



Oregon

Kate Brown, Governor

Board of Massage Therapists

728 Hawthorne Ave NE

Salem, OR 97301

Phone: (503) 365-8657

Fax: (503) 385-4465

www.oregon.gov/OBMT

OBMT Board Meeting Minutes

September 12, 2016

Board Office

Attendance

Board Members:

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

Staff:

Kate Coffey, Executive Director
Ekaette Udosenata-Harruna, Policy Analyst
Bob Ruark, Compliance Manager
Lori Lindley, AAG

Public: Julie Crispin Natalie Weintraub Kelly Nordahl Melissa Dronen

Call to order at 9:04am

Fredrickson called the meeting to order at 9:04 am. Roll call was performed. **Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger** and **Fredrickson** were present, as well as **Coffey**, Executive Director, **Lindley**, AAG, **Udosenata-Harruna**, Policy Analyst and **Bob Ruark**, Compliance Manager.

Fredrickson asked members of the public to introduce themselves. Public present at this time were: **Crispin, Nordahl, Dronen, and Weintraub**.

Fredrickson acknowledged the passing of Senator Bates. Senator Bates was an advocate for the massage profession. Senator bates died the 5th of August of a heart attack while fly fishing. He sponsored the Facilities Permit legislature that successfully passed and currently requires facilities that are not owned by a licensed health provider to obtain a permit. Senator Bates will be missed.

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

2) **Approve Minutes for July 18, 2016:** Grossart moved to approve the minutes. **Second the motion: Rodriguez. In favor: Chen, Fredrickson, Foster-Wexler, Grossart, Kirby, Rodriguez and Rothenberger. Opposed: None. Motion carries.**

3) **Directors Report:** Coffey updated the Board on the Budget Status for the 1st fourteen months of the 2015-17 Biennium. The board's actual revenue is \$13k less than the revenue projection for the first fourteen months of the 2015-17 biennium. The revenue deficit is due to the discontinuance of the Practical Exam. The board underspent expenses by

\$110k for the 2015-17 biennium. The majority of the under expenditure are in the Examiner Expense, Payroll Expense, and Computer Expense categories. With the discontinuance of the practical exam expenses the board will remain under budget. The board over spent in the following categories: State Assessments – Secretary of State and DAS assessments were paid. Investigation Expense – Complexity of cases. Fingerprint Processing - Increased number of initial license applications. Office Furniture - Office furniture was received and paid in the 2015-17 biennium. Legal Expenses – Increased utilization of DOJ.

August 2016 actual revenue is \$13k over the budget estimate due in large part to the collection of civil penalties and the increase in application fees.

The Board underspent expenses for the month of August 2016 by \$7k. The under- expenditure is in the categories of examiner payments, payroll expense and computer expenses.

Database Update: Coffey updated the Board on the status of the licensing database. Coffey noted that the database conversion is progressing and staff members are actively testing on the production environment. It took over a week for the contractor to upload the transactions into the production environment and that delayed the move to operating parallel systems. Elite's online renewal system is not active and hastened the decision to not move to parallel systems in August.

Compliance Update: Ruark updated the Board that the compliance section received (15) new complaints since the July 2016 Board Meeting and closed (14) cases.

There are four (4) contested cases that are pending, (3) were just received, and (1) is at the Office of Administrative Hearings. There is (1) contested case at the Court of Appeals. Since the July 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 unlicensed practitioner.

4) Board Business

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

1. **Letter to the Board from Nelson** – Requesting that the board remove the public documents that contain disciplinary action against licensee from the board website.

The Board discussed the inquiry and directed the Executive Director to respond indicating that the board would not remove the public documents from the board's website.

2. **Letter to the Board from Young**– Requesting the board to consider a two tier massage licensing.

The Board discussed the inquiry and directed the board Vice Chair, Jon Grossart to respond to the licensee.

3. **Letter to the Board from Treehouse** – Requesting special accommodation for her renewal in December due to a medical issue. Currently, the licensee is not able to retain any information that she reads.

The Board discussed the inquiry and directed board member, Kelley Rothenberger to respond to the licensee with recommendations on other options and opportunities to obtain her CEs.

4. **Letter to the Board from Weintraub**– licensee was present and addressed the board with the issues of insurance discrimination, as there are many of massage therapists who work with insurance companies. Two or three

years ago, prior to the affordable care act a none discrimination provision was put in place that states insurance companies could not discriminate. However, insurance companies continue to discriminate against massage therapists. This is an issue that affects the public as the discriminative process of insurance company creates an undue burden on the clients who are members of the public. **Weintraub** request that OBMT make a statement acknowledging the discrimination on massage therapists by insurance companies.

Grossart noted that as a regulatory board, this is outside the scope of the board purview. While the board agrees with **Weintraub's** concerns and wish there was more that the board could do to address the issue, there is really not much the board could do other than sending a letter of concern to the insurance commissioner. The professional associations, AMTA or ABMP, are the primary organizations that could assist with regards to the issue of insurance discrimination.

Crispin – noted that there are two members that are starting a Facebook group for massage therapist that bill insurance company. Insurance companies tend to pay massage therapists that work at chiropractic offices or work at a clinic more so than individual practitioners. Crispin stated that several of her clients pay up front and then bill the insurance company and often receive a denial when they file for reimbursement. When they appeal the denial, they spend hours trying to get reimbursed. The issue of insurance discrimination is as much a public concern and not just an issue for massage therapists. Crispin noted that, Cindy Roberts, a lobbyist for AMTA is working on legislation similar to a bill in Washington State that recently passed. This legislation will assist with insurance discrimination. AMTA thought this is something that needed to be brought to the board's attention as this not only affect massage therapists but the public as well.

Fredrickson expressed that he agrees with Grossart. The board's role is limited and personally he sees the associations playing a role as the advocacy and educating the insurance commissioner to understand the issue.

Kirby is concerned on whether the insurance commissioner will take a professional association as seriously as they would another state agency. Having some form of clarification from the board might assist in the process.

The Board discussed the inquiry and directed the Executive Director to send a letter of clarification to the insurance commissioner.

b) All School Meeting: Fredrickson called on Ruark and Lindley to provide a recap of the presentation.

Ruark noted that during the All Schools meeting that a presentation was a collaboration effort between Lindley and himself. He updated the board on the presentation with regards to background checks. There were schools that talked about their obligation for federal funding and a moral obligation when a student comes in with a criminal history to tell them whether or not they can be massage therapists. This is easier said than done due to the way that the board statutes are written. The board has the authority to grant or deny a license based on several circumstances. He went over the laws in detail with the schools and informed the schools what a person needs to provide to the board for consideration for licensure.

Lindley added that they also stressed the conviction itself may not be the problem but the fact that they lied about it or tried to diminish the real facts of the case may end up causing them to be denied licensure.

c) FSMTB Meeting – The board discussed the proposed resolutions from the FSMTB. The board concluded to vote no on all the resolutions.

d) **2017 Board Calendar** - The board reviewed the approved board meeting calendar for 2017. See the Board's website at <http://www.oregon.gov/OBMT/Pages/meetings.aspx> for the Approved 2017 Board Meeting Dates.

e) **Public Record Policy** - Coffey updated the board that the proposed public records policy was sent to the Secretary of State archivist for review and as of this date she has not received any feedback from Secretary of State. Once comments are received from the State Archivist it will be incorporated in the policy and represented to the board at the November 2016 board meeting.

Grossart moved to approve the policy pending Secretary of State Archivist recommendations and /or comments. Second the motion: Foster-Wexler. In favor: Grossart, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.

5) **Proposed Fall 2016 BOARDerline Topics** – Coffey updated The Board on the BOARDerline topics for the Fall 2016 Issue.

- 2016 Rules Update highlighting the insurance changes – Coffey.
- Article from Linda Sanderlin – Study of the evolution of massage practice in Oregon over 20 years.
- Topical Use Policy – Coffey.
- Database Update – Coffey
- Introduction of New Staff Member – Coffey/New Staff Member.
- Renewal process - Coffey
- FSMTB meeting update - Fredrickson

Grossart moved to amend the topical preparations policy to add a section stating that any topical use should follow all preparation and labeling laws as lay out by OHA. Second the motion: Foster-Wexler. In favor: Grossart, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.

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

Nordahl noted that a plethora of LMT's are not reading the BOARDerline. Everyone receives numerous emails and if it is not engaging, no one will read them. **Nordahl** recommended that the Board consider sending a separate email with the BOARDerline included as the body of the email as well as an attachment of the BOARDerline. This will make it very clear and engage the reader.

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

The Board returned to Public Session at 11:30pm.

Public present: None Present

Fredrickson called the Board into Executive Session at 11:39 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.

7) Executive Session

a. Compliance (192.660(2)(k))

The Board returned to Public Session at 1:21pm.

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

The Board returned to Public Session at 1:37pm.

8) Action on Executive Session Items

Compliance Cases

- i. **Case 1872 – Kirby moved to review the exceptions filed by licensee’s attorney and; adopt and issue the Ruling on Motion for Summary Determination and Final Order to Licensee. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger, and Fredrickson. Opposed: None. Motion carries**
- ii. **Case 1959 – Foster-Wexler moved to issue a Notice of Proposed Action (Revocation), in accordance with ORS 670.280 (3), for: One violation of ORS 687.081(1) (a)(b)(j)(7) engaging in unprofessional or dishonorable conduct. One violation of OAR 334-030-0005 (1)(b)(d). One violation each of OAR 334-040-0010 (2) (5) (7) (10) (23) (a) (A) (f). One violation of 334-010-0025 (7)not providing the board with current address. Second the motion: Rodriguez. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, and Fredrickson. Rothenberger was not present in the room at time of voting. Opposed: None. Motion carries**
- iii. **Case 1940 – Foster-Wexler moved to Issue a Notice of Proposed Action (Civil Penalty) for: One Violation of ORS 687.081 (1)(a)(b) for violation of OAR 334-040-0010 (2) For a total civil penalty of \$1000. Second the motion: Grossart. In favor: Chen, Foster-Wexler, Grossart, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- iv. **Case 1942 – Grossart moved to close case, no violation found and refer to Chiropractic Board. Second the motion: Chen. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- v. **Case 1934 – Grossart moved to dismiss the Notice of Proposed Action (Suspension) issued by the Board on July 28, 2016. Second the motion: Rodriguez. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- vi. **Case 1886 – Rodriguez moved to accept the Stipulated Agreement and Final Order negotiated by DOJ. Second the motion: Kirby. In favor: Chen, Foster-Wexler, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: Grossart. Motion carries.**
- vii. **Case 1939 – Kirby moved to issue a Notice of Proposed Action for: One violation of ORS 687.081 (1)(a) by violation of OAR 334-040-0010 (23)(h) For a total civil penalty of \$1000 and refer to insurance commission. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: Grossart. Motion carries.**
- viii. **Case 1961 – Rothenberger moved to issue a Notice of Proposed Action for: One violation of ORS 687.021 (1) (a) Practicing Massage without a license, and: One violation of ORS 687.021 (1)(c) Advertising for massage without a license For a total civil penalty of \$2000. Second the motion: Kirby. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- ix. **Case 1958 – Chen moved to issue a Notice of Proposed Action for one violation OAR 334-040-0010 (23)(C)(iv) for a total civil penalty of \$1000 and complete 4 contact hours of Professional Ethics, Boundaries and/or Communication and issue licensee a letter of concern regarding maintaining proper client/therapist relationship. Including the need for proper communication and Boundaries. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- x. **Case 1857 – Kirby moved to reject proposal from Licensee’s attorney and continue with contested case hearing.**

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

- xi. Case 1960 – Foster-Wexler moved to accept the interim Consent Order Signed by Licensee. Second the motion: Chen. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xii. Case 1786 – Rothenberger moved to terminate Licensee's probation early on September 12, 2016 versus November 2016 due to exemplary conduct while on probation. Second the motion: Chen. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger, and Fredrickson. Opposed: None. Motion carries.
- xiii. Case 1967 – Grossart moved to issue license with no stipulation. Second the motion: Foster-Wexler. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xiv. Case 1968 – Foster-Wexler moved to issue a Notice of Proposed Action (Denial of Licensure). Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xv. Case 1919 – Kirby moved to dismiss the Notice of Proposed Action (Suspension) issued by the Board on July 28, 2016 and the Default Final Order (Suspension) issued by the Board on July 26, 2016 as Licensee has complied with the CE audit and issue a letter of concern. Second the motion: Rodriguez. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xvi. Case 1848 – Rothenberger moved to close case no violation found and issue a letter of concern. Second the motion: Grossart. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xvii. Case 1964 – Foster-Wexler moved to Issue a Notice of Proposed Action (Denial of Licensure). Second the motion: Rodriguez. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xviii. Case 1759 – Rothenberger moved to issue a Notice of Proposed Action for: One violation of ORS 687.021(1)(a) for violation of OAR 334-040-0010 (12) Employing unlicensed person to practice massage for a total civil penalty of \$1000. Second the motion: Kirby. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.

Supplemental Packet

- xix. Case 1969 – Chen moved to Issue a Notice of Proposed Action (Revocation) of facility permit for: One violation each of: ORS 687.081 (1) (a) (k) and OAR 334-040-0010 (3) (12) and forward transcript to State of California Massage Council, State of Washington Department of Health-Massage Therapist and State of Colorado office of Massage Therapy Licensure. Second the motion: Grossart. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xx. Case 1970 – Rothenberger moved to issue a Notice of Proposed Action (Denial of Licensure). Second the motion: Kirby. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xxi. Case 1971 – Foster-Wexler moved to issue a Notice of Proposed Action (Suspension) for: One violation of ORS 687.081 (1)(a) for violation of OAR 334-040-0010 failure to comply with a Board order. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Kirby, Rodriguez, Rothenberger, Fredrickson and Grossart abstain. Opposed: None. Motion carries.
- xxii. Case 1972 – Rothenberger moved to issue a Notice of Proposed Action (Denial of Licensure). Second the motion: Rodriguez. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xxiii. Case 1277 – Grossart moved to dismiss the Notice of Proposed Action (Suspension) issued by the Board on February 12, 2012 and the Default Final Order (Suspension) issued by the Board on April 16, 2012 as DOJ sent a Notice to Reinstate Licensee. Second the motion: Kirby. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.

- xxiv. **Executive Session Closed Case Report – Grossart** moved to accept the executive session closed case dated September 12, 2016 containing cases as submitted in Exhibit 1 consisting of 3 page. **Second the motion: Chen. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

Case No. 1852

Allegation: Unlicensed Practice **Closed:** Respondent Unreachable

Case No. 1849

Allegation: Unlicensed Practice/Advertising **Closed:** Unable to Substantiate

Case No. 1843

Allegation: Failure to disclose adverse information **Closed:** Closed – No Complaint

Fredrickson moved the Board meeting back to public session at 1:28

9) Public Compliance Action

- xxv. **Public Session Closed Case Report – Grossart** moved to accept the public session closed case dated January 25, 2016 submitted in Exhibit 2 consisting of 3 pages. **Second the motion: Chen. In favor: Chen, Foster-Wexler, Grossart, Kirby, Rodriguez, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

a)

Case No. 1858

Allegation: Conviction of a Crime **Closed:** Stipulated Agreement Issued

Case No. 1760

Allegation: Sexual Abuse of a Client **Closed:** Stipulated Agreement

Case No. 1766

Allegation: Unlicensed Practice/Advertising **Closed:** Civil Penalty Assessed

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

11) Announcements

Next meeting will be on November 14, 2016 at 9am at the board office in Salem, Oregon.

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

The meeting was adjourned at 1:56 pm.