



Oregon Board of Massage Therapists

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APPROVED

5/11/06 MS

BOARD MEETING MINUTES

April 8, 2006

Attendance

Board Members:

Jacqueline McCal, LMT, Chair
Michael Jordan, LMT
Stephanie Manriquez, LMT

Jackie Kern
Cathy Law

Staff:

Patty Glenn, Executive Director
Michelle Sherman, Office Manager
Diana Nott, Law Enforcement Coordinator

Public:

Christa Caputa, Northwest Colleges Attended by wife of Dale Goodenough Jason Smith
Danielle Hurd Joanie Adams Angel Chesimet
Donald F. Hughes

Call to order

McCal called the public meeting to order at 10:15 am. All Board members were in attendance with the exception of Welker and Oxman.

1) Approve Agenda

Kern moved to approve agenda. **In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.** Item 7a will be moved to the end of the agenda. **Jordan** moved to amend. **In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.**

2) Approve Minutes

The March 9, 2006 meeting minutes were amended for esthetic purposes. **Law** moved to approve the minutes as amended. **In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.**

3) Directors Report

a) Financial Report—To date, the Board has used 37.7% of the biennial budget. The number of Active and Inactive LMT is approximately 5500.

b) Updates—

Glenn attended a forum held at OSM-Salem that was facilitated by Christy Joachim. The Health Licensing Agency informed the attendees that Reflexology was not in the scope of a Nail Technologist. Items discussed included: Massage below C7, Lymphatic drainage, and Vacuum massage. Massage below C7—Estheticians are allowed to practice on the full body provided that the work is for cosmetic or beautification and is within the scope of practice. Lymphatic drainage—HLA representatives stated that this is intended to be subtle manipulation around the eyes to reduce puffiness not full body lymph drainage. Vacuum massage—Even though the appearance of the skin may be smoother as a result of this application the equipment provides a treatment that breaks up the adhesions, increases circulation and lymphatic flow beneath the epidermis. The OBMT has ruled on two occasions that this constitutes the practice of massage. As treatment is not within the scope of an esthetician and the physiological effects of the machine are not cosmetic such equipment would require that the operator hold a massage license or that of another health care practitioner operating within their scope of practice.

Glenn updated the public in attendance on the FSMTB and how and why it came to be. The Federation is in the process of developing its own exam.

Glenn updated the board on the database development and that acquisition of an existing database did not meet the needs of the OBMT and therefore was not being pursued.

4) **Committee Report**—There were no meetings to report.

5) **Public Forum**

Several of the public attendees thanked the Board for all of the hard work that they do. The public appreciated the fact that we are willing to travel as it gives them an opportunity to meet the Board and ask questions. Angel Chesimet asked what is happening with CCA investigations, insurance billing and the conversion renewal. Jason Smith asked if it was ok for a CCA to operate the ultrasound equipment if under the supervision of the chiropractor and if there was anything that we need from them that would help us in our investigations of unlicensed and unethical practice. Christa Caputa asked if a LMT needs to be certified in stone massage before practicing this modality.

7) **Law Enforcement**

b) Discussion re: law enforcement cases against unlicensed individuals and to take action against all law enforcement cases.

Case #5-04-279 Denise Currin: Allegation: Practicing massage without a license.

Recommendation: Issue a Notice of Proposed Action for one (1) violation of ORS 687.021(1) performing massage without a license and one (1) violation of ORS 687.021(2)(a) advertising massage without a license for a total civil penalty of \$1,500; forward to the Chiropractic Board and the Occupational Therapists Board; and open a case for unlicensed advertising against the clinic.

Jordan so moved. In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.

Case #3-05-342 April Robyn: Allegation: Practicing massage without a license.

Recommendation: Close the case for insufficient evidence and send a letter of concern. **Jordan so moved. In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.**

Case #8-05-385 Patra Conley: Allegation: Practicing and advertising massage without a license. **Recommendation:** Issue a Notice of Proposed Action for three (3) violations of ORS 687.021(2)(a) advertising massage without a license and one (1) violation of ORS 687.021(1) purporting to be in the practice of massage without a license for a total civil penalty of \$3,500.

Kern so moved. In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.

Case #8-05-403 Gil Guzman: Allegation: Practicing massage without a license.

Recommendation: Issue a Notice of Proposed Action for thirteen (13) violations of ORS 687.021(1) for a total civil penalty of \$11,000 and forward to the Physical Therapists Board and the Athletic Trainer Board. **Law so moved. In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.**

Case #8-05-424 DJ Fox: Allegation: Practicing massage without a current Oregon license.

Recommendation: Issue a Notice of Proposed Action for four (4) violations of ORS 687.021(2)(a) advertising massage without a license and twenty-seven (27) violations of ORS 687.081(1) engaging in or purporting to be in the practice of massage without a license for a total civil penalty of \$20,000. **Jordan so moved. In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.**

Case #4-05-434 Jian Dong Jin: Allegation: Practicing and advertising massage without a license. **Recommendation:** Issue a Notice of Proposed Action for two (2) violations of ORS 687.021(1) performing massage without a license and two (2) violations of ORS 687.021(2)(a) advertising massage without a license for a total civil penalty of \$3,500. **Manriquez so moved. In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.**

Case #1-06-442 Beaverton Jade Sauna (Sunni Kim): Allegation: Practicing massage without

a license. **Recommendation:** Issue a Notice of Proposed Action for one (1) violation of ORS 687.021(1) practicing massage without a license for a total civil penalty of \$500 and forward the appropriate agency for sanitary violations. **Law** so moved. **In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.**

Case #11-05-446 Karen Capo: Allegation: Practicing massage without a license. **Recommendation:** Issue a Notice of Proposed Action for one (1) violation of ORS 687.021(1) practicing massage without a license and twenty-two (22) violations of ORS 687.021(2)(a) advertising massage without a license for a total civil penalty of \$16,000. **Jordan** so moved. **In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.**

Cases that the Board office closed:

Case #8-03-232 Closed C21. Unable to locate.

Case #10-03-246 Closed C21. Unable to locate.

Case #6-04-281 Closed C21. Unable to locate.

Case #3-05-328 Closed C01 Board lacks authority. Business practice issue, not a violation of OAR 334 or ORS 687.

Case #3-05-329 Closed C21. Unable to locate.

Case #4-05-348 Closed C12. Insufficient evidence.

Case #5-05-352 Closed C12 Insufficient evidence. Unable to substantiate.

Case #8-05-394 Closed C21 Unable to locate.

Case #10-05-409 Closed C04 Allegations unfounded. Issue with chiropractic office.

Case #10-05-415 Closed C01 Compliance Met.

Case #11-05-430 Closed C02 Board lacks authority. Business practice issue not a violation of OAR 334 or ORS 687.

Case #11-05-432 Closed C04 Allegations unfounded.

Case #10-05-433 Closed C04 Allegations unfounded. Unable to locate complainant.

Case #10-05-444 Closed C02 Board lacks authority. Issue with employer/employee.

- c) Civil penalty for failure to post LMT number, change address, change name.** The Board had previously requested that an outline be presented for the purposes of staff issuing a Notice of Proposed Action for Civil Penalty for those individuals who have failed to post their license number in advertisements. After discussion, this will also effect those who fail to update their address within 30 days and those who failed to update their name. The penalty structure is as follows: 1st violation--\$50, 2nd violation--\$100, 3rd violation--\$500 and the 4th violation—\$500 and Suspension of license until the matter is settled. **Jordan** moved to allow administration to issue a Notice of Proposed Action for Civil Penalty without submitting to the Board prior to issuance. **In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.** A list will be provided at the subsequent board meeting for informational purposes only.

8) New Business

- a) **Board Meeting Schedule.** For purposes of efficiency Glenn asked that the Board physically meet every other month with alternating months held by conference call. The agenda for the conference calls will be predominately law enforcement action. After discussion it was determined that the May, July, September, and November board meeting would be held by telephone; June and August's meeting will be in the Board office; and the October meeting will be held in The Dalles. The Board will re-evaluate the schedule at the November meeting. **Law** so moved. **In favor: McCal, Law, Kern, and Manriquez. Opposed: Jordan. Motion carried.** It was also requested that a policy pertaining to member attendance be drafted.
- 9) **Old Business**
- a) **Professional Comparisons**—Glenn will present the document to the Board when it is completed.
- b) **Board Member Training**—Postponed.
- c) **Board Member Position**—Discussed the candidate for the public member position and all members agreed that the candidate would be a good addition to the board.
- 10) **Public Comments – Opportunity to share thoughts that pertain to agenda items.** Don Hughes didn't realize to the degree that unlicensed practice was being violated. He recognized that the Board is: working hard, trying to improve efficiency and willing to travel. He believes that the Conversion renewal makes more sense now that he has completed the requirements.
- 6) **EXECUTIVE SESSION** Executive session is held pursuant to ORS 192.660(2)(f) To consider information or records that are exempt by law from public inspection, ORS 192.660(2)(h) consultation with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed and 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.
- 7) **Law Enforcement**
- a) **Action on Executive Session cases**
- Case #6-05-356: Allegation:** Unprofessional conduct. **Recommendation:** Issue a Notice of Proposed Action for two (2) violations of OAR 334-030-0025(19)(a)(C) sexual impropriety, three (3) violations of OAR 334-030-0005(5)(b) code of ethics and three (3) violations of OAR 334-030-0005(2)(a) failure to foster safety and trust in the client/professional relationship for a total civil penalty of \$8,000 and Revoke license. **Jordan** so moved. **In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.**
- Case #6-05-357: Allegation:** Unprofessional conduct. **Recommendation:** Issue a Notice of Proposed Action for seventy-six (76) violations of ORS 687.081(1)(i) engaging in unprofessional or dishonorable conduct for a total civil penalty of \$42,500; Revoke license; and notify the Board in Texas. **Law** so moved. **In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.**
- Case #7-05-395: Allegation:** Practicing outside the scope of practice and sexual misconduct. **Recommendation:** Issue a Notice of Proposed Action for one (1) violation of OAR 334-030-0025(19)(a)(B)...engaging in any conduct with a client that is sexual or may be reasonably interpreted as sexual, including but not limited to...and one (1) violation of OAR 334-030-0025(19)(a)(C) sexual impropriety...an examination or touching of the genitals for a total civil penalty of \$1,500. **Law** so moved. **In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.**
- Case #12-05-418: Allegation:** Practicing massage without a license. **Recommendation:** Issue a Notice of Proposed Action for two (2) violations of ORS 687.021(1) practicing massage without a license for a total civil penalty of \$1,500. **Jordan** so moved. **In favor: McCal, Law, Kern, Manriquez, and Jordan. Opposed: None. Motion carried.**
- 11) **Announcements**—The May 11th meeting will be a telephone meeting.
- 12) **Adjourn Meeting**— **Manriquez** moved to adjourned. **In favor: McCal, Law, Kern, Jordan and Manriquez. Opposed: None. Motion carried.** Meeting adjourned at 4:01pm.