



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Scott Grosz and Jessica Karls-Ruplinger
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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 13-055

AN ORDER to repeal MTBT 2.05 and (Note); to amend MTBT 1.01, 2.01 (title), 2.03 (title), (1) (a) and (c), 3.01 (1), and (5) (b), 4.01 (title) and (intro.), 4.02 (title), (intro.), (1) and (3), 4.03, 4.04 (1) (a) and (c), and (2) (a) and (b), 5.01 (9), (16), (17), (18), (19), (20), (27), (28), and (32), 5.02 (1), (2) (b) and (c), (3) and (4); to repeal and recreate MTBT 1.02; and to create MTBT 4.02 (5) and chs. MTBT 6 and 7, relating to temporary licensure and continuing education.

Submitted by **DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

07-12-2013 RECEIVED BY LEGISLATIVE COUNCIL.

08-07-2013 REPORT SENT TO AGENCY.

SG:MM

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



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Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

a. It appears that the proposed rule fails to incorporate the requirements for training programs that were added to ch. 460, Stats., by 2009 Wisconsin Act 355. See ss. 460.04 (2) (b) and 460.095, Stats.

b. In proposed s. MTBT 3.01 (5) (b), “may” should be changed to “shall”. See ss. 460.095 (1) and 460.05 (1) (e) 2., Stats.

2. Form, Style and Placement in Administrative Code

a. The enumeration of sections treated by the proposed rule should be updated to refer to the creation of s. MTBT 4.02 (5), currently omitted, as well as to refer to the creation of chs. MTBT 6 and 7, rather than each section of those chapters individually.

b. In the plain language analysis, defined terms, and specific terms such as “certificate” that are referenced, should be placed in quotations.

c. Provisions of the current rule that are not affected should not be repealed and re-created, and renumbering of existing rule sections should be avoided. SECTION 2 of the rule-making order should be rewritten to conform to these drafting conventions. [See ss. 1.03 (5) and 1.065, Manual.]

d. The first sentence of the “Summary of factual data and analytical methodologies” in the analysis is ungrammatical and should be rewritten.

e. The entire rule should be reviewed to ensure that all occurrences of the term "bodyworker" are replaced with the term "body work therapist", all occurrences of "bodywork" are replaced with the term "body work therapy", and all occurrences of the term "certificate" are replaced with the term "license".

f. In order to conform to the definitions set forth in s. 460.01, Stats., the following changes should be made: in s. MTBT 1.02 (2) (a), the word "a" should be inserted after "enhances"; in s. MTBT 1.02 (3), the word "leads" should be changed to "lead"; and in s. MTBT 1.02 (15), "percussion" should be changed to "percussing".

g. Several of the definitions created in the rule-making order contain substantive requirements and as such, should be placed in the text of the rule rather than the definitional section. This comment applies to s. MTBT 1.02 (7), (8), (9), (11), and (18). [See s. 1.01(7) (b), Manual.]

h. Section MTBT 1.02 (11) (a), (17) (e) and (f), and (18) (d) should end each sentence with a period.

i. In s. MTBT 1.02 (18) (a), the department uses the phrase "and all of the following occur:". This phrase suggests further subdivision of par. (a), however no such subdivision is present. Should the phrase be deleted? Note that, as written, pars. (b) to (d) relate to sub. (18) (intro.), not par. (a).

j. In s. MTBT 1.02 (23) (b) and (c), it appears that either the term "competent" or "legitimate" should be used consistently. In addition, the first word of each paragraph following the introductory material in s. MTBT 1.02 (23) should be capitalized and the material should end with a period.

k. Section MTBT 2.01 (title) should end with a period.

l. In ss. MTBT 4.02 (5) and 7.02 (1), the phrase "between initial licensure and the first renewal period thereafter" is unnecessary and should be deleted.

m. The entire rule should be reviewed for correct use of the terms "shall" and "may". For example, in s. MTBT 4.03, the phrase "shall not" does not conform to correct drafting style, and in s. MTBT 7.02 (2), "must" should be changed to "shall". [See s. 1.01 (2), Manual.]

n. In the text of SECTION 11 of the rule-making order, the second occurrence of "MTBT 4.04" is unnecessary and should be deleted. [See the example in s. 1.04 (2) (a) 4., Manual.]

o. The entire rule-making order should be reviewed to ensure that proper drafting style is used when deleting and inserting material. For example, in s. MTBT 5.01 (32), existing phrases that are replaced should be stricken in their entirety and new material inserted after the stricken material. In addition, underscored language should not be stricken. [See s. 1.06 (1), Manual.]

p. In SECTION 13 of the rule-making order, the Administrative Code and statutory provisions that are referenced within the rule text should not be underscored.

q. The entire rule-making order should be reviewed to ensure that the numerical denotation of rule provisions is correctly displayed. For example, in SECTION 13 of the rule-making order, the notation "5.02" should be inserted before "(1)".

r. The treatment clause in SECTION 14 of the rule-making order should be rewritten to read as follows: "chapter MTBT 6 is created to read:". The treatment clause in SECTION 15 should be changed to read as follows: "chapter MTBT 7 is created to read:".

s. In s. MTBT 6.02 (3), "department" should not be capitalized.

t. In s. MTBT 6.02 (4), the use of "and/or" does not conform to proper drafting style and should be rewritten. In addition, the use of "(s)" to refer to both the singular and plural form of a word is improper. [See s. 1.01 (9) (a) and (e), Manual.]

u. In s. MTBT 7.02 (5), "is" should be changed to "shall be".

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. MTBT 1.02 (23), the definition of "sexually oriented business" is limited to for-profit entities. Is this limitation appropriate? Should the definition instead apply to any entity that offers or provides any of the listed services for a fee?

b. In s. MTBT 6.02 (1), the introductory material does not lead into the subunits in a grammatically correct manner. These provisions should be rewritten.

c. Should s. MTBT 7.02 (3) require the licensee to identify the continuing education courses that he or she has completed?

d. To conform to the terminology used in s. 460.10 (2), Stats., in s. MTBT 7.02 (4), "similar" should be changed to "exceptional".

e. Section MTBT 7.02 (4) should specify the standards the board will use in considering requests for waivers and a process for a licensee to appeal a denial of a waiver.

f. In s. MTBT 7.02 (6), "subsequent" is superfluous and should be deleted.

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August 8, 2013

Shawn Leatherwood, Rules Coordinator
Department of Safety and Professional Services
Division of Policy Development
1400 East Washington Avenue, Room 151
PO Box 8935
Madison, WI 53708-8935

VIA email shancethea.leatherwood@wisconsin.gov

Dear Ms, Leatherwood,

Associated Bodywork & Massage Professionals (ABMP) is a national professional association for massage therapists that provides professional liability insurance, business resources and publications, and legislative and regulatory advocacy on behalf of our members. ABMP's membership totals more than 82,000 nationwide, including more than 2000 members in Wisconsin.

ABMP is opposed to imposing mandatory continuing education (CE) requirements on licensees simply for the sake of requiring it. Wisconsin has regulated the practice of massage therapy since 1998, first under the certification law and more recently by mandatory licensing. ABMP is not aware of what has changed so drastically to now mandate, not only CE in general, but so many hours. In reviewing the Massage Therapy & Bodywork Therapy Credentialing Board meeting minutes, I did not see examples of excessive disciplinary actions to warrant the state mandating twenty-four (24) hours of CE.

ABMP values CE just as others do, however, we feel there should be a reason behind a policy. Massage therapy is regulated and there is clear disciplinary action data that can be used to make the case for (or against) imposing CE requirements, and how many hours should, or should not be required. The vast majority of CE offered in the massage therapy profession relates to professional development (learning a new massage technique), very few courses relate to public safety, such as contraindications for massage.

Other considerations should be made as well. According to our membership surveys, 63% of our members work part-time in the profession and rely on income from another occupation as well. They average \$24,000 in massage income per year. Seventy percent of our members are self-employed independent practitioners. The other national massage therapy association's data indicates a similar demographic. Twenty-four hours of CE can be expensive; practitioners could expect to pay (at minimum) \$18 per credit hour if taken in the city in which they live. It is obviously much more expensive if you have to travel to another part of the state, or out of state. If you live in a rural area, it can be a real challenge.

The purpose of regulating a profession is to ensure public safety. I think the entire profession is in favor of practitioners pursuing professional development; however, we do differ in that ABMP

hesitates to encourage states to mandate such development. We believe disciplinary actions and data should drive the policy choice. On the surface, it does not seem that massage therapists are endangering the public to the extent that 24 hours of CE should be mandated of everyone. In fact, a national review of disciplinary cases related to massage therapists revealed that only 0.5% of all massage licensees are ever disciplined by their regulatory board; the majority of these cases are related to unlicensed practice, not the unqualified practice of massage.

We request that the Board re-evaluate the need to impose mandated CE on massage therapists, or perhaps significantly decrease the amount of hours required. The law sets the *maximum* amount of hours the Board may impose, thereby allowing flexibility.

460.10 (1) (a)...The rules promulgated under this paragraph may not require a license holder to complete more than 24 hours of continuing education programs or courses of study in order to qualify for renewal of his or her license.

ABMP fully supports and commends the Board for exempting licensees first renewal period from the CE requirement and allowing all hours to be accomplished through distance learning or online courses. These policies will help licensees, but the question remains whether 24 hours are needed in order to protect the public from injury or harm. ABMP recommends the Board begin this new requirement by lowering the hours mandated hours of CE to 6 per year at most. If disciplinary cases in the future justify raising the level to protect consumers ABMP will be the first to support such a measure.

Thank you for your consideration of ABMP's views. We sincerely appreciate the Board's time and effort on behalf of the profession. If you have any questions, or you would like to further discuss our views, please contact me at 800-458-2267 extension 645, or jean@abmp.com.

Sincerely,



Jean Robinson
Government Relations Director

From: Joan Hamilton [<mailto:jhamilton@globeuniversity.edu>]
Sent: Wednesday, August 07, 2013 1:23 PM
To: Leatherwood, Shancethea N - DSPS
Cc: Maria Leonard; Suzette Plemel
Subject: Question for consideration For August 13 public hearing

Good Afternoon Shawn,

I am submitting some questions for clarification for the upcoming August 13 public hearing. Would you please make sure these points/questions are submitted for consideration? Please disregard the previous email.

How it reads:

Off-site Externship

(17) “Massage therapy extern or bodywork therapy extern” means a student currently enrolled in an approved massage therapy or bodywork therapy school or program and in good standing, who provides massage therapy and bodywork therapy services under the following conditions:

- (a) The extern has successfully completed a massage therapy or bodywork therapy internship and has been approved for an externship by an instructor affiliated with the massage therapy or bodywork therapy school or program in which the student is enrolled.
- (b) A licensed massage therapist or bodywork therapist, whose license is current and unlimited, provides direct on-premises supervision of the unlicensed massage therapy extern or bodywork therapy extern or more intensive supervision if required to avoid unacceptable risk of harm to the client.
- (c) Services are provided off school or program premises.
- (d) Services are provided without financial compensation to the massage therapy extern or bodywork therapy extern.
- (e) The externship site has been approved by the school or program in which the student is enrolled;
- (f) Clients have given informed consent to be treated by a massage therapy extern or bodywork therapy extern

Question 1: We need clarification on 17 (b) It says the student would need to be supervised by a Licensed massage therapist this does not take into consideration the hospital or clinic settings. (In one of the local hospitals it is the physical therapy department that oversees manual therapy.) This means that if they are placed at anywhere that isn't a massage specific facility, e.g. hospital or clinic, it may be more difficult to place our students. Many other health related professionals do massage within their current licensure. Can the wording be changed to Licensed Health care professional?

Question 2: We need clarification on 17 (d) Does financial compensation also include tips?

Thank you for your consideration



Joan Hamilton LMT

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