



Oregon

Theodore R. Kulongoski, 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

March 20, 2009

Attendance

Board Members:

Jordan Barton, LMT, Chair
Jeanna Catalano, LMT
Crystal Collier, LMT
Heather Bennouri, LMT
Craig McMillin, Public Member

Staff:

Patty Glenn, Executive Director
Diana Nott, Enforcement Coordinator

Public: Lucan Rainwater Kimberly Horn Jennifer Shmikter

Call to Order -

Barton called to the meeting order at 1:05pm. Role call was performed. **Barton, Bennouri, Catalano, Collier and McMillin** were in attendance. **Calise** was excused.

1) Approve Agenda – Glenn announced that NCBTMB would not be presenting and as such it would affect if and when FSMTB would present. **Bennouri moved** to approve the agenda as amended. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries.**

EXECUTIVE SESSION

The Board may enter into Executive Session to discuss certain matters on the agenda pursuant to: ORS 192.660(2)(f) to consider information or records that are exempt by law from public inspection, ORS 192.501(4) to review test questions, scoring keys and other data used to administer a licensing examination, ORS 192.660(2)(h) consultation with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed, ORS 192.660(2)(k) to consider information obtained as part of an investigation of a licensee or applicant by a health professional regulatory board and ORS 192.660(2)(i) To review and evaluate the job performance of the Executive Director or staff. Prior to entering into Executive Session, the nature of and authority for holding the Executive Session will be announced.

The Board entered into Executive Session at 1:07pm and returned to Public Session at 2:45pm.

2) Action on Executive Session

a) Applicant AA – McMillin moved to approve application for licensure and, while not a condition of his license, applicant to voluntarily make contact with **Glenn** once a month for the next 12 months. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries.**

b) Case 592 – Bennouri moved to ratify the Notice of Proposed Action for 4 violations of ORS 687.081(1)(f), licensee has been convicted of a crime that bears a demonstrable relationship to the practice of massage; 4 violations of ORS 687.081 (1)(i), licensee engages in unprofessional or dishonorable conduct; 4 violations of OAR 334-030-0025(19)(d) any conduct or practice which could endanger the health or safety of a client or the public; and 4 violations of OAR 334-030-0025(19)(e), any conduct or practice which impairs a massage therapist's ability to safely and skillfully practice massage. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None.**

Motion carries.

c) Case 665 Catalano moved to issue a of Notice of Proposed Action for 4 violations of OAR 334-030-0005(1)(g) be accountable for his or her actions and commitments and assume personal and professional responsibility to do his or her best, for a total civil penalty of \$3,500 with the stipulation that if restitution is made, the civil penalty will be reduced to \$500. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries.**

d) Case 667 – McMillin moved to Close with no action. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries**

e) Case 734 – Collier moved to issue a Notice of Revocation for 4 violations of ORS 687.081(1)(i), unprofessional or dishonorable conduct, 4 violations of OAR 334-030-0025(19)(a)(B), Sexual violation which is sex between the LMT and the client and 4 violations of ORS 687.081(1)(i) and 1 violation of ORS 687.081(1)(b) making false representation or statements to the Board. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries**

f) Case 736 – Bennouri moved to close with no action as the Board was unable to substantiate a draping violation. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None.**

Motion carries

g) Case 737 – Catalano moved to issue an emergency suspension of massage license for 2 violations of OAR 334-040-0010(19)(a)(A), Sexual abuse, pending the outcome of the criminal matter. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None.**

Motion carries.

3) Law Enforcement Action

a) Case 578 Libby Egan – moved to issue a Notice of Proposed Action for one violation of ORS 687.021(2)(a), advertising massage without a license, for a total civil penalty of \$500. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries.**

b) Case 764 Denise Garnes – moved to issue a notice of proposed action for two violations of ORS 687.021(2)(a), unlicensed advertising of massage, and one violation of ORS 687.021(1), practicing massage without a license, for a total civil penalty of \$2,500. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries.**

c) Case 762 Eliza Cahill – moved to issue a notice of proposed action for three violations of ORS 687.021(2)(a), unlicensed advertising of massage, and one violation of ORS 687.021(1) practicing massage without a license, for a total civil penalty of \$3,500. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries.**

d) Case 764 Yvette Kelley – moved to issue a notice of proposed action for four violations of ORS 687.021(2)(a), unlicensed advertising of massage, and one violation of ORS 687.021(1), practicing massage without a license, for a total civil penalty of \$4,500. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries.**

e) Case 765 Lisa King - moved to issue a notice of proposed action for nine violations of ORS 687.021(2)(a), unlicensed advertising of massage, and one violation of ORS 687.021(1), unlicensed practice of massage, for a total civil penalty of \$9,500 and forward to law enforcement **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries.**

f) **Closed Case Report - McMillin moved to accept the closed case report. In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries.**

Case No. 43

Allegation: Ethics/boundaries **Closed:** Unable to substantiate

Case No. 575 **Charlotte A Sperisen**

Allegation: Sexual Impropriety **Closed:** Stipulated Agreement Issued

Case No. 581 **Leah Hansen**

Allegation: Unlicensed Practice **Closed:** letter of concern

Case No. 651 **Amyiriana Santiago**

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

Case No. 658 **Kristin Kennedy**

Allegation: Unlicensed Practice **Closed:** Stipulated Agreement Issued

Case No. 666

Allegation: Abuse of drugs/alcohol **Closed:** insufficient evidence

Case No. 670 **Paula Hulen**

Allegation: Unlicensed Practice **Closed:** compliance met

Case No. 674 **Unknown Craigslist**

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

Case No. 675 **Mia X Craigslist**

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

Case No. 687 **Aaron Wartena**

Allegation: non-compliance with an existing Board order **Closed:** Suspended

Case No. 695 **Richard Harris**

Allegation: Sexual Violation **Closed:** Surrendered

Case No. 726

Allegation: No license number in ad **Closed:** compliance met

Case No. 745

Allegation: No license number in ad **Closed:** No action taken, duplicate case

Case No. 749

Allegation: No license number in ad **Closed:** compliance met

Case No. 750

Allegation: No license number in ad **Closed:** compliance met

Case No. 751

Allegation: No license number in ad **Closed:** compliance met

Case No. 752

Allegation: No license number in ad **Closed:** compliance met

Case No. 753

Allegation: No license number in ad **Closed:** compliance met

Case No. 754

Allegation: No license number in ad **Closed:** compliance met

Case No. 755

Allegation: No license number in ad **Closed:** compliance met

4) Public Comments – Opportunity for the public to address the board Jennifer Shmikter, speaking for NCB, does not know which meeting they will attend. Board discussed meeting dates, **McMillin moved** to give NCB the following options: if NCB wishes to meet in April, they will need to provide written notice to the Board by March 27, 2009. If the Board does not hear from NCB by that date, they will automatically be placed on the agenda for the May meeting. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries**

5) Approve Minutes of February 20, 2009 – **McMillin moved** to approve the amended minutes of January 16, 2009 and postpone approval of the meeting minutes of February 20, 2009 until the April meeting. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries.** After discussion on the clarity and readability of meeting minutes **Glenn** asked the Board to make sure that our minutes are accurate and clearly captured in a way that the public can easily understand the intention of discussions and motions.

6) Directors Report - Glenn provided the Board with a demographic report which included the number of active and inactive licensees, as well as a breakdown by age, ethnicity, gender and modality.

a) Staff Meetings -. The staff met March 9th and the Board received a summary of that meeting. **Glenn** stated that the Board will need to discuss furloughs at the April meeting. **Barton** asked if this was something that was being done now or something that was being planned for the future. **Glenn** responded that it was both. State employees were being asked to take furlough days for the remainder of the biennium and the union is negotiating for the next biennium. There was discussion on what other states are doing, how the concept could impact the agency and the possibility of closing one Friday per month. **Glenn** also reported that the automated phone system is up and running.

b) Finances - The Board received a balance sheet and P&L. We are trending well. A detailed budget to actual and the 09/11 budget will be reviewed at the April meeting.

i) 2009-2011 budget –**Glenn** is preparing the 09/11 budget and will review with Barton and Calise prior to the April meeting.

c) 2009 Legislative session – Glenn will provide an updated bill tracking report to the Board members. We are currently watching about 20 bills. Some updates are: SB 146 – The OBMT bill passed out of committee with a 4-1 vote. HB 2057 – is quiet at this point. **Glenn** met with the Representatives of the committee and there's not much happening right now; HB 2058A passed out of committee but hasn't been scheduled on the Senate side; HB 2118 has a lot of amendments happening and we will most likely need to look at it in April. **Glenn** testified at the request of the Governor's office on the continued jurisdiction piece in HB2118.

There was discussion on other bills being tracked and where they are in the process.

d) Health Related Boards meeting – Will meet again on March 30th. **Glenn** will have more information for the Board in April.

e) SIBA update – Met on the 17th. There is a follow-up meeting scheduled April 1st with PEBB.

7) Committee Updates

a) Education/Scope of Practice Committee - Because **Calise** is the liaison and was not in attendance, the Board was directed to read the report from the last meeting and address any questions with **Calise** at April's meeting.

8) FSMTB Updates – The Board received a copy of the letter from AMTA endorsing MBLEx as the exam of choice for entry level licensure into the profession. They also received a copy of the NCBTMB press release regarding that endorsement.

Glenn reported that the strategic planning process was phenomenal. She continues to be impressed with how that group works together as a team. The information will eventually come back to the Board as Oregon is a member state.

With the AMTA endorsement, the FSMTB has seen an increase in exams administered.

NCBTMB is challenging Florida law and that is coming back to their Board in April.

9) Board Business

a) NCBTMB Reports at 3:00 - postponed

b) FSMTB Reports at 3:30 – postponed

c) FARB Report – **Barton** reported that it was valuable experience.

d) Residual Rules Changes – These rules changes are left over from the last large revision, and will be wrapped in with the upcoming budget rules changes. The anticipated effective date would be July 1, 2009. **McMillin moved** to accept the rules as proposed **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries.**

Proposed Rules:

334-010-0005 (3) Applicants for examination shall submit the following with their application:

- (a) A copy of a ~~legal picture~~ **government issued photo** identification. This identification could be a valid driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;

334-030-0005 (6) All application documents for examination and licensure submitted in a language other than English shall be accompanied by:

- (a) An accurate translation of those documents into English;
- (b) A notarized affidavit certifying that the translator is competent in both the language of the document and the English language;
- (c) A notarized affidavit certifying that the translation is a true and complete translation of the foreign language original; **and**
- (d) Any costs of translation of all documents required by the Board shall be at the expense of the applicant.

OAR 334-010-0010 (6) Failure to Pass: An applicant must pass the practical examination within 24 months of the initial date of application. **The Board may require an applicant with 3 or more examination failures to undertake and satisfactorily complete a Board approved remediation plan prior to reapplying for the examination.**

334-010-0033

Fees

~~Licensure fees will not be refunded.~~

~~(1) The fee for an initial and renewal license is \$100 per biennium.~~

~~(2) The fee for inactive license is \$50 per biennium.~~

~~(3) The fee for the practical examination and retake is \$150.~~

~~(4) Application fee \$50.~~

~~(5) Examination fee will be refunded only when the applicant is unqualified by Oregon statutes and no inquiry or investigation is initiated.~~

~~(6) A \$25 fee will be charged per week, to a maximum of \$250, for any late license renewal.~~

~~(7) The temporary license fee is \$25.~~

~~(8) The fee for mailing list is \$100.~~

~~(9) The fee for a license reprint is \$5.~~

~~(10) The fee for license verification is \$5.00.~~

(1) The fees are:

- (a) \$100 per biennium for initial or active license;**
- (b) \$50 per biennium for inactive license;**
- (c) \$25 per week, up to a maximum of \$250, for any late renewal;**
- (d) \$50 for exam/endorsement application processing;**
- (e) \$150 for each practical examination;**
- (f) \$100 for mailing list;**
- (g) \$5 for license reprint;**
- (h) \$5 for license verification; and**
- (i) other administrative fees as allowed by law.**

(2) Application and licensure fees are not refundable.

(3) Examination fees will be refunded only when requested in writing and either:

- (a) the applicant is unqualified by Oregon statutes, or
- (b) applicant requests refund postmarked at least 7 days prior to the exam.

334-010-0050 (1) Each licensee shall complete 25 hours of continuing education in the competencies each renewal period. At renewal time, each licensee shall sign and submit a Board supplied CE form indicating they have completed 25 hours of continuing education. **The Board may require proof of CE hours.**

334-020-0050

Linens

- ~~(1) The use of soiled linens is prohibited.~~
- ~~(2) All single-service materials and clean linens shall be stored at least four inches off the floor in shelves, compartment, or cabinets used for that purpose only.~~
- ~~(3) All single-service materials and linens (such as sheets, towels, gowns, pillow cases) used in the practice of massage, shall be furnished clean and fresh for the use of each individual patron.~~
- ~~(4) All soiled linens shall be immediately placed in a covered receptacle.~~
- ~~(5) All soiled linens shall be washed with bleach in a clothes washing machine which provides a hot water temperature of at least 140 degrees Fahrenheit.~~
- (1) When linens are used they must be routinely cleaned and stored in a manner which reasonably assures the sanitary use for each client**
- (2) The use of soiled linens is prohibited.**
- (3) All soiled linens must be:**
 - (a) immediately placed in a receptacle that closes and prevents cross-contamination;**
 - (b) handled as little as possible;**
 - (c) laundered in a manner that eliminates the risk of spreading parasites, communicable diseases and infections; and**
 - (d) laundered in a manner that removes all residue of topical preparations.**

e) Transportation & Accommodations for April meeting - There will be an ethics class from 9-12, followed by a ½ hour break from 12:00 – 12:30. The Board Q&A Session will be scheduled from 12:30 – 1:30, with the Board meeting commencing at the end of the Q&A. The work session and Board meeting on Saturday will be held at the Manor from 9-12.

f) CAM & Nursing Practice – The nursing Board felt that OBMT Board member feedback was very important. **McMillin** would rather reserve comment for the final product. It was agreed by all Board members.

g) Tim Driscoll – The Board discussed the interested party and will support the appointment of Tim Driscoll as the new Public Health Board Member.

h) SB's 692/693/717 - SB 692 expands the exemption of reflexology to include the face of the client and the palms and fingers of the practitioner. SB 693 would exempt Bowen from the massage practice act. SB 717 would exempt polarity from the massage practice act. **McMillin** stated that if there's touch it should be regulated and it doesn't matter by whom. The Board discussed what the challenges are and discussed possible options such as creating limited practice acts or creating a task force charged with identifying what modalities should be regulated by the massage board and which need to be removed.

McMillin moved to issue the position statement that if the modality involves touching one person to another, we believe the activity should be regulated for reasons of public safety including sanitation, and the manner in which it should be regulated should be left up to the legislature. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries.**

10) Public Forum – Opportunity to share thoughts that pertain to agenda items. No public comments.

11) Announcements – No announcements.

12) Adjourn Meeting - Bennouri Moved to adjourn the meeting at 4:39pm. **In favor: Barton, Bennouri, Catalano, Collier and McMillin. Opposed: None. Motion carries.**