



Oregon

Kate Brown, Governor

Board of Massage Therapists

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OBMT Board Meeting Minutes

July 16, 2018

Board Office

Attendance

Board Members:

Jon Grossart, LMT, Chair

Christa Rodriguez, LMT, Vice Chair

Meng Chen, Public Member

John Combe, LMT

Carol Ann Kirby, Public Member (Excused)

Kelley Rothenberger, LMT

Steven Foster-Wexler, LAc, Public Health Member

Staff:

Kate Coffey, Executive Director

Ekaette Udosenata-Harruna, Policy Analyst

Bob Ruark, Compliance Manager

Lori Lindley, AAG

Public:

Leah Bowder

Julie Crispin

Erica Baern

Jim Roberts

Mark Retzlaff

Laura B Embleton

Call to order at 9:07am

Grossart welcomed the new board member John Combe to the board.

Grossart called the meeting to order at 9:07 am. Roll call was performed. Chen, Foster-Wexler, Combe, Grossart, Rodriguez, and Rothenberger were present, and Kirby was excused. Coffey, Executive Director, Lindley, AAG, Udosenata-Harruna, Policy Analyst, and Ruark, Compliance Manager.

Grossart asked members of the public to introduce themselves. Public present at this time were. Leah Bowder, Julie Crispin, AMTA-Oregon, Erica Baern, East west college, Jim Roberts, Mark Retzlaff, AMTA-Oregon, and Laura B Embleton, Associated Bodywork & Massage Professionals.

1) Approve Agenda: Rothenberger moved to approve the Agenda. Second the motion. Combe: In favor: Chen, Combe Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

2) Public Comment:

Roberts appealed to the board for oncology patients to be able to obtain internal pelvic floor, external Pelvic and genital massage.

Rothenberger expressed that there are many therapists that do not abide by the rules, opening up the rules would

essentially give the okay for therapists to perform genitalia massage for other than medical reasons.

Grossart clarified that internal pelvic floor work is allowed by board policy and rule as long as the licensee has certified training and written consent. Unfortunately, there are limited places that train massage therapists in these modalities. For external work, Grossart noted that massage therapists can perform those modalities and there are therapists that perform pelvic floor work routinely. There are ways to work prostate externally that is included within the scope of practice for massage therapists. Grossart further noted that there are practitioners that do practice external pelvic floor work, work on nerves, and work on the vascular area. Most LMTs are not trained to work in those areas; however, there are some therapists that specialize in that area.

Grossart requested to amend the May 18-19, 2018 board meeting minutes on page 15, item 5.3, and Page 16 paragraph 2.

3) **Approve Minutes for May 18-19, 2018:** Combe moved to approve the minutes as amended. Second the motion: Rodriguez. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

4) **Directors Report:** Coffey updated the Board on the Budget Status for the 2017-19 Biennium. The board expenses are \$122k more than the revenue received for the first year of the biennium. The board projected to overspend by \$38k; however, the increase in payroll and legal costs increased the over expenditure. The board's actual revenue is \$38k more than the revenue projection for the first year of the 2017-19 biennium. The excess revenue is in the categories of Application, Initial License, Civil Penalties and Fingerprint fees. The Board has three months of working capital at the end of June 2018.

Licensing Statistics Update:

Active Licenses On 06/30/2018	InActive Licenses On 06/30/2018	Total Licenses On 06/30/2018
7524	772	8296

Initial Licenses For Jun2018
75

Active Renewals For Jun2018	InActive Renewals For Jun2018	Total Renewals For Jun2018
274	25	299

Expired Licenses For Jun2018	Lapsed Licenses For Jun2018
28	76

Compliance Update: The compliance section received 12 new complaints since the May 2018 Board Meeting, this number is down compared to recent months. There are currently 6 contested cases that are pending at the Office of Administrative Hearings. Three administrative hearings have occurred since the last board meeting and two have been decided in favor of the board, the third is still pending a decision. The compliance section also settled multiple cases prior to hearing and will continue to actively negotiate cases with those willing to negotiate a settlement. The compliance section has begun to assign cases that were backlogged and that should cause an increase in cases for the Board to review beginning September 2018.

5) Board Business

- a) Emeritus Status Draft Rule: Coffey noted that based on the Board's feedback from the May 2018 board meeting she drafted the following emeritus status rule language:

334-010-0016

Emeritus License

- (1) An Emeritus License is for long-term therapists that work less than 1040 hours per calendar year and do not actively promote their massage business.
- (2) Applications for renewal of an emeritus license must be accompanied by:
 - a) Proof that the Massage Therapist has attained the age of 65 at the time the renewal application is submitted;
 - b) Has been licensed, in active status, by the State of Oregon as a massage therapist for 16 consecutive years;
 - c) Signs an attestation that they will not actively engage in the promotion of their massage business;
 - d) Proof of current certification in basic life support (BLS) Healthcare Provider cardiopulmonary resuscitation;
 - e) Proof of 12 hours of board-approved continuing education that includes 4 contact hours or Ethics, Boundaries, and/or Communication;
 - f) Current Emeritus License fee; and
 - g) Any additional documentation required by the Board

Foster-Wexler in light of what we are going to talk about of the CE revision, which the board is looking to go down to 12 hours, the emeritus will not be less than normal which was the main reason for emeritus status along with cost. Why 1040? As it is high for a massage therapists. Foster-Wexler inquired why 16 years of active licensure?

Coffey expressed that if the board wants something else other than the proposed 1040 hour limit, she is open to recommendations. The reason she choose 1040 is because, that is what the State uses 1040 to define part time and temporary workers. She further explained that because they are supposed to be retired, they are not going to want to actively advertise or promote their businesses. Coffey noted that the majority of massage therapists are under 30.

Foster-Wexler inquired, what problem are we solving and are we solving that problem directly? The rationale for Emeritus Status was, less CEUs, the board is working on changing the rules on CEUs to reduce the amount of CEUs required for the renewal of license. The other aspect about emeritus in other fields are no income. One can continue to practice legally but cannot charge for it. The Inactive license status provides for practicing and not charging. Why does the Board need emeritus status, what are we solving with this that we cannot solve in other ways?

Rothenberger noted that she thought this was supposed to address the concern of those who only have a couple of clients and still wanted to charge because that is their sole income. But cannot afford to do 25 hours of continuing education every two years.

Grossart expressed that in his opinion, if you are a professional serving your clients, you should be meeting the same guidelines as everyone else in the profession.

Foster-Wexler moved to continue discussion on the emeritus status and to revisit the item once the revised continue education has been implemented. Second the motion: Rothenberger. In favor: Chen, Foster-Wexler, Combe, Kirby, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

b) Proposed Rules :

Proposed Rules already approved:

The Board approved the new budget to go into effect January 1, 2019 during the May 2018 Board Meeting.

334-001-0012

Budget

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists' 2017–2019 Biennium budget of ~~\$1,910,000~~ **2,280,000**.

Revised rule was approved in the January & March 2018 Board meetings and allows the Board to not accept transcripts from schools that have been found by the NCBTMB and FSMTB to have questions educational programs. This clarifies the Facility License requirements and makes all applicants notify the board within 10 days if something changes on their original application for licensure.

334-010-0005

Applications

- (1) All applications for licensure, inactive status, renewal, temporary permit, or a facility permit must be made on forms provided by the Board. Only applications that are completed and on Board approved forms, without alterations, must be accepted for filing and review by the Board.
- (2) All applications made to the Board must be accompanied by the required fee.
- (3) Applicants for Licensure must submit the following with their application:
 - (a) A copy of a valid government issued photo identification. This identification could be a valid driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;
 - (b) An official certificate or transcript from the administering institutions, instructors, or programs showing successful completion of study and practice in the required subject matter and hours required by the Board.
 - (A) Official copies of transcripts or certificates presented to the Board ~~in an envelope sealed by the program or institution and verified as sealed may be accepted directly from the applicant.~~
 - (B) If a program or institution granting credit is no longer in business, the Board must accept for review a copy of a certificate of completion, transcript or diploma in the required subject matter and hours. The Board may require additional information to verify the authenticity of such documents.
 - (i) Transcripts or certificates directly received from other states massage licensing boards will be accepted.
 - (C) The Board will not accept transcript(s) or certificate(s) from schools that are not approved or not in good standing with the national massage associations.
 - (c) A current photograph of the applicant.
- (4) Transcripts must include a minimum of 625 hours of certified classes. The 625 hours must include the knowledge and skills identified in OAR 334-010-0047 competencies and must be comprised of:
 - (a) A minimum of 200 hours of Anatomy & Physiology, Pathology, and Kinesiology; and
 - (b) A minimum of 300 hours of Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, and Sanitation. Hydrotherapy may be included as part of the 300 hours.
 - (c) The additional 125 hours can be in Anatomy & Physiology, Pathology, Kinesiology, Massage or Bodywork Theory and Practical Application, Clinical Practice, Business Development, Communication, Ethics, Sanitation or Hydrotherapy.
 - (d) Hours can be calculated in clock hours or equivalent credit hours from an institution that substantially complies with the definition of credit hours in 34 CFR 600.2.
- (5) If for any reason an applicant does not appear to be qualified for Licensure, the applicant must be so notified and invited to submit additional evidence that he/she is entitled to have his/her case considered for licensure.
 - (a) Applicants who are or have legally practiced massage and/or bodywork outside of the State of Oregon may be eligible to apply for the Credentialing Review Process.
- (6) Applicants who apply for licensure on or before December 31, 2015 with a minimum of 500 hours of certified classes and do not take and pass the Oregon practical exam within 60 days of the date of their application must apply as a new applicant.

- (7) All application documents for examination and licensure submitted in a language other than English must be accompanied by:
- (a) An accurate translation of those documents into English;
 - (b) A notarized affidavit certifying that the translator is competent in both the language of the document and the English language; and
 - (c) A notarized affidavit certifying that the translation is a true and complete translation of the foreign language original.
- (8) Any costs of translation of all documents required by the Board must be at the expense of the applicant.
- (9) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, then the application is considered incomplete.
- (10) All information required for an initial license must be received within 12 months of the initial date of application. Thereafter, one must apply as a new applicant.
- (11) Applicants for Facility Permit must submit the following with ~~their~~ the Facility Permit application:
- (a) ~~if~~ If a natural person
 - (A) ~~A~~ A copy of a valid government issued photo identification. ~~This identification could be a~~ Valid identification includes: a state issued driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;
 - (B) Verification of Oregon Secretary of State Business Registration confirming registration of the assumed business name with the State of Oregon. The Verification must be in a format acceptable to the Board and include: the business registry number, owner and entity name as each appears on the Facility Permit Application, Facility Address as it appears in the Facility Permit Application, the current status of the registration, and start date of the registration.
 - (b) ~~if~~ If not a natural person:
 - (A) ~~Copy~~ Verification of the Oregon Secretary of State Business ~~Registration, listing all owners and/or shareholders and~~ confirming registration of the corporation, partnership, limited liability company, or assumed business name with the State of Oregon. The Verification must be in a format acceptable to the Board and include the business registry number, entity name as it appears on the Facility Permit Application, Registered Agent, owner/member/partner information, Facility Address as it appears in the Facility Permit Application, the current status of the registration, and start date of the registration.
 - (B) For corporations, partnerships, and limited liability companies, copies of Articles of Incorporation, Articles of Organization, or shareholder agreements showing all percentages of ownership with appropriate owner(s) identification including name and address.
- (12) Applicants for Facility Permit Transfer must submit the following with the Facility Permit application:
- (a) If a natural person, a copy of a valid government issued photo identification. Valid identification includes: a state issued driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;
 - (b) If not a natural person:
 - (A) Verification of Oregon Secretary of State Business Registration confirming registration of the corporation, partnership, limited liability company, or assumed business name with the State of Oregon. The Verification must be in a format acceptable to the Board and include the business registry number, entity name as it appears on the Facility Permit Application, Registered Agent, owner/member/partner information, Facility Address as it appears in the Facility Permit Application, the current status of the registration, and start date of the registration.
 - (B) For corporations, partnerships, and limited liability companies, copies of Articles of Incorporation, Articles of Organization, or shareholder agreements showing all percentages of ownership with appropriate owner(s) identification, including name and address.
 - (C) A Buy-Sell Agreement, Purchase Agreement, Transfer Agreement, Lease Agreement or other documentation approved by the Board verifying transfer of legal ownership of the Facility.
- (13) Applicants for licensure, inactive status, renewal, or a facility permit must notify the Board in writing immediately, but no later than 10 days after the change occurs, if any information submitted on the application changes, including, but not limited to: name; contact information, including address, email address, and

telephone number; Board or other governmental agency investigation or disciplinary actions; civil, criminal, or ethical investigations, arrests, charges or convictions; employment investigations which lead to termination or resignation; in-patient mental health care for a psychological or behavioral health condition, addiction, or chemical dependency issue. Failure to do so may be grounds for denial of the application or revocation of the license, once issued.

This revised rule was approved in March 2018 and adds clarification for Facilities.

334-010-0006

Facility Permits

- (1) ~~Applicants for facility permits~~ Facility Permit Applications may be denied for reasons listed in ORS 687.081. Applicants Facility Permit Applications may also be denied for a permit due to prior discipline by the Board for the ~~unlicensed practice of massage~~ of the Facility, or its affiliated owner(s), registered agent, or member(s)/partner(s). The Board should consider the circumstances of the violations, the duration of the conduct, the egregiousness of the violations, if the applicant the facility, its owner, registered agent, or member(s)/partner(s) are is currently in compliance with the law and orders Oregon laws and rules, and previous orders of the Board, and whether the conduct demonstrably related to the Facility Permit Applicant's holding a facility license permit.
- (2) A Facility Permit is valid only for the location and business name printed on the Facility Permit. An issued Facility Permit cannot be used at a different location, at multiple locations, or for a facility at the same location under a different name.
- (3) Facility Permits issued by the Board are transferable to a new owner(s), or to a new business name or assumed business name, only as approved by the Board.
- (4) A permitted Facility may provide massage therapy services only through the use of LMTs licensed under ORS 687.051.
- (5) A permitted Facility is responsible for the conduct and behavior of its employees and contracted agents in their performance of services on behalf of or in association with the Facility.

This revision was approved in the May 2018 Board Meeting and specifies the type of CPR required.

334-010-0015

Licensure

- (1) An applicant for licensure 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 electronic fingerprint for a criminal background check.
- (3) All applications for licensure must be accompanied by proof of current certification in ~~cardiopulmonary resuscitation (CPR)~~ from the American Heart Association's Basic Life Support (BLS) Healthcare Providers Course or its equivalent. A CPR certification card must include an expiration date.
- (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 have passed a written examination approved by the board unless the applicant is applying through Health Indorsement in which the applicant must have passed a practical examination.
- (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 Basic Life Support (BLS) Healthcare Provider cardiopulmonary resuscitation (CPR);. The CPR certification card must include an expiration date;
 - (d) Proof of 25 hours of continuing education as required in OAR 334-010-0050(1)(b); and
 - (e) Any additional documentation required by the Board.
- (9) All applicants for initial, renewal, or reinstated license must sign a statement verifying that they have read, understand, and must comply with all current Oregon Revised Statutes (ORS 687), Oregon Administrative Rules (OAR 334), and policy statements of the Board.
- (10) Licenses issued by the Board must not be transferable.
- (11) A person licensed by the Board may move to an inactive status by completing the form provided by the Board. Upon payment of the appropriate fee, the applicant will be issued an inactive license. During the period of inactive status, the licensee may not practice massage for compensation in the State of Oregon.
- (12) An application to reactivate an inactive license must be accompanied by:
 - (a) Current licensing fee;
 - (b) Verification of current cardiopulmonary resuscitation (CPR);. The CPR certification card must include an expiration date;
 - (c) Verification of 25 hours of continuing education for each biennium the license was inactive. Of the 25 hours, at least 15 must be contact hours of continuing education training or Board approved activities. At least 4 contact hours must be in Professional Ethics, Boundaries and/or Communication. The remaining 10 of 25 hours may be contact or noncontact hours.
 - (d) Verification of 50 hours of continuing education for the reactivation of inactive license more than 1 biennium must be submitted to the Board. Of the 50 hours, at least 30 must be contact hours of continuing education training or Board approved activities. At least 8 contact hours must be in Professional Ethics, Boundaries and/or Communication. The remaining 20 of 50 hours may be contact or noncontact hours; and
 - (e) Completed electronic fingerprints for criminal background check.

This revision was approved in the March & May 2018 Board Meeting and specifies the type of CPR required and closes the loop-hole for those who are lapsed to apply as a new applicant.

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 less than 24 months 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;~~
- (eb) Late fee payment;
- ~~(dc) Proof of 25 hours of continuing education for each biennium the license was lapsed and for the current licensing period;~~
- ~~(ed) Verification of 4 contact hours in Ethics Professional Ethics, Boundaries and/or Communication.~~
- ~~(fe) Proof of current certification in in basic life support (BLS) Healthcare Provider cardiopulmonary resuscitation (CPR);. The CPR certification card must include the expiration date of the CPR certification; and~~
- ~~(g) A statement indicating whether the applicant has engaged in the practice of massage and bodywork in another jurisdiction during the period of lapsed status; and~~
- ~~(hf) Applicants must Complete and submit a completed electronic fingerprint for criminal background check.~~
- (4) An applicant whose license is lapsed for more than 24 months and less than 36 months 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 for the previous period of the lapsed license;
 - (c) Late fee payment;
 - (d) Proof of 50 hours of continuing education;
 - (e) Verification of 8 contact hours in Professional Ethics, Boundaries and/or Communication.
 - (f) Proof of current certification in (BLS) Healthcare Provider cardiopulmonary resuscitation (CPR). The CPR certification card must include the expiration date of the CPR certification; and
 - (g) Complete and submit a completed electronic fingerprint for criminal background check.
- (5) An applicant whose license is lapsed for 36 months or more, must meet all of the current initial license requirements listed in OAR 334-010-0005 (4) (a-d) to reactivate to active status; and include 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 periods of the lapsed license;
 - (c) Late fee payment;
 - (d) Proof of 50 hours of continuing education;
 - (e) Verification of 8 contact hours in Professional Ethics, Boundaries and/or Communication.
 - (f) Proof of current certification in (BLS) Healthcare Provider cardiopulmonary resuscitation (CPR). The CPR certification card must include the expiration date of the CPR certification; and
 - (g) Complete and submit a completed electronic fingerprint for criminal background check.
- (46) An applicant whose license is lapsed for 12 months or less may renew as an inactive status; a license that is lapsed for 12 months or more is prohibited from renewing as an inactive status
- ~~(5) An applicant whose license is lapsed for greater than 12 months must renew as an active status.~~
- ~~(67) All information required for restoring a lapsed license to an active status must be received within 3 years of the date of lapsing along with the requirements listed in OAR 334-010-0017(3)(a-h). Thereafter, one must apply as a new applicant.~~
- (78) Continuing Education is not required if this is your first subsequent renewal after receipt of your initial license.

This revised rule requires a LMT to post their current license (remember the case where the LMT had their expired license posted)

334-010-0025

Practice of Massage

- (1) Massage treatment may include, but is not limited to:
 - (a) Client intake and assessment;

- (b) Practice of massage or bodywork;
 - (c) Post massage assessment and recommendation; and
 - (d) Documentation.
- (2) Massage treatment does not include:
- (a) The application of high velocity/low amplitude force further defined as thrust techniques directed toward joint surfaces;
 - (b) The use of equipment or devices that require a prescription; or
 - (c) Making a medical diagnosis.
- (3) A massage therapist must use safe and functional coverage/draping practices during the practice of massage when the client is disrobed.
- (a) Safe and functional coverage/draping means:
- (A) LMT explains, maintains and respects coverage/draping boundaries;
 - (B) Client gives informed consent;
 - (C) Genitals and gluteal cleft of male and female clients and the breast area of female clients are not exposed;
 - (i) With voluntary and informed consent of the client, the gluteal and breast drapes may be temporarily moved in order to perform therapeutic treatment of the area.
 - (D) Massage or movement of the body does not expose genitals, gluteal cleft or breast area.
- (b) Exceptions to the rule may be made for LMTs who can document training in specific modalities that require variations in coverage/draping.
- (4) A Licensed massage therapist must not perform or offer to perform any services for clients other than those connected with giving massage therapy treatments as defined in ORS 687, unless the LMT has additional training and/or licensure.
- (5) A person represents himself or herself as a massage therapist when the person adopts or uses any word(s) that implies a skill or application as defined by statute 687.011.
- (6) Any person who holds a license as a massage therapist in this state may use the abbreviation "LMT." No other person(s) may assume such title or such abbreviation or any other word[s], letters, signs, or figures to indicate that the person using the title is a licensed massage therapist.
- (7) All licensed massage therapists must notify the Board office in writing of any change of residence, business, email or mailing address within 30 days of change of address.
- (8) Active licensed massage therapists must display their current license in a location clearly visible to their clients.
- (9) Active licensed massage therapists are required to include their license number in all advertisements, including but not limited to: written, electronic, televised and audio.

The revised rule adds clarification for Facility Permit fees.

334-010-0033

Fees

- (1) The fees are:
- (a) \$100 for initial license;
 - (b) \$50 for initial license under 12 months;
 - (c) \$155 per biennial renewal for active license;
 - (d) \$75 per biennial renewal for inactive license;
 - (e) \$100 mid-cycle inactive to active renewal
 - (f) \$25 per week, up to a maximum of \$100, for any late renewal;
 - (g) \$100 for application processing;
 - (h) \$150 for each practical examination;
 - (i) \$100 for mailing list;

- (j) \$10 for license reprint;
 - (k) \$10 for license verification;
 - (l) \$250 Credentialing Review;
 - (m) Current Oregon State Police Criminal Background Check Fee;
 - (n) \$50 initial facility permit;
 - (o) \$250 facility permit ownership transfer;
 - (p) \$250 permitted facility name change;
 - (q) \$10 facility permit reprint
 - (r) \$10 permitted facility address change and
 - ~~(q)~~ (s) other administrative fees as allowed by law.
- (2) Application and licensure fees are not refundable

Adds clarification for Facility Permits.

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, of any change of the permitted Facility's name, business location, operation status, ownership, email or mailing address within 30 days of change. within 30 days of relocating the facility;~~
 - (a) A Facility Permit Transfer Application must be submitted and approved by the Board prior to the Facility providing of massage therapy services under new ownership, under a new business or assumed business name.
 - (ii) ~~keep posted and visible to the public, the facility permit with the correct location address~~ A permitted Facility must display its permit in a location clearly visible to anyone entering the facility;
 - (iii) A permitted Facility must display original licenses of its LMT employee(s) in a location inside the premises, clearly visible to the general public.
 - (iv) A permitted Facility is required to include its permit number in all advertisements, including but not limited to: written, electronic, televised and audio advertisements, service menus, business cards, flyers, websites, and other means of promotion of the permitted Facility.
 - (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;
 - (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.

This revision was approved in January 2018 and adds clarity for Fitness to Practice and the Discipline associated with the failure to practice safely.

334-040-0010

Discipline

The Board may deny, conditionally grant, restrict, suspend or revoke a license or permit, impose probation, reprimand, and 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) Misrepresentation or fraud in any aspect of the profession, including but not limited to charging for unnecessary services, charging for services not provided, failing to provide services that are paid in full, or failure to comply with Oregon insurance billing laws and rules.
- (24) Splitting fees or giving or receiving a commission in the referral of patients for services.
- (25) 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.
 - (d) ~~Failure~~ Failing to disclose or ~~release~~ releasing information about a client if required by law or on written consent of client
 - (e) Intentionally harassing, abusing, or intimidating a client either physically or verbally.
 - (f) Any conduct or practice which could endanger the health or safety of a client or the public.
 - (g) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage that falls below the standard of minimal competence within the profession that results in unacceptable risk of harm to the client; regardless of whether injury occurs.

(h) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage

~~(ih) 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. Employing illegal or unethical business practices including but not limited to;~~

1. Fraud, deceit or misrepresentation in obtaining or attempting to obtain any fee or third party reimbursement for services.
2. Taking advantage of a relationship with a client for the licensee's personal advantage, including obtaining a benefit that is a personal, sexual, romantic or financial. This includes the 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.
3. A Licensee shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement. A Licensee must either honor a gift certificate or pre-paid package or provide a full refund of unused services. A Licensee must comply with ORS 646A.276.

Rothenberger moved to approve and move the proposed rules through the rules hearing process with an effective date of January 1, 2019. Second the motion: Combe. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

c) Proposed CEU Rule Revision:

Grossart updated the board on a draft revised CEU rules and noted that it focusses on public safety in decreasing the CEU required to 12 hours. Grossart noted that he included two versions. One with strike out and the other showing what it would actually read as strike out can be confusing. He also included a list of questions that he would like to discuss and make some decisions regarding.

334-010-0050

Continuing Education

(1) The intent of Continuing Education is to protect the public by maintaining knowledge and minimal competency of massage and/or bodywork. Each licensee must complete ~~25~~ 12 hours of continuing education each renewal period.

(a) The continuing education hours must be from the following topics and within the scope of the license:

~~(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;~~

(A) Science of Massage Therapy:

(F i) Anatomy and physiology of the human body;

~~(G ii)~~ Kinesiology of the human body;

~~(H iii)~~ Pathology of the human body;

(iv) Pain management;

~~(I) Professional Ethics, Boundaries or Communication;~~

(B) Client Safety and Communication:

(i) Communicable diseases;

(ii) Sanitation;

(iii) Draping;

(iv) Ethical client interaction;

(v) Therapeutic framework and boundary setting;

- (vi) Trauma informed care;
- (C) Oregon Regulatory Practices:
 - (i) 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 day.
 - (ii) Insurance Billing;
- (D) Re-Examination for minimal competency:
 - (i) Licensee may retake any of the Board approved written exams once per renewal period for 6 CE hours. Proof of passing counts as the CE certificate.
 - (ii) Licensee may retake the OBMT Jurisprudence Exam once per renewal period for 1 CE hour. Proof of passing counts as the CE certificate.
 - (iii) Licensee may take the EBAS Ethics and Boundaries Essay Examination once per renewal period for 6 CE hours. Proof of passing all sections counts as the CE certificate.
- (J) Cultural competency as defined in ORS 413.450
- ~~(K) Body mechanics;~~
- ~~(L) Somatic education; or~~
- (M) CPR/First Aid- Basic Life Support (BLS) for Healthcare Providers;
 - (i) Distance learning versions of the course shall count for 1 hour of CE;
- (a) At renewal time, each licensee must sign and submit a Board supplied CE form submit full details of all CEs taken during the renewal period indicating they have completed 25 the required hours of continuing education. The Board may require proof of CE hours.
- (A) Required details include, but are not limited to, course title, course provider, completion date, hour breakdown per CE category breakdown,
- (b) Of the 25 required hours, at least 15 must be contact hours of continuing education training or Board approved activities. A at least 4 hours must be contact hours must be in Professional Ethics, Boundaries and/or Communication topics listed in OAR 334-010-0050(1)(a)(B) or the examination in OAR 334-010-0050(1)(a)(D)(iii). The remaining 10 of 25 hours may be contact or noncontact hours.
- (2) The methods of obtaining continuing education contact hours shall include: courses, seminars, workshops, and research conferences, and workshops.
- ~~(a) Attendance of courses, seminars, and workshops sponsored, certified by a licensed or accredited 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 are listed in OAR 334-010-0050(1)(A-M).~~
- ~~(d) Attendance of courses, seminars, and workshops that meets the content requirement of OAR 334-010-0050(1)(A-M).~~
- ~~(e) Individual interactive distance learning study courses with subject matter that is listed in OAR 334-010-0050(1)(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.~~
- (a) Classes shall be provided by:
 - (A) licensed or accredited massage and bodywork training program;
 - (B) accredited institution of higher learning;
 - (C) a provider recognized by a massage and bodywork professional organization;

- (D) licensed healthcare provider;
- (b) Classes may be in-person or distance learning.
 - (A) All in-person classes count as contact hours.
 - (B) Distance learning study courses may only count as contact hours if the class requires an interactive learning component.
- (c) Classes must be completed and with a passing grade when applicable.
- ~~(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 d) If the Continuing Education Classes with subject matter is not listed under OAR 334-010-0050(1)
 - (a) or outside the scope of an LMT it will not be accepted for continuing education.
- (e) Classes with expanded topic focus will be given partial credit based on the CE hours covering the topics listed in OAR-334-010-0050(1)(a) if the licensee can verify the hour breakdown via an official syllabus or a class completion certificate.
- ~~(6 3) The continuing education requirement does not apply to a licensee's first license renewal.~~
- (7 4) Continuing education must be completed within the renewal period. Contact CE 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) Contact hours taken in topics from Professional Ethics, Boundaries and/or Communication OAR 334-010-0050(1)(a)(B) in excess of the four 4 hour requirement may be carried over to the next subsequent renewal period.
 - ~~(b) 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. All CEs taken during a licensee's first renewal period must still be reported, but they will all carry over to the next renewal period.~~
- ~~(8 5) Continuing education records must be maintained by each licensee for a minimum of five years.~~
- (5 6) 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.
- (9 7) If the Board finds indications of fraud or falsification of records, investigative action shall be taken. Findings may result in disciplinary action up to and including revocation of the licensee's license.
- ~~(10 8)~~ 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.

Crispin expressed that she takes a little umbrage with the board's assumption that by kicking the emeritus status down, the change is already in the work for this. The communication that has transpired today, implied that the board already have strong consideration that change is coming without a lot of public input. She is very concerned about that assumption and would caution the language that the board uses before discussion and before a vote has occurred to refrain from making a decision without the public input or additional discussion.

Grossart responded stating that, these are subject matters that were discussed at the previous meeting. Grossart expressed that, before any rules change is made, the board notifies the public of any such changes. Grossart responded stating that, for public members who were not at the last meeting, the CEU rules changed a number of years ago and since they have changed, the board limited the categories but there has been problems with those categories. LMT's try to claim classes that no longer fit with-in the current categories, but think they are fine. As a

result, it is creating additional work for board staff and the board is faced with questions on what should count or should not count towards the CEU requirement. In addition, there are exempt modalities and people are taking things outside of the scope of massage therapy, should those even count for CEU credit for your massage license? The board has the long standing issue of LMT's saying, I have been a massage therapist for 25 years why do I have to take 25 hours? People saying that they only make the average of \$22,000 a year, why should they have to spend \$3000 to \$4000 potentially every two years for continuing education? Why do they have to drive 4-5 hours to take continuing education as they are not a lot of classes available in the rural areas. In addition, there the question regarding the over standing scope of the board as a regulatory agency not an advocacy agency so, the board's intent legally is to make sure that the public is safe and not that people are good massage therapists. Mandating people to take 25 hours of technique classes that people may or may not want, is that furthering the goal of public safety in any way and again if people do not want to take it but are taking it because they have to, are we doing a disservice? Some of this is based on what Federation of State Massage Therapy Board (FSMTB) has stated was their goal for continuing education two years ago. Focusing on demonstrating that a massage therapist can maintain minimum competence in what massage therapists have been trained in. The Oregon Revised Statutes require a minimum of 12 CEU's per biennium. The practice in Oregon, client safety, pathology, science etc. and if one wanted to retake the MBLEx that would count for 6 of the required hours. If the massage therapists can recertify that they are competent, they you do not have to take the classes because, what the board cares about, is the minimum level competence. It will narrow down the categories so that, the board staff would know what a massage therapist could claim without having to ask for clarification.

Crispin noted that in the proposed rules under C, that the board took away attending board meeting at one point and now putting it back. Furthermore, when the board says examination, which exam would the board be accepting? What percent of structural integration is accepted?

Grossart responded that it is still in rules as contact hours. Any board approved written exam will be accepted.

Baern noted that it is valuable to be in the known of what is happening however, she is trying to understand how attending the board meeting protects the public more than going and doing a technique class where you are learning how to properly apply technique. It does not make sense to her that coming and sitting in a room and listening to discussion about rules would actually protect the public.

Rothenberger expressed that some of the things that she has been listing to from people that have trouble getting their CEs approved by the board is that, I cannot find one credit. Attending a board meeting is just an option.

Baern expressed that, if attending a board meeting is an option, she would put a limit on that because, being able to say they can have one hour for each meeting day attended over a biennium would be 12 hours. The other thing that she is concerned about is how going to learn how to apply technique properly would not be consider public safety. Baern is concerned that with the proposed rule changes, the board is making things more confusing for people who are interested in going and taking a class when they signed up for a 25 hour class and then they find out that only 7 hours of those would count toward their CE because they do not fall under the specific categories. The board needs to find a way to tighten the rules rather than saying that the technique aspect would not count.

Retzlaff noted that he was at the state of Washington meeting last Friday and he asked their staff about how they handle people that submit CEs that are off topic, there rules are a lot more streamlined. They do not have it broken up into topics like Oregon does. It sounds like the conversation is trying to define specifically what topics are in or out though it seems that what is being proposed will increase the burden on staff.

Coffey noted that it is a great first draft. The board directed the ED to gather additional information on what other States have for CE Rules.

Embleton several States are changing their statute to say must be within the scope of practice. In general, a lot of states just saying that it has to be within the scope of practice is good enough. The more you put in, is the more you are putting out and it is particularly difficult in the field of massage therapist because there are new modalities coming out every day. Embleton offered to provide Coffey with information from other States as the ABMP does have that information.

Grossart stated that he would argue that someone taking a one hour course on a technique does not mean a person knows how to do it correctly nor does it enhance someone's knowledge and skills.

Coffey expressed that it is very difficult for staff to discern whether it is online or not and asked if there needs to be the differentiation between contact or noncontact?

Lindley recommended that the board have a list that states, board approved examination, and have the names of the once that are approved listed.

Combe expressed that the board needs to have some form of incentive to encourage public attendance at the board meetings. He believes there is value in involving them with what the board is doing which is important. Putting a limit on it would be in the board's best interest. He would hate to see public attendance drop to zero because, there is no CEs involved. Combe further stressed that there is probably not a need for the differentiation between contact and non-contact.

The board discussed the hours for attending board meeting should be limited to 3 hours per biennium. The board discussed rollover hours and decided to discontinue the roll-over of hours when the CEU rules change.

Rothenberger moved that at this time, while the board consider lowering the CE requirements that the board forgo the emeritus status. Second the motion: Chen. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

d) 2019 Board Calendar.

- 4) January 14, 2019
- 5) March 18, 2019
- 6) May 20, 2019
- 7) July 29, 2019
- 8) September 13-14, 2019 (Traveling Board Meeting Location TBD)
- 9) November 18, 2019

Combe moved approve 2019 calendar. Second the motion: Rodriguez. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

Rothenberger moved to take a short break. Second the motion: Rodriguez. In favor: Chen, Combe, Foster-Wexler, Grossart Rodriguez, and Rothenberger. Opposed: None. Motion carries.

e) Board Action Plan (updated) - Coffey updated the board on the action plan. Coffey noted that there are seven items on the strategic planning objective.

1. Revise Electronic Board Meeting delivery method
2. Historical FSMTB Documents to Board Meeting area
3. Asian Pacific Islander Community and unlicensed practice concerns
4. Facility Permit – Pursue unlicensed facilities
5. Emeritus Status for Licensees with Over 20 years
6. Revise CEU rule

7. Scope of Practice

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

1. Letter to the Board from Kelley – Requesting that the Board modify its rules regarding the way credit hours are handled for experienced therapists, similar to the way the Oregon Board of Chiropractic handles it.

The Board discussed the inquiry and directed the Ed to respond thanking her for her inquiry and inform her that the board is discussing the matter and working on reducing CE hours.

2. Letter to the Board from Roberts – Requesting the board consider allowing genital massage for oncology patients.

The Board discussed the inquiry and thanked him for attending the board meeting and for his input.

3. Letter to the Board from Luttmann – Requesting that the board waive the late fee & fingerprint fee due to miscommunication.

The Board discussed the inquiry and directed the ED to respond to her thanking her for her inquiry and she will need to pay the late fee.

4. Letter to the Board from Tupper requesting that the board consider keeping the 25 hours of continuing education to continue to lift up the field of massage therapy & consider lowering the requirement to 2 continuing education hours of ethics online, non-interactive classes so LMTs can focus on improving the craft of massage therapy.

The Board discussed the inquiry and directed the ED to respond to her thanking her for her inquiry.

5. Letter to the Board from Maden requesting that the board reconsider my application for licensure.

The Board discussed the inquiry and directed the ED to respond to her thanking her for her inquiry and since Arcata school was denied by the CAMTC that the Board could not accept the transcript.

Rothenberger move to modify the Oregon Administrative Rules to clarify when transcripts would be approved or not be approved for schools that have been disapproved or decertified. Second the motion: Rodriguez. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

7) Fall 2018 BOARDerline: The board reviewed the Proposed Fall BOARDerline Topics.

1. Rules Changes Effective January & July 2019
2. FSMTB Meeting - Jon Grossart
3. Upcoming Board Meeting Dates
4. New Board Member Article - John Combe
5. Article on Communication - Kelley Rothenberger
6. Survey for the proposed CEU Rules – Kate Coffey

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

Embleton noted that one of the biggest issues that California is having right now is fraud prevention. Embleton thanked

the board for always considering matters before making a decision.

Bowder expressed that she had a couple of comments on the CEU changes. First, it will be really difficult for a class to parcel what portion is technique and what is considered anatomy and physiology and pathology. In addition she has concerns with the way the changes are moving forward. She would like to see more public involvement.

The board discussed the concerns and concluded that the board will be reaching out to the public for input on the proposed CEU rules.

Rodriguez moved to take a lunch break. Second the motion: Rothenberger. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

The Board returned to Public Session at 12:04pm.

Public present: None Present

Grossart called the Board into Executive Session at 12:05pm.

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.

7) Executive Session

a. Compliance (192.660(2)(k))

The Board returned to Public Session at 2:25 pm.

8) Action on Executive Session Items

Compliance Cases

- i. Case 1983 – Foster-Wexler moved to Accept the Amended proposed Order as written. Second the motion: Chen In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- ii. Case 2171 - Rothenberger moved to Amend the Proposed Order with the modification to include costs. Second the motion: Combe In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- iii. Case 2392 – Foster-Wexler moved to Accept the Voluntary Surrender of license. Second the motion: Rodriguez. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- iv. Case 2157 - Combe moved to direct staff to write a letter that the Board will not entertain further discussion on this matter, and recommends that Respondent submit a new application for licensure to be processed. Second the motion: Rothenberger. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- v. Case 2367 - Rodriguez moved to withdraw the NOPA issued on June 1, 2018 and rescind the civil penalty. Second the motion Combe. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

- vi. Case 2066 & 2119 - Rodriguez moved to accept the Proposed Order as written that includes costs and the Board reviewed the exceptions and found them to be without merit. Second the motion Foster-Wexler. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- vii. Case 2373 - Rothenberger moved to issue a Notice of Proposed Action for Denial of Licensure Second the motion Chen. In favor: In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- viii. Case 2270 - Chen moved to accept the Stipulated Agreement negotiated by staff. Second the motion Rothenberger. In favor: In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- ix. Case 2404 - Chen moved to approve the Facility Permit Transfer application. Second the motion Rothenberger. In favor: In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- x. Case 2358 – Rodriguez moved to Accept the Stipulated Agreement negotiated by staff. Second the motion Chen. In favor: In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xi. Case 2361 – Rodriguez moved to Accept the Stipulated Agreement negotiated by staff. Second the motion Combe. In favor: In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xii. Case 2362 – Combe moved to Accept the Stipulated Agreement negotiated by staff. Second the motion Rodriguez. In favor: In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xiii. Case 2328 - Rodriguez moved to Dismiss the case unable to substantiate. Second the motion Rothenberger. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xiv. Case 2336 - Rothenberger moved to Issue a Notice of Proposed Action (Civil Penalty) for one violation of OAR 334-040-0010(2) Knowingly or recklessly making any false statement to the Board; and one violation of OAR 334-040-0010(12) Employing or permitting an unlicensed person to practice massage; and one violation of 334-040-0010(17) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition; for a total civil penalty of \$3,000. Second the motion Combe. In favor: In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xv. Case 2405 – Chen moved to Issue a Notice of Proposed Action (Revocation) for: Violation of ORS 687.081 (1) (a) and (j): for engaging in unprofessional or dishonorable conduct; Violation of OAR 334-040-0010 (14) Practicing or offering to practice massage beyond the scope permitted by law; and violation of OAR 334-040-0010 (25) (a) (A) (i) and (iii): for engaging in unprofessional or dishonorable conduct. Second the motion Foster-Wexler. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xvi. Case 2406 - Rothenberger moved to Issue a Notice of Proposed Action (Civil Penalty) for One violation of ORS 687.021(1)(a) Practice of Massage without a license. Second the motion Chen. In favor: In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xvii. Case 2343 – Rothenberger moved to Issue a Notice of Proposed Action (Civil Penalty) for One violation each of ORS 687.021 (1) A person may not: (a) Engage in or purport to engage in the practice of massage without a massage therapist license issued by the State Board of Massage Therapists under ORS 687.051;(d) Use the word “Massage” in a business name unless the person is licensed under ORS 687.051; and two violations of ORS 687.021(1)(c) Advertise for massage without a license. For a total civil penalty of \$4,000. Second the motion Combe. In favor: In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xviii. Case 2348 –Foster-Wexler moved to Issue a Notice of Proposed Action (Civil Penalty) for: one violation of ORS 687.021(1) A person may not (a). Engage in the practice of massage without a license. Second the motion Rothenberger. In favor: In favor: Chen, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Recused Combe. Opposed: None. Motion carries.
- xix. Case 2407 – Foster-Wexler moved to Issue a Notice of Proposed Action (Civil Penalty) for One violation of OAR 334-040-0010(12) Permitting an unlicensed person to practice massage. For a total civil penalty of \$1,000. Second

the motion Rothenberger. In favor: Chen, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Recused Combe. Opposed: None. Motion carries.

xx. Case 2350 – Chen moved to Issue a Notice of Proposed Action (Civil Penalty) for one violation each of ORS 687.021(1)(a) practice massage without a license and (b) operate a massage facility without a license and (c) advertise for massage without a license and one violation of OAR 334-040-0010 (12) employing unlicensed person to practice massage. For a total civil penalty of \$4,000. Second the motion Combe. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

xxi. Case 2409 – Foster-Wexler moved to Issue a Notice of Proposed Action (Civil Penalty) for One violation of OAR 334-040-0010 (12) Assisting an unlicensed person to practice massage. For a total civil penalty of \$1000. Second the motion Rodriguez. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

xxii. Case 2387 – Foster-Wexler moved to Issue a Notice of Proposed Action (Civil Penalty) for One violation of ORS 687.021 (1)(a) practice massage without a license and one violation of ORS 687.021(c) advertising for massage without a license. For a total civil penalty of \$2000. Second the motion Rothenberger. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

xxiii. Case 2378 – Rothenberger moved to issue the license and a letter of concern. Second the motion Chen. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

xxiv. Case 2380 - Combe moved to Issue a Notice of Proposed Action (Civil Penalty) for One violation of OAR 334-040-0010(12) Employing an unlicensed person to practice massage. For a total civil penalty of \$1,000. Second the motion Rothenberger. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

xxv. Case 2408 - Combe moved to Issue a Notice of Proposed Action (Civil Penalty) for One violation of OAR 334-040-0010(12) Employing an unlicensed person to practice massage. For a total civil penalty of \$1,000. Second the motion Rothenberger. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

xxvi. Case 2382 - Rodriguez moved approve licensure application and issue license. Second the motion Chen. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

xxvii. Case 2383 - Rodriguez moved to approve voluntary surrender of license. Second the motion Foster-Wexler. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

xxviii. Case 2399 - Chen moved to Issue a Notice of Proposed Action (Civil Penalty) for One violation of ORS 687.021(1)(b) operating a facility without a permit and one violation of OAR 334-040-0010(12) employing an unlicensed person to practice massage. For a total civil penalty of \$2000. Second the motion Combe. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries..

xxix. Case 2389 – Combe moved to Issue a Notice of Proposed Action (Denial of Facility Permit) for violation of OAR 334-040-0010(12) permitting an unlicensed person to practice massage. Second the motion Rodriguez. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

xxx. Case 2400 – Rodriguez moved to Issue a Notice of Proposed Action (Civil Penalty) for One violation of OAR 334-040-0010(12) Assisting an unlicensed person to practice massage. For a total civil penalty of \$1000. Second the motion Rothenberger. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

xxxi. Case 2394 - Chen moved to Issue a Notice of Proposed Action (Civil Penalty) for: OAR 334-040-0010(19)(a) Failure to comply with a CE Audit and failure to furnish requested documents. For a total civil penalty of \$1000 and suspension of license until licensee comes into compliance with the CE audit. Second the motion Combe. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

xxxii. Case 2397 – Chen moved issue license with no stipulations and issue a Notice of Proposed Action (Civil Penalty) for one violation of OAR 334-040-0010(2) knowingly making a false statement to the Board. For a total Civil Penalty of \$1000. Second the motion Combe. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

- xxxiii. Case 2398 – Rothenberger moved to Issue a Notice of Proposed Action (Civil Penalty) for: One violation of OAR 334-040-0010 (5) knowingly or recklessly falsifying continuing education statement. For a total civil penalty of \$1000. Second the motion Rodriguez. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xxxiv. Case 2402 – Foster-Wexler moved to Issue a Notice of Proposed Action (Civil Penalty) for: OAR 334-040-0010(19)(a) Failure to comply with a CE Audit and failure to furnish requested documents. For a total civil penalty of \$1000 and suspension of license until licensee comes into compliance with the CE audit.. Second the motion Chen. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xxxv. Case 2338 – Foster-Wexler moved to accept the Stipulated Agreement negotiated by staff. Second the motion Rodriguez. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xxxvi. Case 2331 – Foster-Wexler moved to accept the Stipulated Agreement negotiated by staff. Second the motion Rodriguez. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xxxvii. Case 2418 – Rodriguez moved to Deny Facility Permit. Second the motion Combe. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xxxviii. Case 2419 – Combe moved to Issue a Notice of Proposed Action (Civil Penalty) for: One violation of ORS 687.021 (1) A person may not: (a) Engage in or purport to engage in the practice of massage without a massage therapist license issued by the State Board of Massage Therapists under ORS 687.051. For a total civil penalty of \$1000. Second the motion Rothenberger. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xxxix. Case 2420 – Rothenberger moved to Issue a Notice of Proposed Action (Civil Penalty) for: One violation of OAS 334-040-0010(12) Assisting an unlicensed person to practice massage without a license. For a total civil penalty of \$1000. Second the motion Combe. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xl. Case 2421 – Rothenberger moved to Issue a Notice of Proposed Action (Civil Penalty) for: One violation of ORS 687.021(1)(a) Practicing massage without a license. For a total civil penalty of \$1000. Second the motion Chen. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.
- xli. Case 2374 – Rodriguez moved to Accept the Stipulated Agreement negotiated by staff. Second the motion Chen. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

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

9) Announcements

Next meeting will be on September 17, 2018 at 9am at the Board Office in Salem, Oregon.

10) Adjourn Meeting –moved to adjourn the meeting. Second the motion:. In favor: Chen, Combe, Foster-Wexler, Grossart, Rodriguez, and Rothenberger. Opposed: None. Motion carries.

The meeting was adjourned at 2:52-pm.