



**STATE OF WISCONSIN**  
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**Governor Scott Walker      Secretary Dave Ross**

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**MESSAGE THERAPY AND BODYWORK THERAPY  
AFFILIATED CREDENTIALING BOARD MEETING  
(VIA VIRTUAL MEETING)  
Room 121A, 1400 E. Washington Avenue, Madison  
Contact: Tom Ryan 608-261-2378  
January 29, 2013**

*The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions and deliberations of the Board.*

**9:00 A.M.**

OPEN SESSION – CALL TO ORDER – ROLL CALL

**A. Adoption of Agenda (1-3)**

**B. Welcome New Board Appointees**

**C. Recognition of Board Members**

**D. Approval of Minutes – August 21, 2012 (5-9)**

**E. Secretary Matters**

**F. Executive Director Matters**

**G. Election of Officers and Board Appointees (11-14)**

1) **9:30 A.M. APPEARANCE – CREDENTIALING STAFF (Brittany Haberman, Angie Herl and Kris Hendrickson)** – Consideration and review of Credentialing process and defining the role of the Credentialing Liaison(s) **(15-16)**

**H. Legislation/Administrative Rules Matters**

1) Executive Order 61 **(17-23)**

2) Draft of Proposed Rules to Reflect Changes to SPS Ch. 90 – SPS Ch. 94 Pursuant to the Passage of 2009 Wisconsin Act 335 **(25-40)**

**I. FSMTB Matters**

1) FSMTB and Wisconsin Membership **(41-45)**

**J. Informational Items**

**K. Items received after printing of agenda**

1) Presentation of Proposed Stipulations and Final Decisions and Orders

- 2) Presentation of Proposed Decisions
- 3) Petitions for Re-hearing
- 4) Petitions for Summary Suspension
- 5) Petitions for Extension of Time
- 6) Petitions for Assessments
- 7) Petitions to Vacate Orders
- 8) Requests for Disciplinary Proceeding Presentations
- 9) Motions
- 10) Appearances from Requests Received or Renewed
- 11) Division of Legal Services and Compliance Matters
- 12) Education and Examination Matters/CE Issues
- 13) Credentialing Matters/Application Issues
- 14) Practice Questions/Issues
- 15) Legislation/Administrative Rule Matters
- 16) Liaison Reports
- 17) Speaking Engagement, Travel, Public Relation Requests

**L. Public Comments**

**M. New/Other Business**

**CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1) (a), Stats.; consider closing disciplinary investigation with administrative warning (s. 19.85(1)(b), Stats. and 440.205, Stats., to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.; and, to confer with legal counsel (s. 19.85(1)(g), Stats.)**

**N. Deliberation of Proposed Stipulations, Final Decisions and Orders including any received after printing of the agenda**

- 1) Kevin J. Roys – 12 MTB 014 (47-52)
  - o Case Advisor – Elizabeth Krizenesky

**O. Deliberation of Order Fixing Costs**

- 1) Joao L. Fraiser – 11 MTB 003 and 11 MTB 010/Order No. 0002000 (53-62)

**P. Application Review(s)**

- 1) P.C.B. - Application by Examination (63-124)

**Q. Case Closings**

**R. Deliberation of other items received after printing of agenda**

- 1) Proposed Stipulations
- 2) Proposed Decisions and Orders
- 3) Objections and Responses to Objections
- 4) Complaints
- 5) Petitions for Summary Suspension
- 6) Remedial Education Cases
- 7) Petitions for Extension of Time
- 8) Petitions for Assessments
- 9) Petitions to Vacate Orders
- 10) Motions
- 11) Administrative Warnings
- 12) Matters Relating to Costs
- 13) Appearances from Requests Received or Renewed

- 14) Examination Issues
- 15) Continuing Education Issues
- 16) Credentialing Matters/Application Issues
- 17) Case Closings
- 18) Case Status Report
- 19) Monitoring Cases
- 20) PAP Cases

**S.** Consulting with Legal Counsel

**RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION**

**T.** Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

**U.** Other Board Business

**ADJOURNMENT**

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**MASSAGE THERAPY AND BODYWORK THERAPY  
AFFILIATED CREDENTIALING BOARD  
MEETING MINUTES  
AUGUST 21, 2012**

**PRESENT:** John Anderson, Elizabeth Krizenesky, Carole Ostendorf, Cindy Spitz, Wendy Wettengel-Perrigou (Live Meeting), Barbara Yetter

**STAFF:** Mojgan Hall, Executive Director; Sandy Nowack, Legal Counsel; Karen Rude-Evans, Bureau Assistant; Shawn Leatherwood, Paralegal

**CALL TO ORDER**

Elizabeth Krizenesky called the meeting to order at 9 a.m. A quorum of six (6) members was confirmed.

**ADOPTION OF AGENDA**

**Amendments:**

- Item H14 (open session) – FSBMT ANNUAL MEETING REPORT, is deleted from the agenda
- Item H17b (open session) – LEGISLATION/ADMINISTRATIVE RULE MATTERS – Draft of Proposed Rules to Reflect Changes to SPS Chs. 90-94 Pursuant to the Passage of 2009 WI Act 355, insert additional information after page 38
- Case Status Report – insert at the end of closed session

**MOTION:** Barbara Yetter moved, seconded by Carole Ostendorf, to adopt the agenda as amended. Motion carried unanimously.

**APPROVAL OF MINUTES – JANUARY 31, 2012**

**MOTION:** Carole Ostendorf moved, seconded by John Anderson, to approve the minutes of January 31, 2012 as written. Motion carried unanimously.

**BOARD DISCUSSION ITEMS****Legislation/Administrative Rules Matters****Draft of Proposed Rules to Reflect Changes to SPS Chs. 90-94 Pursuant to Passage of 2009 WI Act 355**

- MOTION:** John Anderson moved, seconded by Carole Ostendorf, in the definition of client, to retain the language pertaining to minors in the proposed draft. Motion carried unanimously.
- MOTION:** Carole Ostendorf moved, seconded by Cindy Spitzza, to retain the draft language expressed in informed consent concerning chaperones. Motion carried unanimously.
- MOTION:** Barbara Yetter moved, seconded by Carole Ostendorf, to define intimate parts as has the meaning given in § 939.22(19). Motion carried unanimously.
- MOTION:** Carole Ostendorf moved, seconded by John Anderson, to accept the minimum CE hours per biennium as twenty four (24). Motion carried unanimously.
- MOTION:** Barbara Yetter moved, seconded by Cindy Spitzza, to have DSPS staff develop a FAQ regarding continuing education. Motion carried unanimously.
- MOTION:** Elizabeth Krizenesky moved, seconded by Cindy Spitzza, to require two (2) CE hours to be in ethics. Motion carried 4 to 2.
- MOTION:** Barbara Yetter moved, seconded by Wendy Wettengel-Perrigoue, that the remaining 22 CE hours are unspecified as long as they concern topics within the scope of practice of massage therapy and bodywork therapy or relevant to business practices. Motion carried unanimously.

**MOTION:** Cindy Spitzza moved, seconded by Carole Ostendorf, to designate as approved sources of CE institutions of higher education, approved MTBT programs and schools and professional organizations that address the improvement of the professions (NCCAOM, NCBTMB, The Federation of State Massage Therapy Boards). Motion carried unanimously.

**MOTION:** Elizabeth Krizenesky moved, seconded by Barbara Yetter, to authorize DSPS staff to begin the process of rule drafting and scope statement on unprofessional conduct chapter. Motion carried unanimously.

**MOTION:** Elizabeth Krizenesky moved, seconded by Cindy Spitzza, to delegate John Anderson to work with DSPS staff on rules projects. Motion carried unanimously.

### **RECESS TO CLOSED SESSION**

**MOTION:** Barbara Yetter moved, seconded by Carole Ostendorf, to convene to closed session to deliberate on cases following hearing (Wis. Stat. § 19.85 (1) (a)); consider closing disciplinary investigation(s) with administrative warning(s) (Wis. Stat. § 19.85 (1) (b), and Wis. Stat. § 440.205); consider individual histories or disciplinary data (Wis. Stat. § 19.85 (1) (f)); and to confer with legal counsel (Wis. Stat. § 19.85 (1) (g)). Roll call: John Anderson-yes; Elizabeth Krizenesky-yes; Carole Ostendorf-yes; Cindy Spitzza-yes; Wendy Wettengel-Perrigoue-yes; Barbara Yetter-yes. Motion carried unanimously.

Open session recessed at 12:22 p.m.

### **RECONVENE IN OPEN SESSION**

**MOTION:** Cindy Spitzza moved, seconded by John Anderson, to reconvene in open session. Motion carried unanimously.

Open session reconvened at 1:11 p.m.

### **ITEMS VOTED ON DURING CLOSED SESSION**

All motions made in close session were reaffirmed.

## PROPOSED STIPULATIONS, FINAL DECISIONS AND ORDERS

**MOTION:** Carole Ostendorf moved, seconded by Cindy Spitzza, to adopt the Findings of Fact, Conclusions of Law, Final Decision and Order in the disciplinary proceedings against **Yan Ling Romanek (11 MTB 001)**. Motion carried unanimously.

**MOTION:** Wendy Wettengel-Perrigoue moved, seconded by Barbara Yetter, to adopt the Findings of Fact, Conclusions of Law, Final Decision and Order in the disciplinary proceedings against **Scott K. Jordan (10 MTB 006)**. Motion carried unanimously.

## PROPOSED ADMINISTRATIVE WARNING

**MOTION:** Carole Ostendorf moved, seconded by Cindy Spitzza, to issue the Administrative Warning in case **11 MTB 013**. Motion carried. Elizabeth Krizenesky opposed.

## PROPOSED DECISION AND ORDER

**MOTION:** Barbara Yetter moved, seconded by John Anderson, to adopt the Final Decision and Order in the disciplinary proceedings against **Joao L. Fraser (11 MTB 003 and 11 MTB 010/ DHA Case No. SPS-11-0084)**. Motion carried unanimously.

## CASE CLOSINGS

**MOTION:** Barbara Yetter moved, seconded by Wendy Wettengel-Perrigoue, to close case **12 MTB 002 for compliance gained**. Motion carried unanimously.

**MOTION:** Barbara Yetter moved, seconded by John Anderson, to close case **12 MTB 007 for lack of jurisdiction**. Motion carried unanimously.

**MOTION:** Barbara Yetter moved, seconded by Cindy Spitzza, to close case **11 MTB 014 for prosecutorial discretion (P7)**. Motion carried unanimously.

## **ADJOURNMENT**

**MOTION:** Carole Ostendorf moved, seconded by Cindy Spitza, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 1:13 p.m.

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**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:		2) Date When Request Submitted:	
		Items will be considered late if submitted after 4:30 p.m. and less than: ■ 10 work days before the meeting for Medical Board ■ 14 work days before the meeting for all others	
3) Name of Board, Committee, Council, Sections:  <b>Massage Therapy and Bodywork Therapy Affiliated Credentialing Board</b>			
4) Meeting Date:  January 29, 2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page?  <b>Board Officer Elections and Board Committee, Panel and Liaison Appointments</b>	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing?	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:  1. Elect Officers for 2014, as required by statute. 2. Delegate authority to committees, panels and liaisons to carry out duties of the Board.			
11) Authorization			
Signature of person making this request			Date
Supervisor (if required)			Date
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)			Date

**Officers- §§ 15.07(2), 15.08(2)**

Approved by Board: [DATE]

Chair:

Vice-Chair:

Secretary:

**Panels & Committees**

Name of Panel / Committee	Description	Nomination Date - Member
Screening Panel	Reviews complaints received by the Department to determine whether a case should be opened for investigation.	

## **Liaisons**

Various matters arise in the Department that necessitate a quick decision by the board. In these cases, having a board member to serve as the liaison to the Department can expedite action and prevent unnecessary delays that would result from waiting until the next meeting. Board liaisons should give a report to the full board at the next meeting describing what actions were taken. Given that no individual board member may act on behalf of the board without specific authority to do so, each board must specifically delegate authority to each liaison by motion.

<b>Liaison</b>	<b>Duties</b>	<b>Name of Board Member</b>	<b>Date of Motion Delegating Authority</b>
Legal Services and Compliance Liaison	<p>Make decisions on routine questions involving disciplinary and monitoring matters.</p> <ul style="list-style-type: none"> <li>• Division Liaison – consults with Division staff on various matters, including remedial course approvals.</li> <li>• Professional Assistance Procedure (PAP) Liaison – Consults with Department staff as necessary for PAP cases.</li> </ul>		
Office of Education and Exams Liaison	Make decisions on routine questions involving the administration of examinations and approval of education programs.		
Website Liaison	Make decisions about board materials posted to the DSPS website.		
Credentialing Liaisons:	Consult with Department staff on the processing of applications. Three Board members are selected, including the Chair, to review applications for a determination as to whether an oral examination is required and occasionally to advise on other matters.		
Legislative Liaison(s)	Track legislation and report activity to the Board and Department Policy Manager.		

**General Delegation Motion:**

\_\_\_\_\_ moved, seconded by \_\_\_\_\_, that in order to facilitate the completion of assignments between meetings, the Board delegates its authority by order of succession to the Chair, highest ranking officer, or longest serving member of the Board, to appoint liaisons to the Department where knowledge or experience in the profession is required to carry out the duties of the Board in accordance with the law. Motion carried unanimously.

**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:  <b>Tom Ryan</b>		2) Date When Request Submitted:  <b>1/7/2013</b>	
		Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> <li>▪ 10 work days before the meeting for Medical Board</li> <li>▪ 14 work days before the meeting for all others</li> </ul>	
3) Name of Board, Committee, Council, Sections:  <b>Massage Therapy and Bodywork Affiliated Credentialing Board</b>			
4) Meeting Date:  <b>January 29, 2013</b>	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page?  <b>Consideration and Review of Credentialing Process and Defining the Role of the Credentialing Liaison(s)</b>	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled?  <input checked="" type="checkbox"/> Yes Brittany Haberman, Angie Herl, Kris Hendrickson <input type="checkbox"/> No	9) Name of Case Advisor(s), if required: <b>N/A</b>	
10) Describe the issue and action that should be addressed:  <b>The assigned member(s) of credentialing staff will appear and provide the Board with an overview of the credentialing process for the credentials under its purview. Additionally, the Board should work to define the role(s) of its credentialing liaison(s) in an effort to clarify its expectations in terms of credentialing liaison work.</b>			
11) <b>Authorization</b>			
Signature of person making this request			Date
Supervisor (if required)			Date
Executive Director signature (indicates approval to add post agenda deadline item to agenda)			Date
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

# Credentialing Procedures

## (Massage Therapy/Bodywork Affiliated Credentialing Bd)

Date of Motion:

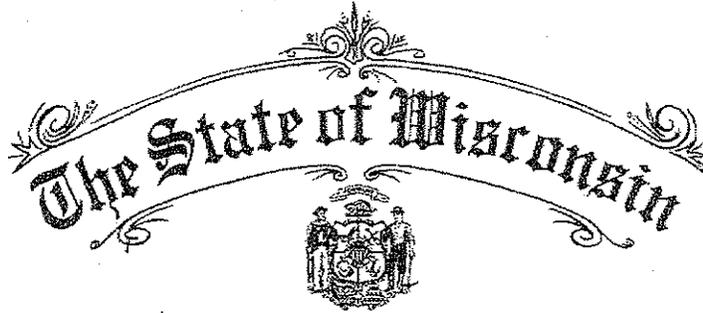
Delegated Authority to Take Action

Action	Person with delegated authority to act on behalf of the board [Either Dept staff, cred liaison ( <i>name</i> ) or None ( <i>goes to full board</i> )]	Notes or Comments
Grant a credential within the board's jurisdiction when all information required by law is submitted and there is discipline.	<p><b>Low Risk Discipline:</b></p> <p><b>Medium Risk Discipline:</b></p> <p><b>High Risk Discipline:</b></p>	<p>Criteria used to determine whether past discipline is low, medium or high risk:</p> <ul style="list-style-type: none"> <li>• Minor misconduct vs. serious misconduct</li> <li>• First occurrence</li> <li>• Time elapsed since the misconduct</li> <li>• Requirements stemming from the misconduct completed</li> <li>• License fully restored</li> <li>• Any further discipline</li> <li>• Potential for harm or recurrence</li> <li>• Current license limitations</li> </ul>
Grant requests for further examination upon conditions authorized by rule ( <b>failed national exam</b> )		
Grant a credential within the board's jurisdiction for <b>endorsement equivalency</b>		
Grant a credential within the board's jurisdiction for <b>minimum curriculum requirements</b>		
Issue an intent to deny on behalf of the board		
Issue a denial on behalf of the board for any basis authorized by law		
<p><b>When a full board takes action, Department staff will prepare the order reflecting the action taken. Who has the authority to sign these orders between meetings?</b> (e.g. Executive Director with approval from a designated board member)</p>		

**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b>  Office of the Governor		<b>2) Date When Request Submitted:</b>  <div style="border: 1px solid black; padding: 2px; font-size: small;">                     Items will be considered late if submitted after 4:30 p.m. and less than:                      ■ 10 work days before the meeting for Medical Board                      ■ 14 work days before the meeting for all others                 </div>
<b>3) Name of Board, Committee, Council, Sections:</b>  Massage Therapy and Bodywork Therapy Affiliated Credentialing Board		
<b>4) Meeting Date:</b>  January 29, 2013	<b>5) Attachments:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b>  Executive Order #61
<b>7) Place Item in:</b> <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	<b>8) Is an appearance before the Board being scheduled? If yes, who is appearing?</b>  	<b>9) Name of Case Advisor(s), if required:</b>  
<b>10) Describe the issue and action that should be addressed:</b>  To comply with Executive Order #61, the Board is being asked to review its rules to identify rules that unnecessarily burden small businesses to conduct their affairs and expand. The following options are suggested for undertaking this assignment, with a report back to the Board at its next meeting: <ol style="list-style-type: none"> <li>1. Appoint a member of the Board to review the rules;</li> <li>2. Divide the rules among Board members for review;</li> <li>3. All Board members could review the rules individually.</li> </ol> If the Board decides at the next meeting that there is a need to write rules, the next step would be to draft a scope statement.		
<b>11) Authorization</b>		
Signature of person making this request		Date
Supervisor (if required)		Date
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)		Date



**OFFICE OF THE GOVERNOR**

**EXECUTIVE ORDER # 61**

**Relating to Job Creation and Small Business Expansion**

**WHEREAS**, creating jobs and growing our state's economy is dependent on a vibrant small business sector; and

**WHEREAS**, small businesses have generated 64% of net new jobs over the past fifteen years and employ over half of all private sector employees; and

**WHEREAS**, according to recent U.S. Census data, 86% of Wisconsin business employ fewer than 20 workers, and 74% have ten workers or less; and

**WHEREAS**, small businesses spend 80% more per worker than large employers to comply with government regulations and, according to a recent National Federation of Independent Business survey of Wisconsin employers, 91% said it was impossible to know about, comply with, and understand all of government's regulations; and

**WHEREAS**, according to the U.S. Small Business Administration, complying with government regulations costs small businesses \$10,585 per worker, which discourages investment and hiring by small businesses; and

**WHEREAS**, government regulations are regularly cited as one of the top three concerns for small business growth, according to NFIB's Small Business Optimism Index; and

**WHEREAS**, 2011 Wisconsin Act 46 strengthened Wisconsin's Small Business Regulatory Review Board (Board) empowering small business owners and giving them the ability to judge the economic impact of government regulation; and

**WHEREAS**, 2011 Wisconsin Act 46 requires state agencies to submit any rule with an economic impact to the Board for review and allows the Board to suggest changes to the agency that will improve compliance and reduce the rule's burden on small businesses; and

**WHEREAS**, pursuant to Wis. Stat. § 227.30, the Board has the authority to review rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses to conduct their affairs; and

**WHEREAS**, state agencies and the Board should not only be reviewing new rules but collaborating to reform existing rules that hinder job creation and small business expansion and that this effort would help further the state's goal of creating 250,000 jobs by 2015.

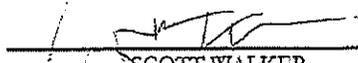
**NOW THEREFORE, I, SCOTT WALKER**, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and laws of this State, specifically Wis. Stat. § 227.10(2m), do hereby:

1. Require all state agencies to review 2011 Wisconsin Act 46 to ensure they are in compliance, ready to assist small business owners, and properly submitting any proposed rules with an economic impact to the Board;
2. Require all state agencies to cooperate with the Board to identify existing rules hindering job creation and small business growth;

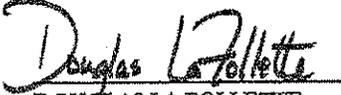
3. Require all state agencies to work with the Board to recommend changes to these rules that will both reduce their burden on job creators while continuing to comply with the intent of the statutes that created them;
4. Require all state agencies to work with the Board to identify strategies that will increase compliance with existing rules;
5. Request that the Board engage small business owners and their representative organizations to gather input on any rules hindering job growth;
6. Request that the Board provide a report and analysis of these rules, in a manner similar to Wis. Stat. § 227.30(1), to the Governor's Office of Regulatory Compliance and the agency with the authority to amend the rules, which details the rules they have identified for modification.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done in the City of Eau Claire this twenty-second day of February, in the year two thousand twelve.

  
SCOTT WALKER  
Governor

By the Governor:

  
DOUGLAS LA FOLLETTE  
Secretary of State

notice, under ch. 985, of the hearing in the official state newspaper and give any other notice which the committee directs. The hearing shall be conducted in accordance with s. 227.18 and shall be held not more than 60 days after receipt of notice of the requirement.

**History:** 1985 a. 182 ss. 1, 3, 50; 1987 a. 186; 2005 a. 249.

Rule suspension under sub. (2) (d) does not violate the separation of powers doctrine. *Martinez v. DILHR*, 165 Wis. 2d 687, 478 N.W.2d 582 (1992).

A collective bargaining agreement between the regents and the teaching assistants association is not subject to review by the committee. 59 Atty. Gen. 200.

In giving notice of public hearings held under sub. (2), the committee should concurrently employ the various forms of notice available that best fit the particular circumstances. 62 Atty. Gen. 299.

If an administrative rule is properly adopted and is within the power of the legislature to delegate there is no material difference between it and a law. No law, including a valid rule can be revoked by a joint resolution of the legislature as such a resolution deprives the executive its power to veto an act of the legislature. 63 Atty. Gen. 159.

Legislative committee review of administrative rules in Wisconsin. Bunn and Gallagher. 1977 WLR 935.

### **227.27 Construction of administrative rules.**

- (1) In construing rules, ss. 990.001, 990.01, 990.03 (1), (2) and (4), 990.04 and 990.06 apply in the same manner in which they apply to statutes, except that ss. 990.001 and 990.01 do not apply if the construction would produce a result that is inconsistent with the manifest intent of the agency.
- (2) The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the legislative reference bureau or the secretary of state, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.

**History:** 1983 a. 544; 1985 a. 182 ss. 22, 55 (2), (3); Stats. 1985 s. 227.27; 2005 a. 249; 2007 a. 20.

### **227.30 Review of administrative rules or guidelines.**

- (1) The small business regulatory review board may review the rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1), to conduct their affairs. If the board determines that a rule or guideline places an unnecessary burden on the ability of a small business to conduct its affairs, the board shall submit a report and recommendations regarding the rule or guideline to the joint committee for review of administrative rules and to the agency.
- (2) When reviewing the report, the joint committee for review of administrative rules shall consider all of the following:
  - (a) The continued need for the rule or guideline.
  - (b) The nature of the complaints and comments received from the public regarding the rule or guideline.
  - (c) The complexity of the rule or guideline.

- (d) The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.
  - (e) The length of time since the rule or guideline has been evaluated.
  - (f) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule or guideline since the rule or guideline was promulgated.
- (3) The joint committee for review of administrative rules may refer the report regarding the rule or guideline to the presiding officer of each house of the legislature for referral to a committee under s. 227.19 (2) or may review the rule or guideline as provided under s. 227.26.

History: 2003 a. 145; 2005 a. 249.

### SUBCHAPTER III

#### ADMINISTRATIVE ACTIONS AND JUDICIAL REVIEW

Cross-reference: See also ch. NR 2, Wis. adm. code.

#### 227.40 Declaratory judgment proceedings.

- (1) Except as provided in sub. (2), the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of the rule brought in the circuit court for the county where the party asserting the invalidity of the rule resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for the county where the dispute arose. The officer or other agency whose rule is involved shall be the party defendant. The summons in the action shall be served as provided in s. 801.11 (3) and by delivering a copy to that officer or, if the agency is composed of more than one person, to the secretary or clerk of the agency or to any member of the agency. The court shall render a declaratory judgment in the action only when it appears from the complaint and the supporting evidence that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency to pass upon the validity of the rule in question.
- (2) The validity of a rule may be determined in any of the following judicial proceedings when material therein:
  - (a) Any civil proceeding by the state or any officer or agency thereof to enforce a statute or to recover thereunder, provided such proceeding is not based upon a matter as to which the opposing party is accorded an administrative review or a judicial review by other provisions of the statutes and such opposing party has failed to exercise such right to review so accorded;
  - (b) Criminal prosecutions;
  - (c) Proceedings or prosecutions for violations of county or municipal ordinances;
  - (d) Habeas corpus proceedings relating to criminal prosecution;

**227.10 Statements of policy and interpretations of law;  
discrimination prohibited.**

- (1)** Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. A statement of policy or an interpretation of a statute made in the decision of a contested case, in a private letter ruling under s. 73.035 or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render it a rule or constitute specific adoption of a rule and is not required to be promulgated as a rule.
- (2)** No agency may promulgate a rule which conflicts with state law.
- (2m)** No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter. The governor, by executive order, may prescribe guidelines to ensure that rules are promulgated in compliance with this subchapter.

**227.114 Rule making; considerations for small business.**

227.114(2)

- (1) In this section, "small business" means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.
- (2) When an agency proposes or revises a rule that may have an effect on small businesses, the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:
  - (a) The establishment of less stringent compliance or reporting requirements for small businesses.
  - (b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
  - (c) The consolidation or simplification of compliance or reporting requirements for small businesses.
  - (d) The establishment of performance standards for small businesses to replace design or operational standards required in the rule.
  - (e) The exemption of small businesses from any or all requirements of the rule.

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STATE OF WISCONSIN  
MESSAGE THERAPY AND BODYWORK THERAPY  
AFFILIATED CREDENTIALING BOARD

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IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : MESSAGE THERAPY AND  
MESSAGE THERAPY AND BODYWORK : BODYWORK THERAPY AFILIATED  
THERAPY AFFILIATED CREDENTIALING: CREDENTIALING BOARD  
BOARD : ADOPTING RULES  
 : (CLEARINGHOUSE RULE )

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PROPOSED ORDER

An order of the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board to amend MTBT 1.01, 2.01 (title), 2.03 (title), 2.03 (1) (a), 2.03 (c), 2.05 (title) (intro) 2.05 (3), 2.05 (5), 2.05 (7), 3.01 (1), 3.01 (5) (b), 4.01 (title) (intro), 4.02(title) (intro), 4.02 (1), 4.02 (3), 4.03, 4.04 (1), 4.04 (1)(a), 4.04 (1) (c), 5.01 (9), 5.01 (16), 5.01 (17), 5.01 (18), 5.01 (20), 5.01 (27), 5.01 (28), 5.01 (32), 5.02 (1), 5.02 (2) (b), 5.02 (2) (c), 5.02 (3), 5.02 (4); repeal and recreate MTBT 1.02; to create MTBT 6.01, 6.02, 7.01, 7.02, and 7.03.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:**

Sections. 460.04(2) (a), 460.04 (2) (f), 460.04 (2) (c), 460.11 (1), 460.04 (2) (d), 460.11(3), and 460.08, Stats and 2009 Wisconsin ACT 355

**Statutory authority:**

Sections 460.04 (2), 460.04 (2)(f), 460.10 (1), Stats.

**Explanation of agency authority:**

Affiliated credentialing boards are generally empowered by the legislature pursuant to s. 15.085 (5) (b) and 440.035 (1), Stats. to promulgate rules that govern their profession. The Massage Therapy and Bodywork Therapy Affiliated Credentialing Board has been specifically empowered by recent legislation to promulgate rules concerning temporary licenses, continuing education and standards that govern the professional conduct of license holders pursuant to s. 460.04 (2)and 2009 Wisconsin Act 355. Therefore, the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board is authorized both generally and specifically to promulgate the proposed rules.

**Related statute or rule:**

Wis. Admin. Code Chapter MTBT 2 to 4

**Plain language analysis:**

2009 Wisconsin Act 355 transformed the Massage Therapy and Bodywork Therapy Council into the Massage Therapy and Bodywork Therapy Affiliated Board. (Board) The newly formed board, under the oversight of the Medical Examining Board, may grant licenses instead of certificates, and was granted rule making authority by the legislature. The proposed rule carries out the intent of the legislature by making the necessary changes to Wis. Admin. Code MTBT 1 - MTBT 5. The necessary changes include defining terms such as informed consent, intimate parts, sexually oriented business, and setting forth the requirements for temporary licensure and continuing education.

SECTION 1. amends the authority section by replacing department with board.

SECTION 2. repeals and recreates the definition section to include additional terms.

SECTION 3. amends title of MTBT 2.01 to replace certificate with license.

SECTION 4. amends the title of MTBT 2.03 replacing certificate with license.

SECTION 5. amends the title of MTBT 2.05 replacing certificate with license.

SECTION 6. amends the section by replacing department with board and certificate with license.

SECTIONS 7. To 12. Replaced department with board and certificate with licensure.

SECTION 13. creates provisions regarding temporary licensure.

SECTION 14. creates provisions regarding continuing education.

**Summary of, and comparison with, existing or proposed federal regulation:**

None

**Comparison with rules in adjacent states:**

**Illinois:**

Illinois regulates massage therapy via the Massage Licensing Act. Ill. Admin. Code tit.68 §1284 (2012) Illinois exempts students from the licensure requirement as long as they are practicing in conjunction with an approved massage school or program. Approved

massage therapy schools are required to meet certain criteria including maintaining written programs, written plans of study, written course outlines and student handbooks. Applicants are required to obtain 500 hours of supervised hands-on instruction from an approved massage therapy school. Ill. Admin. Code tit. 68 §1284.20 With regards to continuing education 24 hours are required per biennium. Illinois does not issue a temporary license

**Iowa:**

Iowa regulations encompass both massage and bodywork therapy. IA. r. 645-131.1 Iowa requires "500 hours in massage therapy education" for licensure. IAC r. 645-131.3 Furthermore, Iowa only allows temporary licensure for applicants from other states with less stringent licensure criteria. IAC 131-5 (1) Students are not exempt from the licensure requirement. However, students may participate in "clinical practicum," meaning, "hands-on" massage therapy provided to members of the public," at the massage therapy school's primary location which is similar to an on-site student clinic. Lastly, Iowa requires 24 hours of continuing education per biennium.

**Michigan:**

Michigan regulates massage therapy by statute under MCL 333.17591-333.17969 (2012). Administrative rules are pending as of December 19, 2011. The practice act defines such terms as "massage therapist," and "practice of massage therapy." The terms bodywork or body worker are not included. 18 hours of continuing education are required by statute. There are no provisions for temporary licensure. The Michigan practice act allows students to practice massage therapy as a part of program of study if they are enrolled in school and under the supervision of a licensed massage therapist.

**Minnesota:**

Massage and bodywork therapist are not licensed, certified, or registered in Minnesota. Minnesota maintains general oversight of the practice of massage therapy and bodywork through Minn. Stat. §146A, (2011)The Unlicensed Complementary and Alternative Health Care Practice Act. This act identifies body work, massage, and massage therapy as encompassed within the, "broad domain of complementary and alternative healing methods and treatment".

**Summary of factual data and analytical methodologies:**

The Massage Therapy and Bodywork Therapy Affiliated Credentialing Board ensured the accuracy, integrity, objectivity and consistency of data were used in preparing the proposed rule and related analysis.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:**

This proposed rule will be posted on the Department's website for 14 days to solicit comments from small business.

**Fiscal Estimate and Economic Impact Analysis:**

The rule is being posted for comments regarding its economic impact on small businesses.

**Effect on small business:**

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Jeffrey.Weigand@wisconsin.gov, or by calling (608) 267-9794

**Agency contact person:**

Shawn Leatherwood, Rule Coordinator, Department of Safety and Professional Services, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email at Shancethea.L Leatherwood@wisconsin.gov.

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Shawn Leatherwood, Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to Shancethea.L Leatherwood@wisconsin.gov. Comments must be received on or before December 18, 2012 to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. MTBT 1.01 is amended to read:

**MTBT 1.01 Authority and intent.** The rules in chs. MTBT 1 to 5 7 are adopted by the department board pursuant to s. 227.11 (2), Stats., and ch. 460. Stats., to govern the credentialing of massage therapists and body workers.

SECTION 2. 1.02 is repealed and recreated to read:

**MTBT 1.02 Definitions.** As used in chs. MTBT 1 to 5, unless the context otherwise requires:

(1) "Accrediting agency" means either of the following:

(a) A regional or national accrediting agency recognized by the U.S. department of education.

(b) A state government agency or territorial government agency located in another state or territory of the United States or another country.

(2) "Adjunctive therapy" means any of the following:

(a) The use of a device that stimulates or enhances manual action.

(b) The application of water, lubricants, or other nonprescription topical agents to the skin.

(c) The application of heat or cold to the skin in the absence of an electromagnetic device.

(3) "Approved training program" means a series of classroom courses, not including continuing education, which is approved by the board having a unified purpose which leads to a diploma or degree or to an occupational or vocational objective meeting the requirements of s. MTBT 3.01.

(4) "Board" means the massage therapy and bodywork therapy affiliated credentialing board.

(5) "Classroom hour" means a period of instruction consisting of not less than 50 minutes.

(6) "Client" means a person who has contracted for or who receives the professional services of a massage therapist, bodywork therapist, student or temporary licensee, whether the massage therapist, bodywork therapist, student or temporary licensee is paid or unpaid for the service, and regardless of where such services occur. If a client is a person under the age of 18, the client's parents or legal guardian are also clients. If a person contracts for multiple sessions of treatment, the person remains a client until the full terms of the contract have been fulfilled.

(7) "Direct, immediate, on-premises supervision" means the supervising massage therapist or bodywork therapist is present in the same building with the person being supervised, with fact-to-fact contact as necessary to avoid unacceptable risk of harm to the client.

(8) "Direct, immediate, one-to-one supervision" means one-to-one supervision with face-to-face contact between the person being supervised and the supervisor throughout the client contact with the supervisor assisting the person being supervised as necessary.

(9) "General supervision" means indirect, off-premises supervision, with direct, on premises or direct fact-to-face contact between the supervisor and the person being supervised as necessary. Between direct contacts, the supervisor is required to maintain indirect, off premises telecommunication contact such that the person being supervised can, within 15 minutes, establish direct telecommunication with the supervisor.

(10) "Health care practitioner" means a health care provider as defined in s. 146.81 (2) Stats.

(11) "Informed consent" means a client's voluntary, knowing and understood agreement to the service to be provided by the massage therapist, bodywork therapist, temporary licensee or student. Informed consent requires, at a minimum, that the licensee has provided information about the risks and benefits of the service to be provided that a reasonable person in the client's position would need before making an informed decision concerning the service.

(a) Informed consent shall be documented in writing

(b) A client may withdraw informed consent verbally or in writing at any time before a service is completed.

(c) Informed consent shall include an understanding that the client may, upon request, have a chaperone present while massage therapy or bodywork therapy services are provided.

(d) No service or part of a service may be provided without the clients informed consent or after informed consent has been withdrawn.

(12) "Insured" means any person to whom an insurer makes a promise in an insurance policy. The term includes policyholders, subscribers, members and beneficiaries.

(13) "Intimate parts" has the meaning given in s. 939.22 (19), Stats.

(14) "License holder" means a person granted a license under this chapter.

(15) "Manual action" includes holding, positioning, rocking, kneading, compressing, decompressing, gliding or percussion the soft tissue of the human body or applying a passive range of motion to the human body without joint mobilization or manipulation.

(16) "Massage therapist or bodywork therapist" means a person who engages in massage therapy or body work.

(17) "Massage therapy intern or bodywork therapy intern" means a student currently enrolled in an approved massage therapy or bodywork school or program and in

good standing, who provides massage and body work therapy services under the following conditions:

(a) A clinic instructor provides direct on-premises supervision of massage therapy intern or bodywork therapy intern or more intensive supervision if required to avoid unacceptable risk of harm to the client.

(b) Services are provided on school or program premises.

(c) Services are provided without financial compensation to the massage therapy intern or bodywork therapy intern.

(d) Clients have given informed consent to be treated by a massage therapy intern or body work therapy intern.

(18) "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 body work therapy services under the following conditions

(19) "Massage therapy or bodywork" means the science and healing art that uses manual actions and adjunctive therapies to palpate and manipulate the soft tissue of the human body, in order to improve circulation, reduce tension, relieve soft tissue pain, or increase flexibility. Massage therapy or bodywork therapy includes determining whether manual actions and adjunctive therapies are appropriate. Massage therapy or bodywork therapy does not include making a medical, physical therapy, or chiropractic diagnosis.

(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;

(e) Clients have given informed consent to be treated by a massage therapy extern or bodywork therapy extern.

(20) "Policy holder" means the person who controls the policy by ownership, payment of premiums or otherwise.

(21) "Sexual contact" has the meaning given in s. 939.22 (34), Stats.

(22) "Sexual intercourse" has the meaning given in s. 948.01 (7) (a), Stats.

(23) "Sexually oriented business" means any for-profit entity that offers or provides any of the following:

(a) sexually explicit conversation

(b) exposure of any person's intimate parts except as necessary for competent massage and body work therapy

(c) direct and indirect contact with any persons intimate parts unless necessary for a legitimate massage and body work therapy

(d) prostitution

(e) materials depiction or describing sexually explicit conduct

(24) "Temporary licensee" means a graduate of a massage therapy or bodywork therapy school or program who has met the requirements for and who has been granted a temporary license to practice massage therapy and bodywork therapy as provided in s. MTBT 6.02.

SECTION 3. MTBT 2.01 (title) is amended to read

**MTBT 2.01 (title) Application for a ~~certificate~~-license**

SECTION 4. MTBT 2.03 (title), (1) (a), and (c) are amended to read

**MTBT 2.03 (title) Reciprocal ~~certificate~~-license.** (1) An individual applying for a ~~certificate~~-license on the basis of a similar license, registration or ~~certificate~~ license in another state or territory of the United States or another country shall:

(a) Submit an application on a form provided by the ~~department~~ board.

(c) Submit evidence satisfactory to the ~~department~~ board.

SECTION 5. MTBT 2.05 (title) and (intro) are amended to read:

**MTBT 2.05 (title) Alternate ~~certification~~-license.** The ~~department~~ Board shall grant a ~~certificate~~-license as a massage therapist or bodyworker to a person who satisfies all of the following:

**MTBT 2.05 (title) Alternate ~~certification~~-license.** The department Board shall grant a ~~certificate~~ license as a massage therapist or bodyworker to a person who satisfies all of the following:

SECTION 6. MTBT 2.05 (3), (5), and (7) are amended to read:

(3) Submits an application for the ~~certificate~~ license to the department board on a form provided by the department board

(5) Submits evidence satisfactory to the department board that the person has in effect as a policyholder insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

(7) Submits evidence satisfactory to the department board that, during the 2 year period after March 1, 2003, the person was actively engaged in the practice of massage therapy or bodywork. In this subsection, "actively engaged in the practice of massage therapy or bodywork" means having engaged in at least 1500 hours of the practice of massage therapy or bodywork during the 2 year period after March 1, 2003.

SECTION 7. MTBT 3.01 (1) and (5) (b)

(1) An individual applying for a ~~certificate~~ license as a massage therapist or bodyworker who has not graduated from a school of massage therapy or bodywork approved by the educational approval board shall submit an official transcript or other official documentation showing dates and total hours attended and a description of the curriculum completed establishing that he or she has completed an approved training program.

(5) (b) Business, law and ethics: 50 classroom hours, which may include at least 6 classroom hours in the laws of this state and rules of the department board relating to the practice of massage therapy or bodywork required by s. MTBT 2.01 (3) (b).

SECTION 8. MTBT 4.01 (title) and (intro) are amended to read:

**MTBT 4.01 (title) ~~Certificate~~-License expiration.** Certificate License for massage therapists and bodyworkers expire on March 1 of each odd-numbered year.

SECTION 9. MTBT 4.02 (title) (intro) (1), and (3) are amended to read:

**MTBT 4.02 (title) Renewal of certificate-license.** In order to renew a ~~certificate~~ license on or before the renewal date, the ~~certificate~~ license holder shall submit the following to the department board:

(1) A renewal application on a form provided by the department board.

(3) Evidence satisfactory to the department board that he or she has in effect as a policyholder and insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

SECTION 10. MTBT 4.03, 4.04 (1), (a), (c), (2) (a) and (b) are amended to read:

**MTBT 4.03 Failure to renew.** A certificate license holder who fails to renew a certificate license by the applicable renewal date shall not use any title or description that implies that he or she is credentialed by the department board as a massage therapist or bodyworker until his or her certificate license is renewed under s. MTBT 4.04.

(1) If applying less than 5 years after the renewal date, submitting to the department board all of the following:

(a) An application for renewal on a form provided by the department board.

(c) Evidence satisfactory to the department board that he or she has in effect as a policyholder and insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

(2) (a) Successful completion of educational course work required by the department board to ensure protection of the public health, safety and welfare.

(b) Successful completion of an examination required by the department board to ensure protection of the public health, safety and welfare.

SECTION 11. MTBT 5.01 (9), (16), (17), (18), (20), (27), (28), and (32) are amended to read:

(9) Failing to keep confidential any information that a client gives in confidence to the certificate license holder and any other information that the certificate license holder obtains about a client in the course of practicing massage therapy or bodywork that a reasonable person in the client's position would want kept confidential, unless the information is otherwise required by law to be disclosed or the client specifically authorizes the disclosure of the information.

(16) After a request by the department board, failing to cooperate in a timely manner with the department's investigation of complaints filed against the certificate license holder. There is a rebuttable presumption that a certificate license holder who takes longer than 30 calendar days to respond to a request of the department has not acted in a timely manner under this subsection.

(17) Violating any rule adopted by the ~~department~~ board relating to the practice of massage therapy or bodywork.

(18) Violating any term, provision or condition of any order issued by the ~~department~~ board.

(19) Failing to practice massage therapy or bodywork within the scope of the ~~certificate~~ license holder's competence, education, training and experience.

(20) Aiding or abetting an ~~uncertified~~ unlicensed person, knowingly conspiring with an ~~uncertified~~ unlicensed person, or allowing one's ~~certificate~~ license to be used by an ~~uncertified~~ unlicensed person to evade the use of title restrictions under s. 460.02, Stats., relating to the practice of massage therapy or bodywork.

(27) Failing to submit a written report to the ~~department~~ board if the ~~certificate~~ license holder is convicted of a felony or misdemeanor, or is found to have committed a violation, in this state or elsewhere, if the circumstances of the felony, misdemeanor or violation substantially relate to the practice of massage therapy or bodywork. The report shall be made on a complaint form provided by the ~~department~~ board and shall be submitted within 30 days after the entry of the judgment of conviction or the judgment that the ~~certificate~~ license holder committed the violation, and shall identify the date, place, and nature of the conviction or finding. If the report is submitted by mail, the report is considered to be submitted on the date that it is mailed. In this subsection, "violation" means a violation of any state or local law that is punishable by a forfeiture.

(28) Failing to display his or her ~~certificate~~ license in his or her place of business or practice so that it can easily be seen and read by the public.

(32) Advertising by a ~~certificate~~ license holder that he or she practices massage therapy or bodywork unless the advertisement includes his or her ~~certificate~~ license number and a statement that the ~~certificate~~ license holder is a ~~certified~~ "licensed massage therapist or bodyworker" or "certified licensed massage therapist" or "certified licensed bodyworker." A telephone directory listing for which no additional advertising charge is made is not considered advertising.

SECTION 12. MTBT 5.02 (1), (2) (b), (c), (3), and (4) are amended to read:

(1) A ~~certificate~~ license holder shall submit a report to the ~~department~~ board if he or she has reasonable cause to believe that another ~~certificate~~ license holder has committed a crime relating to prostitution under ss. 944.30 to 944.34, Stats., or has had sexual contact or sexual intercourse with a client. If the report relates to sexual contact or sexual intercourse with a client, the report may not identify the client unless the client has provided written consent for disclosure of this information.

(2) (b) Being informed by a person that he or she, while a client of another ~~certificate~~ license holder, engaged in nonmarital sexual contact or sexual intercourse with the other ~~certificate~~ license holder.

(2) (c) Being informed by another ~~certificate~~ license holder that he or she has engaged in nonmarital sexual contact or sexual intercourse with a client, or has done an act prohibited by ss. 944.30 to 944.34, Stats.

(3) The report shall be made on a complaint form provided by the ~~department board~~. The ~~department board~~ may use the report as the basis for an investigation under s. 460.14 (1), Stats.

(4) A complaint as defined in s. SPS 2.03 (2), filed against a ~~certificate~~ license holder pursuant to s. SPS 2.08, based upon the allegation of one or more acts prohibited under ss. 944.30 to 944.34, Stats., constitutes reasonable cause for the department to believe that a ~~certificate~~ license holder has committed a crime and the ~~department board~~ shall report the belief to the district attorney for the county in which the crime, in the opinion of the ~~department board~~, occurred.

SECTION 13 Chs.. MTBT 6.01 and 6.02 are created to read:

#### CHAPTER MTBT 6

#### TEMPORARY LICENSURE

**MTBT 6.01 Authority.** The rules in ch. MTBT 6 are adopted under the authority of ss.460.08 and 460.04 (2) (f), Stats.

**MTBT 6.02 Temporary license prior to licensure.** (1) The board may issue a temporary license to practice massage therapy and bodywork therapy to an applicant for licensure who meets the criteria under s. 460.05, Stats., and who has done all of the following:

- (a) Submits a completed application for licensure and a completed application for temporary licensure.
- (b) Remits the fee specified in s. 440.05 (1), Stats.
- (c) Has successfully completed an educational program as defined in s. MTBT 3.01
- (d) Has not previously failed an examination required in s. 460.06, Stats., unless the applicant has subsequently passed the failed examination.
- (e) Has passed the state board statutes and rules examination.

(2) Practice during the period of temporary license shall be under the supervision of a licensed massage therapist or bodywork therapist, at the level of general supervision or as necessary to avoid unacceptable risk of harm to the client. The supervising massage therapist or body work therapist is responsible for determining the level of supervision necessary to avoid unacceptable risk of harm to the client.

(a) A person holding a temporary license shall meet face-to-face with the supervising massage therapist or bodywork therapist as necessary to insure that the temporary licensee performs competently, including creation and maintenance of records as required in s. MTBT 5.01 (8).

(b) The temporary licensee shall provide each client the name, contact information and license number for the supervising massage therapist or bodywork therapist responsible for supervision of the temporary licensee.

(c) Prior to commencing any health care service, a temporary licensee shall obtain written informed consent of all clients. The informed consent documentation shall include, in addition to other requirements, an acknowledgement that the temporary licensee is not fully credentialed and that the client has been provided the information required by (b).

(3) A temporary license expires 6 months after the date of issuance or when the Department provides notice that the temporary licensee has failed or passed the examination required by s. 460.06, Stats., whichever is first.

(a) A temporary license shall not be renewed.

(b) No person shall be issued more than one temporary license in any 365 day period.

(4) For purposes of the Board's disciplinary authority the supervising massage therapist or bodywork therapist is responsible for the acts of the temporary licensee under supervision. The Board may discipline the supervising massage therapist or bodywork therapist, student and/or the temporary licensee for any act(s) or omission of the temporary licensee in violation of any state or federal statute, rule, regulation or order of the massage therapy and bodywork therapy affiliated credentialing board or of the medical examining board.

(5) Temporary licensees shall use the title massage therapy temporary licensee or bodywork therapy temporary licensee.

SECTION 14. Chs.. MTBT 7.01 to 7.03 are created to read:

Chapter MTBT 7.01

CONTINUING EDUCATION

**MTBT 7.01 Authority.** The rules in ch. MTBT 7 are adopted under the authority of s. 460.10, Stats.

**MTBT 7.02 Continuing education required. (1)** Each licensee is required to complete 24 hours of continuing education prior to renewal of a license to practice as a massage therapist or body work therapist.

(2) Acceptable continuing education must address topics within the scope of practice of massage therapy and body work therapy or related business practices. The topic of at least two of the total continuing education hours in each biennium shall be ethics.

(3) Each licensee shall, at the time of making application for renewal, sign a statement on the application for renewal certifying that the licensee has completed 24 hours of acceptable continuing education, including 2 credits pertaining to ethics, within the 2 calendar years immediately preceding the calendar year for which application for renewal is made.

(4) A licensee may apply to the board for waiver of the requirements of this chapter on grounds of prolonged illness or disability or other similar circumstances. The Board will consider each request individually on its merits.

(5) One hour of continuing education is awarded for each 50 minutes of instruction or its equivalent.

(6) Each licensee shall maintain verifiable evidence of completion of the continuing education activity until the licensee submits the next subsequent application for renewal of a license to practice massage therapy or body work therapy.

**MTBT 7.03 Acceptable continuing education activities.** The board shall accept the following in satisfaction of the biennial training requirement provided under s. MTBT 7.02.

(1) Continuing education activities approved or provided by:

(a) Massage therapy or body work therapy schools or training programs approved pursuant to s. 460.095, Stats.

(b) Institutions of higher education as s. 106.57 (1) (c), Stats.

(c) Local, state or national chapters of professional organizations that address improvement of the profession, including but not limited to the National

Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), National Certification Board for Therapeutic Massage and Bodywork (NCBTMB), and the Federation of State Massage Therapy Boards (FSMTB).

(2) Continuing education activities may be in the form of in-person instruction, distance learning, online activities, audiovisual recordings, audio recordings and professional literature review.

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(END OF TEXT OF RULE)

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The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated \_\_\_\_\_

Agency \_\_\_\_\_

Chairperson  
Massage Therapy and Bodywork Therapy  
Affiliated Credential Board

**MASSAGE THERAPY AND BODYWORK THERAPY  
AFFILIATED CREDENTIALING BOARD  
MEETING MINUTES  
AUGUST 21, 2012**

**PRESENT:** John Anderson, Elizabeth Krizenesky, Carole Ostendorf, Cindy Spitz, Wendy Wettengel-Perrigoue (Live Meeting), Barbara Yetter

**STAFF:** Mojgan Hall, Executive Director; Sandy Nowack, Legal Counsel; Karen Rude-Evans, Bureau Assistant; Shawn Leatherwood, Paralegal

**CALL TO ORDER**

Elizabeth Krizenesky called the meeting to order at 9 a.m. A quorum of six (6) members was confirmed.

**ADOPTION OF AGENDA**

**Amendments:**

- Item H14 (open session) – FSBMT ANNUAL MEETING REPORT, is deleted from the agenda
- Item H17b (open session) – LEGISLATION/ADMINISTRATIVE RULE MATTERS – Draft of Proposed Rules to Reflect Changes to SPS Chs. 90-94 Pursuant to the Passage of 2009 WI Act 355, insert additional information after page 38
- Case Status Report – insert at the end of closed session

**MOTION:** Barbara Yetter moved, seconded by Carole Ostendorf, to adopt the agenda as amended. Motion carried unanimously.

**APPROVAL OF MINUTES – JANUARY 31, 2012**

**MOTION:** Carole Ostendorf moved, seconded by John Anderson, to approve the minutes of January 31, 2012 as written. Motion carried unanimously.

**BOARD DISCUSSION ITEMS****Legislation/Administrative Rules Matters****Draft of Proposed Rules to Reflect Changes to SPS Chs. 90-94 Pursuant to Passage of 2009 WI Act 355**

- MOTION:** John Anderson moved, seconded by Carole Ostendorf, in the definition of client, to retain the language pertaining to minors in the proposed draft. Motion carried unanimously.
- MOTION:** Carole Ostendorf moved, seconded by Cindy Spitzza, to retain the draft language expressed in informed consent concerning chaperones. Motion carried unanimously.
- MOTION:** Barbara Yetter moved, seconded by Carole Ostendorf, to define intimate parts as has the meaning given in § 939.22(19). Motion carried unanimously.
- MOTION:** Carole Ostendorf moved, seconded by John Anderson, to accept the minimum CE hours per biennium as twenty four (24). Motion carried unanimously.
- MOTION:** Barbara Yetter moved, seconded by Cindy Spitzza, to have DSPTS staff develop a FAQ regarding continuing education. Motion carried unanimously.
- MOTION:** Elizabeth Krizenesky moved, seconded by Cindy Spitzza, to require two (2) CE hours to be in ethics. Motion carried 4 to 2.
- MOTION:** Barbara Yetter moved, seconded by Wendy Wettengel-Perrigoue, that the remaining 22 CE hours are unspecified as long as they concern topics within the scope of practice of massage therapy and bodywork therapy or relevant to business practices. Motion carried unanimously.

**MOTION:** Cindy Spitzza moved, seconded by Carole Ostendorf, to designate as approved sources of CE institutions of higher education, approved MTBT programs and schools and professional organizations that address the improvement of the professions (NCCAOM, NCBTMB, The Federation of State Massage Therapy Boards). Motion carried unanimously.

**MOTION:** Elizabeth Krizenesky moved, seconded by Barbara Yetter, to authorize DSPS staff to begin the process of rule drafting and scope statement on unprofessional conduct chapter. Motion carried unanimously.

**MOTION:** Elizabeth Krizenesky moved, seconded by Cindy Spitzza, to delegate John Anderson to work with DSPS staff on rules projects. Motion carried unanimously.

### **RECESS TO CLOSED SESSION**

**MOTION:** Barbara Yetter moved, seconded by Carole Ostendorf, to convene to closed session to deliberate on cases following hearing (Wis. Stat. § 19.85 (1) (a)); consider closing disciplinary investigation(s) with administrative warning(s) (Wis. Stat. § 19.85 (1) (b), and Wis. Stat. § 440.205); consider individual histories or disciplinary data (Wis. Stat. § 19.85 (1) (f)); and to confer with legal counsel (Wis. Stat. § 19.85 (1) (g)). Roll call: John Anderson-yes; Elizabeth Krizenesky-yes; Carole Ostendorf-yes; Cindy Spitzza-yes; Wendy Wettengel-Perrigoue-yes; Barbara Yetter-yes. Motion carried unanimously.

Open session recessed at 12:22 p.m.

### **RECONVENE IN OPEN SESSION**

**MOTION:** Cindy Spitzza moved, seconded by John Anderson, to reconvene in open session. Motion carried unanimously.

Open session reconvened at 1:11 p.m.

### **ITEMS VOTED ON DURING CLOSED SESSION**

All motions made in close session were reaffirmed.

## PROPOSED STIPULATIONS, FINAL DECISIONS AND ORDERS

**MOTION:** Carole Ostendorf moved, seconded by Cindy Spitz, to adopt the Findings of Fact, Conclusions of Law, Final Decision and Order in the disciplinary proceedings against **Yan Ling Romanek (11 MTB 001)**. Motion carried unanimously.

**MOTION:** Wendy Wettengel-Perrigou moved, seconded by Barbara Yetter, to adopt the Findings of Fact, Conclusions of Law, Final Decision and Order in the disciplinary proceedings against **Scott K. Jordan (10 MTB 006)**. Motion carried unanimously.

## PROPOSED ADMINISTRATIVE WARNING

**MOTION:** Carole Ostendorf moved, seconded by Cindy Spitz, to issue the Administrative Warning in case **11 MTB 013**. Motion carried. Elizabeth Krizenesky opposed.

## PROPOSED DECISION AND ORDER

**MOTION:** Barbara Yetter moved, seconded by John Anderson, to adopt the Final Decision and Order in the disciplinary proceedings against **Joao L. Fraser (11 MTB 003 and 11 MTB 010/ DHA Case No. SPS-11-0084)**. Motion carried unanimously.

## CASE CLOSINGS

**MOTION:** Barbara Yetter moved, seconded by Wendy Wettengel-Perrigou, to close case **12 MTB 002 for compliance gained**. Motion carried unanimously.

**MOTION:** Barbara Yetter moved, seconded by John Anderson, to close case **12 MTB 007 for lack of jurisdiction**. Motion carried unanimously.

**MOTION:** Barbara Yetter moved, seconded by Cindy Spitz, to close case **11 MTB 014 for prosecutorial discretion (P7)**. Motion carried unanimously.

## **ADJOURNMENT**

**MOTION:** Carole Ostendorf moved, seconded by Cindy Spitza, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 1:13 p.m.

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