) Under no circumstances will intravaginal or intra-anal techniques be performed on individuals under 18 years of age.

334-040-0010

Discipline

The Board may deny, conditionally grant, restrict, suspend or revoke a license, impose probation, reprimand, censure, impose remedial education or corrective actions, and/or impose a civil penalty for any of the following reasons:

(1) Practicing massage or representing one's self as a massage therapist without a current active license issued by the Board;

(2) Knowingly or recklessly making any false statement to the Board;

(3) Has been the subject of disciplinary action as a licensed healthcare professional by this or any other state or territory of the United States or by a foreign country and the Board determines that the cause of the disciplinary action would be a violation under ORS 687.011 to 687.250, 687.895 and 687.991 or OAR Chapter 334;

~~(4)~~(3) Suspension or revocation of a license to practice massage in another jurisdiction based upon acts by the licensee similar to acts described in this section;

(5) Knowingly or recklessly falsifying an application or continuing education statement or documentation;

~~(4)~~(6) Conviction of a crime in ~~this any~~ state, or jurisdiction;

~~(5)~~(7) The use of false, deceptive, or misleading advertising, which includes but is not limited to, advertising massage using the term "massage" or any other term that implies a massage technique or method in any private or public communication or publication by a person licensed or not licensed by the Board as a massage therapist;

~~(6)~~(8) Allowing the use of a license by an unlicensed person;

~~(7)~~(9) Presenting as one's own license, the license of another;

~~(8)~~(10) Practicing massage under a false or assumed name without notification to the Board;

~~(9)~~(11) Impersonating another massage therapist;

~~(10)~~(12) Assisting, employing, or permitting an unlicensed person to practice massage;

~~(11)~~(13) Practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive;

~~(12)~~(14) Practicing or offering to practice massage beyond the scope permitted by law;

~~(13)~~(15) The use of intoxicants, drugs, controlled substances, or mind altering substances to such an extent as to impair or potentially impair the licensee's abilities to perform professional duties in a safe manner;

~~(14)~~(16) Practicing massage with a physical or mental impairment that renders the therapist unable or potentially unable to safely conduct the practice of massage;

- ~~(15)~~(17) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition as required by rules of the Board;
- ~~(16)~~(18) Refusing to permit the Board or its representatives to inspect the business premises of the licensee during regular business hours;
- ~~(17)~~(19) Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to:
 - (a) Failure to furnish any requested papers or documents,
 - (b) Failure to provide in writing a full and complete explanation covering the matter contained in the complaint filed with the Board,
 - (c) Failure to respond to subpoenas issued by the Board whether or not the recipient is accused in the proceeding;
- ~~(18)~~(20) Failing to comply with an order issued by the Board;
- ~~(19)~~(21) Unprofessional or dishonorable conduct which includes but is not limited to:
 - (a) Any conduct involving inappropriate physical contact or sexual misconduct which includes:
 - (A) Sexual abuse which is conduct which constitutes a violation of any provision of ORS 163.305 through 163.465;
 - (B) Sexual violation which is sex between the LMT and the client, whether initiated by the client or not, engaging in any conduct with a client that is sexual, or may be reasonably interpreted as sexual, including, but not limited to:
 - (i) Sexual intercourse;
 - (ii) Genital to genital contact;
 - (iii) Oral to genital contact; oral to anal contact;
 - (iv) Oral to oral contact except cardiopulmonary resuscitation; touching breasts or genitals or any sexualized body part for any purpose other than appropriate examination or treatment or where the client has refused or withdrawn consent; or
 - (v) Encouraging the client to masturbate in the presence of the LMT or masturbation by the LMT while the client is present.
 - (C) Sexual impropriety which is any behavior, gestures, or expressions that are seductive or sexually demeaning to a client; inappropriate procedures, including, but not limited to,
 - (i) Disrobing or draping practices that reflect a lack of respect for the client's privacy, deliberately watching a client dress or undress instead of providing privacy for disrobing;
 - (ii) Subjecting a client to an examination in the presence of students, assistants, or other parties without the explicit consent of the client or when consent has been withdrawn;
 - (iii) An examination or touching of genitals;
 - (iv) Inappropriate comments about or to the client, including but not limited to, making sexual comments about a client's body or clothing, making sexualized or sexually-demeaning comments to a client, comments on the client's or LMT's sexual orientation and making a request to date;
 - (v) Initiation by the LMT of conversation regarding the sexual problems, preferences or fantasies of the LMT; or
 - (vi) Kissing.
 - (b) Violating the client's rights of privacy, and confidentiality.
 - (c) Failure to disclose or release information about a client if required by law or on written consent of client.
 - (d) Intentionally harassing, abusing, or intimidating a client either physically or verbally.
 - (e) Any conduct or practice which could endanger the health or safety of a client or the public.
 - (f) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage.
 - (g) Exercising undue influence on a client, including promotion or sale of services, goods, or appliances in such a manner as to exploit the client for the financial gain or self-gratification of the massage therapist.

- (h) Routinely practicing in an incompetent manner.
- (i) Conduct which would also constitute a violation of the Oregon Unlawful Trade Practices Act.
- (j) Practicing a modality or technique without adequate training or licensure.

Write Fiscal Impact Statements: After discussion of the fiscal impact for each rule, it was determined these rules are already in place, the amendments will not create a material fiscal impact to the agency or LMT's.

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Massage Therapists	334
Agency and Division Number	Administrative Rules Chapter

Adopt Board budget; clarify internal cavity, discipline, exempt practices, initial license and applicants rules.
 Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:
 Amendments of rules in OAR Chapter 334, Divisions 1, 10, and 40
 Statutory Authority: ORS 687.011, 687.051, 687.081, 687.121
 Other Authority: ORS 183, ORS 182.456-182.472
 Stats. Implemented: ORS 687.011, 687.031, 687.051, 687.081, 687.121
 Need for the Rule(s):
 To clarify existing rule verbiage, move two requirements from application for initial test to application for initial license and exempt a modality.

Documents Relied Upon, and where they are available:
 OAR 334, 2012 Board meeting minutes and Rules committee meeting minutes. These documents are available at www.oregon.gov.obmt

Fiscal and Economic Impact:
 There is no material fiscal impact to the Board of Massage Therapists or the licensees; these rules are already in effect.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):
 - 334-001-0012 Budget, No projected fiscal impact
 - 334-010-0005 Applications, No projected fiscal impact
 - 334-010-0015 Licensure, No projected fiscal impact
 - 334-010-0027 Exempt Practices, No projected fiscal impact
 - 334-010-0029 Internal Cavity, No projected fiscal impact
 - 334-040-0010 Discipline, No projected fiscal impact
2. Cost of compliance effect on small business (ORS 183.336):
 - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:
 - 334-001-0012 Budget, No projected fiscal impact
 - 334-010-0005 Applications, No projected fiscal impact
 - 334-010-0015 Licensure, No projected fiscal impact
 - 334-010-0027 Exempt Practices, No projected fiscal impact
 - 334-010-0029 Internal Cavity, No projected fiscal impact
 - 334-040-0010 Discipline, No projected fiscal impact
 - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:
 - 334-001-0012 Budget, No projected fiscal impact

334-010-0005 Applications, No projected fiscal impact
334-010-0015 Licensure, No projected fiscal impact
334-010-0027 Exempt Practices, No projected fiscal impact
334-010-0029 Internal Cavity, No projected fiscal impact
334-040-0010 Discipline, No projected fiscal impact

c. Equipment, supplies, labor and increased administration required for compliance:

334-001-0012 Budget, No projected fiscal impact
334-010-0005 Applications, No projected fiscal impact
334-010-0015 Licensure, No projected fiscal impact
334-010-0027 Exempt Practices, No projected fiscal impact
334-010-0029 Internal Cavity, No projected fiscal impact
334-040-0010 Discipline, No projected fiscal impact

How were small businesses involved in the development of this rule?

Each licensee may be considered a small business. Licensees and stakeholders are Rules committee members and Licensees and Stakeholders were notified through Rules committee meetings minutes and invitations to attend the rules committee meetings.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:

Christine West

3/15/2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

Adjournment – The meeting adjourned at 10:24 a.m.

RULES HEARING:

May 16, 2013 at 9:00 a.m.

748 Hawthorne Ave NE

Salem, Or 97301