



# Oregon

Theodore R. Kulongoski, Governor

## Board of Massage Therapists

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## BOARD MEETING MINUTES

November 15, 2010

### Attendance

#### Board Members:

Kathy Calise, Public Member, Chair  
Crystal Collier, LMT  
David Fredrickson, LMT  
Melanie Morin, LMT  
Craig McMillin, Public Member  
Timothy Driscoll, DC, Public Health Member

#### Staff:

Kate Coffey, Executive Director  
Diana Nott, Compliance Coordinator  
Chris Montenaro, Compliance Manager  
Kristy Huffman, Law Clerk  
Lori Lindley, Assistant Attorney General

**Public:** Anthony Brown Janice Brown Ryan Gibbons Jamie Oldencamp

### Call to Order

Calise called the meeting to order at 9:14 am. Role call was performed. Calise, Collier, Driscoll, Fredrickson and Morin were present. McMillin arrived later in the meeting.

At this time, there was an introduction of each Board member as well as Kate Coffey, Executive Director, Chris Montenaro, Compliance Manager and Kristy Huffman, Law Clerk.

- 1) **Approve Agenda** – Driscoll moved to approve the agenda, moving Executive Session to 11:00 am. **Second the Motion: Morin** In favor: Collier, Driscoll, Fredrickson, Morin and Calise. **Opposed: None.** Motion carries.
- 2) **Approve Minutes of October 4, 2010** – Collier moved to approve the minutes of October 4, 2010 as presented. **Second the Motion: Morin** In favor: Collier, Driscoll, Fredrickson, Morin and Calise. **Opposed: None.** Motion carries.
- 3) **Directors Report**
  - a) **Introduction of Kate Coffey** – Calise introduced Coffey, the new Executive Director.
  - b) **Finances** – Coffey provided the Board with several exhibits to be presented with the Director's Report. The Board reviewed sixteen months of financial information, from July 2009 through October 2010. This information showed a net loss of \$156,000. The eight months of November 2010 to June 2011 forecast an additional projected loss of \$104,000. This will bring the total net loss for the 2009-2011 biennium to \$261,000. Fredrickson inquired if the projected numbers include the expected fee increase. Coffey reported that the Board would not see a change in revenue with the fee increase until February 2011. The numbers provided do include that increase. Coffey reported that the ideal circumstance has the agency operating with two months of working capitol in the bank. The Board is not there yet. The Board then reviewed the October 2010 financial statement. This shows a net loss of \$13,000 for the month. Coffey reported that the bulk of this lies in payroll. She explained that the Board is currently paying unemployment benefits, which may be paid out for ninety-nine weeks. Payroll also reflects the payout to Mr. Peccia, as the interim Executive Director and the hiring of Coffey. Coffey reported she and staff are looking into cost-reduction measures. This includes such efforts as reviewing the rent, phones and internet and the lease on office equipment. They are looking at everything to determine if they can obtain cost savings. Coffey also reported that she is in negotiations with the landlord to try to obtain additional space at little or no additional cost. She reported that she is also looking at ways to increase revenue, with a great deal of focus on collection of civil penalties owed to the Board. She reported that the Board may change the process to include outside collection agencies. Currently the Board utilizes the Department of Revenue

(DoR) in collections matters. **Calise** inquired about the amount that DoR takes for successful collections. **Coffey** will have to research that information and will report back. **Montenaro** indicated that an item for future consideration of the Board will be consideration of further reductions with negotiated settlements or fines. He would like to see the Board allow staff the autonomy to negotiate settlement.

**Coffey** updated the Board on the surrender of license for Michael Retone. They received a copy of the Stipulated Agreement and Final Order (Voluntary Surrender).

The Board has received quite a lot of positive feedback on the most recent issue of the Boarderline. The Board also received four or five negative comments about the proposed fee increase.

**Coffey** provided a report to the Board with information on geographical location of licensees by county. This will assist the Board when considering future traveling Board meetings or town halls.

**Coffey** reported that the Board has received a notice of tort claim by Ms. Van Atta. This has been sent to Risk Management for review. They have opened a file on the matter and requested information on the Board process and the action that was taken. **Montenaro** provided the requested information. Risk believes that the Board can successfully support their position, should the matter go to court.

The Governor's office has indicated that they will allow a special day of leave for managers. This will be up to the Board to determine if this will be granted. Represented staff are provided this day of leave through the collective bargaining agreement.

**Coffey** reviewed the action log of the Board. This is a log of items that the Board and staff uses to track desired actions:

**Coffey** is researching the purchasing policy and technology policy. She is setting up contacts with other Executive Directors to learn what their policies look like.

The Board confirmed that staff will stop issuing counter licenses. This means that individuals will no longer be able to come into the office to receive their initial license or renewal license at that time. Information will be collected and processed in the order it was received. This information will be posted to the web site.

The Best Practices information will be provided to the Board at the end of the meeting. This will be reviewed in January.

Board staff is working on a database which will be used to create reports for the Board to help provide consistency in case and disciplinary action.

The database and forms need to be modified to allow for confidentiality of licensee information. This will allow licensees to opt out of having their information publicly available.

**Coffey** will update the Board on investment accounts in January.

The Board still has a desire to work towards paperless Board meetings. The discussion focused on encrypted thumb drives. The Board is concerned with confidentiality of Board meeting information, particularly case information. **Coffey** and **Montenaro** will be working with Grant Moyle on options. **Calise** indicated that she recognizes that there is no such thing as totally paperless, but would like to work towards that goal. **Morin** indicated that it is a typical move in today's society. It will allow the Board to be mindful of the environment and provide better accessibility. **Coffey** asked what the Board expectation is regarding computers. Would the Board provide netbooks or would Board members utilize their own equipment? The consensus was that the Board would obtain encrypted flash drives and office netbooks. The Board will be provided with cost estimates in January.

**McMillin** had provided the Board members with a suggested legislative process in the past. All Board members have reviewed and approved this process.

The current rule-making process should be complete by January.

**Calise** held a Town Hall meeting on November 12, 2010 in Portland. She received positive feedback. The Bend Town Hall was cancelled due to expected incimate weather and safety concerns. **Collier** reported that the LaGrande Town Hall was positive as well. Many attendees understood the reasoning for the fee increase. Some voiced objections at first but by the end of the meeting they seemed to have a better understanding of the reasoning.

**Coffey** reported that Board staff had been asked to reconsider the current late fee structure and if there was any flexibility with that structure. The Board recognizes that the late fee is written into rule and thus provides no flexibility. In addition, they feel that the late fee structure is reasonable and well-known.

c) **General Updates -**

i) **Town Hall Meetings** – **Calise** reported that over the past two months, she has spoken before approximately 2.5% of the licensee population in the State of Oregon. On a whole, she has not gotten negative feedback. There were four or five individuals that spoke out against the proposed fee increase. She reported that the attendees left with a better understanding of the role of the Board, the role of the Board office and the role of the professional associations. They seemed to understand that lower examinations and increased staffing play a role in the current deficit. Attendees also provided positive feedback on the newsletter. The articles were well-received and addressed matters of concern to the LMT population. **Calise** suggested that the Board consider more articles on matters that were addressed or questions asked during the Town Hall meetings. **Collier** indicated that the Town Hall meetings were more of an opportunity for the public to ask questions and get answers. The Board discussed having additional Town Hall meetings throughout the state. **Fredrickson** indicated that he liked the Town Hall format and thought that LMTs would find this to be a better use of their time, as opposed to spending all day in a Board meeting. The Board suggested reminding the public of the traveling Board meeting as well.

4) **Committee Updates**

a) **Education/Scope of Practice Committee** – This committee has not met for a couple of months. **Calise** received information that there were some matters being addressed by the Oregon Department of Education (DoE), pertaining to private career schools. Lisa Barck Garofalo contacted **Calise** and indicated that this committee may need to come back together around February, after she has received all of the information from DoE pertaining to concerns and requests. **Fredrickson** is aware of this matter and is the Board liaison to that committee. This matter is expected to be updated in January.

b) **Rules Committee** – This committee is not meeting right now.

c) **Multiple Discipline Task Force** – This task force is meeting on December 17, 2010, at East West College of the Healing Arts in Portland, Oregon. At that time they will review the work done by the task force and make a determination on the next step. The meeting is scheduled from 2:30-4:30.

5) **Board Business**

a) **Approve 2011 Calendar** – The Board discussed the proposed 2011 calendar. It was determined that the traveling meeting would be held May 13-14, 2010 in Bend. **Morin moved** to approve the 2011 calendar as amended. **Second the Motion: Driscoll** In favor: **Collier, Driscoll, Fredrickson, Morin and Calise**. **Opposed: None**. **Motion carries**

b) **Vote on 2011 Board Chair & Vice Chair** – The Board currently has a policy that the Board Chair will serve for one year. They discussed changing that policy to allow the Board Chair to serve for two years. It was suggested that the Vice Chair serve for one year, allowing for two people to serve as Vice Chair during the two-year term of the Chair. This would allow the Board members to choose between two candidates for the open Chair position. **Calise** indicated that she would be interested in serving a second year as Board Chair. **Collier moved** to extend the tenure of **Calise** for one more year as Board Chair. **Second the Motion: Morin** In favor: **Collier, Driscoll, Fredrickson, Morin and Calise**. **Opposed: None**. **Motion carries**. The Board will consider the Vice Chair term in January.

c) **Third Quarter Examination Statistics** – The Board received the examination statistics for third quarter 2010. The overall pass rate is 82%. **Collier** indicated that is had been suggested and discussed in the past to have these statistics published to

the Board web site. **Calise** reported that there needs to be a meeting with the Board representative and the DoE to discuss poorly performing schools. Staff will compile the statistics and publish to the web site.

**d) Demographics Report** – The Board has requested a quarterly demographics report of licensees. This includes information on gender, age, ethnicity, years in practice and modalities practiced.

**e) Character Questions** – **Montenaro** reported that the prior Compliance Manager had started modification of the character questions. **Montenaro** has further researched this matter and the current version provided to the Board is based on best practices of agencies in Oregon as well as other states. There is a wide spectrum of questions asked and he believes that the version provided to the Board is a good compromise and has the relevant information for the Board to make determinations and decisions with licensing issues. **Fredrickson** questioned if the applicants will be able to see the expungement statement. He would like to see it emphasized. **Calise** stated that this was a topic of discussion at the Federation of State Massage Therapy Boards (FSMTB) meeting. Oregon stands out as having the most in-depth and precise character and background questions. **Fredrickson** asked about the verbiage on the initial license application. The draft states, “an issue that affected your ability to safely practice massage...” He feels that it should read, “an issue that may affect your ability to practice massage...”

**Fredrickson** will assist **Montenaro** with verbiage and editing. **Morin moved** to accept the character questions, with minor revisions. **Second the Motion: Fredrickson** In favor: **Collier, Driscoll, Fredrickson, Morin and Calise.** **Opposed: None.** **Motion carries.**

**f) Committee Considerations** –

**i) Review Committee Expectations** – The Board reviewed the current committee expectations and finds them to be applicable.

**ii) Policies** – There are no suggested changes to policy on committees.

**iii) Staff Attendance** – It was determined that a staff member should attend each committee meeting, acting as the committee secretary to ensure that minutes are taken in a consistent manner. The staff member will act in all manners as the committee secretary, with the exclusion of incorporating duties of the committee chair. **Collier moved** to approve the committee expectations, with the addition of staff member attendance to assume the secretary duties. **Second the Motion: Morin** In favor: **Collier, Driscoll, Fredrickson, Morin and Calise.** **Opposed: None.** **Motion carries.**

**g) Mission Statement & Board Goals** – This matter was deferred to January, when the full Board can meet to discuss it.

**h) Personnel Policy** – **Coffey** reported that the personnel policy has been amended since the Board reviewed it in August. The requested reference policies have been included. **Fredrickson** mentioned that he had some grammatical concerns and questions about consistency. He will speak with **Coffey** to discuss those matters. **Driscoll moved** to approve the personnel policy. **Second the Motion: Collier** In favor: **Collier, Driscoll, Fredrickson, Morin and Calise.** **Opposed: None.** **Motion carries.**

**i) Legislative Strategic Plan** – The Board has a plan in place on how to address legislative matters. **Calise** reported that she had requested that **Coffey** research any pending legislative concepts to determine if any groups are moving forward at the 2011 legislative session to request exemption. At this point, there was nothing being reported. However, the Board would have a better idea in December. **Calise** provided the Board with a document for review as a possible response to potential exemption requests. This matter will be discussed further in January. **Coffey** clarified that this was a proposed response to exemption requests and was not a legislative concept of the Board. **Calise** believes that there will be requests for exemptions in the 2011 legislative session and as such would propose that the Board have a response ready. **Coffey** reported that when she called on the matter, there were indications that it may occur, but nobody had received anything official on the matter yet. **Collier** thinks that the response should be a basis to be put forth as a legislative concept for the following session.

## 6) FSMTB Report

**a) States Report** – **Calise** attended the FSMTB annual meeting in October. She provided a report compiled from member states with statistics and concerns. She also provided the Board with her report on the meeting. There are currently forty member states. Thirty-one states are utilizing the Massage & Bodywork Licensing Exam (MBLEx). The organization is now five years old and they are still feeling growing pains. The meeting for 2011 is slated to be held in Los Angeles. As such, **Calise** believes that it would be beneficial to send more than one Board member. **Collier** believes that the Vice Chair should attend as well. **Calise** reported that the 2011 meeting is expected to have a day of focus on compliance and enforcement. She believes that this would be beneficial for **Montenaro** and **Nott** to attend. The FSMTB has a new government relations person. In addition, the Executive Director, Deborah Persinger has offered to appear before the OBMT any time that they would like. **Calise** indicated that relationships with the FSMTB need to move forward. They are still working towards portability of the

profession, though they recognize that this will take time. They also intend to put together a national compliance database and a national licensee database. They believe this will ultimately assist with portability.

**7) Borderline** – Calise has requested that this be an on-going agenda item, so that Board members may discuss what articles they feel should be in each newsletter. It was discussed that staff had intended to re-run the article from a prior newsletter regarding scams. If the rate increase takes effect, that matter will need to be published in the newsletter as well. It was suggested that the upcoming Board meetings be placed in the newsletter as well as a reminder about renewals and late fees. **Fredrickson** would like to see something about compliance regarding the importance of accurately reporting information on the applications. He also thinks that there should be an article on how compliance benefits the licensees. **AAG Lindley** suggested a piece on the duty to report.

**Fredrickson** moved to take a break at 10:59 am. **Second the Motion: Morin** In favor: Collier, Driscoll, Fredrickson, Morin and Calise. **Opposed: None. Motion carries.**

The Board returned from break at 11:06 am.

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

There were no comments from the public.

**9) Executive Session**

**a) 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.

The Board entered into Executive Session at 11:08 am and returned to public session at 1:45 pm. **McMillin** arrived at 12:15 pm and **Collier** was excused at 1:45 pm.

**10) Action on Executive Session Items**

**a) Renewal License Applicant AA** – **Fredrickson** moved to grant the renewal with the following stipulations: the licensee must adhere to all terms and conditions of probation; the licensee shall provide a quarterly report to the Board in writing from their probation officer for the remainder of the probation period; the licensee shall submit quarterly reports and written verification of continued participation in a substance abuse program, at cost to the licensee, for the duration of the probation period; and the first report is due to the Board January 1, 2011. **Second the Motion: Morin** In favor: Driscoll, Fredrickson, Morin and Calise. **Opposed: None. Abstained: McMillin Motion carries.**

**b) Renewal License Applicant AD** – **Morin** moved to grant the renewal. **Second the Motion: Fredrickson** In favor: Driscoll, Fredrickson, Morin and Calise. **Opposed: None. Abstained: McMillin Motion carries.**

**c) Case 893** – **Fredrickson** moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in the practice of massage without a license; and ten violations of ORS 687.021(2)(a), advertising massage without a license; for a total civil penalty of \$10,000 and to forward to the Lane County District Attorney. **Second the Motion: Driscoll** In favor:

- Driscoll, Fredrickson, McMillin, Morin and Calise. **Opposed: None. Motion carries.**
- d) Case 946 – Morin moved to close the case as compliance met. **Second the Motion: Driscoll In favor: Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- e) Case 976 – Morin moved to close the case as respondent unreachable. **Second the Motion: Driscoll In favor: Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- f) Case 1005 – McMillin moved to defer this case to a later date. **Second the Motion: Morin In favor: Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- g) Case 1007 – Morin moved to close the case as respondent unreachable. **Second the Motion: Fredrickson In favor: Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- h) Case 1025 – Morin moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in the practice of massage without a license; and three violations of ORS 687.021(2)(a), advertising massage without a license; for a total civil penalty of \$3,500. **Second the Motion: Driscoll In favor: Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- i) Case 1027 – Fredrickson moved to close the case based on further review and issue the inactive license. **Second the Motion: Morin In favor: Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- j) Case 1033 – Morin moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in the practice of massage without a license; for a total civil penalty of \$500. **Second the Motion: Fredrickson In favor: Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- k) Case 1035 – Fredrickson moved to issue a letter of concern. **Second the Motion: Driscoll In favor: Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- l) Case 1038 – McMillin moved to close as no violation found. **Second the Motion: Driscoll In favor: Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- m) Case 1057 – Morin moved to close the case as compliance met. **Second the Motion: Driscoll In favor: Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- n) Executive Session Closed Case Report – Morin moved to accept the closed case report. **Second the Motion: Driscoll In favor: Driscoll, McMillin, Morin and Calise. Opposed: None. Abstained: Fredrickson. Motion carries.**

**Case No. 990**

**Allegation:** Scope of Practice **Closed:** Duplicate Case

**Case No. 1048**

**Allegation:** Unlicensed Advertising **Closed:** Non-licensed Person Notified of ORS

**Case No. 1050**

**Allegation:** No license number in advertising **Closed:** Compliance Met

**11) Public Session Compliance Action –**

- a) **Embassy Request** – The Board received a request from the Embassy of Belize regarding a prior case of the Board. Driscoll moved to send the requested information. **Second the Motion: Morin In favor: Driscoll, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- b) **Public Session Closed Case Report** – Morin moved to accept the public session closed case report. **Second the Motion: Driscoll In favor: Driscoll, McMillin, Morin and Calise. Opposed: None. Abstained: Fredrickson. Motion carries.**

**Case No. 898**

**Allegation:** Unlicensed practice of massage **Clea Huot Closed:** Final Default Order Issued

**Case No. 909**

**Allegation:** Failure to Disclose Adverse Action **Alexander Cann Closed:** Final Default Order Issued

Case No. 945  
Allegation: Unlicensed practice of massage

Tambri Deharpport  
Closed: Stipulated Agreement Issued

Case No. 1060  
Allegation: Other

Kathryn Hoover (a.k.a. Wah'Keena Sitka Tidepool Ripple  
Closed: Stipulated Agreement Issued

12) **Public Forum** – Opportunity to share thoughts that pertain to agenda items – There were no public in attendance at this time.

13) **Announcements** – The Board will hold rules hearing on December 16, 2010 at 1:00 pm. A brief telephone Board meeting will then be held on December 20, 2010 at 1:00 pm to vote on the proposed rules.

Calise handed out the draft Best Practices document that Bennouri prepared. Board members will discuss the document in January.

14) **Adjourn Meeting** – Morin moved to adjourn the meeting at 2:00 pm. **Second the Motion: Driscoll** In favor: Driscoll, Fredrickson, McMillin, Morin and Calise. **Opposed: None. Motion carries.**