



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

RULES COMMITTEE MEETING

February 14, 2011

OBMT Office

Attendance

Committee Members:

Michael Jordan, LMT

Board Members & Staff:

Kathy Calise, Board Chair

Heather Bennouri, LMT, Board Liaison

Kate Coffey, Executive Director

Diana Nott, Compliance Coordinator

Public: There was no public in attendance.

1. **Call to Order** - Calise called the meeting to order at 2:05pm.
2. **Introductions** – Present today are Michael Jordan, LMT; Board Members Kathy Calise, Board Chair and Heather Bennouri, LMT and Board Liaison; and staff members Kate Coffey, Executive Director and Diana Nott, Compliance Coordinator.

There was discussion that Michael Blackmore, LMT, was interested in attending these committee meetings in the future as the representative for the American Massage Therapy Association (AMTA) Oregon Chapter. A request for representation from the Oregon Massage Therapy Association (OMTA) was issued. At this time, there has not been a representative from that professional association assigned to this committee.

It was discussed that the committee desired to have five or six members, excluding Board members and staff, for this committee.

Bennouri reported that prior to 2007, the Rules Committee conducted a thorough review of Oregon Administrative Rules Chapter 334, and Oregon Revised Statutes Chapter 687. There had been suggested statute changes reviewed by Board counsel and put forward at the 2007 and 2009 legislative sessions. Each time, the proposed bill was not passed. There was a discussion on strategy to consider, should the Board wish to put forth future legislative proposals. **Calise** indicated that the Board must mend relationships with the legislature and licensees.

3. **Public Input** – There were no members of the public present.

4. Considerations:

- a. Budget – **Coffey** put forward a proposed budget for consideration. Based on her forecast, the 2011-2013 biennial budget should be \$1,602,000. She noted that the salary forecast did not include cost of living adjustments, and if those are allowed during the biennium, the budget will need to be adjusted.
- b. OAR 334-010-0015(10) – There was discussion on the fees associated with individuals that move from an inactive status to an active status, mid-cycle. It was explained that the rules had been previously interpreted that an individual may return to an active status by paying the active fee. Past practice was to require the full active fee. It was then internally changed to accept the difference in fee between the inactive status and the active status. It was unclear that the rule as written allowed such a practice. It was also questioned if that was the intent of the Board. It was suggested that the Board consider a new fee for those returning to active from an inactive status when the request is mid-cycle (before the two-year license renewal is due). It was determined that this matter would require additional work for consideration. It was deferred to a future committee meeting. Staff is to gather statistics on how many individuals this scenario affects. The committee will consider defining “mid-cycle” as well.
- c. Definition of Agency – It was discussed that the current definition of “agency” was not in line with how “agency” is defined in the Oregon Administrative Rules. Currently located under OAR 334-001-0060(1) “Agency” means the ability to exert personal power or produce an effect.

“Agency” is currently used in the following places:

- OAR 334-001-0060(8) "Certified Class or program" means a class or program that is approved by the Board and is offered:
 - (a) By a person or institution licensed as a career school under ORS 345.010 to 345.450; or
 - (b) By a community college approved by the Department of Education; or
 - (c) In another state and licensed or approved by the appropriate **agency** in that state.
(emphasis added)
- OAR 334-010-0015(2) 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;
(emphasis added)
- OAR 334-010-0046 (1) A class or program certified under ORS 687.051 must be offered by:
 - (a) A person or institution licensed as a private vocational school under ORS 345.010 to 345.074 or the equivalent licensing authority of another jurisdiction; or
 - (b) By a community college and approved by the Division of Vocational Education or the Department of Education, or the appropriate **agency** of another jurisdiction; or *(emphasis added)*
 - (c) By a college accredited either by the Northwest Association of Secondary and Higher Schools or a like regional association or by a college in Oregon approved by the Oregon Office of Educational Policy and Planning for the purpose of granting degrees; and
 - (d) Approved by the Board.

It was discussed that the removal of “Agency” may be the best option to address this matter, as the word is not used in plain language and does not appear to cause confusion.

- d. Fingerprinting – **Jordan** reported that the Board had tried, in the past, to create rules and policies for fingerprinting of new applicants. He indicated that there was significant opposition to this prospect. It was further explained that during the 2009 legislative session, the members of the legislature had voiced concerns over the Board's lack of fingerprinting and indicated that the OBMT is the only health-regulatory agency not conducting fingerprint checks. As a compromise, the Board began the criminal history checks through LEDS. However, this does not allow the Board to have access to full criminal history matters outside of Oregon. As such, it is the desire of many to implement fingerprint checks on all new applicants. This will only affect incoming applicants and will have no impact on current licensees. It was explained that the fingerprints are destroyed after the background check is conducted, and they are not retained by any entity. There was discussion on how an applicant would obtain the fingerprint cards. It was believed that they may be able to visit their local Oregon State Police office and obtain them. It was unclear what the cost would be to the applicant or if there would be a delay in licensure as a result of this process. It was determined that this matter requires more research pertaining to language, fees, procedures, etc. It was expected that this would be part of the examination application process. **Coffey** will contact the Board's counsel for prior works on this matter.
- e. Portfolio Review – **Coffey** provided the committee with information on a potential portfolio review process. She indicated that this is a topic begin addressed by the Multi-Discipline Task Force and is in preparation of potential changes to statute. This is presented as a compromise to full exemption.

Bennouri indicated that she was concerned that the ability to draft rules for a portfolio review process is connected to SB 454. She recognizes the need for a portfolio review process and questioned if there was any other way to get portfolio review authority without connecting it to another bill. It was explained that there was no way to get portfolio review authority language put forth on its own for this legislative session. It was reported that putting the portfolio review process forward to the legislature is proof that the Board is willing to work on the concerns of those requesting exemption. There was a great deal of discussion on the exemption requests and how to address those concerns in a productive manner. **Coffey** indicated that it is her desire that the committee allow the portfolio review language in SB 454..

There was discussion on the concern over the vagueness of the exemption language.

Jordan asked if exemption is allowed, how are those individuals then regulated? There was concern over the ability of the associations to have disciplinary authority over the membership. The exemption concept is a matter that is before the MDTF for consideration.

The Rules Committee is asked to draft portfolio review language to prepare for potential statute change. There was discussion on where this language should go. Would it be best to have its own section such as OAR 334-010-0009?

Bennouri asked for more clarity on the requirements, which currently state:

- Minimum of 140 hours of contact classroom instruction
- Maximum of 40 hours of clinical practice work experience
- Maximum of 120 hours of continuing education hours

Because the minimum of 140 hours can be done through continuing education, it was confusing what the maximum of 120 continuing education hours refers to.

It was noted that the current process needs to be re-written to address jurisdictions with or without licensure requirements.

The committee will need to consider a fee associated with this process, as it will require a significant amount of staff time for review and determination.

Bennouri will contact the Education/Scope of Practice Committee chair to obtain further information and clarity of intent.

- f. Retired License Status – **Nott** reported that there is a need to allow for a “retired” licensure status and to draft rules around such a status. There is a need to determine what an individual would need to do if they chose to return from a retired status. This matter will require more consideration and has been deferred for another committee meeting.
- g. Definition of Prescription – After the February 7, 2011 Board meeting, it was determined that there may be a need to define prescription. This is in response to an inquiry about the ability of a LMT to use certain devices or equipment. Currently, if the LMT is trained in the use of device or equipment, the device or equipment can be purchased by the general population, the device or equipment does not require a prescription and the treatment falls within the scope of practice of a massage therapist, then the LMT may use the device or equipment. It was suggested to the Board that certain items currently used by LMTs, such as cold laser, require a prescription. The following questions were asked:

Who determines what requires a prescription?
What is considered a prescription by Oregon Statute?

Jordan will research this matter and report back at the next committee meeting.

- 5. Public Input - There was no public in attendance at this time.
- 6. Review – The committee will put forth a recommendation to the Board for the budget and to remove the definition of agency. The remaining items will be deferred to future meetings.

The next meeting is scheduled for Monday, March 21, 2011 from 9:00 am – 11:00 am.

- 7. Adjournment – The meeting was adjourned at 4:00 pm.