



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

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OBMT Board Meeting Agenda

May 17-18, 2013

Lane Community College

Downtown Center

101 W 10th Avenue

Eugene, Oregon 97401

(541) 463-6136

DAY ONE

Attendance

Board Members:

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

Staff:

Kate Coffey, Executive Director
Diana Nott, Compliance Coordinator
Lori Lindley, Assistant Attorney General

Public:

B. Lynne Schwarts
Gail Karuna Vetter

Melody Morton-Gandy
Amie Allison

Charles Roe
Karen McAlpine

Call to Order

Fredrickson called the meeting to order at 9:07 am. Roll call was performed. **Calise, Grossart, Morin, Rothenberger, McMillin, Foster-Wexler** and **Fredrickson** were present, as well as **Kate Coffey**, Executive Director, **Lori Lindley**, Assistant Attorney General and **Diana Nott**, Board staff.

Fredrickson welcomed the new Board members, **Jon Grossart** and **Steven Foster-Wexler**. He thanked them and stated appreciation for their willingness to serve on the Board.

- 1) **Approve Agenda – Calise moved** to approve the agenda. **Second the motion: Morin. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- 2) **Executive Session**
 - a) **Practical Exam (192.501(4))**
 - b) **Compliance (192.660(2)(k))**

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.

The Board entered into Executive Session at 9:10 a.m. and returned to public session at 11:16 a.m. The Board then took a brief recess for lunch and toured the new Lane Community College building.

3) Lunch & Tour**4) Action on Executive Session Items**

- a) **Case 1184** – The Board took no action on this case.
- b) **Case 1406** - The Board took no action on this case.
- c) **Case 1239 – Calise moved** to renew the licensee’s massage license with no further stipulations. **Second the motion: Morin. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- d) **Case 1454** – The Board took no action on this case.
- e) **Case 1485 – Morin moved** to amend the Notice of Proposed Action to include one additional count of ORS 687.081(1)(i), unprofessional or dishonorable conduct, for a total of two counts; one count of OAR 334-040-0010(19)(a)(C)(i), any conduct involving inappropriate physical contact or sexual misconduct which includes... 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: disrobing or draping practices that reflect a lack of respect for client’s privacy...; and one count of OAR 334-040-0010(19)(d), intentionally harassing, abusing, or intimidating a client, either physically or verbally. **Second the motion: Calise. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- f) **Case 1495 – McMillin moved** to ratify the surrender of the license. **Second the motion: Morin. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- g) **Case 1514 – Rothenberger moved** to issue a Notice of Proposed Action for: One violation of ORS 687.051(2), an applicant must be a person of good moral character. For purposes of this section, the lack of good moral character may be established by reference to acts or conduct reflecting moral turpitude or to acts or conduct that would cause a reasonable person to have substantial doubts about the applicant’s ability to practice massage in accordance with ORS 687.011 to 687.250, 687.895 and 687.991 and rules of the board; One violation of ORS 687.081.(1)(a), 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: violated any provision of ORS 687.011 to 687.250, 687.895 and 687.991 or any rule of the board adopted under ORS 687.121; 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 334-010-0025(3)(a)(A)(B)(C)(D), A massage therapist must use safe and functional coverage/draping practices during the practice of massage when the client is disrobed. Safe and functional coverage/draping means: LMT explains, maintains and respects coverage/draping boundaries; Client gives informed consent; Genitals and gluteal cleft of male and female clients and the breast area of female clients are not exposed; Massage or movement of the body does not expose genitals, gluteal cleft or breast area; One violation of OAR 334-030-0005(1)(b)(g), Standard I: Responsibility -- the relationship between the LMT and the profession. The LMT must: act within the context of professional practice standards, codes of ethics, and relevant statutes and regulations; be accountable for his or her actions and commitments and assume personal and professional responsibility to do his or her best; One violation of OAR 334-030-0005(2)(a)(c), 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; 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; One violation of OAR 334-040-0010(19)(a)(A), Unprofessional or dishonorable conduct which includes but is not limited to: any conduct involving inappropriate physical contact or sexual misconduct which includes: sexual abuse which is conduct which constitutes a violation of any provision of ORS 163.305 through 163.465; One violation of OAR 334-040-0010(19)(a)(B)(iii)(v) Unprofessional or dishonorable conduct which includes but is not limited to: any conduct involving inappropriate physical contact or sexual misconduct which includes: 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: oral to genital contact; or encouraging the client to masturbate in the presence of the LMT or masturbation by the LMT while the client is present; and One violation of OAR 334-040-0010(19)(a)(C)(i)(iii), 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: 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; an examination or touching of genitals. **Second the motion: Grossart. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

h) Case 1515 – Morin moved to issue a Notice of Proposed Action for: One violation of ORS 687.021(2)(a), advertising for massage without a license; OAR 334-010-0017(2), during lapsed status, no such person shall practice massage in the State of Oregon; OAR 334-040-0010(1), practicing massage or representing one's self as a massage therapist without a current active license issued by the Board; and OAR 334-040-0010(11), practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive; and one violation of OAR 334-010-0025(6), any person who holds a license as a massage therapist in this state may use the abbreviation LMT. No other person(s) may assume such title or such abbreviation or any other word[s], letters, signs or figures to indicate that the person using the title is a licensed massage therapist; and one violation of ORS 687.021(2)(b), use of "massage" in the business name, without a license; for a total civil penalty of \$2,500. **Second the motion: McMillin. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

i) Case 1516 – McMillin moved to defer this case to July and extend the Licensee the opportunity to appear before the Board at that time. **Second the motion: Rothenberger. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

j) Case 1523 – Calise moved to issue a letter of concern. **Second the motion: Grossart. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

k) Case 1529 – Morin moved to issue a Notice of Proposed Action for: five violations of ORS 687.021(2)(a), advertising for massage without a license; and two violations of OAR 334-040-0010(5), 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; for a total civil penalty of \$7,000. **Second the motion: Calise. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

l) Case 1549 – Calise moved to issue a Notice of Suspension pursuant to ORS 25.750 through 25.783. **Second the motion: Foster-Wexler. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

m) Case 1550 – Calise moved to issue a Notice of Suspension pursuant to ORS 25.750 through 25.783. **Second the motion: Foster-Wexler. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

n) Executive Session Closed Case Report – Rothenberger moved to accept the executive session closed case report as submitted in exhibits 1-4. **Second the motion: Calise. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

o) Practical Exam There was no action on this item.

Case No. 1407

Allegation: Unprofessional/dishonorable conduct

Closed: Unable to substantiate

Case No. 1470

Allegation: Unprofessional/dishonorable conduct

Closed: Unable to substantiate

Case No. 1484

Allegation: Professional misconduct

Closed: Letter of concern

Case No. 1497

Allegation: Injury

Closed: Unable to substantiate

Case No. 1506

Allegation: Other

Closed: License granted

Case No. 1510**Allegation:** Sexual impropriety**Closed:** Unable to substantiate**Case No. 1521****Allegation:** Failure to provide documents to Board**Closed:** Compliance met**Case No. 1524****Allegation:** Unprofessional/dishonorable conduct**Closed:** Compliance met

- 5) **Q & A with the Board** - (*An opportunity for the public to interact with and ask questions of the Board*) – In attendance at this time were Melody Morton-Gandy, Gail Karuna-Vetter, Charles Roe, Chris Wallace and Lynne Schwartz. There were no questions for the Board from the public at this time.
- 6) **Public Compliance Action**
 a) **Public Session Closed Case Report – Calise moved** to accept the public session closed case report as submitted in exhibits 1-3. **Second the motion: Morin. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

Case No. 1190**Allegation:** False representation to Board**Markel Town****Closed:** Surrendered**Case No. 1391****Allegation:** Unprofessional/dishonorable conduct**Abdi Sherif****Closed:** Stipulated agreement issued**Case No. 1441****Allegation:** Sexual violation**Christian Collins****Closed:** Stipulated agreement issued**Case No. 1442****Allegation:** Practicing while inactive**Kama Hedding****Closed:** Stipulated agreement issued**Case No. 1467****Allegation:** False representation to Board**Erin Giusto****Closed:** Stipulated agreement issued**Case No. 1472****Allegation:** Unlicensed practice of massage**Henry Queen Jr.****Closed:** Final default order**Case No. 1495****Allegation:** Sexual abuse of a client**James Escobar****Closed:** Surrendered

- 7) **Approve Minutes of March 11, 2013** (*The Board will review the minutes from the prior meeting for accuracy*) **Calise moved** to approve the minutes as presented. **Second the motion: Morin. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

8) **Directors Report**

a) **Finances** (*The Board will receive a report on status of the Board finances*) - **Coffey** reported on the status of the Board budget through April 2013. For the month of April, the Board received \$11,000 more revenue than was budgeted; the Board spent \$5,000 more than was budgeted- while under spending in the category of payroll, the Board overspent in the category of exam supplies with the purchase of a new camera system for the practical exam. This camera system has current technology which allows for one file that contains both audio and video, whereas the prior system saved the audio

and video files separately. To date for the 2011-2013 biennium, the Board has under-spent in expenses by \$129,000. The majority of this savings is in payroll expenses. While the Board has underspent in legal fees by \$20,000, there are currently six contested cases scheduled for hearing with the Office of Administrative Hearings.

b) Action Log (*The Board will receive a report on the progress of desired Board actions*) – **Coffey** updated the Board on action items. Draft copies of the peer supervision training were provided to the Board members. The proposed training was suggested to be open to any interested LMT and would provide six contact hours of continuing education for completion of the training. At the conclusion of the training, a peer supervisor application would be distributed to the attendees for those interested in becoming a peer supervisor and would be placed into a pool to be referenced when the Board had need of a Peer Supervisor. There was discussion on pre-screening, the selection process, and alternate training locations. **Coffey** will continue to work with Karen McNeese on the training.

c) Legislative Update (*The Board will receive an update from the 2013 Legislative Session*) **Coffey** updated the Board on SB387A (Facilities Licensing). This bill passed unanimously in the Senate and received a public hearing in the House Health Care Committee on May 1, 2013. SB111 (License Endorsements and Name Change) received a public hearing and did not pass from committee. The Board was unable to achieve consensus on a definition for bodywork.

d) Audit Updates – **Coffey** reported that the Secretary of State's office (SoS) is conducting an audit of Health Licensing Boards. The Board received one visit from a SoS auditor and multiple surveys from them inquiring of licensing and compliance practices. According to the SoS Office, when the audit objective is determined, the scope of the audit will be defined and the audit timeline will be developed. The cost for this audit will be covered through the State Assessment process and should not result in any additional costs to the Board. The Board office is undergoing an IT audit. The Board received the results of that audit in their addendum packet. The Semi Independent Boards and Commissions (SIBA) report prepared by the Legislative Fiscal Office (LFO) recommended that all SIBA's have an IT audit. The Department of Administrative Services (DAS) agreed to perform the audit at no charge. The overall audit review was positive, stating that in general, the OBMT's understanding of the data that they handle and their practices to protect it are extensive and sufficient. Although their technical assessment of OBMT's infrastructure identified a few vulnerabilities, they are for the most part low-risk and easy to fix. The OBMT appears to be in a good place as far as security is concerned. Recently, the Board office signed an \$8,000 contract for the biennial financial review. This scope of work was approved by the SoS office and meets the requirements of ORS 182.464, Financial Review by Secretary of State. The internal control testing will begin in June 2013.

e) Compliance (*The Board will receive a report on the progress of the Compliance department*) – **Nott** provided the Board with a Compliance Report from March 1, 2013 through April 30, 2013. The report includes information such as: complaints open at start date (43); active cases at start date (37), number of new complaints received (28); number of cases opened (16); number of complaints closed (4); number of cases closed (12); and number of cases closed with disciplinary action (6).

9) Board Business

a) Vote on Rules (*The Board will vote on the rules from the 05/16/2013 Rules Hearing*) **Calise moved** to accept the rules. **Second the motion: Morin. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.** The rules have been accepted and will become effective July 1, 2013.

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);
 - (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, an 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.

b) 1st Quarter Exam Statistics (*The Board will review statistical information for the Oregon Practical Examination*) – The Board reviewed the first quarter practical examination statistics for 2013.

At this time, **Calise moved** for the Board to take a brief recess and return for Strategic Planning at 1:30pm. **Second the motion: Morin. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

10) Strategic Planning

- a) *Introductions & overview of planning process* – The Board began their planning by reviewing prior work sessions and reviewing all that the Board has accomplished in that time.
- b) *Affirming our Mission, Vision and Values* – The Board reviewed the current Mission, Vision and Values statements.
- i. *Strengths & Weaknesses* – The Board considered their strengths and weaknesses. In this analysis, strengths are those attributes which enable an organization to accomplish their mission and weaknesses are those qualities which may prevent the organization from reaching their full potential. Both strengths and weaknesses are internal attributes and are within the control of the organization. **Strengths:** recognizing the role of the Board as a semi-independent regulatory agency; improved relationships with the Oregon legislature and individual legislators; having policies and procedures in place; having an engaged Board at full membership; providing balance between consideration and compliance; very good introspection; excellent executive staff; and improved communication with professional associations. **Weaknesses:** Inconsistency; reputation; slow pace of progress; sometimes out of touch with licensees; lack of institutional memory; gaps in Board appointees; and history of centralization of services.
- ii. *Understanding our internal landscape*
- c) *Opportunities & Threats Analysis* – The Board considered external factors, of which they may have little to no control or impact, which may be considered opportunities or threats (or challenges) to the organization. Opportunities are presented by the external environment within which the organization operates and threats (or challenges) arise when conditions jeopardize the organization's ability to perform their function or to perform to the best of their abilities. **Opportunities:** Defining scope of practice; changing landscape of healthcare; current legislation to study Oregon Boards and Commissions – possible Boards & Commissions consolidation; FSMTB data sharing & commonality of data; insurance coverage changes; greater awareness of acceptance of massage as a therapeutic practice; expressed need by licensees for identified modalities and specialties; massage therapy research findings; opportunity to distinguish between massage as a healthcare therapy and a spa treatment; changing acceptance of technology tools; scope of massage in the new Oregon Health Plan; Corporate Franchises – opportunity for greater accountability, relationships and support for regulation; and an increased need for massage therapy (lifestyle, technology impacts). **Threats (or challenges):** Overlapping scope of practice; Public attitude toward regulating massage therapy; economy; current legislation to study Oregon Boards and Commissions – possible Boards & Commissions consolidation; pressure of changing academic delivery; lack of continuity in regulation between states; insurance coverage changes; regulation seen as impairment to employment; pressure to have exams and materials in other languages and the expenses that accompany that desire; cuts in funding for research; changing business models from sole proprietorships to corporate franchises; and geographic location of constituents.
- i. *Understanding our external landscape*
- d) *Vision assignment*
- i. *Does our current vision help us go to where we want to go?*
- ii. *Is it future-focused, goal-oriented, relevant, challenging, inspiring, and measurable?*
- e) *Closing and adjournment*

Morin moved to adjourn for the day at 4:24 pm. Second the motion: Grossart. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

11) Adjourn for Day One 5:00 pm (Ending time may vary)

OBMT Board Meeting Agenda
May 17-18, 2013
Lane Community College
Downtown Center
101 W 10th Avenue
Eugene, Oregon 97401
(541) 463-6136

Attendance**Board Members:**

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

Staff:

Kate Coffey, Executive Director
 Diana Nott, Compliance Coordinator

Public: Chris Wallace

Tecie Astorga

Jeannette Jones

DAY TWO**Understanding our future – How do we get there?**

Fredrickson called the meeting to order at 9:09 am. Roll call was performed. **Calise, Grossart, Morin, Rothenberger, McMillin, Foster-Wexler** and **Fredrickson** were present, as well as Kate **Coffey**, Executive Director, Diana **Nott**, Board staff, Chris **Wallace**, facilitator and Tecie **Astorga**, Executive Project Assistant.

The only member of the public present at this time was Jeanette Jones.

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

13) Strategic Planning – notes provided by Tecie Astorga, edited by OBMT:

I. SWOT Analysis Findings

- a. Include “exam locations” to SWOT
 - i. Issue: Large geographical areas of Oregon, one location for exam
 - ii. Internal opportunity, external weakness
 1. External factor – geographically dispersed in Oregon
 2. Internal weakness – History of centralization of services
 - iii. Customer service issue
 - iv. Testing Center vs. Testing Site – Pearson VUE
 1. OBMT is unable to control Pearson VUE site locations
- b. Include threat to SWOT: Changing business model from sole proprietorship to corporate franchise
 - i. Example: Facility licensing
 - ii. Hold facilities owner accountable, not licensee

II. Critical Success Factors

- a. **Stay (continue) on course**
 - i. Staff input on what is practical from an infrastructure standpoint
- b. **High standards for licensure**
 - i. Task Force reviewing the practical exam, reporting back to board with any desired changes
 - ii. Task Force reviewing safe vs. good technique
 - iii. Current licensure standards are set and clear
 - iv. Question: Opportunity present for those who do not pass exam to be informed as to what they can do to qualify?
 1. All who take exam receive a detailed letter indicating what additional education needs to be done in order to qualify
 2. Applicants can call and ask for additional information
 3. Exam results will be provided except for specific information regarding the exam
- c. **Standards in line with other regulatory boards**
- d. **Pathway to licensure/renewal is reasonable, understood, efficient, affordable**
 - i. Consistent information in regards to licensing
 - ii. Oregon State Legislature can effect flow of licensing
 - iii. Ensure schools understand how processing works
 - iv. Asking applicants to be prepared
 - v. Strong relationship with schools
- e. **Schools turn out students prepared for licensure**
 - i. Course at school covering licensure process
 - ii. Model Curriculum
- f. **Clear definition of scope of practice**
 - i. Difficult to define
 - ii. Clear on conditions covered by Medicaid, where provider should send patients
 - iii. Example of Reflexology licensing opportunity
 1. Tiered licensing as a solution
- g. **Profession is esteemed through effective regulation**
 - i. Ethics training through CEUs
- h. **Massage is an accepted and credible healthcare therapy**
- i. **Strong relationship with executive branch and legislature**
- j. **Strong understanding/discipline of our role as a regulatory board**
 - i. Annual board training
 - ii. Structure of Government and how we fit in
 - iii. Working together with government entities and asking for assistance when needed
- k. **Strong relationships with massage trade organizations**
- l. **Established criteria and strategy for accepting CEUs and compliance procedure**
 - i. Ethics in continuing education
 - ii. Nothing mandated in regards to ethics in continuing education
 - iii. What is a legitimate ethics course?
 - iv. Creation of a CEU administrative ruling reference
 - v. Currently the board does not regulate CEU providers
 - vi. Inconsistency with CEU information given to licensees
 - vii. Follow up process from those who do not pass audit; compliance procedure
- m. **Effective and welcome communications strategy (social media, webpage)**
 - i. Social media
 - ii. Ensure webpage is setup for mobile phones and other devices
 - iii. Provides ability to know people prior to receiving application
- n. **Discussed: Reciprocity for out of state licensees**
 - i. We want to have strict standards and also be efficient

- ii. Break down between Oregon licensure vs. out of state licensees - who is that 1/3? Pull data (mostly bordering states)

III. Critical Success Factors Prioritization

| # of Votes | Critical Success Factors |
|------------|---|
| 9 | Effective and welcome communication strategy (social media, webpage) |
| 9 | Pathway to licensure/renewal is reasonable, understood, efficient, affordable |
| 6 | Established criteria and strategy for accepting CEUs and compliance procedure |
| 6 | Profession is esteemed through effective regulation; Massage is an accepted and credible healthcare therapy |
| 4 | Strong relationship with executive branch and legislature |
| 3 | Stay on course |
| 2 | Clear definition of scope of practice |
| 2 | Strong relationship with massage trade organizations |
| 0 | High standards for licensure |
| 0 | Schools turn out students prepared for licensure |
| 0 | Strong understanding/discipline of our role as regulatory board |
| 0 | Standards in line with other regulatory boards |

IV. Critical Success Factors Prioritization Post-Discussion

- a. Our actions affect the perception of LMTs to the community
- b. Stay (continue) on course correlates to:
 - i. Strong relationship with executive and legislature
 - ii. Strong relationship with massage trade organizations
 - iii. Strong understanding/discipline of our role as regulatory board
- c. We will be forced to define scope of practice as we maintain relationships with the legislature
- d. Invite government contacts to an OBMT meeting on an annual basis
- e. Someone on the board designated to work with the legislatures
- f. Adhere to values within our mission and vision statements
- g. Continually refer back to the strategic plan and make changes as needed
- h. Think about the chosen strategy and how it will be viewed overtime

V. Identifying Key Strategic Initiatives

- a. Communication Strategy
- b. Supporting high standards and effective pathway to licensure
- c. Well-defined renewal strategy (CEUs)
- d. Effective role and relationship with the State of Oregon
 - i. Top strategy – Defining scope of practice

VI. Strategic Initiative Framework

- a. *Initial work of populating strategic initiatives with high-level strategies and tactics*
 - 1) Support high standards and an efficient, reasonable, affordable, and understood pathway to licensure
 - 2) Develop an effective role and relationship with the State of Oregon
 - 3) Establish well-defined renewal and continuing education strategy
 - 4) Create an effective and welcome communications strategy for all constituents

- b. Tactics for (1) “Support high standards and an efficient, reasonable, affordable, and understood pathway to licensure”
- i. Clear and efficient sequence of steps
 - ii. Assess what can be simplified
 - iii. Board members go to schools and discuss the application process
 - iv. Instructors would like to be able to tell students which areas specifically they need to improve upon
 - v. Scoring formula for the practical exam is by statute confidential
 - vi. Specific missed exam questions cannot be shared
 - vii. Review candidate handbook to identify info that can be simplified or strengthened
 - viii. Open house and video for candidates and determine appropriate timing as recommendation to schools
 - ix. Ask schools for input on what they need, what are impediments → survey
 - x. Complaints from central Oregon applicants who have to come all the way to Salem to become licensed
 - xi. Evaluate and disseminate new online scheduling
 - xii. Survey initial licensees on process
 - xiii. Survey people who fail to get feedback
 - xiv. Current estimate \$2000 extra to administer exam in other location for one week (June, December)
 1. Return on Investment
 - a. Look at students served
 - b. A minimum standard to make it worthwhile
 - c. Review strategies to lower costs
 - xv. Strategy for meeting testing needs – a threshold
 - xvi. Investigate regional testing sites/or school testing
 - xvii. Explore implications of lowering cost of testing on budget
- c. Tactics for (2) “Develop an effective role and relationship with the State of Oregon”
- i. Defining the scope of practice
 1. People wanting to be exempt from licensure
 2. Who is going to get paid under Medicaid
 - ii. Educate board on executive structure and legislative process → annual training
 - iii. Invite government representatives to OBMT meetings
 - iv. Train board members on how to communicate with legislators
 1. Legislative council process
 2. Proactive through relationship building vs. reactive
 - v. Maintain strategy of making regular courtesy “calls” and being involved in district
 - vi. Utilize presence of the board in different areas of the state
 - vii. Identify LMT “ambassadors”
 1. Identify to formal committees – a pool of people as resources
 2. Discuss policies of facility regulation to facility owners from within our own community
 - viii. Strengthen ongoing relationship with trade associations in order to have effective voice with the state of Oregon
 1. Four (4) separate trade associations in Oregon
 - a. Associated Bodywork and Massage Professionals (ABMP)
 - b. American Massage Therapy Association (AMTA)
 - c. Oregon Massage Therapists Association (OMTA)
 - d. Hands-On Trade Association (HOTA)
 2. Encourage board members to have presence
 3. Approximately 2800 Oregon LMTs are part of ABMP
 - a. Insurance offered through ABMP
 4. Invite to OBMT meetings
 5. Building professional credibility in the eyes of the legislators

- d. Tactics for (3) “Establish well-defined renewal and continuing education strategy”
- i. Address need for ethics CEUs
 - ii. Determine hours
 - iii. Board approved courses
 - iv. Suggestion of online board ethics class
 - v. Establish criteria and acceptance strategy for CEUs
 - vi. Evaluate ratio of contact and non-contact hours required
 - vii. Compliance procedure when hours not met
 - viii. Clear expectations of office assistance in license renewal
 - ix. Assign items to the Education Committee
 - x. Clarify and simplify renewal late fee policy
- e. Tactics for (4) “Create an effective and welcome communications strategy for all constituents”
- i. Updated compliance information readily available – website, Facebook
 1. Provide some information on items that the board is working on
 - ii. First newsletter of the year has a full breakdown of statistics in regards to cases of disciplinary actions, etc.
 - iii. Snapshot for information and the way it is presented
 - iv. Executive summary of actions happened
 - v. Improve presentation of compliance info → trends
 - vi. Improve information sharing with licensees – what’s effective
 - vii. Identify and separate what is required and what is beneficial
 1. Meeting requirements for notification – bare minimum
 2. How would you prefer to be contacted? Survey Q
 - viii. Look at examples of other board communications “best practices”
 1. You can use that for multiple constituencies, not just licensees
 - ix. Identify ways to recognize/acknowledge licensees
 1. Issuing thank you cards to people who go out and do things above and beyond
 2. Include in newsletter format
 - x. Find ways to share personal stories
 - xi. Evaluate possible use of social media
 - xii. Written information for law enforcement and county officials/fairs
 1. For particular areas that we know have issues, for awareness
 2. Identify events/organizations that need communication on an annual basis
 3. Exempt for sports teams, don’t need a temporary license
 4. Future agenda item: the Board to discuss temporary licenses for festival work/visitor license
 - xiii. Develop effective strategy for all schools meeting
 1. Addressing compliance portion
 2. More participatory school presence
 3. More communications with schools – survey schools of what they would prefer (i.e. conference call)
 - xiv. Improve communication with schools
 - xv. Improvement in internal communication and clearer directives to committees
 1. Define liaison role
 2. Better understanding of assignment and role of committee (defined structure)
 3. Feedback loop
 4. Be responsive and supportive to committees
 5. Getting communication quicker to board members in-between meetings
 6. Specific deadlines
 - xvi. Creation of committee member handbook
 1. Understanding of commitment/role

VII. Action Plan Development

- f. Prioritize items will be provided in email

Fredrickson thanked Wallace and Astorga. He also thanked **Grossart** and **Foster-Wexler** for their participation during their first Board meeting. He was impressed with their immediate participation.

14) Calise moved to adjourn the meeting. Second the motion: Grossart. In favor: Calise, Grossart, Foster-Wexler, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries. The meeting adjourned at 3:28 pm.

DRAFT