



Oregon Board of Massage Therapists

748 Hawthorne Ave NE Salem OR 97301
(503) 365-8657 fax (503) 385-4465

BOARD MEETING MINUTES Thursday, June 10, 2004

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Attendance

Board Members:

Michael Jordan, L.M.T., Chair
Stephanie Manriquez, L.M.T
Jackie Kern

Cathy Law
Lisa Oxman, L.M.T.
Brad Welker, D.C.

Staff:

Patty Glenn, Executive Director
Michelle Sherman, Office Manager
Diana Nott, Administrative Specialist

Robyn McGinnity, AAG
Helen Bicart, Investigator

Public:

Kassy Daggett, LMT, Six Rivers Lisa Garafalo, LMT, OSM/Ed Committee
Jolie Griffin, LMT, OSM Nick Chrones, LMT, LCC

1) Call to order

Jordan called **Executive Session** to Order at 9:06 AM.

Pursuant to ORS 192.660 (1)(f) and ORS 192.660 (1)(h) the Oregon Board of Massage Therapists met in Executive Session for the purpose of considering records that are exempt by law from public inspection. These records are relevant to test questions, scoring keys, and other examination data used to administer the qualifying examinations and consultation with legal counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. Representatives of the news media and designated staff are allowed to attend the Executive Session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the Executive Session except to state the general subject of the session as previously announced. No decision may be made in Executive Session. At the end of the Executive Session the Board returned to open meeting.

Jordan called the **Public Session** to Order at 10:30 AM

2) Approve Agenda

Kern moved to approve the agenda as presented. *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*

3) Public Forum - An opportunity for the public to address the Board and ask questions.

Daggett: Brought CE catalog to share with Board. Requested published start time for public meeting when meetings are combined. She is available as a resource for the board for fielding topics like communication, CE, ethics, etc. The Board suggested she either attend committee mtgs or consider joining one of the committees as a committee member.

4) Action on Law Cases

Executive Session Cases:

- i) **Case No. 12-03-259** – Allegation: Unlicensed practice of or offer to practice massage. Respondent advertised and practiced massage without a license. A hearing was requested. Settlement proposed prior to hearing. **Manriquez** moved to accept settlement and Stipulated Final Order and close C18-Stipulated agreement. *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*

- ii) **Case No. 08-03-231** - Allegation: Unlicensed practice of or offer to practice massage. Respondent advertised and practiced massage without a license. A hearing was requested.

Settlement proposed prior to hearing. **Welker** moved to accept settlement and Stipulated Final Order and close C18-Stipulated agreement. *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*
- iii) **Case No. 03-04-265** – Allegation: Multiple violations on site inspection. Respondent received notice of violations with required date of compliance. All areas have been brought into compliance. **Oxman** motioned to close the case compliance met. *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*
- iv) **Case No. 10-02-194** – Allegation: Professional Misconduct. Respondent has met all requirements of stipulated agreement. **Welker** moved to close C22-Stipulated agreement met. *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*
- v) **Case No 4-03-214** - Unlicensed practice of massage. Respondent request hearing and hearing was held. Proposed order was sent and respondent did not submit written exceptions or arguments within the 20 days allotted. **Kern** moved to accept proposed order as final order and close C09-Civil Penalties assessed. *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*
- vi) **Case No 06-03-228** – Allegation: Professional Misconduct – Sexual. **Law** moved to issue a Notice of Proposed Action to revoke license and access civil penalties for **two** violations of ORS 687.081 in the amount of **\$1000** per violation for a total civil penalty of **\$2000, plus costs.** *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*

Public Session Cases:

- i) **Case No. 01-04-260; Irene Mills:** Unlicensed Practice of or offer to practice massage. Respondent advertised and performed reflexology treatment without a license. **Manriquez** moved to issue a Notice of Proposed Action to assess civil penalties for **three** violations of ORS 687.021 in the amount of **\$500** for the first violation and **\$1000** for each additional violation for a total civil penalty of **\$2500.** *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*
- ii) **Case No. 10-03-251; Lauren Rosenberg:** Unlicensed practice of or offer to practice massage. Respondent advertised and performed massage without a license. **Manriquez** moved to issue a Notice of Proposed Action to assess civil penalties for **two** violations of ORS 687.021 in the amount of **\$500** for the first violation and **\$1000** for the second violation for a total civil penalty of **\$1500.** *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*
- vii) **Case No. 03-04-273; Tessa Riley:** Unlicensed practice of or offer to practice massage. Respondent advertised for and performed services of massage without a license. **Manriquez** moved to issue a Notice of Proposed Action to assess civil penalties for **three** violations of ORS 687.021 in the amount of **\$500** for the first violation and **\$1000** for each additional violation for a total civil penalty of **\$2500.** *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*

viii) **Case No. 03-04-272; Janice Cole:** Unlicensed practice of or offer to practice massage. Respondent advertised for and performed massage services without a license. **Manriquez** moved to issue a Notice of Proposed Action to assess civil penalties for **two** violations of ORS 687.021 in the amount of **\$500** for the first violation and **\$1000** for each additional violation for a total civil penalty of **\$1500**. *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*

Discussion on how investigator was progressing on cases. Investigator has some cases she is still working on and the office has other cases in route. We are able to keep up with complaints but not be proactive with current resources.

5) **Approve minutes** of the March 11, 2004 Public Session and the April 8, 2004 Executive Session. **Oxman moved** to approve the minutes from March 11th and April 8th. *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*

6) **Report of Executive Director**

- a) **New recording Software** - for public meetings under evaluation. Advantages; security, storage, web casting, merging agenda. Both tape and software are recording this meeting.
- b) **Financial Report** – No significant events to report at this time. More detailed report for the July meeting. Reviewing current systems for potential cost savings.
- c) **Revenue Collections** – 1st collection has come in. After fee \$800 recovered on \$1000 penalty. Approx. 30,000 outstanding in collections.
- d) **Financial Audit report** – Financial audit has been completed.
- e) **Legislative Fiscal Office review** – distributed correspondence from Theresa McHugh from Governors office and from Adrienne Sexton, LFO. Ms. Sexton may want to speak with board members, please be prepared to address questions re; board functions, differences since becoming semi-independent, etc. SIBA supportive of review and hopes two things are true; first, weaknesses or concerns found will be given opportunity to address, and second that a decision as to viability of semi-independence will not be made based on this one review.
- f) **Directors Audit** – is being scheduled.
- g) **Web site Development** – Applied Logic (computer support company) is addressing items of interest to the board; Law Enforcement database needs to be completed to better track cases (10-15k), Online license lookup (2k), online law exam (2k), website hit tracking in place. Manriquez stated that videotaping practical examination might provide better information and be beneficial for appeals. Jordan suggested adding to **work session** agenda. Glenn will look into options to present to board at work session.

7) **Committee Reports**

- a) **Scope of Practice Committee** – Jordan summarized scope of practice report. Includes several proposed rules changes. Jordan suggested referring to **work session** for continued discussion. Board concurred.
- b) **Education Committee** – Lisa BG Committee Chair addressed board. Two reports; March and April meetings. Proposed Purpose of Education Committee; “The purpose of the Education Committee is to advise the Oregon Board of Massage in matters of training, certification and continuing education of massage therapists in the state of Oregon. At the request of the OBMT, the Education Committee will also advise the Board on any other education-based issues that arise”. **Oxman** moved to accept statement as the Purpose of the Education Committee. *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.* Add Statement of Purpose for the Scope of Practice committee to **work session**. Lisa BG asked board to review and adopt CE forms as amended. Jordan stated that this does not need to be approved by the board should be addressed by office. Glenn stated than many issues and questions regarding the process still exist. Suggestion to hold combined Education Committee and Scope of Practice Committee meeting to address the CE process. Glenn asked that no changes be made to this renewal period as this has already been communicated to the licensees. Process for future renewal referred to

combined meeting.

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8) **Old Business –**

- a) **Increase of Fees** – Sherman provided breakdown of approximate cost for practical exam to be considered in fee increase. Renewal/License fee was reduced prior to 2000 renewal. No increase since. Fee increase driven by many factors, increasing need and cost of investigation, Website changes to better serve public and licensees, increasing cost of doing business, increasing costs of PERS and PEBB, etc. Discussion moved to late fees. Per April work session discussion the Board suggested increasing late fee to 25 per week up to a maximum of \$250. The goal is to encourage individuals to get their applications in on time. Approx. 25% of therapists renew late, the intent of this increase is to discourage late renewals. No significant change is expected in revenue generated by late fees. Discussion moved to increase in Exam fee, Application Fee, Mailing List fee. **Law moved** to amend fees as follows; Application Fee \$50, Licensing renewal fee \$100, Inactive \$50.00, Exam fee \$150, Mailing list \$100. Late fee \$25 per week to a maximum of 250.00 (effective this renewal) and elimination of credit card fee. *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*
- b) **NCE vs NLE** – Discussion began to look at NCBTMB exam vs NCBTM exam. Concerns to consider are; candidates who have taken exam prior to 1998 or those who have significant industry experience but are unable to meet current requirements due to language barriers or inability to document education. This discussion was moved to **work session**. Discussion around NCE and NLE; exam content is identical; the difference is the application process and the ability to become nationally certified. **Oxman moved** to accept both the NCE and NLE examinations as certifying exams. *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*
- c) **Mission Statement** - this has not been addressed but Patty will work on this to present to future mtg.
- d) **Felony and Gross Misdemeanor Conviction Policy** – This has been presented to AAG for review. Glenn asked that board please take time to review matrix and email from AAG Robin McGinnity and provide any additional comments, suggestions or concerns. Glenn will continue to work with AAG do develop matrix that is applicable to Oregon Statue and Rule.
- e) **Fingerprinting** – New development presented. LEDS (Law Enforcement Data Systems) has brand new system that will allow Board to do Criminal History Reports in-house. This may be limited to Oregon only and not National and is still being researched. Even if limitation exists this allows us to address concerns without fingerprinting all applicants. Fingerprinting can still be requested on an individual basis when needed. Board concurred this would be equivalent to initial fingerprinting. Glenn will be continuing the process of implementation.
- f) **Board of Cosmetology** – Glenn met with Sue Wilson of the HLO. Reviewed proposed changes provided by Cosmetology board. They have removed the C7 limitation and the word “massage” from the statue but still includes manipulation which in definition by their rule means “the articulation and massage of the spine to C7...”. The HLO does not want opposition in legislature and is willing to work with the Board to find language that is acceptable to boards. Concern expressed during mtg w/HLO was addressed by Trisha Allbritton who replied on behalf of Ms. Wilson stating they would be willing to add the statement that “Esthetic services do not include the practice of massage therapy as defined in ORS 687.011.” Concern that currently the facial technologists have ability to massage to C7 and this change to language would restrict their current scope of practice. This concern has been addressed to the Cosmetology Board and does not appear to be of concern. Jordan does not believe that this restriction of massage in its entirety will be acceptable and is concerned with removal of C7 limitation which may allow “Estheticians” to perform full body massage unless massage is restricted with more clarity. Law is concerned with words such as stimulating and manipulating once you remove the C7 restriction. Jordan also expressed concerns about modalities under consideration as stated in the Facial Technology Scope of Practice meeting on January 14, 2004 by Ms. Allbritton which include; ...muscle stimulation, lymphatic drainage. Welker is concerned about the ability with such limited training to do head and neck massage. Oxman expressed that she received a facial where technologist included shoulders and upper part

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of her chest, clearly outside of current scope of practice. The Board currently has many law enforcement cases in which facial techs and nail techs are operating outside scope of practice. Jordan stated, at this point, we need to Oppose changes as they are written. Oxman and Law stated that they would like to make sure that the cosmetology board understands that we are opposed to the language as it now stands but that we would like to work with them to find acceptable language. Manriquez also wants to make sure that they are not trying to exclude massage therapists from doing body wraps, etc. The Board currently opposes the change in scope for Facial Technologist as currently written and of Nail Technicians addition of arms and legs. Glenn will continue to work with the Cosmetology Board to come to a language, which addresses the Boards concerns.

- g) **Set next work session** – Work session set for August 12 following Executive Session. Sherman will include specific start time for work session on the meeting notice.

9) **New Business**

- a) **Signature Authority** - Need to add new ED to Depository Authority. **Welker moved** to approve Depository Authority with Patty Glenn, Michelle Sherman and Michael Jordan as authorized signers. *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*
- b) **David Frostad's Resignation** – David Frostad has resigned. Sherman will verify that the resignation was forwarded to the Governor's office.
- c) **Board liaison – Education Committee** - With resignation the Board needs a new liaison for Education Committee. Manriquez volunteered.
- d) **Voluntary Surrender of License** – Glenn per conversation with AAG; the Board should vote to not accept the current voluntary surrender of license until further review. **Kern moved** to not accept voluntary surrender of licensure. *In-favor: Jordan, Kern, Law, Manriquez, Oxman, Welker. Opposed: none. The motion carried.*
- e) **Confidentiality of Client information** – Suggest we refer to other organizations that regulate confidentiality such as HIPPA. Board supports a strict and cautious approach to confidentiality. Those with questions need to refer to the ORS and OAR for clarification.
- f) **Remedial Instruction** - process referred to Education Committee for further clarification and development of clear process.
- g) **Executive Appointments** – Governors office stated there had been significant interest would make decision in approx 6 weeks. Glenn suggested inviting all candidates to give 3-minute presentation at the July Public mtg. Sherman will check with Governors office to verify what type of contact is appropriate and if we may invite to give presentation at July mtg.

10) **Public Comment -**

Garafolo; Would like information on semi-independence. Would like to keep abreast of Scope of Practice changes for cosmetology and would like to have input. Wanted to know where our Legislative Concept stands. Glenn stated has been approved and is in process. Sherman has done research on different options and will be placed on next **work session** agenda with the plan of having system ready to put into place once statute change is approved. Daggett; Supports posting minutes on web and licensee lookup on web. Feels that since law exam is a take home exam the students don't take the exam as seriously and don't apply themselves to learning the laws and rules. Concerned about late fee increase in this renewal cycle. Concerned about polarization between the Massage community and "The Board". Glad to hear fingerprinting has been postponed.

Glenn responded to comment of LMT's vs "The Board". It is important to remember that the Board is charged with protection of the public, which ultimately supports the massage therapists. The public is always welcome to attend public meeting and be party to the discussion. We encourage all therapists to attend public meetings to better understand the work that goes into making decisions. Try to look at fingerprinting from perspective that we are not punishing the majority for crimes of the few but rather asking all of the therapists to be willing to submit to fingerprinting if necessary in order to protect the integrity of the profession and the public from the few who are not appropriate candidates for licensure.

11) **Announcements:**

Housekeeping changes being made to application form.

Jordan closed the public meeting at 2:21 P.M.

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