



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

748 Hawthorne Ave NE

Salem, OR 97301

Phone: (503) 365-8657

Fax: (503) 385-4465

www.oregon.gov/OBMT

BOARD MEETING MINUTES

August 06, 2012

Attendance

Board Members:

David Fredrickson, LMT, Chair
Heather Bennouri, LMT Vice Chair
Melanie Morin, LMT
Kathy Calise, Public Member
Craig McMillin, Public Member
Dr. Carolle Chapman, ND, Public Health Member

Staff:

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

Public: Jennifer Sharar Lisa Garofalo Pam Pennington Robert Gebarowski
Steve Davis Erika Baern Austin Cory Francisco Pacheco
Stephanie Ross

Call to Order

Fredrickson called the meeting to order at 9:08 am. Role call was performed. **Bennouri, Calise, Chapman, McMillin and Fredrickson** were present, as well as Kate **Coffey**, Executive Director and Lori **Lindley**, Assistant Attorney General. **Morin** arrived later in the meeting.

Fredrickson asked each member of the public to introduce themselves. Present at this time were Lisa Garofalo, Steve Davis, Francisco Pacheco, Jennifer Sharar and Robert Gebarowski.

1) **Approve Agenda – Bennouri moved** to approve the agenda as presented. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, McMillin and Fredrickson Opposed: None. Motion carries.**

2) **Approve Minutes of June 11, 2012 – Calise moved** to approve the minutes of June 11, 2012 as presented. **Second the Motion: Bennouri In favor: Bennouri, Calise, Chapman, McMillin and Fredrickson Opposed: None. Motion carries.**

3) **Director's Report –**

a) **Finances – Coffey** reported on the status of the Board budget. The budget status report reflects actual revenues and expenditures through June 2012. **Coffey** indicated that the Board completed the fiscal year at 9% below budgeted expenses. Investigation expenses will continue to remain over budget, as fingerprint costs were not budgeted. The revenue for the FBI/fingerprints is received under the Fingerprint Fee revenue category; however the budget category of investigations did not include these costs, as the Board implemented the fingerprint process after the budget was prepared and adopted. The additional cost in investigations will be covered by savings in other categories.

b) **Board Action Log –** The Board action log was updated to reflect any outstanding items. **Coffey** reported that the schools will go through a review and approval process upon adoption of the Model Curriculum. The database replacement is on hold, as it is a significant expense and the programmer is currently unavailable due to prior commitments. The Board had previously requested that Licensees be provided the option to choose whether to receive information by electronic copy or hard copy. However, the Governor's Sustainability Initiative is moving towards electronic documents and communication, and **Coffey** would recommend the Board reconsider this request. **Morin** arrived at 9:13

am. **Coffey** is working with the LMT Board members for the scope of work for the Practical Exam review. Additionally, she has prepared the request for proposal for a new examiner contract, as the current contract expires December 31, 2012. If the Board has any questions, concerns or suggestions, please contact **Coffey** right away, as she needs to place the request by September. **Coffey** informed the Board that a question was recently raised regarding D grades on transcripts. The Oregon Administrative Rules require that individuals submit transcripts showing successful completion of the course. Past practice has been to allow the schools to determine what is considered successful completion. Recently, staff was challenged when it was learned that an individual going through an entire program would not receive credit for a D, whereas an individual taking a partial program and receiving a transcript might receive credit. After a great deal of discussion, it was determined that this matter would be forwarded to the Rules Committee, for the Committee to create a definition of what equates to successful completion of a course.

c) Compliance Update – Nott provided the Board with a Compliance Report from June 1, 2012 to June 30, 2012. The report includes information such as: complaints open at start date (41); active cases at start date (32), number of new complaints received (17); number of cases opened (15); number of complaints closed (5); number of cases closed (4); and number of cases closed with disciplinary action (2). She also presented information from July 1, 2012 to July 31, 2012. The report includes information such as: complaints open at start date (47); active cases at start date (40), number of new complaints received (12); number of cases opened (6); number of complaints closed (3); number of cases closed (5); and number of cases closed with disciplinary action (1).

d) September Meeting – Coffey indicated that there were some Board members that would not be in attendance at the September meeting. There was discussion and it was determined that the September meeting would be cancelled. The next Board meeting will be October 15, 2012 at the Board office in Salem.

4) Committee Updates

a) Education Committee – Garofalo reported that the committee has finished their work on the model curriculum. They have provided their final draft to the Board for consideration. The Committee received praise from the Department of Education. **McMillin moved** to provide the schools with the Model Curriculum, allowing them until September 25, 2012 for comment. The matter will return to the Board at the October meeting where, pending no significant changes, it will be considered for adoption and a July 1, 2013 implementation. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

Garofalo inquired about the next charge of the committee in considering the approval of continuing education (CE) providers. What are the leanings of the Board? There was some discussion on the Oregon Board of Chiropractic Examiners process, as it was straight forward and had a nominal fee associated with the review. **Bennouri** requested that when considering CE, the committee look at the rural populations, online access, cost of travel, and cost of classes and consider if the Board will only take approved CE courses. She noted that there are licensees that are in secluded areas with limited practices that may not have access to CE as easily as others in the state. Additionally, she suggested that the committee review some of the work of the FSMTB.

b) Scope of Practice Committee – This committee has not been meeting. They will meet in September.

c) Rules Committee – This committee has not been meeting. They will meet next week. They will review the certified class or program rule, as out of state schools are currently treated differently than Oregon schools; They will address successful completion of course work; They will address Breema exemption; They will address clarification on the internal cavity massage.

5) Board Business

a) Model Curriculum Vote – This was done earlier in the meeting.

b) 2nd Quarter Exam Stats – McMillin noted that the overall score looked better. **Calise** agreed that an overall pass rate of 84% was amazing.

c) Demographics Report – The Board received a quarterly demographics report of licensees. This includes information on gender, age, ethnicity, years in practice and modalities practiced. **Bennouri** stated that she found it interesting that the Board has more Licensees over the age of 80 than Licensees under the age of 20. **Fredrickson** suspects that the Board will see an increase in younger practitioners in the future.

d) 2013 Draft Calendar – The Board reviewed a proposed calendar for 2013. This draft calendar proposed meetings every-other month, beginning in January, with a traveling Board meeting in May. The Board had received feedback

from the Peer Review audit on the benefits to a reduction in the number of Board meetings. The reduction provides a savings to the Board in meeting expenses and staff time. **McMillin moved** to accept the proposed calendar schedule.

Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson
Opposed: None. Motion carries.

Calise would like the Board to consider Eugene for the traveling meeting. The Board has not been to Eugene since 2008. The area has a large number of active and interested Licensees and Lane Community College could host the meeting.

- e) **Request for Exemption: Ortho-Bionomy** – The Board received a request for exemption from The Society of Ortho-Bionomy International. After reviewing the information provided and conducting independent research, several Board members were unclear on this practice. **McMillin** indicated that he did not feel that it would be out of line to request a demonstration of the practice. He suggested that they be contacted and invited to present to the Board, prior to any decision being made. The Board members agreed that this would be prudent.
 - f) **Clarification Inquiry** – The Board received an inquiry from an individual currently dual-licensed as a LMT and a LAc. She would like to place her massage license into an inactive status. Typically, when an individual moves into an inactive status, they are unable to practice or advertise for massage or any modality or practice that requires a massage license. However, as a licensed acupuncturist, she is able to engage in certain massage practices as part of her acupuncture scope of practice, such as Shiatsu. In this case, she would like to know if it is acceptable for her to advertise as a Shiatsu Practitioner under her acupuncture license. She said that she checked with the Medical Examiners Board and was directed to the OBMT. After discussion, the Board determined that the Executive Director would send an advisory letter, thanking her for her inquiry, and informing her that it would be acceptable for her to advertise as a Shiatsu Practitioner *only* if she includes it with her acupuncture designation as well. The letter should also note that this is not a formal position and that if a complaint is filed with the OBMT, the Board would have to consider the matter.
 - g) **Petition for Physician Assistant** – The Board received a written request from an individual regarding the current licensed fields that qualify for examination by Health Indorsement. Currently, the accepted professions list does not include Physician Assistant, and the individual would like the Board to consider adding this profession to the list. After discussion, it was determined that additional information was needed about the requirements for PA education. This matter will be deferred until October.
 - h) **FSMTB Resolution** – The Board reviewed a resolution that was adopted by the North Carolina Board of Massage and Bodywork Therapy at its June 21, 2012 meeting, regarding the FSMTB CE approval program. **Fredrickson** is concerned that this could circumvent all states and their current CE programs, placing the FSMTB in the place of being the only national provider. **Calise** noted that this is coming from North Carolina, and is that state resolution, not the FSMTB resolution. Though she agrees with **Fredrickson** in sharing his concern. **McMillin** indicated that this has been discussed before – the states are in the best position to determine what is best for their licensees. He feels the FSMTB should focus on the disciplinary database. **Bennouri** explained that the most the FSMTB can do is issue proposals. They can create structures that the states can choose to buy into or not. The organization has no authority to mandate that the states do anything one way or another. **Fredrickson** thanked the Board for their feedback and looks forward to the discussion at the annual FSMTB meeting.
- 6) **BOARDerline** – **Coffey** reported that the newsletter will be published later in the week. For the November 2012 edition, **Bennouri** is slated to write articles on supplements; **Morin** is to write on recent body art; **Coffey** is to write an article on proposed legislation; and **Fredrickson** will write an article about the FSMTB meeting.

Also in the Board member addendum file, is Legislative Concept 76 (LC76). This concept changes the Board's name to Oregon Board of Massage and Bodywork. It defines "bodywork" and changes the name of the Board to the State Board of Massage and Bodywork. It provides for the Board to issue an endorsement for advanced techniques. It declares an emergency and is effective upon passage. **Coffey** requested the Board members to review the concept and provide feedback by Thursday, August 9, 2012. She also noted that there are some mistakes in the concept, which are to be addressed. **Bennouri** suggested language other than permit or certification, as to avoid any confusion with other certifying body or facility permits. There was discussion on alternate verbiage, such as mastery, accreditation, commission, charter, privilege and authorization. She would also like something added that states that when the term massage is used, it

encompasses bodywork as well and vice versa. **Fredrickson** would like to include structural and functional change in the bodywork definition.

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

Lisa **Garofalo** stated that it is her strong position that a D grade is not satisfactory completion of any course, and she questions the Board's acceptance of those grades. Also, she recommends to the Rules Committee that they create a rule stating that the Board addresses out of state schools in a certain manner, as opposed to re-writing the whole certified class or program rule.

Bennouri moved to take a brief recess at 10:50 am. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson Opposed: None. Motion carries.** The Board returned from recess at 11:14 am.

The Board entered Executive Session at 11:15 am and returned to Public Session at 4:05 pm.

8) Executive Session

- a) **Practical Exam (192.501(4))**
- b) **Compliance (192.660(2)(k))**

The Board will now meet in 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 192.660(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, applicant, or other persons alleged to be practicing in violation of law pursuant to ORS 676.175 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.

Representatives of the news media and designated staff shall be 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 executive session, the Board will return to open session and welcome the audience back into the room.

9) Action on Executive Session Items

- a) **Case 1436 – McMillin moved** to grant the applicant's license to practice massage with the following stipulations: Applicant is placed on probation through 07/31/2014; The Board may, upon 30-days prior notification, amend, modify, extend or reduce the period and terms of probation; Applicant is placed on Peer Supervision through 07/31/2014; Applicant is required to attend, at a minimum of twice weekly, attendance in a 12-step or other alcohol treatment program through 07/31/2014. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**
- b) **Case 1417 – McMillin moved** to grant the applicant's license to practice massage with the following stipulations: Applicant is placed on probationary status through 03/30/2014, after which the Board may review his application for renewal to determine if the probationary period shall be extended; The Board may, upon 30-days prior notification, amend, modify, extend or reduce the period and terms of probation; Applicant agrees not to engage in any conduct that would or could impact his ability to safely and competently conduct his massage practice or compromise the health and safety of the clients served; Applicant shall work only in a group practice setting; Applicant agrees that any time he engages in the practice of massage, it will be in a group practice setting; Applicant shall disclose to his employer, or in the case of other settings, organizer, manager or individual responsible for the event, his stipulations for licensure; Applicant shall obey all laws and ordinances; Applicant shall be placed on peer supervision through 03/30/2014, at the expense of the Board; and Applicant shall successfully complete all court ordered probation with no further violations. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**
- c) **Case 1419 – Bennouri moved** to deny applicant's renewal application per ORS 687.081(1)(a) and ORS 687.051(2). **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

- d) **Case 1437 – Bennouri** moved to grant the applicant's massage license. **Second the Motion: McMillin** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.
- e) **Case 1431 – McMillin** moved to grant a temporary license valid through 01/31/2013 and to have the Board reconsider this matter at the January 2013 Board meeting. **Second the Motion: Morin** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.
- f) **Case 1259 – Morin** moved to accept and issue the Final Order. **Second the Motion: Calise** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.
- g) **Case 1310 – Calise** moved to revoke Licensee's massage license for violations of: ORS 687.081(1)(i), engaging in unprofessional or dishonorable conduct; OAR 334-040-0010(17)(a), failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to: failure to furnish requested papers and documents; OAR 334-040-0010(18), failing to comply with a Board Order; and OAR 334-040-0040(19)(c), failure to disclose or release information about a client if required by law or on written consent of a client (x2). **Second the Motion: Bennouri** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.
- h) **Case 1321 – McMillin** moved to defer this matter to the October meeting for further information. **Second the Motion: Morin** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.
- i) **Case 1371 – McMillin** moved to close the case with a Letter of Concern regarding communication and draping practices. **Second the Motion: Morin** In favor: **Bennouri, Chapman, McMillin, and Morin** **Opposed: None.** **Recused: Calise and Fredrickson** Motion carries.
- j) **Case 1395 – Morin** moved to close the case, as based on further review. **Second the Motion: McMillin** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.
- k) **Case 1408 – Bennouri** moved to close the case as unable to substantiate. **Second the Motion: McMillin** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.
- l) **Case 1412 – McMillin** moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in or purporting to be in the practice of massage, for a total civil penalty of \$500. **Second the Motion: Morin** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.
- m) **Case 1418 - Morin** moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in or purporting to be in the practice of massage; and seven violations of ORS 687.021(2) advertising for massage without a license; for a total civil penalty of \$6,500. **Second the Motion: Calise** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.
- n) **Case 1432 - McMillin** moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in or purporting to be in the practice of massage, for a total civil penalty of \$1,000. **Second the Motion: Morin** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.
- o) **Case 1433 - Calise** moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in or purporting to be in the practice of massage, for a total civil penalty of \$1,000. **Second the Motion: Morin** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.
- p) **Case 1434 - McMillin** moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in or purporting to be in the practice of massage, for a total civil penalty of \$1,000. **Second the Motion: Calise** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.
- q) **Case 1435 - Morin** moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in or purporting to be in the practice of massage, for a total civil penalty of \$1,000. **Second the Motion: Calise** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.
- r) **Executive Session Closed Case Report – Bennouri** moved to accept the Executive Session closed case report as submitted in exhibits 1-3. **Second the Motion: Calise** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** Motion carries.

Case No. 1174

Allegation: Sexual violation

Closed: Letter of concern

Case No. 1320

Allegation: Billing fraud

Closed: Letter of concern

Case No. 1372**Allegation:** Sexual violation**Closed:** No violation found**Case No. 1396****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1414****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1416****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1420****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1422****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1423****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1426****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1427****Allegation:** Unlicensed practice of massage**Closed:** No violation found**Case No. 1428****Allegation:** Work outside of scope of practice**Closed:** No violation found**Case No. 1429****Allegation:** Work outside of scope of practice**Closed:** No violation found

s) **Practical Exam** – The Board took no action on this matter.

10) Public Session Compliance Action –

a) **Public Session Closed Case Report – Bennouri** moved to accept the Public Session closed case report as submitted in exhibits 1- 4 **Second the Motion: Calise** In favor: **Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** Opposed: **None.** Motion carries.

Case No. 1271**Allegation:** Unlicensed practice of massage**Lee Tuley****Closed:** Stipulated agreement issued**Case No. 1277****Allegation:** Other**Steven Rolland****Closed:** Suspended**Case No. 1286****Allegation:** Unlicensed practice of massage**Dustin Breshears****Closed:** Stipulated agreement issued

Case No. 1389 Allegation: Unlicensed practice of massage	Rose Barker Closed: Civil penalty assessed & paid
Case No. 1410 Allegation: Other	Jill Fessenden Closed: Stipulated agreement issued
Case No. 1411 Allegation: Other	Melissa Cerrillo Closed: Stipulated agreement issued
Case No. 1413 Allegation: Substance abuse/impairment	Lynne Marshall-Brook Closed: Voluntary Surrender/Consent Order

11) Public Forum – Opportunity to share thoughts that pertain to agenda items –

Steve **Davis** shared that New York has stated that massage therapists risk losing their licenses if they use Groupon. He sees Groupon as a potential problem to Oregon LMTs, as the discounted prices are so low that they are not profitable. Additionally, he would like to see more public awareness as to what massage therapists do, and less discounting of massage services. **Bennouri** would be happy to write an article for the newsletter. **Davis** would like the Board to take a proactive role to help massage therapists to succeed in business. **Calise** explained that such action is not the legislative charge of the Board. Such a topic would be suited for the professional associations. The Board is charged with public protection, not professional advocacy.

Robert **Gebarowski** inquired about refunded licensure fees. Licensure fees are non-refundable, per Oregon Administrative Rule.

12) Announcements – There is no September meeting.

13) Adjourn Meeting – **Calise** moved to adjourn the meeting. **Second the Motion: Morin** **In favor: Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson** **Opposed: None.** **Motion carries.** The meeting was adjourned at 4:26 pm.