



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

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OBMT Board Meeting Minutes

September 22, 2014

Board Office

Attendance

Board Members:

David Fredrickson, LMT, Chair

Kathy Calise, Vice Chair

Jon Grossart, LMT

Melanie Morin, LMT

R. Craig McMillin, Public Member

Kelley Rothenberger, LMT

Steven Foster-Wexler, LAc, Public Health Member

Staff:

Kate Coffey, Executive Director

Ekaette Udosenata, Policy Analyst

Robert (Bob) Ruark, Compliance Manager

Lori Lindley AAG

Public:

Michael Jordan

Wendy Hodsdon

Todd Pennington

April Neufeld

Neil Pinholster

Jim Marshall

Regina Calahan

Wendy Marshall

Erica Baern

Call to order at 9:10am

Fredrickson called the meeting to order at 9:10 am. Roll call was performed. **Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger** and **Fredrickson** were present, as well as **Coffey**, Executive Director, **Lindley**, AAG, **Ruark**, Compliance Manager and **Udosenata-Harruna**, Board staff.

Fredrickson asked members of the public to introduce themselves. Public present at this time were **Jordan, Neufeld, Marshall, Marshall, Hodsdon, Pinholster, Calahan, Baern** and **Pennington**.

- 1) **Approve Agenda:** Calise moved to approve the agenda. **Second the motion: Rothenberger.** In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. **Opposed: None. Motion carries.**
- 2) **Approve Amended Minutes for July 21, 2014:** Calise moved to approve the minutes as amended **Second the motion: Morin.** In favor: Calise, Fredrickson, Foster-Wexler, Grossart, McMillin, Morin and Rothenberger. **Opposed: None. Motion carries.**

3) Directors Report

Finances – Coffey reported on the status of the Board Budget Status for the first year of the 2013-15 Biennium. The board's actual revenue for August 2014 was within a 1% deviation from the revenue projection. The board spent \$8k less than was budgeted for the month of August 2014. The Majority of the under expenditure was in the category of payroll

expenses.

The board received \$13k less revenue than was budgeted for the first fourteen months of the 2013-15 biennium. The board underspent expenses by \$77k for the first fourteen months of the 2013-15 biennium. The majority of the under expenditure is in the category of Payroll Expenses. The board is \$4k over budget in Contract/Professional services as the board has increased the utilization of consultant services. The board is \$4k over budget in the category of Computer services as the facilities database was a non-budgeted expense. The board is \$4k over budget in the category of Exam Supplies as we are having the vendor pick-up linens weekly. The board is \$4k over budget in the category of travel expenses as the board has expanded their participation in FSMTB activities and the Compliance Manager is performing additional investigations. The board will use this savings to fund the office move, continue with the implementation of facilities licensing, and increased participation in FSMTB.

Massage School Programs – Coffey noted that In August 2014 Anthem College filed for bankruptcy and ceased operations at the Beaverton campus. The board received applications from Anthem students with an Anthem check to pay for the exam and licensing fees. These checks were returned as the school's bank account has been frozen. The Exam coordinator sent information to the applicants informing them that they will need to submit payment in order for the board to process their application. Other massage programs are working with Anthem students to determine how best to proceed on assisting the students in attaining a massage license. The Anthem massage program was an 885 hour program and many of the students may qualify for licensure without completion depending on what coursework they have taken.

All Schools Meeting – Coffey updated the Board that, on September 12, 2014 the board had a meeting with most of the Massage School Programs to discuss the Oregon Practical Exam, CEU changes, and the proposed Legislative Initiative. The discussion between the board and the schools was collegial and the schools provided good insight on the topics discussed.

Fingerprints – Coffey update the Board on the status of the electronic fingerprint. Coffey noted that, the State of Oregon entered into a contract with Fieldprint to provide electronic fingerprints to applicants and licensees. The cost to the applicant is \$12.50 and the prints are electronically transmitted to the Oregon State Police. This saves staff time and allows for the expeditious processing of fingerprints; however, it does not allow for the board to collect the fingerprint processing fee of \$47.25 prior to the applicant having their fingerprints taken and sent to Oregon State Police.

Compliance Update – Coffey noted that the Compliance section received 14 new complaints for the month of August 2014. 12 new cases were opened based on those complaints. Ruark noted that, there is one contested case and the prehearing conference is set for October 2014. We are optimistic that this case will be settled prior to hearing or a motion for summary determination will be filed.

ADA accommodation - Coffey noted that the board received an ADA accommodation request for the practical examination. The requester has test anxiety and she is asking to only retake the kinesiology section of the practical examination as she has previously scored in the high 90's in communication and massage. The board discussed the matter and agreed to grant the request.

Rules Committee Updates – Jordan reported on the progress of the Rules Committee and updated the Board on the changes made to the proposed rules at the August, 11 2014 Rules Committee Meeting. **Jordan** provided to the board a summary document detailing the tasks that the Rules Committee completed. The Rules Committee recommended that Review Continuing Education Rules, Rules Modifications for Electronic Fingerprint, Definition of Contact Hours, Definition for Non-Contact hours, Cap for Late Fee, and New Ethics Continuing Education requirement for Lapsed and Inactive License. Modify Rules for Insurance Billing, Fee Splitting, address the Rules on Photographing or Filming and remove Hand Washing Signage requirement. The Rules Committee discussed the matter of Good Moral Character and Professional Fitness as defined in the proposed Rules and concluded that the committee needs the Board to clarify intent. Jordan further

noted that, the Committee reviewed and discussed Insurance Billing as proposed in the Rules. The Committee recommended that the Board establish an Insurance Billing Task Force to conduct research on the subject matter of Insurance Billing and Fee Splitting.

The Board discussed the committee update and concluded that a Task Force needs to be created to research the issues of insurance billing and fee splitting. The task force is to begin in January of 2015. The Board accepted the offer of Mike Blackmore to chair the Task Force and Calise volunteer to serve as the Board Liaison on the Task Force.

Foster-Wexler motioned that the Board create a Task Force to look at the issues of insurance billing and fee splitting
Second the motion: Rothenberger. In favor: Fredrickson, Foster-Wexler, Grossart, McMillin, Morin and Rothenberger. Opposed: None. Motion carries.

The Board addressed the committee's concerns for the board to clarify its intent in the matter of Good Moral Character and Professional Fitness. The Board discussed the matters and agreed to strike "*five years*" for 334-001-0060 (23)(a) and (33)(a) and have it read, "ever"

Calise moved to change the language in 334-001-0060 (23)(a) and (33)(a) from "*within five years*" to "*ever*": **Second the motion: Grossart. In favor: Fredrickson, Foster-Wexler, Grossart, McMillin, Morin and Rothenberger. Opposed: None. Motion carries.**

Fredrickson motioned that the language of the five year limitation in 334-001-0060 subsection (23) and subsection (33) be amended to strike all the words "*within five years*" and replace with "*ever*": **Second the motion: Grossart. In favor: Fredrickson, Foster-Wexler, Grossart, McMillin, Morin and Rothenberger. Opposed: None. Motion carries.**

Jordan stated that he will step down as Rules Committee Chair at the end of the next Rules committee meeting which is scheduled for October 6, 2014. The Board accepted his request and thanked him for his services and dedication to the Board.

Foster-Wexler moved to approve the proposed Rules to go into effect July 1, 2015 with the exception of CE's Rules which is proposed and approved by the Board to be effective on January 1, 2016: **Second the motion: Calise. In favor: Foster-Wexler, Grossart, McMillin, Morin and Rothenberger. Opposed: None. Motion carries.**

Draft OAR
Board Approved 7/21/14

PROCEDURAL RULES

334-001-0060

Definitions

- (1) "Advantageous" means in the Board's best interests, as assessed according to the judgment of the Board.
- (2) "Award" means either the act or occurrence of the Board's identification of the Person with whom the Board will enter into a Contract.
- (3) "Barter" means partial or complete trade or exchange of massage or bodywork services for any other type of goods or service other than money.

- (4) "Board" means the State Board of Massage Therapists or its authorized representatives as provided by ORS 687.115.
- (5) "Bodywork" means **forms, methods, and styles including massage, that positively influence the body through various methods that may or may not include soft-tissue deformation, energy manipulation, movement reeducation, and postural reeducation.** ~~the use on the human body, for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition of:~~
- ~~(a) Pressure, friction, stroking, tapping, kneading, vibration or stretching by manual or mechanical means or gymnastics;~~
 - ~~(b) Appliances, tools or devices;~~
 - ~~(c) Topical preparations; or~~
 - ~~(d) Hot and cold applications.~~
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- (a) Pressure, friction, stroking, tapping, kneading, vibration or stretching by manual or mechanical means or gymnastics; 8
 - (b) Appliances, tools or devices;
 - (c) Topical preparations; or
 - (d) Hot and cold applications.
- (6) "Boundary" means the limits in a professional relationship which create safety based on the needs of the client.
- (7) "Boundary violation" means an alteration or shift in the limits of a professional relationship so that what is allowed in the relationship becomes ambiguous and/or may not be based on the needs of the client.
- (8) "Caring" means acting in a manner in which things, events, people or relationships matter.
- (9) "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 or university approved by the Department of Education; or
 - (c) In another state and licensed or approved by the appropriate agency in that state.
- (10) "Client" means any individual, group of individuals, or organization to whom an LMT provides massage
- (11) "Client vulnerability" means factors which diminish a client's ability to be self-determining.
- (12) "Compensation" means something given or received as payment including but not limited to bartering, tips, monies, donations, or services.
- (13) "Conflict of interest" means any action or decision or recommendation by an LMT at the detriment of a client.
- (14) "Contact hours" means actual hours in class under the instruction of and in the **physical** presence of an instructor; **or an interactive distance learning course.**
- (15) "Contract" means an agreement for purchase, lease, rental or other acquisition or sale or other disposal by the Board of Goods or Services.
- (16) "Contract Price" means, as the context requires;
- (a) The maximum payments that the Board will make under a Contract if the Contractor fully performs under the Contract;
 - (b) The maximum not-to-exceed amount of payments specified in the Contract; or
 - (c) The unit prices for Goods and Services set forth in the Contract.
- (17) "Contractor" means the Person with whom the Board enters into a Contract.
- (18) "Critical Reflection" means a process whereby knowledge and action are connected to each other through the application of careful, conscious, deliberate reflection on:
- (a) Personal practice (perceptions, assumptions, motivations, values, behaviors).
 - (b) Assessment and understanding of a situation.
 - (c) Likely or actual consequences or impact of one's actions.
- (19) "Dual Relationship" means any relationship of a personal or business nature with a client that is in addition to or concurrent with a professional relationship in which the LMT is providing or has provided massage or bodywork services to that same client.
- (20) "Ethics" means a system of valued societal beliefs and behaviors that may be used to guide and evaluate conduct to ensure the protection of an individual's person and rights.
- (21) "Emergency" means circumstances that:

- (a) Could not have been reasonably foreseen;
 - (b) Require prompt execution of a Contract to remedy the condition; and
 - (c) The circumstances create a substantial risk of loss or revenue, damage or interruption of services or substantial threat to property, public health, welfare or safety when the circumstances could not have been reasonably foreseen;
- (22) Equivalent Credit Hours: are those credit hours as determined by the respective educational institution or its certified classes or programs
- (23) ***Good moral character means***
- (a) ***an applicant has not ever before the date of application, been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, required to be a registered sex offender and other similar offense which has a reasonable relationship to the practice of massage;***
 - (b) ***has not ever before the date of application, been convicted of an act involving dishonest, fraud misrepresentation, gross negligence or incompetence or is not currently incarcerated or on community supervision after a period of incarceration in a local, state or federal penal institution for such an act;***
 - (c) ***has not ever before the date of application, had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in the United States, or voluntarily surrendered a professional license in lieu of disciplinary action;***
 - (d) ***has not ever before the date of the application, had a massage therapy license revoked or suspended by any state or national massage certifying agency.***
- (24) "Goods and Services" or "Goods or Services" means supplies, equipment, materials and services including Personal Services and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the Board is authorized by law to procure.
- (25) "Indorsement" means:
- (a) the process of evaluating and recognizing the credentials of a person licensed in Oregon in another health care specialty that includes in its scope of practice, acts defined as massage; or
 - (b) the process of evaluating and recognizing the credentials of a massage or bodywork practitioner authorized to practice massage or bodywork in another jurisdiction.
- (26) "Informed consent" means a process wherein clients have knowledge of what will occur, that participation is voluntary, and that the client is competent to give consent.
- (27) "Licensee" means any person holding a license, permit, or certificate issued by this Board; an LMT
- (28) "LMT" means a Licensed Massage Therapist.
- (29) "Massage" or "massage therapy" is defined in ORS 687.011.
- (30) "Non-Contact hours" means education hours independently acquired outside the presence of an instructor.
- (31) "Offer" means a response to a request for price quote or response to a Solicitation Document.
- (32) "Offeror" means a Person who submits an Offer.
- (33) ***Professional fitness means***
- (a) ***an applicant has not ever before the date of application, been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, required to be a registered sex offender and other similar offense which has a reasonable relationship to the practice of massage;***
 - (b) ***has not ever before the date of application, been convicted of an act involving dishonest, fraud misrepresentation, gross negligence or incompetence or is not currently incarcerated or on community supervision after a period of incarceration in a local, state or federal penal institution for such an act;***
 - (c) ***has not ever before the date of application, had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in the United States, or voluntarily surrendered a professional license in lieu of disciplinary action;***
 - (d) ***has not ever before the date of the application, had a massage therapy license revoked or suspended by any state or national massage certifying agency.***

- (341) "Personal power" means recognizing and taking personal responsibility for the inherent power differential between the LMT and the client and recognizing and taking personal responsibility for the impact of professional decisions, actions and behavior on the client.
- (352) "Power differential" means the basic inequality inherent in the professional relationship between an LMT and a client in terms of who has the advantage in the relationship. The LMT is presumed to have the advantage by virtue of the authority which emerges from the role of professional and the vulnerability which is automatically part of the role of client.
- (363) "Practical Work Experience" means experience gained while employed or self-employed providing legal massage/bodywork to the public within the last five (5) years, in another state or jurisdiction.
- (374) "Practice of massage" is defined in ORS 687.011.
- (385) "Professional authority" means the power inherent in the professional role and which is derived from a combination of an LMT's specialized or expert knowledge, societal expectations, stated and unstated client expectations, and an LMT's personal power.
- (396) "Professional relationship" means the relationship established when a LMT contracts with a client, verbally or in writing, to provide any service associated with the practice of massage or bodywork.
- (4037) "Professional role" means assuming the demands and responsibilities of professional authority by taking charge of the conditions which create and maintain client safety and trust in the professional-client relationship.
- (4138) "Scope" means the range and attributes of the Goods or Services described in the applicable Solicitation Document, or if no Solicitation Document, in the Contract.
- (4139) "Solicitation Document" means an Invitation to Bid, Request for Proposal or other document issued to invite Offers from prospective Contractors.
- (4240) "Specification" means any description of the physical or functional characteristics or of the nature of Goods or Services, including any requirement for inspecting, testing or preparing Goods or Services for delivery and the quantities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained.
- (43) "Split Fee" means giving or receiving a commission or payment, either monetary or otherwise, for the referral of patients.
- (441) "Successful Completion" means the written receipt of credit from classes taken at a community college or university or the written receipt of a certificate from a program or private career school.
- (452) "Written" or "Writing" means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

Stat. Auth.: ORS 687.011 & 687.121

Stats. Implemented: ORS 687.011

Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 2-2011, f. 6-29-11, cert. ef. 7-1-11; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

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 or 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; 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.
- (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; ~~and~~
 - (D) Verification of 4 contact hours in Professional Ethics, Boundaries and/or Communication; and**
 - (E) ~~(D)~~ Completed fingerprint card or electronic fingerprints for criminal background check.**
 - (b) An individual who has been inactive or a combination of lapsed/inactive for 6 consecutive years or greater must, in addition, successfully pass the practical examination.

Stat. Auth.: ORS 687.121 & 687.051

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0006; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 2-2006(Temp), f. & cert. ef. 2-16-06 thru 8-7-06; Administrative correction 8-22-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

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) **Proof of 4 contact hours in Professional Ethics, Boundaries and/or Communication.**
 - (f) ~~(e)~~ Proof of current certification in cardiopulmonary resuscitation (CPR);
 - (g) ~~(f)~~ 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) ~~(g)~~ Applicants must submit a completed fingerprint card **or electronic fingerprints** for criminal background check.
- (4) All information required for restoring a lapsed license must be received within 3 years of the date of lapsing. Thereafter, one must apply as a new applicant.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

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 be obtained at a law enforcement office or at a private service acceptable to 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/or~~ any electronic fingerprint records must subsequently be destroyed by the Oregon Department of State Police.
 - (a) The Board requires completed fingerprint cards **or any submitted 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, 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.

Stat. Auth.: ORS 687, 676

Stats. Implemented: ORS 181, 183, 687.041, 687.051, 687.081, 670.280

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

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:
 - (A) 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). Examples include the Feldenkrais Method of Somatic Education as defined on May 16, 2011, by the Feldenkrais Guild® of North America and The Trager® Approach as defined on May 16, 2011, by the United States Trager® Association; and Registered Practitioners of Ortho-Bionomy® as defined on December 28, 2012 by the Society of Ortho-Bionomy International; or
 - (B) Using minimal touch over specific points on the body to facilitate balance in the nervous system, as defined per 687.031(1)(j)(ii). An example includes Bowenwork® and/ or the Bowen Technique as defined on May 16, 2011 by the Bowenwork Academy USA; or

- (C) Using touch to affect the energy systems or channels of energy of the body, as defined per 687.031(1)(j)(iii). An example includes Polarity Therapy as defined on May 16, 2011 by the American Polarity Therapy Association; **Biodynamic Craniosacral Therapy as defined on September 22, 2014 by the Biodynamic Craniosacral Therapy Association of North America; Milne Institute Craniosacral Therapy as defined on September 22, 2014 in their education requirements and standards;** and
- (b) Hold an active certification from a National or International professional organization or credentialing agency that:
- (A) Requires a minimum level of training specific to their discipline, demonstration of competence and adherence to an approved scope of practice and ethical standards;
- (B) 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) Refer to themselves or imply they are a massage therapist;
- (b) Practice outside of the exempt scope of practice;
- (c) Practice without an active certification from a National or International professional organization or credentialing agency; or
- (d) Fail 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.
- (4) Disciplines and/or Organizations seeking to be named in the exemption shall contact the Board of Massage Therapists to request a review.

Stat. Auth.: ORS 687, SB 454
Stats. Implemented: ORS 687.031
Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

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) \$150 per biennial renewal for active license;
- (d) \$50 per biennial renewal for inactive license;
- (e) \$25 per week, up to a maximum of ~~\$250~~ **\$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.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1989(Temp), f. & cert. ef. 7-27-89; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 4-2004, f. 10-22-04, cert. ef. 1-1-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11; BMT 1-2011, f. & cert. ef. 4-21-11; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0050

Continuing Education

- (1) The intent of Continuing Education is to protect the public by maintaining **knowledge and skills of massage and/or bodywork**. ~~and enhancing competencies as defined in OAR 334-010-0047.~~ Each licensee must complete 25 hours of continuing education ~~in the competencies~~ each renewal period. **The continuing education hours must be from the following topics:**
 - (A) Massage and bodywork techniques;
 - (B) Use of thermal modalities, topical preparations, mechanical assistive; devices/appliances;
 - (C) Stretching and gymnastics that lengthen and shorten soft tissues;
 - (D) Posture and movement assessment;
 - (E) Massage and bodywork business practices;
 - (F) Anatomy and physiology of the human body;
 - (G) Kinesiology of the human body;
 - (H) Pathology of the human body;
 - (I) Professional Ethics, Boundaries and/or Communication;
 - (J) Cultural competency
 - (K) Body mechanics;
 - (L) Somatic education;
 - (M) CPR/First Aid;
 - (a) At renewal time, each licensee must sign and submit a Board supplied CE form indicating they have completed 25 hours of continuing education. The Board may require proof of CE hours.
 - ~~(a) At least 12 contact hours of continuing education training or Board approved activities (Board or Committee meeting/Peer Supervisor/Examiner of Practical Exam/Board Investigator).~~
 - ~~(b) The remaining 13 hours may be contact hours or in areas as defined on the Board supplied CE form.~~
 - ~~(2) The continuing education requirement does not apply to a licensee's first license renewal.~~
 - ~~(3) Continuing education must be completed within the renewal period. Contact hours taken and submitted during renewal in excess of the total number required may only be carried over to the next subsequent renewal period.~~
 - ~~—(a) First renewal CE are not required to be submitted at the time of renewal, CE may be submitted with second renewal.~~
 - ~~(4) Continuing education records must be maintained by each licensee for a minimum of five years.~~
 - ~~(5) If the Board finds indications of fraud or falsification of records, investigative action must be instituted. Findings may result in disciplinary action up to and including revocation of the licensee's license.~~
 - ~~(6) Failure to complete continuing education hours by the time of renewal may result in revocation, suspension and/or denial of a license. Licensee has 30 days from date of notification of non-compliance to come into compliance. Failure to be in compliance may result in discipline of the license to practice massage.~~
 - ~~(7) Continuing education must be in areas related to the practice of massage or bodywork including theory, research, technique or business development.~~
 - (b) 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 hours maybe contact or noncontact hours.
- (2) The methods of obtaining continuing education contact hours *shall* include:

- (a) Attendance of courses, seminars, and workshops sponsored, certified by an established and recognized massage and bodywork training program;
 - (b) Attendance of courses or activities for continuing education offered by a provider recognized by a massage and bodywork professional organization;
 - (c) Attendance of courses provided by an accredited institution of higher education if *topics is listed* in OAR 334-010-0050(1)(a)(A-M).
 - (d) Attendance of courses, seminars, and workshops provided by OBMT registered CE provider.
 - (e) Individual interactive distance learning study courses with subject matter that is listed in OAR 334-010-0050(1)(a)(E-J).
 - (f) Courses in cardiopulmonary resuscitation/first aid if taken in the presence of an instructor;
 - (g) Providing Board requested peer supervision or Board exam proctoring; One hour of CE contact credit will be given for each meeting/day.
 - (h) Attendance at an Oregon Board of Massage Therapists board meeting, board committee meeting, board task force or serving on these committees/task forces. One hour of CE contact credit will be given for each meeting.
- (3) The methods of obtaining continuing education non-contact hours shall include:
- (a) Publishing an article relating to massage and bodywork;
 - (b) Self-study based on media (i.e. book/video, periodical, *web based*, DVD);
 - (c) Courses or lectures on massage and bodywork which a licensee presents. A licensee may receive credit for presenting a course or lecture only one time per renewal period regardless of how many times the licensee presents the course or lecture.
- (4) If the Continuing Education subject matter is not listed under OAR 334-010-0050(1)(A-M) it will not be accepted for continuing education.
- (5) The Oregon Board of Massage Therapists randomly selects a minimum of 10 percent of received monthly renewals for an audit.
- a. If selected for an audit you will have 30 days to complete the audit form and submit copies (not originals) of your Continuing Education certificates.
 - b. If you fail to provide the requested information to the Board, within the 30 days, the Board may issue discipline per ORS 687.081 and 687.250.
- (6) The continuing education requirement does not apply to a licensee's first license renewal.
- (7) Continuing education must be completed within the renewal period. Contact hours taken and submitted during renewal in excess of the total number required may only be carried over to the next subsequent renewal period.
- (a) First renewal CE are not required to be submitted at the time of renewal, CE taken during the first renewal period may be submitted with second renewal.
- (8) Continuing education records must be maintained by each licensee for a minimum of five years.
- (9) If the Board finds indications of fraud or falsification of records, investigative action must be instituted. Findings may result in disciplinary action up to and including revocation of the licensee's license.
- (10) Failure to complete continuing education hours by the time of renewal may result in revocation, suspension and/or denial of a license. Licensee has 30 days from date of notification of non-compliance to come into compliance. Failure to be in compliance may result in discipline of the license to practice massage.

Stat. Auth.: ORS 687.081, 687.121 & 687.122

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: BMT 1-1998(Temp), f. & cert. ef. 2-3-98 thru 7-31-98; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 2-2004(Temp), f. & cert. ef. 3-16-04 thru 9-7-04; Administrative correction, 9-28-04; BMT 3-2004(Temp), f. & cert. ef. 10-22-04 thru 4-19-05; BMT 1-2005, f. & cert. ef. 2-23-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

SANITATION, FACILITY AND BUILDING REQUIREMENTS

334-020-0005

Facilities and Sanitation

- (1) Permanent and Mobile structures:

- (a) All permanent structures and mobile facilities where a LMT routinely conducts massage and bodywork must:
- (A) Be established and maintained in accordance with all local, state and federal laws, rules & regulations;
- (B) Obtain a facility permit to operate;
- (i) notify the Board office in writing, within 30 days of relocating the facility;
- (ii) keep posted and visible to the public, the facility permit with the correct location address;
- (C) Facilities exempted from the permit process:
- (i) clinic or facility owned or operated by a person authorized to practice a profession by a health professional regulatory board, as defined in ORS 676.160;
- (ii) a career school licensed under ORS 345.010 to 345.450; and
- (iii) clinics of a board approved massage therapy program.
- (D) Provide a finished lavatory that
- (i) Is well maintained,
- (ii) Provides a system for sanitary disposal of waste products,
- (iii) Is capable of being fully closed and locked from the inside,
- (iv) Supplies hot and cold running water,
- (v) Is supplied with liquid soap and single use towels,
- (vi) Is supplied with toilet paper at each toilet, and
- ~~(vii) Has a sign prominently displayed encouraging hand washing;~~
- (E) Dispose of refuse sewage in a manner described by local and state law; and
- (F) Follow applicable laws pertaining to public spas, pools, baths and showers.
- (b) All treatment spaces must:
- (A) Provide for client privacy, both in-house and on-site;
- (B) Be designated as used only for massage at the time of services;
- (C) Provide for sufficient heating, cooling and ventilation for client comfort; and
- (D) Provide illumination during cleaning.
- (c) The facility and treatment space must be:
- (A) Cleaned regularly and kept free of clutter, garbage or rubbish;
- (B) Maintained in a sanitary manner; and
- (C) Maintained free from flies, insects, rodents and all other types of pests.
- (2) Outcall/On-site
- (a) Any temporary location where the LMT conducts massage and bodywork, the LMT must provide and utilize:
- (A) Safe, sanitized and well-maintained equipment, tools and preparations;
- (B) Sanitary linen practices; and
- (C) Client privacy practices.

Stat. Auth.: ORS 687.121 Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121 Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0012; MTB 2-1985, f. & ef. 1-23-85; MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0030; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

COMPLAINTS AND DISCIPLINE

334-040-0010

Discipline

The Board may deny, conditionally grant, restrict, suspend or revoke a license or permit, impose probation, reprimand, censure, impose remedial education or corrective actions, and/or impose a civil penalty for any of the following reasons:

- (1) Practicing massage or representing one's self as a massage therapist without a current active license issued by the Board;
- (2) Knowingly or recklessly making any false statement to the Board;

- (3) Has been the subject of disciplinary action as a licensed healthcare professional by this or any other state or territory of the United States or by a foreign country and the Board determines that the cause of the disciplinary action would be a violation under ORS 687.011 to 687.250, 687.895 and 687.991 or OAR Chapter 334;
- (4) Suspension or revocation of a license to practice massage in another jurisdiction based upon acts by the licensee similar to acts described in this section;
- (5) Knowingly or recklessly falsifying an application or continuing education statement or documentation;
- (6) Conviction of a crime in any state or jurisdiction;
- (7) The use of false, deceptive, or misleading advertising, which includes but is not limited to, advertising massage using the term "massage" or any other term that implies a massage technique or method in any private or public communication or publication by a person licensed or not licensed by the Board as a massage therapist;
- (8) Allowing the use of a license by an unlicensed person;
- (9) Presenting as one's own license, the license of another;
- (10) Practicing massage under a false or assumed name without notification to the Board;
- (11) Impersonating another massage therapist;
- (12) Assisting, employing, or permitting an unlicensed person to practice massage;
- (13) Practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive;
- (14) Practicing or offering to practice massage beyond the scope permitted by law;
- (15) The use of intoxicants, drugs, controlled substances, or mind altering substances to such an extent as to impair or potentially impair the licensee's abilities to perform professional duties in a safe manner;
- (16) Practicing massage with a physical or mental impairment that renders the therapist unable or potentially unable to safely conduct the practice of massage;
- (17) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition as required by rules of the Board;
- (18) Refusing to permit the Board or its representatives to inspect the business premises of the licensee during regular business hours;
- (19) Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to:
 - (a) Failure to furnish any requested papers or documents,
 - (b) Failure to provide in writing a full and complete explanation covering the matter contained in the complaint filed with the Board,
 - (c) Failure to respond to subpoenas issued by the Board whether or not the recipient is accused in the proceeding;
- (20) Failing to comply with an order issued by the Board;
- (21) Failure to obtain the required permits for facilities or in violation of OAR 334-010-0010.
- (22) Failure to report to the Board information that a licensee has engaged in prohibited or unprofessional conduct as required in ORS 676.150.
- (23) Unprofessional or dishonorable conduct which includes but is not limited to:
 - (a) Any conduct involving inappropriate physical contact or sexual misconduct which includes:
 - (A) Sexual abuse which is conduct which constitutes a violation of any provision of ORS 163.305 through 163.465;
 - (B) Sexual violation which is sex between the LMT and the client, whether initiated by the client or not, engaging in any conduct with a client that is sexual, or may be reasonably interpreted as sexual, including, but not limited to:
 - (i) Sexual intercourse;
 - (ii) Genital to genital contact;
 - (iii) Oral to genital contact; oral to anal contact;
 - (iv) Oral to oral contact except cardiopulmonary resuscitation; touching breasts or genitals or any sexualized body part for any purpose other than appropriate examination or treatment or where the client has refused or withdrawn consent; or
 - (v) Encouraging the client to masturbate in the presence of the LMT or masturbation by the LMT while the client is present.
 - (C) Sexual impropriety which is any behavior, gestures, or expressions that are seductive or sexually demeaning to a client; inappropriate procedures, including, but not limited to,
 - (i) Disrobing or draping practices that reflect a lack of respect for the client's privacy, deliberately watching a client dress or undress instead of providing privacy for disrobing;

- (ii) Subjecting a client to an examination in the presence of students, assistants, or other parties without the explicit consent of the client or when consent has been withdrawn;
- (iii) An examination or touching of genitals;
- (iv) Inappropriate comments about or to the client, including but not limited to, making sexual comments about a client's body or clothing, making sexualized or sexually-demeaning comments to a client, comments on the client's or LMT's sexual orientation and making a request to date;
- (v) Initiation by the LMT of conversation regarding the sexual problems, preferences or fantasies of the LMT; or
- (vi) Kissing.
- (b) Violating the client's rights of privacy, and confidentiality.
- (c) **photographing or filming the body or any body part or pose of a client without consent.**
- (de) Failure to disclose or release information about a client if required by law or on written consent of client.
- (ed) Intentionally harassing, abusing, or intimidating a client either physically or verbally.
- (fe) Any conduct or practice which could endanger the health or safety of a client or the public.
- (gf) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage.
- (hg) Exercising undue influence on a client, including promotion or sale of services, goods, or appliances in such a manner as to exploit the client for the financial gain or self-gratification of the massage therapist.
- (ih) Routinely practicing in an incompetent manner.
- (ji) Conduct which would also constitute a violation of the Oregon Unlawful Trade Practices Act.
- (kj) Practicing a modality or technique without adequate training or licensure.

Stat. Auth.: ORS 687.081 & 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; Sections (6) - (20)(h) Renumbered from 334-030-0020; BMT 2-1998, f. & cert. ef. 7-22-98; Renumbered from 334-030-0025 by BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

5) Board Business

a) Correspondence – Coffey shared details of correspondence received at the Board office.

- **Letter by Fuegy** to the Board in regards to the Model Practice Act (MPA) and its opposition to the MPA for its total disregard for the insights of the IASI.
- **Letter to the Board by IASI** to the Board in regards to the Model Practice Act (MPA) and its opposition to the MPA
- **Letter to the FSMTB** by Board member Jon Grossart stating his dissatisfaction with the Model Practice Act (MPA)
- **Letter to the Board by Pearson** to the Board asking for the board to consider waiving her late fees.
- **Letter to the Board by Marshall expressing concerns with CE Rules.** Marshall addressed the board expressing that the Board exceeded its rule making authority in regards to Continuing Education. The concerns are in regards to the board allowing his wife to submit hours that were taken in 2012 and were not submitted at the time of the 2012 renewal. She would like to submit them in 2015 to fulfil her CE requirements. The Board discussed the request and instructed **Lindley** to draft a response.

(a) **Cranio-Sacral** – After discussion, the Board voted to list Milne Visionary and Bio Dynamic Craniosacral Therapy as an exempt practice. The board is still concerned on how the public is going to discern the differences in craniosacral practitioners.

Fredrickson questioned how is the public supposed to know whether or not the modality is exempt?

McMillin – what is the urgency and the true need for the exemption request? Is there a market that is being affected by board non action? The Board needs to be proactive. What he saw did not make him worry that this will create harm to the public. Noted that if we grant the exemption today and the board finalizes the tier licenses how the board reverses the exemption.

Calahan – Noted that they are not proposing that the broad category of Craniosacral to be exempt but they want the individual program that has an extensive certification process.

Hodsdon - Noted that they want registered Craniosacral Therapists to be exempt and be named in the exemption list. They are asking for their specific certification to be acknowledged. Whitney agrees with the Board's mission of protecting the public. Her question is; they have been asking to be named, but do they need to be named? Can the people who have already met the requirement in the two institutions practice under this exemption without being named specifically? She can see the confusion amongst other craniosacral practitioners who think that they are exempted and they are not. Can someone practice if they have gone through all the training at both institutions? They are asking for the exemption because they have an extensive certification program to be able to practice.

Fredrickson noted the law grants exemption. The issue facing the Board is one of portability and reciprocity nationwide and how the board is going to respond to the empathies to include bodywork community in some type of certification in state oversight of massage licensure. If for example the practices seeking exemptions are exempted in rules today, or in the near future, how will the board undo that in order to require that the practices have some level of oversight? **Fredrickson** questioned if the Board wants to grant more exemptions when the board knows that it may have to undo them?

McMillin moved to exempt Milne institute and Bio Dynamic craniosacral as currently defined and under their current standards and conditions of their education requirement as presented to the Board at this point in time. To be listed under 334-010-0027(1)(a)(C): **Second the motion: Foster-Wexler. In favor: Foster-Wexler, McMillin, Calise and Morin. Opposed: Fredrickson, Grossart and Rothenberger. Motion carries.**

a) **Federation of State Massage Therapy Boards (FSMTB) Model Practice Act (MPA)** – The Board provided guidance to the board delegate who will be attending the October annual meeting. **Calise** will be representing and voting on behalf of the Board. After discussing the matter, the Board voted that it is not in the best interest of the Board to support or in favor of the FSMTB MPA as it is written.

The board also discussed the Entry-Level Analysis Project (ELAP) recommendation and invited the representative from massage schools to comment.

Bearn director of education at East West College expressed that she appreciate the intent of the ELAP, however, it is difficult for her to get the intent of the document and the reasoning behind including lesson plans. Identifying competency and having a recommendation of what the intents are is one thing but having someone hand a lesson plan on how to achieve competency, is a bit constraining.

b) **January 2016 Proposed Rules Change** – the Board discussed the proposed rules changes and because of the nature of the changes specifically in Continuing Education, and the length of time it may takes the schools to organize those required classes, that January 2016 is appropriate time for implementation of the Rules change for Continuing Education. The change in implementation date will simply give the education community and licensees time to gear up.

The Board approved the proposed Rules to go into effect July 1, 2015 with the exemption of CEs Rules which is proposed and approved by the Board to be effective on January 1, 2016.

Proposed Rules to go into effect July 1, 2015

- 334-001-0060 Definitions
- 334-010-0018 Criminal Background Check, Fitness Determinations
- 334-010-0027 Exempt Practices
- 334-010-0033 Fees
- 344-040-0010 Discipline
- 334-020-0005 Sanitation

Proposed Rules to go into effect on January 1, 2016

- 334-010-0015 Licensure
- 334-010-0017 Lapsed License
- 334-010-0050 Continuing Education

Calise moved to take a short break; Second the motion: **Rothenberger**. In favor: **Calise, Fredrickson, Foster-Wexler, Grossart, McMillin, Morin** and **Rothenberger**. Opposed: **None**. Motion carries.

Fredrickson reconvene the meeting at 11:45am

6) **BOARDerline** – the Board discussed possible topics for the BOARDerline. Rules modification and the 2015 legislation proposals. Proposed CE changes and FSMTB meeting. The next BOARDerline will be published in October or November of 2014.

The board acknowledges McMillin and thanked him for his eight (8) years of service and dedication to the Oregon Board of Massage Therapist. The Board also further expressed that this will be McMillin's last Board meeting as a Board Member.

Calise expressed her gratitude of working with McMillin and she is honored to have gotten the opportunity to work with him and will forever be grateful for everything that he has done for the Board and the wisdom that she has gained from him. He always brings clarity and common sense to the Board and has been instrumental in moving the Board in the right direction.

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

Pinholster noted that he is concerned with the language in the MPA as it states they will create a new board that will supersede all other boards.

The board assured **Pinholster** that they cannot superseded state law and there is no federal law in place to support the topic in question.

Newfield asked for clarification on the ethic and professional development hours for the continue education. The Board clarified that the required hours on Ethics and Professional Development of four (4) hours.

Marshall expressed that she will like to know if her classes will be accepted for her renewal in 2015 when she is due for renewal.

McMillin motioned that the board increases the board member stipends from \$100 a month to \$200. He also noted that Special stipend be considered for the Board chair and \$375 for the vice chair. He is honored to have been given the opportunity to serve. **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger** and **Fredrickson**. **Opposed: None**. Motion carries.

Fredrickson thanked and excused the members of the public

Fredrickson called to enter into Executive Session at 12:40pm.

EXECUTIVE SESSION

The Board may enter into 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 192.501(4) to review test questions, scoring keys and other data used to administer a licensing examination, 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 or applicant by a health professional regulatory Board 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.

1. Executive Session
 - a. Compliance (192.660(2)(k))

The Board returned to Public Session at 3:39pm.

2. Action on Executive Session Items

Compliance Cases

- i. Case 1686 – McMillin moved to issue the license without restrictions. **Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, Rothenberger, McMillin, Morin and Fredrickson. Opposed: None. Motion carries**
- ii. Case 1703 – McMillin moved to issue license without restrictions and issue a letter of concern. **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin and Rothenberger. Opposed: None. Motion carries. Fredrickson recused himself from voting**
- iii. Case 1682 – McMillin moved to issue license without restrictions. **Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- iv. Case 1702 – Calise moved to issue license without restrictions. **Second the motion: Morin. In favor: Calise, Foster-Wexler, Fredrickson, Grossart, Morin, McMillin and Rothenberger. Opposed: None. Motion carries.**
- v. Case 1704 – Calise moved to issue license without restriction. **Second the motion: Grossart. In favor: Calise, Foster-Wexler, Fredrickson, Grossart, McMillin, Morin and Rothenberger. Opposed: None. Motion carries.**
- vi. Case 1687 – Calise moved to request that the licensee appear before the board at the November Board Meeting. **Second the motion: Rothenberger. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson recused himself from voting on the case. Opposed: None. Motion carries.**
- vii. Case 1612 – Grossart moved to issue a Notice of Proposed Action for: one violation of ORS 687.021(1)(a) Engaging in or purporting to engage in the practice of massage without a massage therapists license; and one violation of ORS 687.021(1)(c) Advertising massage without a license for a total civil penalty of \$2000. **Second the motion: Foster-Wexler. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- viii. Case 1692 - Foster-Wexler moved to issue a Notice of Proposed Action for: one violation of ORS 687.021(1)(a) Engaging in or purporting to engage in the practice of massage without a massage therapists license; and one violation of ORS 687.021(1)(c) Advertising massage without a license for a total civil penalty of \$2000. **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- ix. Case 1688 - McMillin moved to issue a Notice of Proposed Action for One Violation of ORS 687.021(1)(a) Engaging in or Purporting to engage in the practice of massage without a massage therapists license, and, two violations of ORS 687.021(1)(c) Unlawful advertising for Massage without a license for a total civil penalty of \$3000. **Second the**

motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

- x. Case 1667 - Grossart moved to close case, no violation found. Second the motion: Foster-Wexler. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xi. Case 1658 - Morin moved to issue a letter of concern. Second the motion: Grossart. In favor: Foster-Wexler, Grossart, McMillin, Morin recused from voting, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xii. Case 1693 – Calise moved to close unable to substantiate. Second the motion: Rothenberger. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xiii. Case 1639 – Morin moved to accept the Stipulated Agreement and Final Order negotiated by the ED. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xiv. Case 1294 – Calise moved to accept the Stipulated Agreement and Final Order negotiated by the ED. Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xv. Case 1676 – McMillin moved to rescind the Notice as compliance has been met. Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xvi. Case 1678 – Calise moved to rescind the Notice as respondent is deceased. Second the motion: Grossart. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xvii. Case 1699 – McMillin moved to issue a Notice of Proposed Action for: One violation of ORS 687.021(1)(a) Engaging in or Purporting to engage in the practice of massage without a massage therapists license; and, One violation of ORS 687.021(1)(b) Operating a Massage Facility without a permit; and, One violation of OAR 334-040-0010 (12) Employing unlicensed persons for a total civil penalty of \$3000. Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xviii. Case 1706 – Morin moved to issue a Notice of Proposed Action for: Ove violation of ORS 687.021(1)(a) Engaging in or purporting to engage in the practice of massage without a massage therapists license for a total civil penalty of \$1000. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xix. Case 1619 – Calise moved to ratify the final order issued from the Administrative Law Judge for a total civil penalty of \$2000. Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xx. Case 1707 – Foster-Wexler moved to issue a Notice of Proposed Action (Suspension): For one violation of OAR 334-040-0010(19)(a) Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to: Failure to furnish requested papers or documents, pursuant to ORS 687.250(2) For a total civil penalty of \$1000 and to suspend licensee’s massage therapist license until such time as licensee comes into compliance with the continuing education requirements or the board.. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xxi. Case 1696 – Calise moved to issue a Notice of Proposed Action for: One violation or ORS 687.021(1)(a) Engaging in or purport to engage in the practice of Massage without a massage therapists license; and, One violation of ORS 687.021(1)(c) advertising for massage without a license. For a total civil penalty of \$2000. Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xxii. Case 1635 – Calise moved to close the case, no violation found. Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xxiii. Case 1670 – McMillin moved to close case unable to substantiate. Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.
- xxiv. Case 1685 – Calise moved to deny application for initial license. Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.

- xxv. Case 1701 Calise moved to issue a letter of concerns regarding communication and business practices. **Second the motion: Rothenberger. In favor: Calise recuse herself from voting, Foster-Wexler, Grossart, McMillin, Morin Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xxvi. Case 1697 – McMillin moved to close case no violation found. **Second the motion: Foster-Wexler. In favor: Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries. Calise abstain from voting.**
- xxvii. Case 1698 – Calise moved to issue a Notice of Proposed Action for violation of Board probation and revocation. **Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xxviii. Case 1694 – Grossart moved to issue a Notice of Proposed Action for: One violation of ORS 687.021(1)(a) Engaging in or purporting to engage in the practice of massage without a massage therapists license; and, Ove violation of ORS 687.021(1)(c) advertising for massage without a license (business card) For a total civil penalty of \$2000 and turn forgery over to DA. **Second the motion: Rothenberger. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xxix. Case 1708 – Foster-Wexler moved to issue a Notice of Proposed Action for: One violation of ORS 687.021(1)(b) Operating a Massage Facility without a permit; and, One violation of OAR 334-040-0010 (12) Employing unlicensed person for a total civil penalty of \$2000. **Second the motion: Rothenberger. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xxx. Case 1649 – McMillin moved to ratify the final order negotiated and issued by the DOJ. **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xxxi. Case 1657 – McMillin moved to accept the Stipulated Agreement and Final Order negotiated by the ED.. **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xxxii. Case 1690 – McMillin moved to accept the Stipulated Agreement and Final Order negotiated by the ED. **Second the motion: Calise. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**
- xxxiii. Executive Session Closed Case Report – Morin moved to accept the executive session closed case report as submitted in Exhibit A. **Second the motion: Grossart. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

Case No. 1576**Allegation: Professional Misconduct****Closed: Insufficient Evidence****3. Public Compliance Action**

- a) **Public Session Closed Case Report – Morin moved to accept the executive session closed case report as submitted in Exhibit A. Second the motion: Grossart. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin Rothenberger and Fredrickson. Opposed: None. Motion carries.**

Case No. 1630**Allegation: Unlicensed Practice****Closed: Civil Penalty Assessed****Case No. 1634****Allegation: Unlicensed Practice****Closed: Civil Penalty Assessed****Case No. 1640****Allegation: Unlicensed Practice****Closed: Civil Penalty Assessed**

Case No. 1631**Allegation:** Unlicensed and Failure to Obtain a Facility Permit**Closed:** Civil Penalty Assessed and Paid

Case No. 1673**Allegation:** Conviction of a Crime**Closed:** License Granted

Case No. 1636**Allegation:** Unlicensed Practice and Advertising**Closed:** Stipulated Agreement Met

Case No. 1638**Allegation:** Failure to Pay Child Support**Closed:** Suspended

Public Forum – Opportunity to share thoughts that pertain to agenda items – There were no members of the public present.

4. Announcements

Morin is excused from attending the November Board Meeting.
Next meeting will be on November 17, 2014 in Salem, Oregon.

12) **Adjourn Meeting** – **Calise** moved to adjourn the meeting. **Second the motion: Morin. In favor: Calise, Foster-Wexler, Grossart, McMillin, Morin, Rothenberger and Fredrickson. Opposed: None. Motion carries.**

The meeting was adjourned at 4:34 pm.