



Oregon

Theodore R. Kulongoski, Governor

Board of Massage Therapists

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BOARD MEETING MINUTES

November 16, 2009

Attendance

Board Members:

Jordan Barton, LMT, Chair
Kathy Calise, Public Member, Vice Chair
Jeanna Catalano, LMT
Crystal Collier, LMT
Heather Bennouri, LMT
Craig McMillin, Public Member
Tim Driscoll, D.C., Public /Health Member

Staff:

Patty Glenn, Executive Director
Mindy Tucker, Director of Compliance
Diana Nott, Enforcement Coordinator
Lori Lindley, Assistant Attorney General

Public: Michael Jordan Tim Wilcox Leah Bowder Brandi Walton
Debi Andal Greg Olson Mike Alex Patrick Riggs
Kathryn Logan Claudia Black

Call to Order

Barton called the meeting to order at 9:05 am. Role call was performed. **Barton, Bennouri, Catalano, Collier, McMillin and Calise** were present. **Driscoll** was excused for the morning and arrived at 1:25 pm.

1) Approve Agenda - Bennouri moved to approve the agenda. **In favor: Barton, Bennouri, Catalano, Collier, McMillin and Calise. Opposed: None. Motion carries.**

2) Public Comments –

Michael Jordan asked for clarification on items deferred to executive session during the October 2009 Board meeting. There was confusion whether items were appropriately discussed in executive session vs. public session. Topics in question included the Multiple Disciplinary Task Force and the Federation of State Massage Therapy Boards (FSMTB) meeting. **Bennouri** will review the transcript from that meeting and report back to the Board at the January meeting.

3) Approve minutes of October 19, 2009 – The board reviewed the minutes and discussed some minor editing changes to get to **Glenn** for finalization. **Calise moved** to approve the minutes as amended. **In favor: Barton, Bennouri, Catalano, Collier, McMillin and Calise. Opposed: None. Motion carries.**

4) Executive Session

The Oregon Board of Massage Therapists will now meet in executive session, pursuant to ORS 192.660(2)(f) to review, discuss, and consider mediation communications that are confidential and exempt from disclosure, pursuant to ORS 192.502(9), 36.224(6), 36.220(1)(a), and OAR 334-001-0051(6). The Board may also consider and discuss in executive session information obtained as part of an investigation of a licensee or applicant, pursuant to ORS 192.660(2)(k). The Board may also review, consider, and discuss written legal advice provided by the Department of Justice that is confidential or privileged and exempt from disclosure under ORS 192.502(9) and ORS 40.225 and other applicable authority.

Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of executive session, the Board will return to open session and welcome the audience back into the room.

The Board entered into Executive Session at 9:15 am per ORS 192.660(2)(k) and returned from Executive Session at 9:47 am.

5) Directors Report –

- a) **Statistics – Glenn** provided a monthly statistics report to the Board members. Staff is working on some programming issues to get the school statistics available on the web site. **Glenn** will forward a presentation done for the schools in regards to the practical examination. There was a discussion on the number of modalities and the possibility of providing information to the legislature via a white paper.
- b) **Finances –** The Board reviewed the finances with information run on November 10, 2009. The 2007-2009 biennium financials will be finalized after the audit.
 - i) **Biennial Audit Update –** Auditors were at the Board office on the November 12-13, 2009. **Glenn** commented that this audit team, from Moss Adams out of Eugene, was the most personal and interactive audit team that staff has worked with. There are a few follow-up items to get to them and they may or may not return for additional work. The Semi-Independent Board Administrator's (SIBA) group will be talking about additional training on GAP (Governmental Accounting Principles) and the GASB (Governmental Accounting Standards Board).
- c) **Health Related Boards –** This group is currently working on the law enforcement peer review audit process. They are also gathering some basic Board information to have a better understanding of what other Boards and Commissions look like. **Glenn** is requesting information from other boards such as number of full-time employees (FTE), Executive Director (ED) salary, license count, etc. The Pharmacy board had tried to gather similar information in the past, so **Glenn** will be connecting with their representative to combine efforts. She will also be taking the arrest/convictions offense matrix from the Washington Department of Health to the next meeting to see what other health-related boards are doing.
- d) **SIBA Update –** The next meeting is scheduled for November 17, 2009. An update will come to the Board in January.
- e) **Legislative Update –** There is nothing new at this time. **McMillin** asked if Kafoury was still reporting the OBMT as a client. If so, it needs to be removed. **Glenn** stated that she thought he would appear at the SIBA meeting, and she would address the issue then.
- f) **General Update –** No additional updates at this time.

6) Committee Updates –

- a) **Education/Scope of Practice Committee –** Staff is working with Nick Chrones to try to set a time to meet. There was interest from another member of the committee to step up as the chair of the committee if Chrones' plate is too full.
- b) **Multiple Disciplinary Task Force –** John Combe has agreed to chair this committee. **Collier** and **Glenn** will draft a letter to go out to interested parties. They will get availabilities and set a date for early December at the latest. The e-mail to go out will contain a statement as to the purpose of the group and will go to the associations as well.

7) FSMTB Updates – There are no updates since the last meeting.

8) Board Business

a) Board Stipend – The Board needs to put forward a permanent rule for the \$100 per month stipend. **Glenn** will get the hearing noticed. The earliest possible hearing date would be mid-January. The Board was provided with a spreadsheet indicating what the stipends are for other boards and commissions. If the Board wishes to do anything different, they would need to convene a committee of non-board members to review it. **Bennouri moved** to adopt a permanent rule for Board members to receive a \$100 per month stipend. **In favor: Barton, Bennouri, Catalano, Collier, McMillin and Calise. Opposed: None. Motion carries.**

b) Special Compensation – **Glenn** sent an e-mail to Ron at the Ethics Commission and met with the Attorney General's (AG's) office regarding the thoughts and concerns that were expressed. **Glenn** indicated that in her communication with the Ethics Commission, there was one specific piece that needed to be addressed. It is under ORS 244.120(2)(b) pertaining to actual conflict of interest. When this occurs, the Board member with the conflict needs to state publicly what the nature of the conflict is. **Collier** questioned if there was a concern with the standardization for hourly pay. **Glenn** said that this was not an issue. However, the previous motion needs to be rescinded and then a new motion made that includes the conflict of interest statements. **McMillin** questioned why this issue was coming to the Board in November when the original motion took place in August. **Barton** responded that afterwards, there was concern with how the motion came to be so he and **Glenn** sought clarity from the Ethics Commission to make sure it was all handled appropriately. **McMillin** wanted to make sure that the new motion then brings everything current to November 16, 2009. The motion will be deferred until the end of the agenda to be sure that all of the necessary information is gathered and taken into consideration.

c) 2010 Legislative Session

i) Management Report – The Board received a report at the October meeting. **Glenn** hoped to hear comments today. There was a discussion on the focus of current issues and how the Board should prepare for the 2010 Legislative Session.

ii) Proposals from SIBA, Pac-West, Tressider – These items had been tabled from a previous meeting and **Glenn** was looking to provide an outcome to the parties. There was a discussion on the current political landscape. **Calise** asked if there had been any news about a consolidated health regulatory entity. **Glenn** stated that she was unaware of any such proposal at this time. She would get information to the Board as it becomes available. The Board determined that they are not interested in representation from these entities at this time. **Glenn** will respond and copy **Calise** on the letter.

d) Personnel Handbook – **Glenn** has been working with Kathryn Logan from the Department of Justice with changes to the handbook. . The details referring to the collective bargaining agreement will be removed, making this a leaner document. **Glenn** hopes to have the handbook finished by the first of next week.

e) Board Special Committee Updates

i) Legislative – **McMillin** spoke with Claudia Black, the Governor's Health Policy Advisor, about setting up a protocol for legislative issues. He suggested that the Board establish a system and that there be no presentation to the legislature unless the Board has approved it and adopted a manner in which to communicate. Apparently no other agency has done this and Claudia seemed to think it was very forward thinking and may benefit other Boards as well. **McMillin** spoke with Senator Johnson, who will likely propose a bill next session with additional exemptions. He has asked her to meet with the Board and work through Senator Morrisette's committee on addressing these issues. He feels that this is an area that needs follow through before the 2010 session begins to set up a meeting with her. The Board should have a statement with written reasons they are for, against or neutral. **Barton** would like to see this Board outreach to Senators and Representatives to help provide understanding. He feels that

lack of communication with the parties involved is what hinders the process in the end. **McMillin** stated that the Board can provide information after they have taken a position. There was discussion on observations and frustrations from past legislative dealings. **Calise** will extend an invitation to Senator Johnson to meet at her availability in January. The Board will re-address the issue of position statements at the January meeting.

ii) Attorney Usage – McMillin had asked for information on any attorney usage not related to enforcement. He has not received that information at this time. **Glenn** will forward that information along with invoices received since the start of the 2009-2011 biennium. A glitch in the DOJ's (Department of Justice) new email billing process resulted in the OBMT not receiving any invoices since June.

iii) Office Policies & Procedures – This special committee has nothing more to do to address this area at this time.

iv) Personnel Performance/Salaries – See item 8.d. for more information.

9) Public Comment - Opportunity for the public to address the Board.

There were no comments.

The Board recessed for a holiday/recognition luncheon at 11:26 am and returned to public session at 1:05 pm. Upon return the Board was introduced to three new contract investigators – Debi Andal, Greg Olson and Mike Alex. Each investigator gave a brief introduction.

10) EXECUTIVE SESSION (continued from Item 4)

The Board reconvened in executive session at 1:12 pm and returned to public session at 5:20 pm.

Driscoll arrived at 1:25 pm.

11) Executive Session Action

a) Case #850 – McMillin moved to defer any action on this case until the January 11, 2009 Board meeting. **In favor: Barton, Bennouri, Catalano, Collier, McMillin, Driscoll and Calise.**

Opposed: None. Motion carries.

b) Case #857 – Bennouri moved to close the case as compliance met. **In favor: Barton, Bennouri, Catalano, Collier, McMillin, Driscoll and Calise. Opposed: None. Motion carries.**

c) Case #920 – Bennouri moved to issue an Emergency Suspension for one violation of ORS 687.081(1)(i), for unprofessional or dishonorable conduct, pending the outcome of LMT's criminal matter. **In favor: Barton, Bennouri, Catalano, Collier, Driscoll and Calise. Opposed: None. Abstained: McMillin Motion carries.**

d) Applicant #AB – McMillin moved to conditionally grant applicant a license with the following requirements as follows: LMT to contact the Board at least once every three months, continue to obey all laws and ordinances of the State and obey all requirements imposed by the courts while being in full compliance, attend AA meetings at least once per week and send a report to the Board every three months beginning 1/1/2010, followed up at 4/1/2010, 7/1/2010 and 10/1/2010. The report shall indicate that LMT is in full compliance with all requirements. This matter shall be subject to review by the Board after one year. **In favor: Barton, Bennouri, Catalano, Collier, McMillin, Driscoll and Calise. Opposed: None. Motion carries.**

e) Applicant #AC – McMillin moved to conditionally grant the applicant a restricted license with the issuance of a signed Stipulated Agreement with the Board. Requirements of the LMT are as follows: LMT shall be supervised in practice and be an employee of another party; LMT is not to work on any minors under the age of 18; LMT is on probation for the licensing period; LMT shall

obey all laws and ordinances of the State; LMT is to obey all laws and restrictions in the terms of his criminal supervision; The Board may have contact with the supervisor of the LMT; The Board shall reserve the right to continue to impose conditions at its discretion. The motion further states that staff shall draft the Agreement and provide it to the Board via e-mail within ten days. Board members then have seven days to respond. If applicant does not sign the Agreement, then the case shall be referred to the January Board meeting. **In favor: Barton, Catalano, Collier, McMillin, and Calise. Opposed: Bennouri Abstained: Driscoll. Motion carries.**
f) **Executive Session Closed Case Report – Collier moved** to accept the closed case report as presented. **In favor: Barton, Bennouri, Catalano, Collier, McMillin, Driscoll and Calise. Opposed: None. Motion carries.**

Case No. 739

Allegation: Sexual Misconduct **Closed:** Letter of concern

Case No. 859

Allegation: Unprofessional Conduct **Closed:** Allegations withdrawn

Case No. 853

Allegation: Unlicensed Practice/
No License Number in Ad **Closed:** No violation found/
Compliance met

Case No. 881

Allegation: Unprofessional Conduct **Closed:** No violation found

Case No. 902

Allegation: No License Number in Ad **Closed:** Compliance met

Case No. 906

Allegation: No License Number in Ad **Closed:** Compliance met

Case No. 912

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

12) Public Session Action

a) **Case #762 (Eliza Cahill) – Bennouri moved** to accept the Final Order as originally presented. **In favor: Barton, Catalano, Collier, McMillin, Bennouri, Driscoll and Calise. Opposed: None. Motion carries.**

b) **Case #783 (Rhiannon Miller) – Calise moved** to amend the Notice of Proposed Action to include an additional 6 ads for an additional \$3,000 making a total violation count of 27 and a total civil penalty of \$18,000. **In favor: Barton, Catalano, Collier, McMillin, Bennouri, Driscoll and Calise. Opposed: None. Motion carries.**

c) **Case #794 (Hannah Bigelow) – Catalano moved** to issue a Notice of Proposed Action for two violations of ORS 687.021(1), engaging in or purporting to be in the practice of massage without a license, for a total civil penalty of \$1,500. **In favor: Barton, Catalano, Collier, McMillin, Bennouri, Driscoll and Calise. Opposed: None. Motion carries.**

d) **Public Session Closed Case Report – Collier moved** to accept the closed case report as presented. **In favor: Barton, Catalano, Collier, McMillin, Bennouri, Driscoll and Calise. Opposed: None. Motion carries.**

Case No. 258

Allegation: Unlicensed Practice of Massage **Robert Heintz**
Closed: Stipulated agreement issued

Case No. 604

Allegation: Unlicensed Practice of Massage

Azalea Unknown

Closed: Respondent unreachable

Case No. 737

Allegation: Sexual Violations

Jason Lutz

Closed: Surrendered

e) **Compensation – Barton** declared an actual conflict of interest in this matter due to personal financial gain and is therefore abstaining from any discussion or vote. **Catalano** declared an actual conflict of interest in this matter due to personal financial gain and is therefore abstaining from any discussion or vote.

McMillin moved to rescind the August 22, 2009 motion pertaining to extraordinary services. **In favor: Bennouri, Collier, Driscoll, McMillin, and Calise. Opposed: none. Abstained: Barton and Catalano Motion carries.**

McMillin moved that based upon extraordinary services provided to the Board through November 16, 2009, that Board chair Jordan Barton be paid \$5,107.50 and Board member Jeanna Catalano be paid \$750.00 for services rendered. **In favor: Bennouri, Collier, Driscoll, McMillin, and Calise. Opposed: none. Abstained: Barton and Catalano Motion carries.**

Documentation shall be provided to **Glenn** for verification.

13) Announcements – Calise will assume the role of chair immediately following this meeting. **Collier** nominated **Bennouri** as the Vice Chair. **In favor: Barton, Bennouri, Catalano, Collier, McMillin, Driscoll and Calise. Opposed: None. Motion carries.**

14) Adjourn Meeting - Calise Moved to adjourn the meeting at 5:55 pm. **In favor: Barton, Bennouri, Catalano, Collier, McMillin, Driscoll and Calise. Opposed: None. Motion carries.**