



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

August 15, 2011

OBMT Office

Attendance

Committee Members:

Michael Jordan, LMT, **Chair**

Todd Pennington, LMT

Pratiti Fullerton, LMT

Mike Blackmore, LMT

Board Members & Staff:

Heather Bennouri, LMT, Board Liaison

Kate Coffey, Executive Director

Diana Nott, Compliance Coordinator

Christine West, Policy Analyst

Public: Marty Dawson Andrea Weiner

1. **Call to Order** - Jordan called the meeting to order at 9:00 am.
2. **Introductions** – Present today are Michael Jordan, LMT, Todd Pennington, LMT, Pratiti Fullerton, LMT and Bowenwork Practitioner, and Mike Blackmore, LMT; Board Member Heather Bennouri, LMT and Board Liaison; staff members Kate Coffey, Executive Director; Diana Nott, Compliance Coordinator; and Christine West, Policy Analyst. Barb Pickle, LMT and Steve Davis, LMT were absent.
3. Public Input –

Weiner indicated that she was interested in the newly implemented exemption matters. She as participated in the development of SB 454 and expressed that she is supportive of developing Oregon Administrative Rules that specifically name any exempt practices. Additionally, she is curious to hear from Board staff on how these rules will be implemented, what is being discussed and what the needs of staff will be.

Dawson indicated that she attended the previous two Scope of Practice Committee meetings and expressed concern that Trager has been left out of the development of exempted practices by mistake. She has asked that the committee include Trager along with Feldenkrais under movement education.

4. Considerations:

Bennouri provided the committee with feedback from the August 8, 2011 Board meeting. She reported that all draft rules provided to the Board were well-received. She informed the committee that the Board requested that quotations used around contact hours and certified class hours be removed. She reported that the Board moved to create a temporary rule which would allow the Board to accept core curriculum education in credit hours as

well as the currently accepted clock hours. She informed the committee that the temporary rule will need to go through the permanent rule-making process with the other items the committee is working on.

Bennroui reported that the Board indicated that it was their desire to not have any exempted practices specifically named in rule. There was extensive discussion on the desire of those exempted practices to be named in rule. It was explained that historically, naming a specific item has caused issues in the past because an individual may say that they are practicing a particular modality when the manner in which they implement their practice is contrary to the true scope of that particular modality. In short, it does not matter what the practice is called, but instead how they actually perform that practice that can be of issue.

There was extensive discussion over the jurisdiction of the Board and how to maintain the integrity of the intent of the exemption language without causing loopholes that may harm the public or practitioner.

It was stated that ultimately, the committee works at the direction of the Board. The Board has instructed the committee to draft language that addresses the current need without naming any specific practice.

The committee amended the draft language to read:

334-010-0027

Exempt Practices

(1) Practitioners exempt from the Oregon Board of Massage Therapists licensing authority are defined as practitioners who:

(a) Do not claim expressly or implicitly to be massage therapists and who limit their work to the practice of:

(i) Using touch, words and directed movement to deepen awareness of existing patterns of movement and suggest new possibilities of movement, as defined per 687.031(1)(j)(i); or

(ii) Using minimal touch over specific points on the body to facilitate balance in the nervous system, as defined per 687.031(1)(j)(ii); or

(iii) Using touch to affect the energy systems or channels of energy of the body, as defined per 687.031(1)(j)(iii); and

(b) Hold an active certification from a National or International professional organization or credentialing agency that:

(i) Requires a minimum level of training specific to their discipline, demonstration of competence and adherence to an approved scope of practice and ethical standards; and

(ii) Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and

(c) Provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

(2) It is the exempt practitioner's responsibility to insure they meet the criteria for being exempt and only practice within their exempt scope of practice. Practitioners may be subject to discipline by the Board if they:

(a) Refers to themselves or implies they are a massage therapist; or

(b) Practices outside of the exempt scope of practice; or

(c) Practice without an active certification from a National or International professional organization or credentialing agency.

(d) Failure to provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

(3) The State Board of Massage Therapists has the authority to verify a practitioners claimed exemption from licensure of ORS 687 under subsection (1)(j) of section 687.031. Verification may include, but is not limited to, consultation with the practitioners certifying organization or agency.

Stat. Auth.: ORS 687

The committee worked on the fiscal impact statement for all of the pending rules changes.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

334-010-0027 (Exemption rule) 2011 Legislative Session Senate Bill 454. There are few modalities known to be exempt as of January 1, 2012 when this rule takes effect. The estimated decline in revenue for the Massage Board is \$13,950 per year.

334-010-0018 (Background check) 2005 Legislative Session authorized the Oregon Massage Board to perform background checks on all licensee. Rule 334-010-0018 encompasses fingerprint records checks on Licensed Massage Therapist living out of state and initial licensees. The estimated fiscal impact is a onetime expenditure of \$850 for modifications of the licensee database.

334-010-0009 (Credentialing rule) 2011 Legislative Session Senate Bill 454 added a credentialing review to ORS 687. Due to different license requirements for Therapist from other states 334-010-0009 offers Massage Therapist currently practicing in other states the opportunity to apply for review of their credentials to determine if they are comparable to Oregon's education requirements and once approved take the Oregon exam. The estimated fiscal impact is a yearly increase of approximately \$10,000.

334-010-0050 (Continuing Education) removes part of a sentence already defined in 334-001-0060 Definitions. There is no estimated fiscal impact from this rule change.

334-010-0050(4)(b) (Hydrotherapy) 2011 Legislative Session, Senate Bill 454, removed Hydrotherapy requirements for licensure. Although applicants may take Hydrotherapy as part of their curriculum and will receive credit towards their 300 required Massage Theory and Practical Application hours, it is not required. There is no estimated fiscal impact from this rule change.

334-001-0020 (Procurement) combines the current 334-001-0020 Contracting and 334-001-0035 Purchasing Rules into one procurement rule. This will eliminate the usage of rule number 334-001-0035. There is no estimated fiscal impact from this rule change.

334-010-0005(4)(c) (Credit Hours) adds language to allow the board to accept credit hours from schools and universities. There is no estimated fiscal impact from this rule change.

334-010-0046(7)(b) & 334-010-0046(1)(b) adds "or University" to acceptable schools for licensure. This was added to statute by House Bill 2155. There is no estimated fiscal impact from this rule change.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

334-010-0009 Credentialing review process could create a decrease in enrollment for the 25 Massage Therapy Schools in Oregon.

334-010-0027 Exemption rule will create an increased enrollment at training facilities teaching specific modalities that will be exempt in Oregon. We estimate that there are approximately 4 training facilities.

334-010-0018 Background check will negatively impact approximately 173 out of state Licensed Massage Therapist and those seeking to become Licensed Massage Therapist in Oregon.

334-010-0050(4)(b) removal of hydrotherapy requirements could create a decrease in enrollment for the 25 Massage Therapy Schools in Oregon.

334-010-0050(4)(b) Hydrotherapy will have a positive saving for Structural Integrators estimated at 20 a year.

334-010-0046(7)(b), 334-010-0046(1)(b) University language and 334-010-0005(4)(c) Credit Hours will retain enrollment and financial aid for students at University of Western States.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

334-010-0018 Background Check will have an estimated \$8996 negative financial impact to out of state Licensed Massage Therapist.

334-010-0050(4)(b) Hydrotherapy training requirements will create a negligible impact at 25 massage therapy schools.

334-010-0050(4)(b) Hydrotherapy will have a minimal financial increase for Structural Integrators. By removing the requirements for hydrotherapy Structural Integrators qualify for the Oregon exam.

334-010-0009 Credentialing review will have a minimal financial decrease due to lower enrollment at 25 massage therapy schools.

334-010-0027 Exemption rule will have a minimal financial decrease due to lower enrollment at 25 massage therapy schools.

334-010-0027 Exemption rule will have a positive financial impact with increased enrollment at training facilities teaching specific modalities. Few licensed massage therapists will have a positive savings from the exemption rule, as they will no longer be required to maintain a massage therapist's license to practice the exempt modalities.

334-010-0046(7)(b), 334-010-0046(1)(b) University language and 334-010-0005(4)(c) Credit Hours will have a positive fiscal impact to University of Western States of as much as \$10,441 per academic year.

334-010-0050 Continuing education will have no fiscal impact.

334-001-0020 Procurement will have no fiscal impact.

c. Equipment, supplies, labor and increased administration required for compliance:

Negligible impact to all by all rule changes.

All draft rules will be sent to the Board legal counsel for review. They will then be reviewed by the Board at the September 12, 2011 Board meeting.

5. Public Input – **Dawson** asked if the exemption draft would be included in the minutes. It was reported that it would. She asked how long it would take to receive the draft minutes. She was told it would one week to ten days.

The committee did not set a future meeting, as they are uncertain that there is any scope of work for them at this time.

Bennouri indicated that an additional change will need to be made under continuing education, as there are two references to contact hours which conflict. The committee addressed the matter.

6. Adjournment – The meeting was adjourned at 10:45 am.