



# 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

## OBMT Board Meeting Minutes

January 13, 2014

Board Office

### Attendance

#### Board Members:

David Fredrickson, LMT, Chair  
Kathy Calise, Public Member, Vice Chair  
Jon Grossart, LMT  
Melanie Morin, LMT  
R. Craig McMillin, Public Member  
Kelley Rothenberger, LMT  
Steven Foster-Wexler, LAc, Public Health Member

#### Staff:

Kate Coffey, Executive Director  
Ekaette Udosenata, Policy Analyst  
Lori Lindley, AAG  
Robert (Bob) Ruark Compliance Manager

#### Public:

**Julie Meade**  
**Todd Pennington**

**Sharla May**  
**Terry Weyers**

**Lisa Garofalo**  
**Lawrence Birch**

### Call to order 9:04 am

**Fredrickson** called the meeting to order at 9:04 am. Roll call was performed. **Calise, Foster-Wexler, Grossart by phone, McMillin, Morin, Rothenberger** and **Fredrickson** were present, as well as **Kate Coffey**, Executive Director, **Lori Lindley**, Assistant Attorney General and **Ekaette Udosenata**, Board staff.

**Fredrickson** asked each Board member, staff and members of the public to introduce themselves. Public present at this time were **Garofalo, May, Meade, Pennington, and Weyers**.

**Fredrickson proposed** to amend the Approved Agenda to view the demonstration for the Cavi Lipo machine at the beginning of the Board meeting rather than at the end to accommodate the presenter's time restraints.

**1) Approve Amended Agenda: Morin moved** to approve the agenda as amended. **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger** and **Fredrickson. Opposed: None. Motion carries.**

*After the demonstration of Cavi Lipo, the Board discussed and concluded that, the Board is neither approving this machine as being included in the scope of massage nor is the Board disapproving the therapist from utilizing this device. The Board is only discussing the matter and advising at this time. The Board decline to make a decision until the FDA issues an opinion for this device. The Board reviewed the expert opinion of Dr. Canall regarding this device.*

**Fredrickson** stated that there is a description of the effects of the structure of the dermis in the article *Treatment of Cellulite part 1. Pathophysiology* by Misbah H. Khan et al (pg. 361-370). **Fredrickson** is concerned if it has substantial local effects and potentially systemic effects on the lymphatic system. He knows that ultra sound devices can burn tissues when used on high frequency and inappropriately used. The concern that was expressed by two persons in the medical

community of the effect of this device was on encapsulated tumors. One effect would be on the potential mesenteric or peritoneal tumor and without supervision and assessment the question in their mind is weather something like this can compromise someone's condition.

**Rothenberger stated** if someone has an undiagnosed condition and one goes in for what one thinks is beauty treatment/body sculpting the potential is there no matter the equipment or method used.

**Grossart noted** that the big thing the Board needs to remember is the FDA essentially says that they cannot sell this device. He agrees at some level with the idea of beauty treatment and anything can happen. If the FDA is saying this is a questionable medical device he believes that for the most part THIS answers the Board's questions of whether it should be allowed or not.

**McMillin stated** that he does not think that the Board should bind itself to make changes until the FDA completes their review. The question at this point is whether or not the Board approves it. He aggres that as long as the FDA says no he believes it's a warning to our Board. He agrees with **Grossart** that the Board needs to wait until the FDA does their work and the Board is not in any position to approve it.

**Calise noted** that she does not see any difference in the Cavi-Lipo machine from what estheticians use on people's faces.

**Frederickson noted** that his concern is that this device is considered an ultra sound device and one must obtain formal training whereas with this device there is no formal training program. We have to go in part on what our laws in the state of Oregon are in regards to what constitute a vibration device and currently massage therapist are not allowed to use ultrasound without a physician's oversight.

**McMillin stated** that it seems to him that there is always a possibility that the Board is going to face this as time goes on because of the ever changing technology. The question is do we tell our massage therapist that they have to alert their patient to the fact that it is not an approved by the FDA.

**Calise suggested** that if the client is fully aware that the equipment is not FDA approved, then the client can make the decision on whether they want the treatment.

**McMillin suggested** that the better answer may be something along the line that it is not causing any harm, we believe its effective, and we are waiting for the regulator to make their decision.

**Grossart suggested** that the Board also have another option. The Board solution can be some sort of distinction that if you practice outside of the scope of massage you are not allow to combine the advertisement if you do advertise.

**2) Approve Minutes of November 23, 2013 – Frederickson. Morin moved** to approve the minutes with amendment adding Sharla May to the list of Public Attendees. **Second the motion: Calise. In favor: Calise, Fredrickson, Foster-Wexler, Grossart, McMillin and Rothenberger. Opposed: None. Motion carries.**

### **3) Directors Report**

**Finances – Coffey** reported on the status of the Board budget from July through December 2013. The Board received \$1.5k less revenue than was budgeted for the month of December 2013. The majority of the deficit revenue was in the category of Initial Licensure Fees. The Board spent \$2.5k less than was budgeted for the month of December 2013. The Board is overspent in the categories of legal fees and computer expenses. The reason for the over expenditure in the computer expense is for the development of the facility permit database and the other was due to contested cases and request for summary determination. Biennium to date, the Board received \$14k less revenue than was budgeted for the first six months of the 2013-15 biennium. The Board underspent expenses by \$26k for the

biennium to date. The majority of the under expenditure is in the categories of Payroll, Examiner, and Investigation Expenses. The Board is \$7k over in legal expenses. As of December 31, 2013 there is six months working capital reserve at US Bank.

**Facility permitting – Coffey** noted that the Board office has issued 46 Facility Permits and received \$2,300 in revenue for the month of December 2013. It cost the Board approximately \$10k to create a facilities database. The database is being delivered in a phased approach. The compliance portion of the facilities database is still being developed.

**Late Fees – Coffey** reported that the weekly late fee is par with other health licensing Boards; however, the not-to-exceed amount is higher than other professions of comparable earning capacity.

Recommend the Board cap the not-to-exceed late fee at \$100 or \$150 currently its cap at \$ 250. This would not create a significant budget impact.

**Compliance – Coffey** updated the Board with a report on the progress of the compliance department: Robert Ruark was selected to fill the vacant compliance manager position and began working for the Board the middle of December 2013. He has decades of investigation experience and has previously worked for other health licensing Boards. There is currently one case scheduled for a contested case hearing in February 2014. For the next two months the compliance section will be focusing on those facilities that perform massage services that do not utilize licensed massage therapists.

#### 4) Committee Updates

- a) **Education Committee - Garofalo reported** on the progress of the committee and updated the Board on the changes made to the CE recommendation at the January Education Committee Meetings. She provided a summary document detailing the task that the committee worked on.

*The Board discussed the committee's recommendations and determined that there will need to be a definition for noncontact hours and the Board may need a rule revision for the current definition of contact hour. The Board accepts the CE recommendation from the Education Committee and will be forwarding it to the Rules Committee.*

**McMillin noted** that the Board wants to leave some discretion when making changes to the rules due to the ever changing technology. The Board should be very careful for the future and leave the Board some flexibility.

**Garofalo noted** that the committee has three questions for the rules committees: 1. what changes should the Education Committee make in the CE requirement for lapsed and inactive license, 2. the definition of contact and noncontact hours: 3. What should be the numbers of hours given to someone for reading a book?

**Frederickson noted** that in time; people get stale on skills and need renewal of skills. People should be encouraged to continue their education.

**Garofalo noted** that the education committee is willing to send a member to the Rules committee in the case that there are questions on the changes made by the committee.

*The Board approved the education committees CE recommendation and moved it to the Rules Committee.*

- b) **Rules Committee - Coffey** updated the Board on the rules committee meeting scheduled for 2/3/2014 and 2/24/2014.

**Calise moved** to approve the Education Committee Proposal and send to the Rules Committee as amended. **Second the motion: Rothenberger. In favor: Calise, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries. Fredrickson** noted for the record that, **McMillin** was out of the room at the time of voting to adopt the CE rules as amended.

**c) Practical Exam Task Force Committee - Rothenberger updated** the Board on the status of the exam task force. The committee has made some head way and has some recommendations. Of what is best tested in a practical exam setting and what is best tested in written format. The committee will be looking at the exam and pull out the things that should not be in the practical exam. The committee is scheduled to meet on February 3, 2014 at Everest College from 4:00 pm to 7:00 pm.

#### 5) Board Business

**a) Correspondence – Coffey shared** details of correspondence received at the Board office.

- **Letter by Be Our Guest** to the Board regarding the Board working with Oregon Health Licensing Agency (OHLA) to have one Facilities permit. The Board discussed that the issue is statutory authority.

**Coffey noted** that at the very beginning she discussed the possibility of regulating massage facilities with the Oregon Health Licensing Agency and they were not interested in taking on that responsibility.

- **Letter to the Exam Task Force by Geraldine Chevron** regarding the makeup and the administration of the practical exam. The Board discussed how the exam needs to be modified.
- **Letter by Fran More** to the Board in regards to the Board awarding 1 CE hour to LMT who has been active for 10 years. The Board Discussed and decided they would keep the education committees recommendation.
- **Article by Fran More** to the Board in regards to Facility Permit. The Board found this information interesting.

After reviewing all the correspondences to the Board, the Board concluded that **Coffey** should respond to the correspondences respectively.

- b) Legislative Initiative for 2015 – Coffey noted** that at this time the Board has nothing for the next full Legislative session.
- c) 4<sup>th</sup> Quarter and 2013 Exam Statistic** – the Board reviewed the exam statistics.
- d) LMT Numbers on Advertisement – Grossart noted** that the OBMT is the only Health licensing Board to require this information from a license.

**McMillin stated** that it might be a burden on LMT however; the purpose for this is to ensure that the advertisement is by a legitimate massage therapist. He further suggests that the Board can ask some input from the membership utilizing the borderline or the survey on their thoughts on the matter.

*The Board moved this matter to the May 2014 planning Meeting.*

**Morin moved** that the Board take a short break. **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

- e) Shamanism - Lindley** noted that the federal courts recognize shamanism as a religion..

*The Board discussed the matter of Shamanism to satisfy continue education requirement and concluded that the Board will need to revisit the matter in the future. The Board decided that LMTs that are practicing massage will be allowed to submit all spiritual/energy classes to fulfil their continuing education requirement.*

- f) **Strategic Plan - Coffey updated** the Board on all the action plans and went over the status of each strategic initiative

**Foster-Wexler** move to cap late fee at a maximum of \$100 **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

- g) **July 2014 Proposed Rules Change – Coffey reviewed** in detail the topics for the proposed Rules Change and 2014 May Planning Meeting.

*The Board reviewed the proposed rule changes and moved the following proposed Rules to the Rules Committee:*

- ❖ *Electronic Fingerprints*
- ❖ *Modify Continuing education rules,*
- ❖ *Revise the Definition of contact hours,*
- ❖ *Definition for non-contact hours,*
- ❖ *Modify Late Fee cap to \$100,*
- ❖ *Ethics CE requirements for lapsed and inactive license.*

*The Board reviewed the proposed rule changes and moved the following matters to 2014 May planning meeting:*

- ❖ *Insurance billing,*
- ❖ *Fee splitting,*
- ❖ *LMT Number on Advertising,*
- ❖ *Confidential Requirements, and*
- ❖ *Client Records Retention.*

- 6) **BOARDerline** – the Board discussed ways to make the BOARDerline a better communication tool. The next BOARDerline will be published in May or June of 2014.

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

**Birch** – wants to discuss the CE issue with shamanism and is happy to hear the Board’s decision. He provided feedback that the Board handled the issue very transparently.

**Morin** move to take a quick break **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

**Fredrickson** called to enter into Executive Session at 12:30pm.

#### EXECUTIVE SESSION

The Board may enter into 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 192.501(4) to review test questions, scoring keys and other data used to administer a licensing examination, 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 or applicant by a health professional regulatory Board 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.

**1. Executive Session**

- a. **Practical Exam (192.501(4))**
- b. **Exam Appeal AA No action – current score remains**
- c. **Exam Appeal AB No action – current score remains**

The Board returned to Public Session at 2:45 pm.

**2. Action on Executive Session Items**

- i. **Case 1603 – Calise moved to grant the renewal of license with no restrictions. Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries**
- ii. **Case 1604 – Rothenberger moved to grant the renewal of license with no restrictions. Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- iii. **Case 1544 – Morin moved to issue a Notice of Proposed Action for: One violation of ORS 687 .012 (1), engaging in or purporting to be in the practice of massage without a license; For a total civil penalty of \$1,000. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- iv. **Case 1568 – Morin moved to accept the order of surrender of license. Second the motion: Foster-Wexler. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- v. **Case 1596 – Morin moved to issue a letter of concern. Second the motion: Rothenberger. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- vi. **Case 1599 – Morin moved to issue a notice of proposed Action for: One violation of ORS687.021 (1), engaging in or purporting to be in the practice of massage without a license; for a total civil penalty of \$1,000. Second the motion: Rothenberger. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- vii. **Case 1598 – Morin moved to close no violation found. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, Morin McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- viii. **Case 1602 - Morin moved to close no violation found. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- ix. **Case 1600 - Calise moved to deny the license for: Five hundred and four violations of ORS 687 .021 (1) engaging in or purporting to be in the practice of massage without a license; Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, and Fredrickson. Opposed: Rothenberger. Motion carries.**
- x. **Case 1562 - Foster-Wexler moved to issue a letter of concern for misrepresenting massage abilities. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xi. **Case 1581 - Morin moved to issue a letter of concern regarding insurance billing practice. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xii. **Case 1515 - McMillin moved to accept the ruling on motion for summary determination and proposed order from the office of administrative Hearing and Issue a Ruling on Motion for Summary Determination and Final order with Stipulated Agreement: Second the motion: Foster-Wexler. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

**Ratification of Settlement Agreements**

- xiii. **Case 1594 – Calise moved to accept the Stipulated Agreement and Final Order negotiated between the ED and the Licensee. Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

- xiv. **Case 1597 – Calise moved** to accept the Stipulated Agreement and Final Order negotiated between the ED and the Licensee. **Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xv. **Case 1418 – Calise moved** to accept the Stipulated Agreement and Final Order negotiated between the ED and the Licensee. **Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xvi. **Case 1478 – Calise moved** to accept the Stipulated Agreement and Final Order negotiated between the ED and the Licensee. **Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, Morin, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xvii. **Executive Session Closed Case Report – Morin moved** to accept the executive session closed case report as submitted in Exhibit A. **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

**Case No. 1558****Allegation:** False Representation of the Board**Closed:** Compliance met**Case No. 1593****Allegation:** Unlicensed Advertising/Practice**Closed:** Final Default Order**Case No. 1580****Allegation:** Unlicensed Practice**Closed:** Final Default Order**Case No. 1592****Allegation:** Unprofessional/Dishonorable Conduct**Closed:** Letter of Concern**Case No. 1546****Allegation:** Unprofessional/Dishonorable Conduct**Closed:** No Violation Found**Case No. 1565****Allegation:** Unlicensed Practice**Closed:** No Violation Found**Case No. 1476****Allegation:** Unlicensed Practice**Closed:** Stipulated Agreement Met**3. Public Compliance Action****a) Public Session Closed Case Report – None**

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

**4. Announcements**

Next meeting will be on March 17, 2014

- 12) **Adjourn Meeting – Kathy moved** to adjourn the meeting. **Second the motion: Steve In favor: Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.** The meeting was adjourned at 4:28 pm.

**Citation**

Khan, Misbah, Frank Victor, Babar Rao, and Neil Sadick. "Treatment of cellulite: Part 1. Pathophysiology." *Journal of the American Academy of Dermatology*. 62.3 (2010): 361-370. Print.