



# Oregon

Kate Brown, Governor

## Board of Massage Therapists

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## OBMT Board Meeting Minutes

July 20, 2015

Board Office

### Attendance

#### Board Members:

David Fredrickson, LMT, Chair

Jon Grossart, Vice Chair

Meng Chen, Public Member

Melanie Morin, LMT

Kelley Rothenberger, LMT

Steven Foster-Wexler, LAc, Public Health Member

#### Staff:

Kate Coffey, Executive Director

Robert (Bob) Ruark, Compliance Manager

Lori Lindley AAG

**Public:** DeeDee Hoover, Daniel Cote, Lisa Barck-Garofalo, and Suzie Barclay.

### Call to order at 9:03am

**Fredrickson** called the meeting to order at 9:10 am. Roll call was performed. **Chen, Foster-Wexler, Grossart, Morin, Rothenberger** and **Fredrickson** were present, as well as **Coffey**, Executive Director, **Lindley**, AAG, and **Ruark**, Compliance Manager.

**Fredrickson** asked members of the public to introduce themselves. Public present at this time were: **Hoover, Cote, Barclay** and **Barck-Garofalo**.

- 1) Approve Amended Agenda:** **Morin** moved to approve the modified agenda which moves the Ethics and Boundaries presentation to item number three (3) on the agenda. **Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger** and **Fredrickson. Opposed: None. Motion carries.**
- 2) Approve Minutes for May 29-30, 2015:** **Morin** moved to amend the minutes that corrected an error on Case 1731 to include Grossart's vote. **Second the motion: Rothenberger. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Morin** and **Rothenberger. Opposed: None. Motion carries.**
- 3) Ethics & Boundaries Testing** – Dr. Cote from the Board of Chiropractic Examiners made a presentation to the board regarding Ethics and Boundaries Essay Examination and how it is used at the Board of Chiropractic Examiners. This exam is psychometrically valid and would provide the board insight into a licensee's ethics and boundaries. The exam provides five essay scenarios and allows for 60 minutes per scenario. The scenarios are focused on boundary violations, fraud, professional standards, unprofessional conduct, and substance abuse. The cost is \$1500 and is paid by the licensee and there is no cost to the board for signing up.

4) **Morin** moved to take a 5 minute break and **Rothenberger** second the motion. In favor: **Chen, Fredrickson, Foster-Wexler, Grossart, Morin and Rothenberger**. Opposed: None. Motion carries.

5) **Directors Report: Coffey** updated the board on the Finances for the 2013-15 Biennium. The board's actual revenue is within a 1% deviation from the revenue projection for the 2013-15 biennium. The board underspent expenses by \$56k and the majority of the under expenditure is in the category of Payroll Expenses. The board increased cash reserves by \$36k.

**Coffey** updated the board on the revised Information Technology Policy. The board reviewed this policy during the May 2015 board meeting and requested a revision to remove the restriction of only allowing board email accounts to be accessed using board equipment. **Morin** made a motion to approve this policy **Second the motion: Rothenberger**. In favor: **Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson**. Opposed: None. Motion carries

**Coffey** updated the board on the Cultural Competency requirement that will be effective January 1, 2016. On January 1, 2016 all Health Licensing Boards will begin capturing Cultural Competency CEU's taken by Licensees and report this activity to the Oregon Health Authority. Implementation of this statutory requirement will require a modification to the Board's continuing education rules and licensing application. The proposed CE rule does include Cultural Competency courses.

**Ruark** updated the board on Compliance. The Compliance section received nine (9) new cases in the past 30 days (Since May Board meeting). There are six contested cases that are pending at the Office of Administrative Hearings. All of these cases have active settlement negotiations occurring. Motions for Summary Determination have been filed on two of these cases, and six of the cases are from the May Board meeting.

The Board prevailed at hearing on a contested case and signed a stipulated agreement of injunctive relief on a pending circuit court case. **Grossart** inquired if we are having an increase of contested cases. **Lindley** commented that this number of contested cases is fairly normal as there was a period of time when the board took fewer cases to hearing.

## 5) Board Business

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

1. **Letter to the Board by Frothingham** expressed his concerns regarding the board budget and board stipends.
2. **Letter to the Board from the Department of Justice - Steven A. Wolf, Chief Counsel** - regarding the recent case with the North Carolina State Board of Dental Examiners v. Federal Trade Commission.
3. **Letter to the Board from Scott MacLowry, LMT** - Requesting the board define gymnastics in the board's rules as it would assist in LMT's billing insurance for this service. The board discussed this and decided not to define gymnastics in rule as it could possibly narrow the scope of massage.

b) **Board By-Laws** - The board reviewed the By-Laws that **Calise** updated. The board reviewed the modified By-Laws and changed leadership terms from a calendar year to a fiscal year. The board made numerous other grammatical changes to the By-Laws. **Grossart** made a motion to approve this policy **Second the motion: Morin**. In favor: **Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson**. Opposed: None. Motion carries

c) **Strategic Objectives** – The board reviewed the Strategic Planning document prepared by Catalysis LLC. The board assigned **Coffey** to prepare an action plan from the report and present this action plan at the September 2015 board meeting. **Fredrickson** requested **Coffey** convey the board's appreciation to Catalysis LLC for their work on the strategic plan.

d) **Database Application** - **Coffey and Rothenberger** presented the eLITE licensing application to the board. The board discussed the cost and implementation. This licensing application is currently being utilized by the Oregon Health Licensing

Board, State of Idaho, State of Washington and several cities and counties. **Rothenberger** indicated that this application would meet the needs of the board and stated that the vendor is willing to extend the current license to the State of Oregon as the Oregon Health Licensing Board is currently utilizing this application. The Oregon Health Licensing Board does not utilize the document imaging module and would cost \$35,000. The document imaging module would allow the board to move to electronic files. **Coffey** will provide additional information at the September 2015 board meeting.

**d) FSMTB Meeting** - The board chose board member **Morin** as the board delegate for the FSMTB meeting in October 2015. The board also agreed to send additional attendees to this meeting.

**e) Board Stipend** - The board reviewed the board member stipend and discussed that they should receive two days of stipend for each board meeting as there is significant time spent reviewing the board packet prior to the board meeting. If the board member travels a long distance they will also be provided for one day of stipend for the travel day.

**f) Practical Exam discussion** - **Lindley** reported that ORS 687.057 requires the board to offer the practical exam for those who license by indorsement. **Fredrickson moved to** refer the practical exam to the rules committee to prepare rules to abolish the practical exam for those who license via transcript and keep the practical exam for those who license by indorsement. **Second the Motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries**

**g) 2015 Legislative Update** – **Coffey** updated the board on the passage of SB 298 as this bill increased the hours for licensure from 500 clock hours to 625 clock hours. The board received a letter from Oregon School of Massage requesting that the board delay the implementation to July 2015. **Lindley** indicated that the board has no authority to delay the implementation and it applies to only those applicants who apply for licensure after January 1, 2015. **Fredrickson** stated that the implementation of this bill would be discussed at the August 21, 2015 All Schools meeting held at Chemeketa Community College as the schools need to be at the table for this discussion.

SB 230 expanded the agencies that are required to gather demographic data on licensees and report this to the Oregon Health Authority every biennium. The Oregon Health authority currently charges \$5 per licensee to analyze this data. This will increase costs to the board by \$37,500. The board agreed that this cost should be passed on to the licensee's.

**h) Craniosacral Therapy Exemption** – **Morin made a motion to deny the exemption request** Second the motion: **Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.** The board directed **Coffey** to send a letter to Bio-Dynamic indicating they can operate as exempt and send letters to the Upledger and Milne indicating that they would require a license.

**6) Committee/Task Force updates** - The board reviewed the current committees and assignments. The board appointed Kathy Calise to be the chair of the Rules Committee and Meng Chen as the board liaison to the Rules Committee. The board appointed **Fredrickson** as the board liaison to the Education Committee and reappointed **Barck-Garafalo** as the chair of the Education Committion. The board appointed **Foster-Wexler** as the chair for the insurance task force. The board disbanded the Scope of Practice committee.

**7) Continuing Education** - The board discussed the current CEU recommendation. **Fredrickson** declared a conflict of interest on this topic as he is a current CE provided. **Fredrickson** stated that the current recommendation should be adopted. **Rothenber made a motion to approve the proposed rule** **Second the motion: Morin. In favor: Chen, Foster-Wexler, Morin, Rothenberger and Fredrickson. Opposed: Grossart. Motion carries**

**8) Insurance Task Force** - The board discussed the current insurance task force recommendation and decided to send this to the revised task force.

Rothenberger made a motion for a break Second the motion: Chen. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

**BOARDerline Topics** – Coffey updated the Board on the BOARDerline topics. Compliance Corner – Ruark; Outgoing Board Member Article – Calise; New Rules effective January 1, 2016 – Coffey; Cultural Competency CEU's – Coffey; FSMTB Meeting – Morin; New Board Member Article – New public member; Compliance Summary – Ruark.

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

Public present:

Barck-Garafalo – The implementation of 625 clock hours is problematic for Oregon School of Massage. What accommodations is the board going to make for the current graduates? **Lindley** responded that the law stated the requirement for 625 clock hours applies to those who apply for licensure on or after January 1, 2016.

Hoover - Asked questions on how to become a member of the board and expressed a desire to be on the education committee. Asked for clarification of how to become a CEU provider.

**Fredrickson** thanked and excused the members of the public.

**Fredrickson** called the board into Executive Session at 1:12pm.

**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. **Compliance (192.660(2)(k))**

The Board returned to Public Session at 2:23pm.

2. **Action on Executive Session Items**

**Compliance Cases**

- i. **Case 1743 – Foster-Wexler moved** to accept the Stipulated Agreement and Final Order negotiated by DOJ. **Second the motion: Morin. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries**
- ii. **Case 1757 – Morin moved** to accept the Stipulated Agreement and Final Order negotiated by DOJ. **Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Fredrickson, Grossart, Morin and Rothenberger. Opposed: None. Motion carries.**
- iii. **Case 1774 – Morin moved** to issue a notice of proposed action for one violation of ORS 687.021(1)(a) Engaging in or purport to engage in the practice of massage without a massage therapy license for a total civil penalty of \$1,000. **Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson.**

**Opposed: None. Motion carries.**

- iv. **Case 1775 – Rothenberger moved** issue a letter of concern. **Second the motion: Morin. In favor: In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- v. **Case 1779 – Morin moved** to issue a notice of proposed action for One violation of ORS 687.021(1) (a) Engaging in or purport to engage in the practice of massage without a massage therapist license; and One violation of ORS 687.021(1) (b) Operating a Massage Facility without a Facility Permit issued by the Board; and One violation of ORS 687.021 (1) (c) advertising for massage without a massage therapists license One violation of ORS 687.021 (1) (d) using the word “Massage” in a business name while unlicensed for a total civil penalty of \$4000. **Second the motion: Foster-Wexler. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- vi. **Case 1789 – Morin moved** to Issue a Notice of Proposed Action for One violation of ORS 687.081 (1)(a)(j) Engages in Professional Misconduct and Has violated a rule of the Board and One violation each of OAR 334-040-0010 (23) (a) (C) (vi) Engages in Unprofessional or Dishonorable conduct for a total civil penalty of \$2000. **Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- vii. **Case 1800 - Morin moved** to Issue a Notice of Proposed Action for One violation of ORS 687.021(1) (b) Operating a Massage Facility without a Facility Permit issued by the Board; and One violation of ORS 687.021(1) (a) Engaging in or purport to engage in the practice of massage without a massage therapist license for a total civil penalty of \$2000. **Second the motion: Chen. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- viii. **Case 1750 – Foster-Wexler moved** to postpone the issuance of the massage therapists license until she proves extended sobriety at the November 2015 board meeting. **Second the motion: Morin. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- ix. **Case 1807 – Rothenburger moved** to issue a probationary massage therapists license for two years with the stipulation of meeting monthly meetings with compliance manager, Monthly Urinalysis, Group Practice, and report any criminal violations or probationary violations within 72 hours. **Second the motion: Foster-Wexler. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- x. **Case 1806 – Foster-Wexler moved** to issue the massage therapists license with no stipulations. **Second the motion: Morin. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xi. **Case 1805 – Grossart moved** to issue the massage therapists license with no stipulations. **Second the motion: Morin. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xii. **Case 1801 – Foster-wexler moved** Issue a Notice of Proposed Action for One violation of ORS 687.081 (1)(a)(j) Engages in Professional Misconduct and Has violated a rule of the Board and; One violation each of OAR 334-040-0010 (23) (C) (i) Engages in Unprofessional or Dishonorable conduct One violation of OAR 334-010-0025 (9) Failure to include license number in advertising for a total civil penalty of \$3000. **Second the motion: Morin. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xiii. **Case 151030 – Morin moved** to Accept the Stipulated Judgment imposing permanent injunction negotiated by the Department of Justice **Second the motion: Grossart. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xiv. **Case 1732 – Morin moved** Accept the Final Order from the Office of Administrative Hearings. **Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xv. **Case 1804 – Morin moved** Issue a Notice of Proposed Action for One violation of ORS 687.021(1) (b) Operating a Massage Facility without a Facility Permit issued by the Board One Violation of OAR 334-040-0010 (12) Employing or permitting unlicensed persons to practice massage for a total civil penalty of \$2000. **Second the motion: Grossart. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xvi. **Case 1797 – Grossart moved** to Issue a letter of concern. **Second the motion: Rothenberger. In favor: Chen,**

**Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

- xvii. **Case 1778 – Morin moved to Issue a Notice of Proposed Action for One violation of ORS 687.021(1) (b) Operating a Massage Facility without a Facility Permit issued by the Board and One Violation of OAR 334-040-0010 (12) Employing or permitting unlicensed persons to practice massage for a total civil penalty of \$2000. Second the motion: Grossart. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xviii. **Case 1794 – Morin moved to Issue a Notice of Proposed Actions for One violation of ORS 687.021 (1) (a) Engage in or purport to engage in the practice of massage without a massage therapist license for a total civil penalty of \$1000. Second the motion: Chen. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xix. **Case 1799 – Rothenberger moved to close the case as insufficient evidence to prove a violation occurred. Second the motion: Morin. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xx. **Case 1796 – Morin moved to Issue a Notice of Proposed Action for One violation of 687.021(1)(a) Engage in or purport to engage in the practice of massage without a massage therapists license; One violation of ORS 687.021 (1) (c) Advertise for massage without a massage therapist license; for a total civil penalty of \$2000. Second the motion: Grossart. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xxi. **Case 1808 – Grossart moved to Issue a license with no stipulations. Second the motion: Foster-Wexler. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xxii. **Case 1809 – Foster-Wexler moved to issue the license with no stipulations. Second the motion: Chen. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xxiii. **Executive Session Closed Case Report – Morin moved to accept the executive session closed case dated July 20, 2015 containing cases as submitted in Exhibit 1 consisting of 1 page. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

xxiv. Case No. 1700

**Allegation:** Unlicensed Practice

**Closed:** No violation found

3. **Public Compliance Action**

- xxv. **Public Session Closed Case Report – Morin moved to accept the public session closed case dated July 20, 2015 submitted in Exhibit 2 consisting of 1 page. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

a)

Case No. 1747

**Allegation:** Unlicensed Practice/Advertising

**Closed:** Civil Penalty Assessed

Case No. 1751

**Allegation:** Unlicensed Practice/Advertising

**Closed:** Civil Penalty Assessed

Case No. 1752

**Allegation:** Unlicensed Practice/Advertising

**Closed:** Civil Penalty Assessed

Case No. 1755

**Allegation:** Unlicensed Practice/Advertising

**Closed:** Civil Penalty Assessed

**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 September 14, 2015 in Salem, Oregon.

All Schools meeting August 21, 2015

Board meeting in November is November 9, 2015/

**12) Adjourn Meeting – Morin moved to adjourn the meeting. Second the motion: Grossart. In favor: Calise, Chen, Foster-Wexler, Grossart, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

The meeting was adjourned at 4:59 pm.