



Oregon

Theodore R. Kulongoski, Governor

Board of Massage Therapists

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BOARD MEETING MINUTES

July 12, 2010

Attendance

Board Members:

Kathy Calise, Public Member, Chair

Heather Bennouri, LMT, Vice Chair

Crystal Collier, LMT

David Fredrickson, LMT

Melanie Morin, LMT

Craig McMillin, Public Member

Staff:

Frank Peccia, Interim Executive Director

Diana Nott, Enforcement Coordinator

George Finch, Interim Director of Compliance

Lori Lindley, Assistant Attorney General

Public:

Kristy Huffman

Rachel Heichen

Jesse Hickerson

Lisa Barck Garofalo

Pratiti Fullerton

Alexander Cann

Ann Watters

Leonel Duarte

Wie Wan Oei

Call to Order

Calise called the meeting to order at 9:01 am. Role call was performed. Calise, Bennouri, Collier, Fredrickson, McMillin and Morin were present. Driscoll was absent.

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

2) **Approve Minutes of June 7, 2010 – Fredrickson** noted that in the extraordinary compensation discussion, he should be recorded as opposed. **McMillin moved** to approve the minutes from the June 7, 2010 Board meeting, with the noted amendment. **Second the Motion: Morin** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None. Motion carries.**

Bennouri moved to amend the agenda and briefly postpone the Polarity discussion, as Ms. Watters had not yet arrived. **Second the Motion: Morin** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None. Motion carries.**

At this time, there was an introduction of each Board member as well as Frank Peccia, Interim Executive Director, George Finch, Interim Director of Compliance and Kristy Huffman, the law clerk hired to assist with special Board projects over the summer.

Meeting attendees introduced themselves to the Board.

3) Directors Report

a) **Finances – Peccia** reported that he will meet with Calise next week to review financials in greater detail. Information was provided which gave the same financial picture to the Board as the prior month, to include information through June 2010. Board members were provided with a cash balance forecast, with as well as without a rate increase.

b) **Board Chair Compensation –** The Board had voted in June to allow for extraordinary compensation to the Board chair for work above and beyond the expected duties of such a position. There had been discussion on how to calculate the amount, however there was a calculation error in the number provided in the final Board vote. The prior vote was for compensation in the amount of \$1,775 when it should have been for \$1,875. **Bennouri moved** to amend the June 2010 payment to Calise by \$100. **Second the Motion: Collier** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None. Motion carries.**

Peccia recommended the Board consider a temporary rule which would allow the office to compensate the Board chair accordingly, without having to come before the Board each month to do so. It was questioned if the extraordinary compensation would be an on-going stipend which would require a permanent rule, or if it is only meant to be temporary so that the Board may address current extenuating needs. **McMillin** stated that he visualized the Board as changing in such a manner that will require much more interaction from the Board chair than in years past. **Collier moved** to approve a temporary rule for an additional stipend for the Board chair in the amount of \$375.00 per month. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.** It was clarified that this stipend will be in addition to the standard \$100.00 per month stipend received by all Board members. The temporary rule will be filed effective July 26, 2010 and will be valid for 180 days.

4) Polarity Discussion – Ann Watters introduced herself and indicated that she had sent documentation for the Board to review at the June 2010 Board meeting. **Calise** confirmed that the information was received and reviewed by the Board members. **Watters** stated that her primary purpose in coming before the Board today was to request exemption from current massage regulation, as it is her opinion that the practice of polarity is not massage. She indicated that practitioners of polarity have a standard of ethical conduct as well as standards of practice and a soon-to-be implemented standardized testing process. She reported that there are international associations for polarity practitioners, as well as an American association. She feels that there is a level of lack of recognition for practitioners and there are a lot of “off-shoots” of the practice. She feels that individuals learn that they can not practice polarity in Oregon unless they receive a massage license, and as such they choose to leave the state, ultimately damaging the economy of the State of Oregon. She feels that the OBMT should not be regulating the practice of polarity, as doing so required practitioners to pay two organizations to be able to practice. **McMillin** asked for clarification on what exactly the issue seems to be. **Watters** responded that she wants to be able to practice polarity without having to be licensed as, referred to as or call herself a massage therapist. **McMillin** inquired as to if she was aware of any enforcement issues before the Board regarding practitioners of polarity. **Watters** indicated that there was not. **McMillin** asked what Ms. Watters would like the Board to do. She replied that she would like the Board to put forward a bill for exemption. **Bennouri** asked for clarification on the two fees paid. This would imply that there is regulation from another entity and she inquired as to who that entity is. In addition, she asked if there were procedures in place to allow that entity to stop someone from practicing if there are ethics, boundaries or business practice violations. **Watters** stated that the American Polarity Therapy Association (APTA) was that entity. She indicated that they may assess fines or revoke credentials, though she said that they haven’t had any problems. **McMillin** asked if there was any governmental oversight of the practitioners through the APTA. **Watters** acknowledged that there was not, but indicated that a client that may have been harmed could turn to their local District Attorney for prosecution. **McMillin** asked what would be cause for prosecution. **Watters** responded that sexual violations, violent matters, etc. could be grounds for prosecution. There was some discussion on enforcement authority of a private entity as well as the enforcement authority of a governmental oversight entity. **Bennouri** asked if there was any authority to prevent someone from practicing. **Watters** stated that the APTA has such authority. **Bennouri** asked if membership is voluntary or if an Oregon LMT may take a workshop on polarity and advertise as practicing polarity without registering with the APTA. **Watters** indicated that such an act would violate APTA rules and regulations and stated that those individuals are not professionals and do not practice polarity. She provided information on the hourly requirements and levels of registration with the APTA. **McMillin** asked for clarification on what authority the APTA has to enforce action based on someone purporting to practice polarity therapy when they are not registered with the APTA. **Watters** explained that this would need to be established, though felt that the private association would have the authority. There was some discussion on the variations between states pertaining to how other states recognize and regulate or exempt polarity. **McMillin** asked **Watters** which entity she feels should be the regulatory body for polarity in the State of Oregon. **Watters** suggested Health and Human Services. There was discussion on the concern of being under one blanket designation as opposed to being recognized as an individual and distinct profession. **Fredrickson** questioned if the Department of Health or another entity would be willing to take on the task of regulating the field of polarity. **Watters** suggested that if another government agency would not be willing to take on such a task, that the APTA could handle the regulation on their own or possibly try to establish under the Department of Education. **Fredrickson** expressed that even with a health care profession that adheres to the requirements of a private organization or professional association may require some sort of governmental oversight. Board members discussed the merits of governmental oversight in health care professions. **Watters** restated that practitioners of polarity do not need to be under another blanket profession. **Bennouri** shared that she believes that when a practitioner starts making physical contact with clients, those individuals should be regulated. **Watters** stated that the APTA is self-contained and that they will not have the same problems that are seen with massage practitioners. She reported that fourteen states have granted exemption for polarity and that there is no governmental oversight in those states. **Fredrickson** requested that **Watters** provide information regarding those states to the

Multi-Discipline Task Force (MDTF), as he feels it would be helpful to them in their current work. The Board thanked **Watters** for her time in speaking with the Board. **Watters** asked the Board to please not raise fees.

5) Committee Updates

- a) **Education/Scope of Practice Committee** – Lisa Barck Garofalo reported to the Board on the July 1, 2010 committee meeting. The committee spent time addressing the legislative directive and trying to determine the role of this committee in comparison to the MDTF. It was ultimately determined that there would be some overlap in work by both committees. She stated that she felt that there was more work than could be accomplished by September, when **Calise** is to report to the legislative committee. There was some concern that the legislative committee would require a final outcome as opposed to a status update on the progress made. Would the committee accept the report as a work-in-progress? **Calise** stated that she was confident in going before the committee with an update and reporting on the commendable job done by both committees on these tasks. General consensus by the Board indicated that they felt that the committee would be pleased to know that there has been some forward momentum and work done on the project. **Barck Garofalo** continued, indicating that the committee was reviewing the definition of massage. There was some concern that with the field of bodywork expanding, narrowing the definition may cause conflict. The committee will consider if issuing one license to all fields of practice is acceptable or if doing so creates a problem by allowing individuals to practice in a field that some feel requires more specific requirements or regulation. The committee has taken a list of the top twenty-five modalities of practice, as reported by Oregon licensees, and is compiling information on those fields of practice. They will be researching how the OBMT has regulated a variety of touch therapies in the past, as well as how other states and organizations view touch therapies. The committee has also been charged with reviewing the Clinical Social Worker bill, SB177, though they have been unable to address this task at this time. She indicated that she would be in attendance at the MDTF meeting on July 30, 2010, and suggested bringing both groups together at some point in the future.
- b) **Rules Committee** – **Calise** reported that she had been unable to locate the prior committee chair, and it is imperative to have this committee meet and move forward. **Bennouri** indicated that she may be aware of someone that could possibly chair the committee. **Barck Garofalo** asked if **Finch** would be willing to chair the committee. He said that he would consider it.
- c) **Multiple Discipline Task Force** – **Collier** reported that the group met on June 25, 2010. She provided the group with the edited work product. They discussed what the Education/Scope of Practice Committee was working on as well. They have utilized a system using Google docs which provides each member access to work product, so that they may continue the committee work on their own time. Each member has been asked to provide a document with information on their field of practice or profession. **Barck Garofalo** asked which professions are represented on this task force. **Collier** replied that the task force included representatives of Bowenwork®, Structural Integration, Rolfing® and Feldenkrais®. She indicated that there has been no reflexology representative or polarity therapy representative, though Ms. **Watters** has provided information on polarity. There was some discussion on making sure that all interested parties receive information on the MDTF meetings. **Calise** would like to recognize that to date, the MDTF has only met four times and that it will take some time to get settled. They have been addressing assignments and gaining focus. It was explained that with this process, there is no discussion on the work being performed; it simply allows the members to have access to the information so that they can prepare for any upcoming meetings, thus not violating any public meeting laws.

6) Board Business

- a) **Executive Director Hire Update** – **Calise** reported that interviews of finalists were being conducted during Executive Session, later in the day.
- b) **Intra-bodywork & Breast Massage Policy** – **Bennouri** provided a document to the Board, which had been reviewed by **AAG Lindley**. It was determined that two separate policies provided better clarity. **Bennouri** was putting these documents before the Board for approval today.

Bennouri moved to take a short break. **Second the Motion: Morin** In favor: **Bennouri, Collier, Fredrickson, McMillin, Morin and Calise.** Opposed: None. Motion carries.

The Board returned from break at 10:20.

Continuation of policy discussion – Collier indicated concern about restrictions in the proposed policy pertaining specifically to breast massage. Fredrickson asked if the policy should include a requirement for both written and verbal consent? McMillin suggested that the verbiage which states, “therapist must articulate a therapeutic reason...” should include the statement, “and demonstrate specialized training...” He also suggested including sections requiring prior written and verbal consent as well as a statement that the client must be fully informed and acknowledge the treatment. There was discussion on the differentiating between male and female breast massage. Bennouri will continue to work on the breast massage policy and seek out input from AAG Lindley. The breast massage policy has been deferred to the August meeting.

Bennouri moved to accept the internal cavity massage policy as submitted, with the discussed revisions. **Second the Motion: Morin** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.

Internal Cavity Massage Policy Adopted July 12, 2010

The Oregon Board of Massage Therapists does not approve specific techniques within the scope of practice. The position on sexual abuse, sexual violation, and sexual impropriety is outlined in the Administrative Rules 334-030-0010.

There are times when massage of internal cavities is appropriate. For example, intra-oral techniques can be used in the treatment of TMJ Dysfunction. Intra-vaginal or intra-anal techniques can be used in the treatment of urinary incontinence, and in women, treating issues related to childbirth.

What is not appropriate is massage of internal cavities for self gratification of the therapist, unnecessary exposure, massage of the genitals without therapeutic (nonsexual) reason, or internal cavity massage without explanation of the treatment or prior consent of the client. Most of the complaints received by the board are around issues of sexual impropriety, lack of communication, or improper draping practices.

The therapist must articulate a therapeutic reason, demonstrate specialized training, and acquire prior written and verbal consent before proceeding to perform massage of internal cavities. Cooperation with other Health Care Practitioners in the management of a client in need of such a treatment is recommended. The client must be fully informed of and acknowledge the treatment procedure, expected outcomes, possible adverse reactions, and give written and verbal consent.

Most of these special procedures will require advanced training beyond the basic massage course. The therapist should be able to present evidence of the completion of such training.

Advised Procedures

There should be someone else (in addition to the client and therapist) present for these massage techniques. A medical prescription is strongly recommended prior to performing these massage techniques.

Mandatory Procedures

ALL INTERNAL CAVITY MASSAGE SHALL BE PERFORMED USING GLOVES AND UTILIZING UNIVERSAL PRECAUTIONS FOR COMMUNICABLE DISEASE CONTROL.

THERE SHALL BE NO INTRAVAGINAL OR INTRANAL TECHNIQUES PERFORMED ON INDIVIDUALS UNDER 18 YEARS OF AGE.

Appropriate draping techniques shall be used at all times (as referenced in OAR 334-010-0025). Any temporary exposure of the genital area for the purposes of treatment is acceptable only in respect to appropriate procedures for that treatment. Immediately following treatment of the area, the genital area must be covered again.

The OBMT has adopted various policies/guidelines to provide additional clarification and information for both licensees and the general public. This policy is supplemental to the Oregon Revised Statutes and Oregon Administrative Rules and as such does

not supersede or replace information contained in the Statutes or Rules that govern massage. Should you have any questions regarding this policy please contact the Board office.

c) **Best Practices** – This document is to be drafted and will be a standing agenda item.

d) **Counter License Discussion – AAG Lindley** had been asked if the Board could impose a counter license/expedited license fee. She confirmed that the Board was within its authority to do so, though rules would need to be created before the practice is implemented. This matter will go before the rules committee.

e) **Meeting with the Oregon Board of Cosmetology – Bennouri** met with Randy Everitt, the Executive Director for the Oregon Health Licensing Agency (OHLA). The OHLA is the centralized agency which monitors several professions, including the cosmetology board. Discussion brought about the recognition that there is an overlapping scope of practice between professions, particularly with massage, nail technicians and estheticians. However, there were some questions pertaining to specific scopes of practice. **Bennouri** reported that OHLA has sought legal advice on such matters. It was asked that if the OBMT discovers matters of concern with a nail technician or an esthetician, that the OBMT will bring the concern to OHLA for discussion. **Bennouri** indicated that the Board compliance unit may need to address such cases differently than they have been addressed in the past. She felt that the discussion was quite positive. **Calise** stated that she had asked **Bennouri** to attend on her behalf and she thanked **Bennouri** for being able to attend this meeting. **Collier** asked if **Everitt** had been informed of the commonly seen areas of concern, such as nail technicians performing deep massage work up the leg or arm, as opposed to strictly application and removal of product. There was some discussion on providing more information to OHLA on the areas of concern from OBMT Board members. The Board feels that there seems to be a level of confusion among some practitioners, as they may not be clear on what is statutorily allowed versus what is being performed in practice. **Fredrickson** stated that he appreciates the quality exchange. Board members asked **Bennouri** to return to **Everitt** with additional information on Board concerns, such as appropriate education on contraindications that, if ignored, could put the public at risk. **Bennouri** indicated that she would e-mail him with the concerns that the Board brought to her.

7) FSMTB

a) **Annual Meeting: Alternate Delegate Discussion** – The Board received information on the cost associated with sending an alternate delegate to the FSMTB annual meeting. **McMillin** suggested that the Board not send the alternate delegate, given current economic matters. He suggested maintaining membership in the organization. **Collier** stated that perhaps the Board would be able to reconsider sending an alternate delegate at some point in the future. **McMillin** clarified for those in attendance, that membership in the organization covers the cost of sending one delegate to the annual meeting. It had been the past practice of the Board to send an alternate delegate as well. **McMillin moved** to decline sending an alternate delegate to the FSMTB annual meeting. **Second the Motion: Collier** In favor: **Bennouri, Collier, Fredrickson, McMillin, Morin and Calise.** Opposed: None. Motion carries.

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

Pratiti Fullerton thanked the Board for moving forward with the MDTF and thanked the Education/Scope of Practice Committee for participating as well. She shared that she was in attendance at the 2009 legislative session when multiple groups approached the legislature to request exemption, and indicated that it seemed to be a shock to the legislators. She stated that she is not against regulation and that she simply wants to be regulated appropriately. She appreciates all of the work that the Board has done in all areas.

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

Case No. 994

Allegation: Sexual impropriety **Closed:** Unable to substantiate

Case No. 995

Allegation: Practicing while in a lapsed status **Closed:** Board lacks jurisdiction

Case No. 997

Allegation: Non-compliance with an existing Board order **Closed:** Compliance met

Case No. 998

Allegation: Scope of practice **Closed:** Letter of concern

Case No. 1000

Allegation: Unlicensed practice **Closed:** Board lacks jurisdiction

Case No. 1002

Allegation: Scope of practice **Closed:** No violation found

Case No. 1017

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

Case No. 1034

Allegation: Unprofessional conduct **Closed:** Board lacks jurisdiction

12) Public Enforcement Action

a) Public Session Closed Case Report – BENNOURI moved to accept the public session closed case report. Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.

Case No. 771

Allegation: Sexual abuse of a client **Benjamin Bekker**
Closed: Revoked

Case No. 759

Allegation: Unlicensed Practice **Bethany Flerchinger**
Closed: Stipulated agreement issued

Case No. 875

Allegation: Practicing massage while license is suspended **Michael Carter**
Closed: Revoked

Case No. 907

Allegation: Other **Jesse Hickerson**
Closed: Stipulated agreement issued

Case No. 911

Allegation: Practicing massage while license is lapsed **Heather Sadowsky**
Closed: Stipulated agreement issued

Case No. 953

Allegation: Unlicensed Practice **Duane Anthony Dorsey**
Closed: Final default order issued

<u>Case No. 955</u>	<u>Wendy Barrantes</u>
Allegation: Unlicensed Practice	Closed: Final default order issued
<u>Case No. 965</u>	<u>Matthew Wruble</u>
Allegation: Unlicensed Practice	Closed: Final default order issued
<u>Case No. 968</u>	<u>Fred Mecha</u>
Allegation: Unlicensed Practice	Closed: Final default order issued
<u>Case No. 974</u>	<u>Chantel McCormick</u>
Allegation: Unlicensed Practice	Closed: Final default order issued
<u>Case No. 986</u>	<u>Marie Del Carmen Medrano</u>
Allegation: Unlicensed Practice	Closed: Final default order issued
<u>Case No. 989</u>	<u>Rick McDaniel</u>
Allegation: Sexual abuse of a client	Closed: Revoked
<u>Case No. 1013</u>	<u>Tia Ramirez</u>
Allegation: Other	Closed: Final default order issued

13) **Public Forum** – Opportunity to share thoughts that pertain to agenda items, ED Hiring Discussion – There were no public in attendance at this time.

14) **Announcements** – Calise made the following announcements:

The OBMT has been selected to take part in a government peer review process of Health Licensing Boards.

Calise has also been contacted and requested to take part in a work group on how to make state agencies more efficient and effective. This group will be headed up by Representative Val Hoyle and the Governor's Health Policy Advisor.

The Board will hold a special meeting on Tuesday, July 20, 2010, at 6:30 pm via conference call, to hear public input on the Executive Director candidates.

15) **Adjourn Meeting** – Bennouri moved to adjourn the Board meeting at 4:24 pm. **Second the motion: Morin. In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**