



# Oregon

Kate Brown, Governor

## Board of Massage Therapists

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### OBMT Board Meeting Minutes May 20-21, 2016 *East West College of the Healing Art*

#### Attendance

##### Board Members:

David Fredrickson, LMT, Chair  
Jon Grossart, LMT, Vice Chair  
Carol Ann Kirby, Public Member  
Christa Rodriguez, LMT  
Kelley Rothenberger, LMT  
Steven Foster-Wexler, LAc, Public Health Member  
Meng Chen, Public Member

##### Staff:

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

##### Public:

Eric Coburn    Erica Baern    Brandon Saggio    Jim Deweese    Lisa Garofalo  
Autur Snegur    Mark Retzlaff    Natalie Denning    Laura Embleton

#### Call to order at 9:02am

**Fredrickson** called the meeting to order at 9:02 am. Roll call was performed. **Chen, Foster-Wexler, Kirby, Grossart, Rodriguez, Rothenberger** and **Fredrickson** were present, as well as **Coffey**, Executive Director, **Lindley**, AAG, **Ruark**, Compliance Manager and **Udosenata-Harruna**, Policy Analyst.

**Fredrickson** asked members of the public to introduce themselves. Public present at this time were: **Coburn, Baern, Saggio, Deweese, Garofalo, Snegur, Retzlaff, Denning** and **Embleton**.

- 1) **Rothenberger** moved to Approve the Agenda. Second the motion: **Grossart**. In favor: **Chen, Foster-Wexler, Fredrickson, Grossart, Kirby, Rodriguez** and **Rothenberger**. Opposed: None. Motion carries.
- 2) **Foster-wexler** moved to Approve the Minutes from March 14, 2016. Second the motion: **Rothenberger**. In favor: **Chen, Foster-Wexler, Fredrickson, Grossart, Kirby, Rodriguez** and **Rothenberger**. Opposed: None. Motion carries.

#### 3) Directors Report

**Finances – Coffey reported** on the status of the Board Budget. The board's actual revenue for the biennium to date is \$22k less than the revenue projection for the first ten months of the 2015-17 biennium. This is due primarily to the loss of the examination fee revenue. Most revenue categories are below budget with the exception of Initial license and Application fees. With the discontinuance of the practical exam the revenue will remain lower than was budgeted. The board underspent expenses by \$42k for the 2015-17 biennium. The majority of the under expenditure is in the Practical Exam

Expense categories. With the discontinuance of the practical exam expenses will remain under budget. The board over spent in the following categories: State Assessments – Secretary of State and DAS assessments were paid. Legal Fees – Several Contested Cases. Office Furniture - Office furniture was received and paid in the 2015-17 biennium. Investigation Expenses – Increase in compliance cases due to the complexity of the cases.

**Database Update:** The database conversion is progressing and the board staff is performing testing in the new database. The data has been downloaded from the current database and put into the eLITE database. The migration was fairly successful; however, there are some anomalies that are being fixed.

The current database contained imaged documents that needed to be moved to the new database. This was slightly more complicated; however, the files were loaded onto a portable drive to allow them to be loaded into the new database. Once the documents are indexed the staff will resume their testing of the new system.

**Compliance Update:** The compliance section received twenty (32) new complaints since the March 2016 Board Meeting and closed 27 cases.

There are two (2) contested cases that are pending at the Office of Administrative Hearings and one (1) contested case at the Court of Appeals. Since the March Board meeting one (1) contested case was settled prior to hearing.

The Board continues to work with the Oregon Department of Justice (DOJ) regarding obtaining an injunction against an unlicensed facility and practitioner.

**Staffing:** Coffey noted that interviews for the vacant Licensing Coordinator position have been held. The Board staff conducted the first round of interviews and the Board chair David Fredrickson came up early on 5/19/2016 and participated in second round interviews. A job offer will be made with a start date in mid-June.

#### 4) Board Business

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

- **Letter to the Board by Retzlaff** in regards to the Oregon pain management online module. **Mark Retzlaff** was present and addressed the board. **Retzlaff** stated that the Oregon pain management commission created a training for pain management classes and he would like the board to consider becoming a part of that group and should consider accepting Pain Management CEU's that are offered by the OCPM. He believes that knowledge in pain management would be a good skill for massage therapists.

Board directed the ED to share the information from the **Oregon pain management commission at the all schools meeting.**

- **Letter to the Board from Rouge Community College** regarding the credits and clock hour information posted on the board's website and it appears to be contrary to what the community college is use to working with.
- **Letter to the Board from Rouge Community College** regarding criminal history, if the board can be more specific about what types of criminal histories that would allow a person to receive a license or not receive a license.
- **Letter to the Board from Oregon School of Massage** comments regarding the model curriculum.
- **Letter to the Board from Sanderlin** requesting that the board send information to her regarding LMTs contact

information for those who have been practicing for over 20 years. She would like to contact them to get some information on how the massage profession has progressed in the last 20 years.

**Coffey** noted that she would need permission from the board to share this information with Sanderlin.

**The board** discussed the inquiry and directed the ED to invite Sanderlin to submit a public records request and to invite Sanderlin to write an article that will be featured in the BOARDerline.

**Topical Use Policy – Lindley** updated the board on the draft topical use policy that has been approved by the general counsel. Protective glove requirement was added to section 2 of the policy.

The board discussed the draft policy and the different protective barriers that are necessary to ensure that massage therapists are not experiencing transdermal absorption of the cannabinoid product. The board concluded that language needs to be added that states a barrier that protect against transdermal absorption.

**Grossart moved** to accept the topical use policy as amended. Second the motion: **Rothenberger. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**

#### **Election of Board Chair and Vice Chair:**

**Rothenberger made a motion** to nominate **David Fredrickson** to continue his current role as **chair**: Second the motion: **Foster-Wexler. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries. David Fredrickson is elected as Board Chair**

**Rothenberger made a motion** to nominate **Jon Grossart** to continue his role as **vice chair**: Second the motion: **Foster-Wesler. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries. Jon Grossart is elected as Board Vice-Chair**

**Insurance Rules – Foster-Wexler** updated the board on the proposed insurance billing rules. He noted that before there can be a policy or a guideline, there has to be a rule. The proposal is to add sub section 23 to 334-040-0010 under discipline to read, "Misrepresentation or fraud in any aspect of the profession including but not limited to charging for unnecessary services, charging for services not provided, failing to provide services that have been paid in full or failure to abide by Oregon insurance billing laws and rules". The other two recommendation made by the task force where, 1) requiring all LMTs to have liability insurance, and 2) a rule on fee splitting. The first of these was struck down at previous board meeting.

**Lindley noted** that the language proposed in subsection 23 is very broad and fee splitting can be inserted in that section.

The board discussed the insurance task recommendation and the board directed the AAG to add language for fee splitting and present the insurance and fee splitting rules at the July Board meeting.

**Coffey** added that it is important for the board to understand that there are several LMTs that work at a chiropractor's offices and fee splitting is part of their contractual agreement.

#### **Rules Hearing update:**

**Coffey noted** that there were no public member present at the Rules Hearing on May 18, 2016 to provide testimony nor were there any comments received by the board. The rules modify language for the following: Fees: Increase inactive renewal fees from \$50 to \$75. Licensure: Clarify requirements for lapsed and inactive license renewal. Criminal background

check, fitness determinations: Clarify verbiage to align with the requirements of ORS181.516 for electronic fingerprint capture:

## 5. Approve Rules:

The Board discussed and approved the proposed rules:

**Foster-Wexler moved to accept the rules. Second the motion: Chen. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**

### Oregon Board of Massage Therapists OAR 334 Effective July 1, 2016

#### 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 **electronic fingerprints** for a criminal background check.
- (3) All applications for licensure must be accompanied by proof of current certification in cardiopulmonary resuscitation (CPR).
- (4) 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) 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) 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) 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) 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 **as required in OAR 334-010-0050(1)(b)**; and
  - (e) Any additional documentation required by the Board.

- (9) 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) Licenses issued by the Board must not be transferable.
- (11) 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) 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 the license was inactive. **Of the 25 hours, at least 15 must be contact hours of continuing education training or Board approved activities. At least 4 contact hours must be in Professional Ethics, Boundaries and/or Communication. The remaining 10 of 25 hours may be contact or noncontact hours.**
    - (D) **Verification of 50 hours of continuing education for the reactivation of inactive license more than 1 biennium must be submitted to the Board. Of the 50 hours, at least 30 must be contact hours of continuing education training or Board approved activities. At least 8 contact hours must be in Professional Ethics, Boundaries and/or Communication. The remaining 20 of 50 hours may be contact or noncontact hours; and**
    - (E) Completed **electronic fingerprints** for criminal background check.

Stat. Auth.: ORS 687.121 & 687.051

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0006; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 2-2006(Temp), f. & cert. ef. 2-16-06 thru 8-7-06; Administrative correction 8-22-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

### **334-010-0017**

#### **Lapsed License**

- (1) The massage therapist license is considered lapsed if an individual fails to complete the renewal process prior to the expiration of license.
- (2) During the lapsed status, no such person shall practice massage in the State of Oregon.
- (3) An applicant whose license is lapsed may return to active status by including the following with the completed application.
  - (a) Payment of the current fee for activation of the license;
  - (b) Payment of the licensing fee applicable for the period of the lapsed license;
  - (c) Late fee payment;
  - (d) Proof of 25 hours of continuing education for each biennium the license was lapsed and for the current licensing period;
  - (e) Verification of 4 contact hours in Ethics.
  - (f) Proof of current certification in cardiopulmonary resuscitation (CPR);
  - (g) A statement indicating whether the applicant has engaged in the practice of massage and bodywork in another jurisdiction during the period of lapsed status; and
  - (h) Applicants must submit a completed electronic fingerprint for criminal background check.
- (4) **An applicant whose license is lapsed for 12 months or less may renew as an inactive status.**
- (5) **An applicant whose license is lapsed for greater than 12 months must renew as an active status.**
- (6) All information required for restoring a lapsed license **to an active status** must be received within 3 years of the date of lapsing **along with the requirements listed in OAR 334-010-0017(3)(a-h)**. Thereafter, one must apply as a new applicant.
- (7) Continuing Education is not required if this is your first subsequent renewal after receipt of your initial license.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

### 334-010-0018

#### **Criminal Background Checks, Fitness Determinations**

- (1) The Board requires a criminal background check of all applicants for a massage therapist license to determine the professional fitness of an applicant. These must be provided on prescribed forms provided by the Board. Fingerprints **shall** be obtained at a **fingerprinting site approved by** the Board. The Board must submit fingerprints to the Oregon Department of State Police for checks against state law enforcement data systems and national data sources. Any electronic fingerprint records must subsequently be destroyed by the Oregon Department of State Police.
  - (a) The Board requires a completed **electronic fingerprint** of all applicants for an initial license; licensees applying to reinstate a lapsed license or licensees applying to reactivate an inactive license; and licensees under investigation to determine the professional fitness of an applicant or licensee.
- (2) These rules are to be applied when evaluating the criminal background of all licensees and applicants for a massage therapist license and conducting professional fitness determinations based upon such history. The fact that the applicant has cleared the criminal background check does not guarantee the granting of a license.
- (3) The Board may require fingerprints of any Oregon licensed massage therapist who is the subject of a complaint or investigation for the purpose of requesting a state or nationwide criminal background check.
- (4) All criminal background checks must include, but not be limited to, all available state law enforcement data systems and national data sources, unless obtaining one or the other is an acceptable alternative.
- (5) Additional information required. In order to conduct the Oregon and National Criminal Background Check and professional fitness determination, the Board may require additional information from the licensee/applicant as necessary, including but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.
- (6) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175(1).
- (7) The Board must determine whether an individual is professionally fit to be granted a license. If an individual is determined to be unfit, then the individual may not be granted a license. The Board may make professional fitness determinations conditional upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure. Except as otherwise provided in section (1), in making the professional fitness determination the Board must consider:
  - (a) Criminal background check;
  - (b) The nature of the crime;
  - (c) The facts that support the conviction or pending indictment or that indicates the making of any false statement;
  - (d) The relevancy, if any, of the crime or the false statement to the specific requirements of applicant's or licensee's present or proposed license, services, employment, position, or permit;
  - (e) Any refusal to submit or consent to a criminal background check including, but not limited to, fingerprint identification;
  - (f) Any other pertinent information requested or obtained as a part of an investigation;
  - (g) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, or permit. Intervening circumstances include but are not limited to:
    - (A) The passage of time since the commission of the crime;
    - (B) The age of the subject individual at the time of the crime;
    - (C) The likelihood of a repetition of offenses or of the commission of another crime;
    - (D) The subsequent commission of another relevant crime;
    - (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
    - (F) A recommendation of an employer.
- (8) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests, court records, Department of Motor Vehicle

records, or other information that may be indicative of a person's inability to perform as a licensee with care and safety to the public.

- (9) If an applicant or licensee is determined not to be professionally fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413-470. Challenges to the accuracy of completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.
- (a) If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board must conduct a new criminal background check upon submission of a new request.
- (10) If the applicant discontinues the application process or fails to cooperate with the criminal background check process, the application is considered incomplete.

Stat. Auth.: ORS 687, 676

Stats. Implemented: ORS 181, 183, 687.041, 687.051, 687.081, 670.280

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

### 334-010-0033

#### Fees

- (1) The fees are:
- (a) \$100 for initial license;
  - (b) \$50 for initial license under 12 months;
  - (c) \$155 per biennial renewal for active license;
  - (d) ~~\$50~~ \$75 per biennial renewal for inactive license;
  - (e) \$25 per week, up to a maximum of \$100, for any late renewal;
  - (f) \$100 for application processing;
  - (g) \$150 for each practical examination;
  - (h) \$100 for mailing list;
  - (i) \$10 for license reprint;
  - (j) \$10 for license verification;
  - (k) \$250 Credentialing Review;
  - (l) Current Oregon State Police Criminal Background Check Fee;
  - (m) \$50 initial facility permit;
  - (n) \$250 facility permit transfer;
  - (o) \$10 facility permit reprint and
  - (p) other administrative fees as allowed by law.
- (2) Application and licensure fees are not refundable

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1989(Temp), f. & cert. ef. 7-27-89; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 4-2004, f. 10-22-04, cert. ef. 1-1-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11; BMT 1-2011, f. & cert. ef. 4-21-11; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

**6. BOARDerline Topics – Fall Edition**

1. 2016 Rules Update
2. Topical Policy
3. Facility Update
4. Linda Sanderlin to write an article for the BOARDerline
5. Database update
6. Introduce the new staff member
7. Brief article from the chair and vice chair
8. Kelley Rothenberger (thank you for your service article)

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

Public present:

**Coburn, Baern, Saggio, Dewese, Garofalo, Snegur, Retzlaff, Denning and Embleton.**

**Coburn presented letters to the board pertaining to his application for massage license.**

**Garofalo** informed the board that she is unable to attend tomorrow session when the board is scheduled to discuss the model curriculum. If there is any question in the matter, she is present to answer them today. **Garofalo** noted that she also has two other points to add, one is, for the BOARDerline for fall, the board should consider adding information for the model curriculum. And secondly, **Garofalo** noted that she has one point of clarification however, she thinks that she knows the answer to the question already. She has a teacher who teaches Ethics and Communication classes. Does the teacher have to go and take a 4 hour Ethics class to meet the 4 hours Ethics contact hour requirement?

Coffey informed Garofalo that she is correct. Per OAR, the 4 hours of Ethics must be contact hours and teaching is considered noncontact.

**Snegur** inquired on the status of his license.

The board informed him that his case will be discussed in the executive section. The compliance manager will inform him of the board decision once a decision has been made.

**Kirby moved** to take a short break; Second the motion: **Rothenberger**. In favor: **Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger**. Opposed: **None**. Motion carries.

**The board took a short brake at 9:57am.**

**Public present:** None Present

**Fredrickson called** the Board into Executive Session at 10:39 am.

**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.

**8. Executive Session****a. Compliance (192.660(2)(k))****9. Discuss AG Advice on Olympic Trials**

The Board returned to Public Session at 2:52pm.

**10. Action on Executive Session Items****Compliance Cases**

- i. **Case 1858 – Foster-Wexler moved** to accept the Stipulated Agreement and Final Order negotiated by the Board Staff. **Second the motion: Grossart. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries**
- ii. **Case 1898 – Grossart moved** to issue a notice of proposed action for. One violation of ORS 687.021(1)(c) advertising massage without a license and one violation of ORS 687.021 (1)(a) Practicing Massage without a license for a total civil penalty of \$2,000. **Second the motion: Kirby. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- iii. **Case 1897 – Grossart moved** to close case no violation found. **Second the motion: Chen. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- iv. **Case 1905 – Kirby moved** Issue the license with no stipulations. **Second the motion: Grossart. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- v. **Case 1900 – Foster-Wexler moved** to issue a Notice of Proposed Action for: One violation of ORS 687.021 (1)(a) Engaging in the practice of massage without a license and One violation of ORS 687.021 (1)(c) Advertising massage without a license for a total civil penalty of \$2,000. **Second the motion: Rothenberger. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- vi. **Case 1896 – Foster-Wexler moved** to close case, no violation found. **Second the motion: Kirby. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- vii. **Case 1842 – Rothenberger moved** to accept the Stipulated Agreement and Final Order negotiated by Board staff. **Second the motion: Grossart. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- viii. **Case 1892 – Grossart 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)(c) Advertising massage without a license for a total civil penalty of \$2000. **Second the motion: Foster-Wexler. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- ix. **Case 1895 – Rothenberger moved** to issue a letter of concern regarding repeat pattern of concern. **Second the motion: Rodriguez. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- x. **Case 1801 – Grossart moved** to accept the Stipulated Agreement and Final Order negotiated by Board Staff and issue license (renewal) **Second the motion: Foster-Wexler. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xi. **Case 1890 – Foster-Wexler moved** to accept the Interim Consent Order signed by Licensee. **Second the motion: Grossart. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xii. **Case 1840 – Foster-Wexler moved** to accept the Interim Consent Order signed by Licensee. **Second the motion: Grossart. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xiii. **Case 1907 – Foster-Wexler moved** to accept the Voluntary Surrender of Licensure signed by Licensee. **Second the motion: Grossart. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger.**

**Opposed: None. Motion carries.**

- xiv. **Case 1838 – Chen moved to accept the Ruling on Motion for Summary Determination and Final Order from the Office of Administrative Hearings. Second the motion: Kirby. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xv. **Case 1889 – Grossart moved to issue a Notice of Proposed Action (Suspension) pursuant to ORS 25.750 through 25.783. Second the motion: Chen. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xvi. **Case 1999 – Grossart moved to issue a Notice of Proposed Action (Suspension) pursuant to ORS 25.750 through 25.783. Second the motion: Chen. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xvii. **Case 1910 – Kirby moved to issue a Notice of Proposed Action (civil Penalties) for One violation of ORS 687.021 (1)(b) Operating a Massage Facility without a Facility without a Facility Permit, and; One violation of OAR 334-040-0010 (12) for assisting, employing, or permitting unlicensed person to practice massage for a total civil penalty of \$2000 . Second the motion: Rodriguez. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xviii. **Case 1911 – Foster-Wexler moved to issue the license with no stipulations. Second the motion: Grossart. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xix. **Case 1912 – Rothenberger moved to issue the license with no stipulations. Second the motion: Rodriguez. In favor: Chen, Foster-Wexler, Grossart, Rodriguez and Rothenberger. Opposed: Kirby and Fredrickson. Motion carries.**
- xx. **Case 1913 – Chen moved to issue the license with no stipulations. Second the motion: Rothenberger. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xxi. **Case 1914 – Rothenberger moved to issue the license with no stipulations. Second the motion: Rodriguez. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xxii. **Case 1893 – Foster-Wexler moved to Issue a Notice of Proposed Action for: One violation of ORS 687.081 (1)(b), has made a false statement to the Board and has violated a rule of the Board by violation of OAR 334-040-0012 (2) Knowingly or recklessly making any false statement to the Board for a total civil penalty of \$1,000 . Second the motion: Rodriguez. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xxiii. **Case 1886 – Foster-Wexler moved to Issue a Notice of Proposed Action for: One violation of ORS 687.081 (1)(a)(b) has made a false statement to the Board and has violated a rule of the Board by violation of OAR 334-040-0012 (2) Knowingly or recklessly making any false statement to the Board for a total civil penalty of \$1,000. Second the motion: Rodriguez. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xxiv. **Case 1915 – Rothenberger moved to Issue a notice of Proposed Action for: One violation of ORS 687.081 (1)(a) has violated a rule of the Board by violation of OAR 334-040-0010 (12) assisting, employing or permitting an unlicensed person to practice massage for a total civil penalty of \$1,000. Second the motion: Grossart. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xxv. **Case 1916 – Kirby 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 for a total civil penalty of \$2000 and refer for injunctive relief. Second the motion: Rothenberger. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xxvi. **Case 1917 – Meng moved to Issue a Notice of Proposed Action (Suspension) for One violation of ORS 687.081(1)(a) has violated a rule of the Board by violation of OAR 334-040-0010 (19) (a) 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. Second the motion: Foster-Wexler. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**

- xxvii. Case 1906 – Grossart moved** to issue a Notice of Proposed Action (Civil Penalties) for One violation of ORS 687.021 (1)(b), Operating a Massage Facility without a Facility Permit, and; One violation of OAR 334-040-0010 (12) for assisting, employing, or permitting unlicensed person to practice massage for a total civil penalty of \$2000. **Second the motion: Kirby. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xxviii. Case 1811 – Foster-Wexler moved** to accept the Voluntary Surrender of Licensure signed by licensee. **Second the motion: Grossart. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xxix. Case 1870 – Grossart moved** to accept the Stipulated Agreement and Final Order negotiated by Board Staff. **Second the motion: Rothenberger. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xxx. Case 1918 – Kirby moved** to issue the license with stipulations; contingency case closed pending completion of probation in October 2016. **Second the motion: In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**

### **Supplemental Packet**

- xxxi. Case 1919 – Rothenberger moved** to issue a Notice of Proposed Action (Suspension) for: One violation for 687.081 (1) (a) has violated a rule of the Board by violation of OAR 334-040-0010 (19)(a) 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. **Second the motion: Kirby. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xxxii. Case 1920 – Chen moved** to issue the license with stipulations to comply with criminal probation. Report to the any arrest record including any violation of probation and continue drug and alcohol treatment. **Second the motion: Kirby. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xxxiii. Case 1877 – Rothenberger moved** to issue a Notice of Proposed Action for: One violation of ORS 687.081(1)(a)(b), has made a false statement to the Board and has violated a rule of the Board and has violated a rule of the Board by violation of OAR 334-040-0010 (2) knowingly or recklessly making any false statement to the Board for a total civil penalty of \$1000. **Second the motion: Rodriguez. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**
- xxxiv. Executive Session Closed Case Report– Grossart moved** to accept the executive session closed case dated May 21, 2016 containing cases as submitted in Exhibit 1. **Second the motion: Chen. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

#### **Case No. 1685**

**Allegation:** Conviction of a Crime Unlicensed Practice

**Closed:** Final Default Order

#### **Case No. 1705**

**Allegation:** Sexual Abuse of a client/unprofessional/dishonorable conduct **Closed:** Revoked

#### **Case No. 1726**

**Allegation:** Abuse of Alcohol/Drugs/Conviction of a Crime

**Closed:** Stipulated Agreement

#### **Case No. 1714**

**Allegation:** Conviction of a Crime failure to disclose information on app

**Closed:** Civil Penalty Assessed

#### **Case No. 1694**

**Allegation:** Unlicensed Practice

**Closed:** Civil Penalty Assessed

**Case No. 1724****Allegation:** Unlicensed Practice**Closed:** Civil Penalty Assessed**Case No. 1730****Allegation:** Noncompliance with an existing Board Order**Closed:** Civil Penalty Assessed and Paid**Case No. 1713****Allegation:** Unlicensed Practice/ Failure to Obtain a Facility Permit**Closed:** Civil Penalty Assessed and Paid**Case No. 1758****Allegation:** Failure to obtain a Facility Permit Unlicensed Practice**Closed:** Civil Penalty Assessed and Paid**11. Public Compliance Action**

- a) **Public Session Closed Case Report – Grossart** moved to accept the executive session closed case dated May 21, 2016 submitted in Exhibit 2 consisting of 4 pages. **Second the motion: Chen. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

**Case No. 1765****Allegation:** CE Audit Failure/Failure to provide documents to Board**Closed:** Compliance Met**Case No. 1740****Allegation:** Unlicensed Practice/Advertising**Closed:** Respondent Unreachable**Case No. 1718****Allegation:** Sanitation**Closed:** Letter of Concern**Case No. 1748****Allegation:** Abuse of Alcohol/Drugs Conviction of a Crime**Closed:** Duplicate Case**The Board returned to public session at 3:15pm**

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

**12. Announcements**

Lite breakfast will be provided at 8:30 am on 5.21.2016

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

The meeting was adjourned at 3:30 pm.

**OBMT Board Meeting Minutes  
May 21, 2016**

Call to order @ 9:10am

**Public:**

**Michael Leard, Pingxiu Leard (Lisa), Eva Johnson (interpreter), Steven yang, Tara Vesel, Rosaline Hui, Laura Ebleton (ABMP), Pattie Lo and Erica Baern**

**Fredrickson** called the meeting to order at 9:01 am. Roll call was performed. **Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez** and **Rothenberger** were present, as well as **Coffey**, Executive Director, **Ruark**, Compliance Manager and **Udosenata-Harruna**, Policy Analyst.

**Grossart** moved to approve the agenda. **Second the motion: Rothenberger**. In favor: **Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rothenberger** and **Rodriguez**. Opposed: **None**. **Motion carries**.

**Fredrickson** asked members of the public to introduce themselves. Public present at this time were: **Leard, Leard, Johnson (interpreter), Yang, Vesel, Hui, Ebleton, Lo and Baern**

**Planning Session****Asian Pacific Islander/Unlicensed Practice:**

**Fredrickson** noted that the board commissioned a study that was done by Portland State University and was finalized in April 2015. The reason for the study was due to the recognition by the board that in the Portland area the Asian Pacific Island community members made up an unusual high number of compliance cases. The board is concerned about the potential impediments that exist towards licensure. Many of the compliance issues involved unlicensed practices and as the licensing board governing massage therapy in the state, the board became concerned about impediments to licensure. The study was released in April 2015 and it is available on the board website. The conclusion of the study outlined the primary barrier as understanding the laws and rules in the state of Oregon for massage therapy and the requirement for licensure. The board would like to get the word out to communities and find ways to remove the barriers so that people will understand what is governing their license and how to become licensed.

**Chen** expressed that in regards to the API community, some of the issues that the board is seeing other than the influx of cases that the board receives are, people utilizing the word reflexology to practice massage. In general, many of the Chinese foot reflexology facilities are found to be offering full body massage. The Board's compliance manager has been communicating with business owners about not doing the full body massage. Due to the language barrier, either they do not understand what is going on or they see it as a cost of business to get penalized and they continue to do the same thing over and over again. The other issue that the board sees is that business owners are hiring a lot of unlicensed massage therapist. Even though they may have some background in massage, they are not formally trained and since they are not able to communicate with the client on the chair or table, they sometimes cause injury and that is when the case is usually reported to the board. When the word massage is used in any advertisement, including business cards, flyers or at the store; when one uses the word massage, a massage therapist license number should be on the advertisement or the board will fine up to \$1000 per violation. Nonetheless, the fine for improper advertisement is also seen as the cost of doing business. Another issue had to do with the education requirement. Many people will go through the process of completing the education requirement and most of the people never got a license due to the practical exam requirement. As of January 1, 2016 the practical was abolished. Now, the board is faced with another issue. People submitting forged transcripts to the board. They are submitting information to meet the requirement for licensure but it is not legitimate information. A small amount of people are ruining the reputation of the general Chinese community. **Chen** expressed that the board would like to

know some of the suggestion or recommendations from the API community. **Chen** noted that some of the recommendations from the PSU study were to have a tiered license which will allow for different sets of requirements for different levels of licensure. Secondly, educate the general public on reflexology.

**Ying** inquired if the Board is doing anything to have the exam in multiple languages and regularly change the exam the same way that Oregon Liquor Control Commission operates its exams.

**Rothenberger** noted that the national written exam is a dynamic test that adjusts based on a person's answer to the first question and it is her understanding that the test is only translated into Spanish.

**Fredrickson** noted that the board has no authority over the national written exam and therefore cannot do anything to change the format of the exam. Nonetheless, the board can provide feedback to the Federation of State Massage Boards.

**L. Leard** noted that in California, people are selling answers to the exam for \$500. **L. Leard** noted that people without ID are practicing massage in Oregon and it is difficult to catch them because they are not using their real names nor do they stay in one location for very long. Even though the board licensed the facilities, the unlicensed practitioners move around regularly to avoid being caught. They will work in one location today and move to a different location the next day. She hopes that the board does not in the future allow reciprocity as this will open a door to a manner of forgery, illegal activities and misconduct under the pretense of massage. **L. Leard** noted that many people in California would pay \$3000 if not more to have someone take the exam for them. Once they are licensed, they wait for states to change their rules and in this case the Oregon practical exam being abolished to apply for licensure. The practical exam served as a deterrent for people transferring their license to Oregon that was obtained illegally, with the practical gone, more people will move to Oregon to practice. It is embarrassing to the career of all massage therapists as this is a field that is highly beneficial to people as an alternative health care.

**Rothenberger** noted that the board is trying to understand how to make changes that will benefit everyone in the massage industry. The board's intention is not to go after everyone with invaluable skills in the industry with a citation but to make it possible for everyone who wants to practice massage to do it legally and follow the rules.

**Grossart** noted that the reason that the facility license was implemented was for the board to have the authority to go into the facilities and issue citations to business owners who violate the Laws and/or Rules.

**M. Leard** noted that another issue is that people make so much money working illegally that the fine that the board issues is simply a slap on the wrist and carries no real weight. He urged the board to increase the fine.

**Fredrickson** noted that the board is interested in addressing the reporter in the room who is present today to get information into the communities so that people who are interested in becoming licensed can understand how to do that and convey that information to other people. The board has limited reach and limited access. We are a regulatory board and the board responds to complaints and the board's goal is public health and safety. There is an issue that involves human trafficking. Where people who are in the country illegally and have no control of their labor and are forced into prostitution under the disguises of massage and are moved from state to state. This is a major concern for all regulatory board across the United States.

**Ebleton** noted that with regards to human trafficking, **Colorado** passed a bill and the intent of the bill was to get at those promoting human trafficking. When it was first implemented, legitimate massage therapists were caught up in the crossfire so the bill had to be amended and essentially what came out of this bill was HB13 that added language for people who were promoting human trafficking. Now, business owners who are bringing in the trafficking are now liable of criminal offenses. The state was having issues around the state were people will be doing illegal activities under the name of

massage therapy or reflexology. **Colorado** is trying to bring in the bad actors that are not “massage therapist” such as the business owners that are promoting human trafficking.

**Fredrickson** noted that the board was fortunate to have the facility permit law in place a couple of years ago. Now, a person that hires a massage therapist or bodyworker, provided that they are not a licensed healthcare professional, must have a facility permit. The board now has access to their facilities and potential fines if they do not have a facility permit. The board can do a search in the database to see if they are licensed or if they have a facility permit. This is the board's effort at an attempt to address the human trafficking issue. The only way that these issues can be addressed is by getting the communities to report to the board giving the board an opportunity to investigate.

**Lo** inquired if the board provided rewards to people who reported illegal activities to the board? She noted that this would be encouraging for people to turn in people who are practicing without a license and those facilities carrying out illegal activities.

**M. Learn** expressed that the only issue is that the board waits for a complaint and he knows that fly dragon is nothing more than a brothel.

**Ruark** addressed the issue of unlicensed facilities. First of all, most people do not know that every one of the violations in the board's statutes are class A misdemeanor crimes and they can be enforced by the police. It is a tool for the police and generally the police officers do not enforce because they are busy with other things that might be a little bit more important and the board does not have the authority to enforce the criminal side so the board enforces it as civil issues. For the board to shut down a facility that is practicing prostitution there is a process that must be followed. The board has to go into the facility, gather evidence by posing as a customer multiple times in some cases and the board has to use the facility permit as a violation because that particular law allows the board to have authority to do some enforcements. Once the board cites them for operating a massage facility without a facility permit, if they do not shut down, get a facility permit or fix what they are doing, then the board has to go through the court system and file a civil injunction. At this point, they have a right to a hearing. Once the injunction has been issued and they continue to practice or operate without a permit then the board goes back to the Judge and asks for a contempt of court and the respondent has the right to a hearing and both sides testify and the board can get another civil penalty against them but eventually, the board can get enough civil penalties to potentially shut the facility down but it is a lengthy process. It takes months and it could take years because the board is not a law enforcer. The police can go into a business with a warrant and shut everything down and the board does not have the ability to do so. It may look like there are all of these facilities out there that no one is doing something about, the board is attacking it one at a time and the board does what it can to shut them down and when that facility gets shut down, sometimes they move somewhere else under a different name or ownership. Sometimes, the police come in and they attack the prostitution side of it and make an arrest as they have little more teeth than the board. However, when they get out of jail, they move to a different facility or they move out of state and the cycle begins again. It is something that the board is attacking and it can be frustrating for people that call up and complain. It may not look like much is being done at the moment and it can be frustrating, but the board is working on it. The board authority is limited and the most that the board can do to a person is revoke their license.

**Ying** noted that HB3623 passed for human trafficking hotline and inquired if the board has a hotline for people to call in regards to human trafficking and other violations. **Ying** further recommended that the board should consider sending Chinese speakers to inform the community on the legal ways to practice massage and do this without fine at the first visit and inform them that the next time there will be fined if they do not have a license.

**Hui** noted that they do a lot of news printing. They inform their customers on the legal ways of advertising amongst other things. They need to have someone educate them because they cannot get information from the board or know where to get information and in most cases, they are simply not aware that they have to have a license to practice massage so they

end up copying the business next door which as a result leads to unlicensed practice. **Hui** noted that the Portland Chinese Times is a free publication and she is willing to translate the publication into Chinese to aid the board in its efforts to disseminate the information into the community. **Hui** suggested that the board could also consider holding a community forum where facility owners, licensees and the public would come to get educated on the laws and rules of the board that governs massage practice in Oregon. **Hui** further recommended that the board have some form of training that would serve as an outreach to the community to help the people understand the process of obtaining a license. A lot of people would like to practice massage legally, they simply do not know how to go about it and she will aid the board to organize this training. **Hui** continued to express that if the emphasis is on how the board can assist them in obtaining a license, a lot of people would attend the training because they would like to practice massage legally.

**Ying** added that if the board does not require them to come with a license that they will attend the informational and training organized by the board. If the board requires them to come with a license, they will not come for fear of being penalized.

**Fredrickson** expressed that it is not typical of a regulatory agency to facilitate outreach and education as the board is currently doing. Typically, that is the role of the trade association to do the advocacy for the massage therapists. However, this is a special situation and it requires the board seeking the help of the community leaders in getting the information across. The goal of the board is the protection of the public. Illegal practice sometimes put the public at risk and sometimes people are forced into labor situation that they do not want to be in. this is a new territory for the board and the board truly appreciate the members of the API community being present at the board meeting and providing expertise, feedback and willingness to speak and offer help on the issues and encouraging collaboration. Rather than a penalty policy, the board would prefer not to have to penalize people. It is important that the board gets information out to the community with the belief that people would like to comply with the laws

**Ying** thanked the board for having Chen on the board as a representative and noted that this improves the cultural relationship between the API community and the Board.

**Unlicensed Facilities: Ruark** Updated the Board on the unlicensed facilities. Ruark gave a brief history with regards to unlicensed massage facility law, what the board has done to address the issue thus far and where the board is heading with the enforcement of the massage facility permit requirements. Ruark noted that the board is not only complaint driven but do take proactive action and enforcement. If there is a complaint, the board is mandated by law to investigate. The board takes proactive action to investigate the complaint without entrapping the practitioner. Since the implementation of the facility permit law, the board has been able to shut down 5 facilities which is a success especially with the limited power that the board has. Ruark recommended that the board needs to proactively pursue facilities that have not obtained the facility permit. Currently there are 157 facilities that have obtained a facility permit and this is a very small percent of the total facilities that need a facility permit. Facilities have been given ample amount of time to know what the laws are and the facilities needs start complying.

**Coffey** expressed that the first step would be having the information translated into multiple languages. The issue is not just an Asian Pacific Island community issue or a Portland issue even though most of the cases are predominately in the Portland area, but a statewide issue.

**Kirby** moved to take a short break; Second the motion: **Rothenberger**. In favor: **Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez** and **Rothenberger**. Opposed: **None**. Motion carries.

The Board returned to Public Session at 11:45 AM

**Foster- Wexler** would like a similar flyer translating definition of reflexology and how to get licensed in other languages should be made for facility permit as well.

**Exemptions: Rothenberger** noted that the exemption came about long before she was on the board. She firmly believes that the board should no longer look at exemption requests. The idea that any modality can ask for exemption is very absurd. People need to be a part of the practice as a whole and not exempt.

**Coffey** summarized the white paper that was presented to the board on exemptions noting that SB 454 that was sponsored by Senator Johnson exempted polarity, Feldenkrais and Bowen. At the very begin, structural integration was also included but they choose to remain licensed by the board. People seeking exemption originally wanted to have the modality listed by name in statute but Legislative Counsel rejected that concept and proposed that instead of listing them by name they will describe them instead. The board agreed to list them by name in rule. Shortly after, other modalities came wanting to be listed in rule as exempt and the board saw an influx of modalities wanting to be listed as an exempt practice. The board would be better off not listing exempt practices by name and if there is ever a compliant with any modality that is truly exempt, the board will investigate and if it is deemed that they are exempt then the board will close the case indicating that it is not within the board's jurisdiction.

The board discussed the matter and concluded that, the board will no longer hear application for people seeking to be exempt from massage or listed as an exempt practice in rule.

**Foster-Wexler** move to accept the recommendations that the board will no longer accept the exemption request to be listed in rules. Second the motion: **Rodriguez**. In favor: **Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez** and **Rothenberger**. Opposed: **None**. Motion carries.

**Board Member Handbook: Grossart updated the Board.** **Grossart** updated the board on the reorganized board GovSpace page, bylaws and operations. He walked the board members through all the changes and showed the board members how to access information on the site. **Grossart** expressed that there is much work to be done to maintain the history of what the board has done thus far. **Grossart** noted that with the phase two of the new database implementation, the board is looking to have a module that will allow board members secure access to the board meeting materials. **Grossart** also inquired from the board what level of prior information the board would like to keep on GovSpace?

The board discussed the matter and concluded that they will leave that to the discretion of board staff and **Grossart**.

**New Continuing Education Rule Implementation: Coffey updated the Board** on the new continuing education rule implementation and noted that she needed clarification for the new CE rules effective 7/1/2016.

The board discussed the CE rules and provided Coffey with clarification on the topics. See rubric below.

Class	Topic	Category	Notes
Bloodborn Pathogens	Pathology	H	
Medical Device Reporting	Business	E	
Business Ethics & Compliance	Ethics	I	
HIPAA	Business	E	
Ergonomics/Lifting & Moving patients	Body Mechanics	K	
Elder or Child Abuse	Ethics	I	
Infection Prevention and Control	CPR/First Aid	M	
Promoting/Maintaining Good Mobility	Posture & Movement Assessment	D	

Skincare	Topical Preparation	B	Includes Esthetics classes, body-wrap, facial classes, and classes about the spa products
First Aid	CPR/First Aid	M	
Aromatherapy	Topical Preparation	B	
Energy Work – Gem therapy, Intuitive, Zero Balance, Polarity, Reiki, Amma	Somatic Education	L	
Nutrition	<b>Does Not Count as CEU</b>	H, L	<b>Does Not Count</b>
Herbs and Plants	Topical Preparation	B	
Hypnotherapy and Hypnosis	<b>Does Not Count as CEU</b>		<b>Does Not Count</b>
Shamanism	Cultural Competency	J	Cultural competence means a life-long process of examining values and beliefs and developing and applying an inclusive approach to health care practice in a manner that recognizes the context and complexities of provider-patient communication and interaction and preserves the dignity of individuals, families and communities.
End of Life Care/Classes on Aging	Pathology	H	
Chiropractic Asst. Course (requires course description)	Ethics/Business/Massage	A,E,I	Only those classes that pertain to the acceptable
Esthetics Course (requires course description)	Massage/Pathology/Topic Preparation/A&P	A,B,F,H	Only those classes that pertain to the acceptable

**Rothenberger** moved to take a short break; Second the motion: **Rodriguez**. In favor: **Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez** and **Rothenberger**. Opposed: **None**. Motion carries.

Return to public session at 12:52 PM.

**Chen** and **Kirby** are excused from the meeting

**Model Curriculum Review:** **Fredrickson** noted that at the March board meeting, there was a request for the board to consider removing the list of muscles and pathology from the model curriculum with the logic that the board’s requirements

have changed as the board no longer offers the practical exam. The list no longer flows with the competencies or learning objectives that the state now requires. **Fredrickson** noted that he had the opportunity to discuss the matter with representatives from East West College and Oregon School of Massage to get some insight on how to improve the model Curriculum. In addition to the muscle list needing to be removed, **Bearn** and **Garofalo** came up with potential specific language on how to further clarify competencies and learning objectives on the model curriculum. **Fredrickson** invited **Bearn** to clarify the rationale for the document that she submitted to the board for consideration. **Fredrickson** further noted that there are some discussions between the Executive Director and himself on whether the board should be involved in creating model curriculum at all.

**Coffey updated** the board on the discussion she had with Dr. Juan Baez- Arevalo on May 18, 2016. **Coffey** noted that she had a long discussion about the role of the board and how the model curriculum for the cosmetology schools works. Dr. Baez-Arevalo would like the board to continue doing the model curriculum as that will be helpful when they certify massage schools. They would like it to be more specific so she sent them the ELAP and inquired if this is what they would like to see. **Coffey** noted that they will get back to her after they review the ELAP.

**Bearn** expressed that there have been conversations about the model curriculum with regards to the pathology and muscle list to be removed as the practical exam is now abolished. She added that the curriculum does not provide specific detail that should be covered by schools. Individual school or program should be making their own decision on what they should teach with regards to muscles and pathology.

**Fredrickson** asked if the representative from East West College has had an opportunity to look at ELAP side by side.

**Bearn** expressed that she has not done a direct comparison of the ELAP and will look into that and get the board a response. **Bearn** added that she would not want the board to expect the school to abide by ELAP recommendations.

**The board discussed** the recommendation for the model curriculum and concluded that changes need to be made to the model curriculum to align with the current licensure requirement.

**Grossart** motioned to make the changes to the Model Curriculum to remove the list of pathology and muscles as they are no longer required. Second the motion: **Rothenberger**. In favor: **Fredrickson, Foster-Wexler, Grossart, Rodriguez and Rothenberger**. Opposed: **None**. Motion carries. **Chen** and **Kirby** excused

### **Critical Next Steps**

- ❖ Update the Board's Travel policy as that was a recommendation from the auditor
- ❖ Community outreach (API) the board to develop a training program for the API community and look at the practicality of how to get the information out for facility permitting and LMT Licensing. Develop training points
- ❖ Add information on the facility license that contains the trafficking hotline.
- ❖ Legislative concept for 2019 legislative session - Tiered fines for repeat offenders
- ❖ Clean up rule to align CE rules with the Model Curriculum and competencies.
- ❖ Post reflexology definition at reflexology facility
- ❖ Educate clients & API Community on the difference between reflexology & massage
- ❖ Information posted for practitioners in multiple languages
- ❖ Look into the possibility of Structural Integrators having its own license rather than being addressed as massage therapists.
- ❖ Have a facilitator at the next traveling board meeting to develop a new 5 year plan.

The Board appointed **Fredrickson** to serve as the Board delegate at the FSMTB meeting in Cleveland, Ohio 10/6-8/2016. **Rodriguez** and Possibly **Grossart** will be representing the board at the Federation meeting.

**Public comment:**

**Ebleton** thanked the board for all that the board does and if the Board needs anything from ABMP to let her know.

**Adjourn Meeting - Rothenberger** move adjourn the board meeting. **Second the motion: Rodriguez.** In favor: **Chen, Foster-Wexler, Fredrickson, Grossart, Kirby, Rothenberger** and **Rodriguez.** Opposed: **None.** **Motion carries.**

**Meeting adjourned at 2:06pm**

DRAFT