



# Oregon

Kate Brown, Governor

## Board of Massage Therapists

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### RULES COMMITTEE MEETING

February 12, 2016

OBMT Office

#### Attendance

##### Committee Members:

Kathy Calise, Chair

Steve Davis, LMT

Todd Pennington, LMT

Eric Polgar, LMT – (Absent)

Barb Pickle, LMT - By Phone

Carol Gray, LMT (Absent)

##### Board Members & Staff:

Meng Chen, Board Liaison

Kate Coffey, Executive Director

Ekaette Udosenata-Harruna, Policy Analyst

**Absent:** Carol Gray and Eric Polgar

**Public:** None

**Call to Order** - Calise called the meeting to order at 9:00 am.

**Introductions** – Present today are **Kathy Calise, Meng Chen, Barb Pickle** by phone, **Todd Pennington**, and **Steve Davis**; Board staff **Kate Coffey** and **Ekaette Udosenata-Harruna**.

**Approve Agenda:** Pennington moved to approve the Agenda. **Second the motion: Davis.** In favor: Calise, Chen, Davis and Pennington. **Opposed: None.** Motion carries.

**Approve Minutes for August 10, 2015:** Pennington moved to approve the minutes. **Second the motion: Davis.** In favor: Chen, Calise, Davis and Pennington. **Opposed: None.** Motion carries.

#### Rule Assignments:

##### Review Proposed Rules Effective January 1, 2016

Modification of fees to increase inactive license fee

Modification of language for Requirement for Licensure

Modification of language for Requirement for Lapsed Licensure

Modification of language for criminal Background check and fitness determinations

The Rules Committee discussed the rules listed below and agreed that the verbiage for the proposed rules will be sent to the board for approval.

The following versions of the Rules will be sent to the March 14, 2016 Board meeting for further review and approval and a Rules hearing will be scheduled. (~~strike through~~ represents deletions, **bold** represent new additions):

Oregon Board of Massage Therapists OAR 334  
Proposed Changes  
Effective January 1, 2016

MESSAGE LICENSING

334-010-0015

Licensure

- (1) An applicant for an initial license or renewal of a license must complete, in its entirety, an original application furnished by the Board.
- (2) An applicant for an initial license and all lapsed and inactive licensees applying for reactivation must submit a completed ~~fingerprint cards~~ **electronic fingerprints** for a criminal background check.
- (3) All applications for licensure must be accompanied by proof of current certification in cardiopulmonary resuscitation (CPR).
- (4) 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;
  - (b) Applicant has surrendered a massage license or other professional license in any state or jurisdiction of the United States or foreign country;
  - (c) Applicant has been arrested, charged or convicted of any type of violation of the law, including both misdemeanors or felonies, other than minor traffic infractions in any state or jurisdiction of the United States or foreign country;
  - (d) Applicant has abused or been treated for the abuse of alcohol, controlled or mind altering substances; or
  - (e) Applicant has suffered from and/or received treatment for a mental, physical or emotional condition, which could impede applicant's ability to safely practice massage.
- (5) Applicants for initial licensure must apply within one year of the successful completion of the practical examination.
  - (a) If an applicant does not apply within one year, the applicant must retake the practical examination.
  - (b) At the time of re-examination, the applicant must meet all current licensing requirements and submit original documents as required by the Board.
- (6) Licenses issued expire on the last day of the licensees' birth month of even numbered years for licensees with even numbered birth years and odd numbered years for licensees with odd numbered birth years. Thereafter, licenses may be renewed every other year upon completion of the application requirements. The application must be returned to the Board postmarked no later than the 1st day of the month of expiration. A delinquent fee must be paid if the completed application and all requirements are not received by the due date.
- (7) Applicants for the renewal of an active license must sign a statement verifying completion of a minimum of 25 hours of continuing education. The Board may require proof of the continuing education hours.
- (8) Applications for renewal of an active license must be accompanied by:
  - (a) Current licensing fee;
  - (b) Any applicable late fees;
  - (c) Proof of current certification in cardiopulmonary resuscitation (CPR);
  - (d) Proof of 25 hours of continuing education **as required in OAR 334-010-0050(1)(b)**; and
  - (e) Any additional documentation required by the Board.
- (9) All applicants for initial, renewal, or reinstated license must sign a statement verifying that they have read, understand, and must comply with all current Oregon Revised Statutes (ORS 687), Oregon Administrative Rules (OAR 334), and policy statements of the Board.
- (10) Licenses issued by the Board must not be transferable.
- (11) A person licensed by the Board may move to an inactive status by completing the form provided by the Board. Upon payment of the appropriate fee, the applicant will be issued an inactive license. During the period of inactive status, the licensee may not practice massage for compensation in the State of Oregon.

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- (12) An application to reactivate an inactive license:
- (a) must be accompanied by:
    - (A) Current licensing fee;
    - (B) Verification of current cardiopulmonary resuscitation (CPR);
    - (C) Verification of 25 hours of continuing education for each biennium ~~or fraction of the biennium~~ the license was inactive, ~~up to 50 hours~~. **Of the 25 hours, at least 15 must be contact hours of continuing education training or Board approved activities. At least 4 contact hours must be in Professional Ethics, Boundaries and/or Communication. The remaining 10 of 25 hours may be contact or noncontact hours.**
    - (D) **Verification of 50 hours of continuing education for the reactivation of inactive license more than 1 biennium must be submitted to the Board. Of the 50 hours, at least 30 must be contact hours of continuing education training or Board approved activities. At least 8 contact hours must be in Professional Ethics, Boundaries and/or Communication. The remaining 20 of 50 hours may be contact or noncontact hours; and**
    - ~~(E)~~ **Completed fingerprint card electronic fingerprints** for criminal background check.

**334-010-0017**

**Lapsed License**

- (1) The massage therapist license is considered lapsed if an individual fails to complete the renewal process prior to the expiration of license.
- (2) During the lapsed status, no such person shall practice massage in the State of Oregon.
- (3) An applicant whose license is lapsed may return to active status by including the following with the completed application.
  - (a) Payment of the current fee for activation of the license;
  - (b) Payment of the licensing fee applicable for the period of the lapsed license;
  - (c) Late fee payment;
  - (d) Proof of 25 hours of continuing education for each biennium the license was lapsed and for the current licensing period;
  - (e) Verification of 4 contact hours in Ethics.
  - (f) Proof of current certification in cardiopulmonary resuscitation (CPR);
  - (g) A statement indicating whether the applicant has engaged in the practice of massage and bodywork in another jurisdiction during the period of lapsed status; and
  - (h) Applicants must submit a completed electronic fingerprint for criminal background check.
- (4) An applicant whose license is lapsed for 12 months or less may renew as an inactive status.**
- (5) An applicant whose license is lapsed for greater than 12 months must renew as an active status.**
- (46) All information required for restoring a lapsed license to an active status must be received within 3 years of the date of lapsing along with the requirements listed in ORS 334-010-0017(3)(a-h). Thereafter, one must apply as a new applicant.**
- ~~(57)~~ Continuing Education is not required if this is your first subsequent renewal after receipt of your initial license.

**334-010-0018**

**Criminal Background Checks, Fitness Determinations**

- (1) The Board requires a criminal background check of all applicants for a massage therapist license to determine the professional fitness of an applicant. These must be provided on prescribed forms provided by the Board. Fingerprints ~~may~~ **shall** be obtained ~~at a law enforcement office or at a fingerprinting site~~ **private service acceptable to approved by** the Board. The Board must submit fingerprints to the Oregon Department of State Police for checks against state law enforcement data systems and national data sources. ~~Any original fingerprint cards and any~~ **any** electronic fingerprint records must subsequently be destroyed by the Oregon Department of State Police.

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- (a) The Board requires a completed fingerprint cards ~~electronic fingerprint~~ of all applicants for an initial license; licensees applying to reinstate a lapsed license or licensees applying to reactivate an inactive license; and licensees under investigation to determine the professional fitness of an applicant or licensee.
- (2) These rules are to be applied when evaluating the criminal background of all licensees and applicants for a massage therapist license and conducting professional fitness determinations based upon such history. The fact that the applicant has cleared the criminal background check does not guarantee the granting of a license.
- (3) The Board may require fingerprints of any Oregon licensed massage therapist who is the subject of a complaint or investigation for the purpose of requesting a state or nationwide criminal background check.
- (4) All criminal background checks must include, but not be limited to, all available state law enforcement data systems and national data sources, unless obtaining one or the other is an acceptable alternative.
- (5) Additional information required. In order to conduct the Oregon and National Criminal Background Check and professional fitness determination, the Board may require additional information from the licensee/applicant as necessary, including but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.
- (6) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175(1).
- (7) The Board must determine whether an individual is professionally fit to be granted a license. If an individual is determined to be unfit, then the individual may not be granted a license. The Board may make professional fitness determinations conditional upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure. Except as otherwise provided in section (1), in making the professional fitness determination the Board must consider:
  - (a) Criminal background check;
  - (b) The nature of the crime;
  - (c) The facts that support the conviction or pending indictment or that indicates the making of any false statement;
  - (d) The relevancy, if any, of the crime or the false statement to the specific requirements of applicant's or licensee's present or proposed license, services, employment, position, or permit;
  - (e) Any refusal to submit or consent to a criminal background check including, but not limited to, fingerprint identification;
  - (f) Any other pertinent information requested or obtained as a part of an investigation;
  - (g) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, or permit. Intervening circumstances include but are not limited to:
    - (A) The passage of time since the commission of the crime;
    - (B) The age of the subject individual at the time of the crime;
    - (C) The likelihood of a repetition of offenses or of the commission of another crime;
    - (D) The subsequent commission of another relevant crime;
    - (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
    - (F) A recommendation of an employer.
- (8) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests, court records, Department of Motor Vehicle records, or other information that may be indicative of a person's inability to perform as a licensee with care and safety to the public.
- (9) If an applicant or licensee is determined not to be professionally fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413-470. Challenges to the accuracy of completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police,

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Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.

- (a) If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board must conduct a new criminal background check upon submission of a new request.
- (10) If the applicant discontinues the application process or fails to cooperate with the criminal background check process, the application is considered incomplete.

**334-010-0033**

**Fees**

- (1) The fees are:
- (a) \$100 per biennial renewal for initial license;
  - (b) \$50 per biennial renewal for initial license under 12 months;
  - (c) \$155 per biennial renewal for active license;
  - (d) ~~\$50~~ **\$75** per biennial renewal for inactive license;
  - (e) \$25 per week, up to a maximum of \$100, for any late renewal;
  - (f) \$50 for exam/endorsement application processing;
  - (g) \$150 for each practical examination;
  - (h) \$100 for mailing list;
  - (i) \$10 for license reprint;
  - (j) \$10 for license verification;
  - (k) \$250 Credentialing Review;
  - (l) Current Oregon State Police Criminal Background Check Fee;
  - (m) \$50 initial facility permit;
  - (n) \$250 facility permit transfer;
  - (o) \$10 facility permit reprint and
  - (p) other administrative fees as allowed by law.
- (2) Application and licensure fees are not refundable
- (3) Examination fees are 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.

There was discussion among the **committee members** that the \$5 fee per licensee, to send the required demographic information to the Oregon Health Authority would cost the board approximately \$4,065 per biennium. It was felt that this fee would require the licensing fee to be raised \$25 per licensee. This increase will include the \$5 fee for the Healthcare Workforce Reporting and the remaining increase would be in proportion of the active renewal fee increase that occurred in 2011.

**Pennington moved** to accept the changes made to OAR 334-010-0015, 334-010-0017, 334-010-0018, and 334-101-033. **Second the motion: Davis. In favor: Calise, Chen, Davis and Pennington. Opposed: None. Motion carries.**

**Pennington moved** to adjourn the meeting. **Second the motion: Davis. In favor: Calise, Chen, Davis and Pennington. Opposed: None. Motion carries.**

Meeting adjourned at 9:35