



**STATE OF WISCONSIN**  
Department of Safety and Professional Services  
1400 E Washington Ave.  
Madison WI 53703

Mail to:  
PO Box 8935  
Madison WI 53708-8935

Email: [dsps@wisconsin.gov](mailto:dsps@wisconsin.gov)  
Web: <http://dsps.wi.gov>

**Governor Scott Walker      Secretary Dave Ross**

Voice: 608-266-2112 • FAX: 608-267-3816 • TTY: 608-267-2416

**MESSAGE THERAPY AND BODYWORK THERAPY  
AFFILIATED CREDENTIALING BOARD MEETING  
Room 121A, 1400 E. Washington Avenue, Madison  
Contact: Tom Ryan 608-261-2378  
August 13, 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. Recognition of Board Members**

**B. Welcome New Board Appointees**

**C. Adoption of Agenda (1-4)**

**D. Approval of Minutes – August 2, 2013 (5-6)**

**E. Administrative Updates**

- 1) Staff Changes
- 2) Paperless Initiative (7-10)
- 3) Other

**F. Legislation/Administrative Rules Matters**

- 1) Scope Statement Relating to Unprofessional Conduct – Review and Discuss (11-12)
- 2) Executive Order 61 – Report from John Anderson
- 3) Executive Order 50 – Review of Position Statements (13-26)
- 4) Wis. Stat. s. 15.085, Chairperson Meeting with Medical Examining Board to Consider All Matters of Joint Interest (27-28)

**G. Report on Discussions with the Podiatry Affiliated Credentialing Board – John Anderson (29-30)**

**H. FSMTB 2013 Annual Meeting, October 10-13, 2013, Baltimore, MD – Appoint Board Member to Represent the Board (31-36)**

**I. 10:00 A.M. – Public Hearing for MTBT 1.01 Temporary Licensure and Continuing Education (37-52)**

- 1) Review and Discussion of Public Comments and Clearinghouse Report for MTBT 1.01(53-54)

**J. Informational Items**

**K. Items received after preparation 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**

**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.)**

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

**N. Deliberation of Proposed Administrative Warning(s)**

- 1) 13 MAB 001 (C.M.P.) (**55-56**)

**O. Application Review(s)**

- 1) M.J.G. - Application by Examination (**57-84**)
- 2) T.W.Y. – Application by Examination (**85-166**)

**P. Case Closings**

**Q. Deliberation of other items received after preparation 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

**R. Consulting with Legal Counsel**

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

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

**T. Training**

- 1) Board Member Training
- 2) Case Advisor Training (**167-180**)

**ADJOURNMENT**

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**MASSAGE THERAPY AND BODYWORK THERAPY  
AFFILIATED CREDENTIALING BOARD  
VIRTUAL MEETING MINUTES  
AUGUST 2, 2013**

**PRESENT:** John Anderson, Elizabeth Krizenesky, Carole Ostendorf, Cindy Spitz, Barbara Yetter

**STAFF:** Tom Ryan, Executive Director; Karen Rude-Evans, Bureau Assistant

**CALL TO ORDER**

Elizabeth Krizenesky called the meeting to order at 10:01 a.m. A quorum of five (5) members was confirmed.

**ADOPTION OF AGENDA**

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

**APPROVAL OF MINUTES – JUNE 28, 2013**

**Corrections**

- Remove Carol Ostendorf from Members Present
- Remove Wendy Wettengel-Perrogue from Members Present

**MOTION:** Cindy Spitz moved, seconded by John Anderson, to approve the minutes of June 28, 2013 as corrected. Motion carried unanimously.

**RECESS TO CLOSED SESSION**

Elizabeth Krizenesky, Chair, read the motion to convene to closed session.

**MOTION:** Cindy Spitz moved, seconded by John Anderson, 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; Carol Ostendorf-yes; Cindy Spitz-yes; Barbara Yetter-yes. Motion carried unanimously.

Massage Therapy and Bodywork Therapy Affiliated Credentialing Board

Virtual Meeting Minutes

August 2, 2013

1 of 2

Open session recessed at 10:06 a.m.

**RECONVENE IN OPEN SESSION**

**MOTION:** Carol Ostendorf moved, seconded by Barbara Yetter, to reconvene in open session. Motion carried unanimously.

Open session reconvened at 10:18 a.m.

**REAFFIRM MOTIONS MADE IN CLOSED SESSION**

**MOTION:** Cindy Spitzza moved, seconded by Carol Ostendorf, to reaffirm all motions made in closed session. Motion carried unanimously.

**MOTION:** Cindy Spitzza moved, seconded by John Anderson, to authorize the Department to sign the Order on behalf of the Board. Motion carried unanimously.

**PROPOSED STIPULATION AND INTERIM ORDER**

**MOTION:** John Anderson moved, seconded by Carol Ostendorf, to adopt the Stipulation and Interim Order in the matter of the disciplinary proceedings against **James S. Storm (13 MTB 001)**. Motion carried unanimously.

**ADJOURNMENT**

**MOTION:** John Anderson moved, seconded by Barbara Yetter, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 10:21 a.m.

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

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b>  Karen Rude-Evans, Bureau Assistant		<b>2) Date When Request Submitted:</b>  7/24/2013 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>	
<b>3) Name of Board, Committee, Council, Sections:</b>  Massage Therapy and Bodywork Therapy Affiliated Credentialing Board			
<b>4) Meeting Date:</b>  August 13, 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>  Paperless Initiative	
<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?</b>  <input type="checkbox"/> Yes ( <a href="#">Fill out Board Appearance Request</a> ) <input checked="" type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b>	
<b>10) Describe the issue and action that should be addressed:</b>  Brief presentation of how Board Members can sign up for SharePoint access as a part of the paperless initiative, as well as instructions for using DSPS laptops.			
<b>11) Authorization</b>			
Karen Rude-Evans		Date	
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	
<b>Directions for including supporting documents:</b> <ol style="list-style-type: none"> <li>1. This form should be attached to any documents submitted to the agenda.</li> <li>2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director.</li> <li>3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.</li> </ol>			

## How to register for a username/password on <http://register.wisconsin.gov> .

In order to access the Board SharePoint site, Board Members must obtain a State of WI/DOA username/password from this site <http://register.wisconsin.gov> . Once registered, Board Members will be provided a DOA credential under the Wisconsin External (wiext) domain. This account is intended to provide users with access to multiple State of Wisconsin web applications, including the DSPS SharePoint site.

To Begin, use the 'Self Registration' link

DOA/Wisconsin Logon Management System

The DOA/Wisconsin Logon Management System allows authorized individuals to access many DOA Internet applications using a single ID and password. When access to information or services is restricted to protect your privacy or the privacy of others, you will be asked to provide your DOA/Wisconsin Logon and password to access DOA/Wisconsin Logon and password verifies your identity so that we can provide you with access to your information and services and prevent access by unauthorized individuals.

**User Acceptance Agreement**

Please note that only certain types of information will be stored in your user profile, as described in the **User Acceptance Agreement**. Your user profile will never contain records such as driving history, tax information, unemployment compensation, vehicle registrations or prison records.

**Sign Up for your DOA/Wisconsin Logon**

**Self Registration** (Request a DOA/Wisconsin Logon and Password.)

Self Registration allows you to create your **personal** DOA/Wisconsin Logon. This is your key to doing secure business with DOA over the Internet.

**Change / Update Your Information**

**Profile Management** allows you to change your account information, e-mail address and other information.

**Change Your Password**

**Password Management** allows you to change your password.

**Forgot Your Logon ID or Password?**

**Logon ID/Password Recovery** allows you to recover a forgotten DOA/Wisconsin Logon and/or Password.

Updated February 6, 2009  
DOA/Wisconsin Logon Management System  
Direct Contact: [BISS@DOA](mailto:BISS@DOA.wisconsin.gov)  
Content Contact: [BISS@DOA](mailto:BISS@DOA.wisconsin.gov)

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**Not sure if you already have DOA/State of WI account?**  
Use the 'Forgot Your Logon ID or Password' link to check

After accepting the user agreement, complete the 'Account Creation' form.

**IMPORTANT!!! Indicate 'SharePoint' under the section entitled, 'Systems You Will Access'**

The screenshot shows the 'Account Creation' form with the following fields and values:

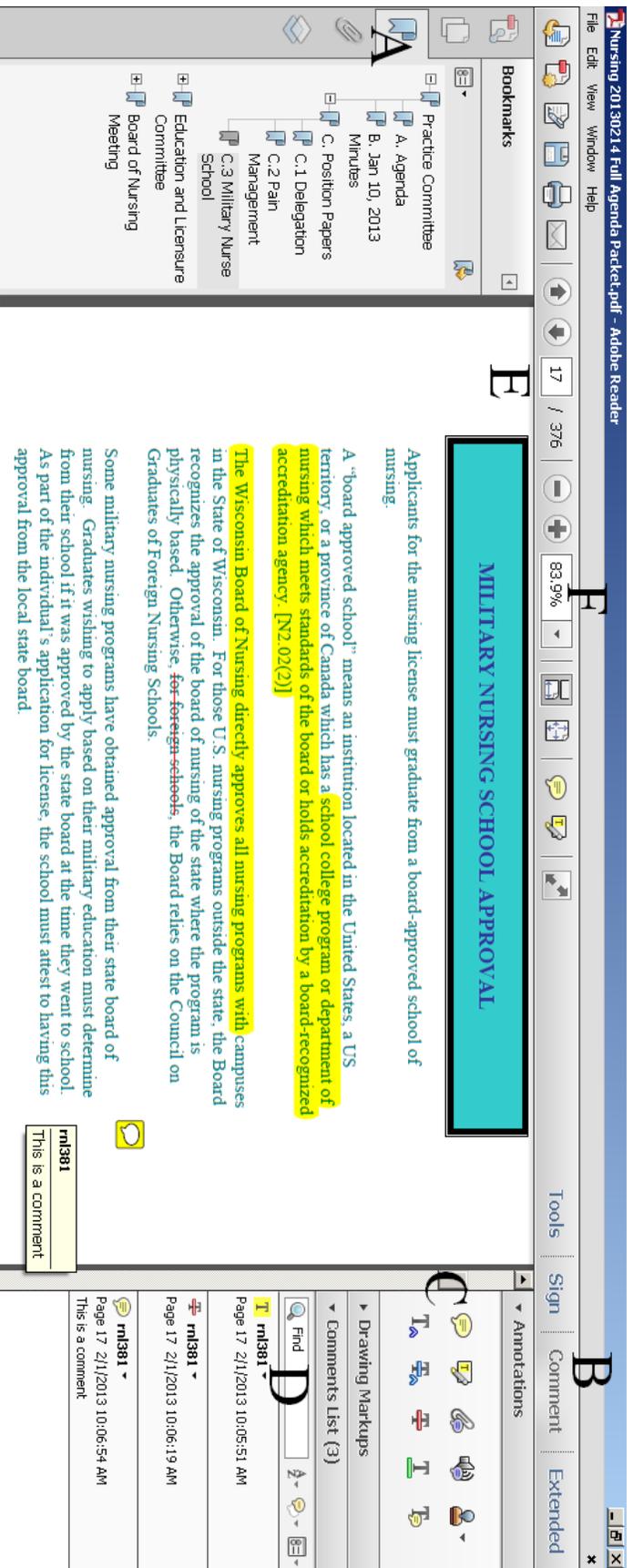
- Profile Information:** First Name: Barbora, Middle Initial: H, Last Name: Cumberdale, Suffix: [dropdown arrow]
- E-Mail:** Barbora.Cumberdale@salsal.net
- Phone:** 431.074.393 ext. [dropdown arrow]
- Mailing Address:** 182 Fingers Lane, Big Patch, Wisconsin, 53818
- Systems You Will Access:** A dropdown menu with 'SharePoint' selected. An arrow points from the red text above to this dropdown.
- Account Information:** Logon ID: jchumberdale
- Password:** [masked with dots]
- Logon ID/Password Recovery:** Secret Question: 'What was your mother's maiden name?', Secret Answer: Logan-Frice
- Verification:** A box contains the number '80542'.

Red asterisks (\*) indicate required fields. A red box highlights the '80542' verification number.

**Please use a login ID of your first initial followed by your middle initial followed by your last name, as in the example to the left.**

**Remember your logon ID, as you will need to provide that to DSPS staff in order for you to receive proper access rights.**

**Once you have been granted permission to access the Board's website, you should receive an automated 'Welcome to SharePoint' email with a link to the site.**



Above is an example of an agenda packet page, with some features you can access through Adobe Reader.

**A: Bookmarks** – When the Bureau Assistant creates the Agenda Packet, it is possible to place in bookmarks for quick reference during meetings. You can expand and minimize categories to better enable you to jump from section to section of your agenda here.

**B: Comment** – On specially designated .pdf files, it is possible for Adobe Reader to be given comment privileges. This allows a Board member to make comments on documents, as well as edit, highlight, or insert text in suitable files. Please note, if the file is a scanned copy, it is likely that the highlight and text editing features will not be usable. The comment feature will still work in such an issue.

**C: Annotations & Drawing Markups** – These are the different options you can use to mark up your document for your reference. If you mouse over an option, it will give a brief description of what it can do for you. Feel free to experiment and find out what works best for you!

**D: Comments List** – Quickly jump between your comments by selecting them in this list. Never again will you miss out on a note during a discussion with this handy tool.

**E: Page List** – No more rifling through papers in order to track down that page someone mentioned! With this handy bar, you can simply type in the page you are looking for, hit enter, and Adobe Reader will take you directly to the page.

**F: Zoom** – Having trouble reading something? You can zoom in and out on a document with this bar. The plus and minus signs to the left can be used to make quick adjustments as well.

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

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b> Shawn Leatherwood		<b>2) Date When Request Submitted:</b> July 11, 2013 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>	
<b>3) Name of Board, Committee, Council, Sections:</b> Massage Therapy and Bodywork Therapy Affiliated Credentialing Board			
<b>4) Meeting Date:</b> August 13, 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> Discuss: Unprofessional Conduct Scope Statement	
<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> <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b> N/A	
<b>10) Describe the issue and action that should be addressed:</b> The Board will consider and discuss the scope statement and decide whether to file the scope statement with the Governor's office			
<b>11) Authorization</b>			
Shawn Leatherwood		July 11, 2013	
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	
<b>Directions for including supporting documents:</b> 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 Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

# STATEMENT OF SCOPE

## Massage Therapy and Bodywork Therapy Affiliated Credentialing Board

Rule No.: 165-MTBT5-Unprofessional Conduct

Relating to: Unprofessional Conduct

Rule Type: Permanent

**1. Finding/nature of emergency (Emergency Rule only):**

N/A

**2. Detailed description of the objective of the proposed rule:**

The objective of this proposed rule is to modernize the unprofessional conduct rules governing licensed massage therapists and bodywork therapist to reflect current trends in the profession.

**3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

Currently, Wis. Admin Code § MTBT 5.01 Unprofessional Conduct sets forth the existing grounds for disciplinary actions against massage therapists and bodywork therapists in Wisconsin. With the passage of 2009 Wisconsin Act 355 the Massage Therapy and Bodywork Council was transformed into the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board. (MTBT Board). The Act granted the newly formed MTBT Board rule-making authority and provided that the MTBT Board would now be attached to the Medical Examining Board. The MTBT Board has seized this opportunity to undertake a review of its current unprofessional conduct rules.

The legislature fully purposed delegating rule making authority to the MTBT Board to establish ethical standards of conduct for massage therapist and bodywork therapist as evidenced by s. 460.04, Stats., which states MTBT board may promulgate rules that establish standards that govern the professional conduct of MTBT licensees. The Board's review of the current unprofessional conduct rules will not result in a significant policy change but rather a further clarification of the ethical goals of the profession.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Section 227.11 (2) (a), Stats., discusses the parameters of an agency's rule-making authority stating, an agency "may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation." Section 227.01 (1), Rev. 3/6/2012

Stats., defines agency as a board. The Massage Therapy and Bodywork Therapy Affiliated Credentialing Board falls within this definition. Therefore, it may promulgate administrative rules which interpret the statutes it enforces or administers as long as the proposed rules do not exceed the proper interpretation of the statute.

Section 460.04 (2) (a), Stats., authorizes the MTBT Board to promulgate rules, "that govern the professional conduct of license holders in practicing massage therapy or bodywork therapy." s. 460.14, Stats. This section is an express grant of authority to draft rules regarding unprofessional conduct. Section 460.14, Stats., sets forth a limited number of grounds for disciplinary action by the MTBT Board. The Board may reprimand, deny, limit, suspend, or revoke a licensee including but not limited to the following conduct: making a material misstatement in an application for licensure, false or deceptive advertising, practicing under another's name, practicing while impaired by alcohol or other drugs, making a false statement

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

It is estimated that state employees may spend up to 70 hours in developing the proposed rules.

**6. List with description of all entities that may be affected by the proposed rule:**

MTBT instructors, students who are currently matriculating in MTBT educational programs, and licensed MTBT professionals

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

None.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The Department estimates that this rule will not result in any economic impact on small businesses.

**Contact Person:** Shawn Leatherwood (608) 261-4438

\_\_\_\_\_  
Department Head or Authorized Signature

\_\_\_\_\_  
Date Submitted

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

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b>  Executive Director Tom Ryan		<b>2) Date When Request Submitted:</b>  2/1/2013 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>	
<b>3) Name of Board, Committee, Council, Sections:</b>  Massage Therapy Affiliated Credentialing Board			
<b>4) Meeting Date:</b>  August 13, 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 50 - Board Review of Position Statements	
<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>  Boards are reviewing position statements and other web content to ensure compliance with statutes, rules and Executive Order 50, relating to guidelines for the promulgation of administrative rules. The following are suggested options for review, with a report back to the Board at the next meeting: <ol style="list-style-type: none"> <li>1) Appoint a Board member or Board member(s) to review the position statements.</li> <li>2) Divide the statements among all Board members for review.</li> <li>3) Review statements as a full Board.</li> </ol>			
<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	



## EXECUTIVE ORDER # 50

### Relating to Guidelines for the Promulgation of Administrative Rules

**WHEREAS**, 2011 Wisconsin Act 21 reformed the administrative rulemaking process in Wisconsin in order to increase accountability, clarify agency regulatory authority, and evaluate the economic impact of all new and amended state administrative rules; and

**WHEREAS**, Wis. Stat. § 227.10(1) requires that each agency statement of policy and each interpretation of a statute adopted to govern its enforcement or administration of that statute shall be promulgated as a rule, and Wis. Stat. § 227.01(13) defines a rule as “a regulation, standard, statement of policy or general order of general application which has the effect of law and which is issued by an agency to implement, interpret or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency;” and

**WHEREAS**, Wis. Stat. § 227.10(2m) requires an explicit grant of authority under statute or administrative rule before a state agency can implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency; and

**WHEREAS**, Wis. Stat. §§ 227.11(2)(a)1. to 3. defines agency authority to promulgate administrative rules, specifically providing the following:

- A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rulemaking authority on the agency or augment the agency’s rulemaking authority beyond the rulemaking authority that is explicitly conferred on the agency by the legislature.
- A statutory provision describing the agency’s general powers or duties does not confer rulemaking authority on the agency or augment the agency’s rulemaking authority beyond the rulemaking authority that is explicitly conferred on the agency by the legislature.
- A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision; and

**WHEREAS**, Wis. Stat. §§ 227.135(2), 227.24(1)(e)1d. requires the Governor to approve a statement of scope before an agency may proceed with rulemaking, Wis. Stat. § 227.185 requires the Governor to approve a final draft rule before it is submitted to the Legislature for review, and Wis. Stat. § 227.24(1)(e)1g. requires the Governor to approve an emergency rule before it is filed with the Legislative Reference Bureau and published in the official state newspaper; and

**WHEREAS**, Wis. Stat. § 227.137 requires state agencies to complete an Economic Impact Analysis (EIA) for every proposed rule in coordination with local governmental units that may be affected and to solicit information and advice from and consult with businesses,

associations representing businesses, local governmental units and individuals that may be affected by the proposed rule; and

**WHEREAS**, Wis. Stat. § 227.10(2m) establishes that “[t]he Governor, by executive order, may prescribe guidelines to ensure that rules are promulgated in compliance with [Subchapter II of Chapter 227 of the Wisconsin Statutes].”

**NOW THEREFORE, I, Scott Walker**, Governor of the State of Wisconsin, by virtue of the authority vested in me by the Constitution and the laws of Wisconsin, specifically Wis. Stat. § 227.10(2m), do hereby direct that state agencies shall comply with the requirements of Subchapter II of Chapter 227 and this Executive Order when promulgating administrative rules.

## I. General Provisions

1. To assure timely and proficient review of administrative rules in accordance with this Executive Order and with Wis. Stat. § 227.10(2m), the Governor’s Office of Regulatory Compliance is hereby established.
2. Each agency that develops any document interpreting, clarifying, or explaining statutes and rules that regulate individuals or entities or local governmental units, shall submit a copy to the Governor’s Office of Regulatory Compliance via [AdministrativeRules@Wisconsin.gov](mailto:AdministrativeRules@Wisconsin.gov) prior to its finalization by that agency.
3. Each agency shall submit to the Governor’s Office of Regulatory Compliance all materials required to be submitted under Subchapter II of Chapter 227. This includes all publicly available materials submitted to the Legislative Council Rules Clearinghouse, Legislative Reference Bureau, Department of Administration, Chief Clerks of the State Assembly and State Senate, legislative standing committees, and the Joint Committee for Review of Administrative Rules.
4. The electronic submission of materials to the State Budget Office, via [SBOAdminRules@wisapps.wi.gov](mailto:SBOAdminRules@wisapps.wi.gov) or as the State Budget Office otherwise prescribes, shall fulfill an agency’s duty, under Chapter 227 and Paragraph I.3. of this Executive Order, to submit materials to the Governor, the Governor’s Office of Regulatory Compliance, or the Department of Administration.
5. Each statement of scope submitted by an agency on or after June 8, 2011 is subject to review and approval by the Governor as required by Wis. Stat. §§ 227.135(2), 227.24(1)(e)1d. and Paragraph II.1. of this Executive Order. An EIA shall be prepared as required by Wis. Stat. § 227.137 and Paragraph IV.1. of this Executive Order if the draft rule is submitted to the Legislative Council Rules Clearinghouse under Wis. Stat. § 227.15 on or after June 8, 2011. An EIA is not required when an agency promulgates an emergency rule. A final draft rule or emergency rule is subject to review and approval by the Governor, as required by Wis. Stat. §§ 227.185, 227.24(1)(e)1g. and Paragraph V.1. of this Executive Order, if the statement of scope for the rule or emergency rule was submitted on or after June 8, 2011.
6. The language of Wis. Stat. § 990.001(11) concerning severability and Wis. Stat. § 990.01 concerning construction of words and phrases are intended to apply to this Executive Order.

## II. Statements of Scope

1. A statement of scope shall be submitted to the Governor’s Office of Regulatory Compliance for approval by the head of the agency proposing a rule or emergency rule or by a deputy or executive assistant who has been authorized to do so by the agency head under Wis. Stat. §§ 15.04(2) or 15.05(3). Statements of scope shall be submitted electronically, as prescribed in Paragraph I.4. of this Executive Order, and contain the following information as required by Wis. Stat. § 227.135(1).
  - a. A detailed description of the objective of the rule.

- b. A detailed description of existing policies relevant to the rule and new policies proposed to be included in the rule and an analysis of policy alternatives. The description shall include an overview of the requirement or program that the rule will implement. If the proposed rule will amend an existing rule, the description shall also include an overview of the existing rule and the general changes. If the proposed rule will replace an emergency rule currently in effect, the agency shall summarize the status of any legislative action under Wis. Stat. § 227.24(2) or § 227.26(2) and identify any implementation issues that have arisen since the rule was promulgated.
  - c. A detailed description of the statutory authority for the rule. The agency shall reference each statute that authorizes the promulgation of the proposed rule and each statute or rule that will affect the proposed rule or be affected by it. The agency shall also explain in detail the agency's authority to promulgate the proposed rule under those statutes. An agency shall rely on an explicit grant of authority from the Legislature to promulgate a rule, if one exists. An agency shall not rely upon general statements of legislative purpose or legislative findings or agency general powers and duties clauses to confer authority to promulgate rules. Pursuant to Wis. Stat. § 227.11(2)(a), in the absence of an explicit grant of rulemaking authority, an agency may promulgate a rule if:
    - i. The agency considers it necessary to effectuate the purpose of the statute; and
    - ii. The agency has a general grant of rulemaking authority to administer or enforce the chapter, subchapter, or section of the Wisconsin statutes.
  - d. An estimate of the amount of time that state employees will spend to develop the rules and of other resources necessary to develop the rule.
  - e. A description of all of the entities that may be affected by the rule. This includes a description of any local governmental units, businesses, economic sectors, or public utility ratepayers who may reasonably be anticipated to be affected by the rule.
  - f. A summary and preliminary comparison, with state law, of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.
2. A statement of scope shall also include a statement of whether the agency anticipates that the proposed rule will have minimal or no economic impact, may have a moderate economic impact, or is likely to have a significant economic impact locally or statewide.
  3. A statement of scope for a proposed emergency rule shall also include an explanation of why the rule is necessary for the preservation of the public peace, health, safety, or welfare. If the rule is exempt from the required finding of emergency, the statement of scope shall cite the Wisconsin Act number and section authorizing the promulgation of an emergency rule or the statute section providing the exemption. The statement of scope shall also indicate whether the agency will promulgate a non-emergency rule and when it will begin the non-emergency rulemaking process.
  4. An agency that intends to simultaneously draft an emergency and a non-emergency rule that are identical in substance may submit one scope statement indicating this intent.
  5. Pursuant to Wis. Stat. § 227.135(2), no state employee may begin work on a proposed rule or emergency rule until the statement of scope has been approved by the Governor, published in the Administrative Register, and approved by the agency head or body with policy making powers for the agency.
  6. A statement of scope not submitted in accordance with Wis. Stat § 227.135(1) and this Executive Order will be returned to the agency and the Governor's Office of

Regulatory Compliance's review will be suspended until a complete description and analysis is resubmitted.

7. The Governor's Office of Regulatory Compliance may request an agency to withdraw a statement of scope and resubmit separate statements of scope if, in the Governor's discretion, the original statement of scope encompasses more than one rule change.
8. Following a review of the statement of scope, the Governor's Office of Regulatory Compliance shall notify the agency in writing whether the statement of scope is approved or disapproved. A disapproval by the Governor may be accompanied by suggested modifications in the event an agency chooses to submit a revised statement of scope.
9. An agency must file a statement of scope approved by the Governor for publication by the Legislative Reference Bureau within thirty calendar days of approval if the agency intends to proceed with rulemaking, or the Governor's Office of Regulatory Compliance will deem the statement of scope to be withdrawn.
10. If at any time during the rulemaking process prior to final approval by the Governor, the scope of a proposed rule is changed in any meaningful or measureable way, including changing the scope so as to include any activity, business, material or product that is not specifically included in the original statement of scope under Wis. Stat. § 227.135(4), a revised statement of scope shall be submitted to the Governor's Office of Regulatory Compliance for approval. A meaningful or measurable change includes a change to the following:
  - a. The objectives of the proposed rule;
  - b. The basis and purpose of the proposed rule;
  - c. The policies to be included in the proposed rule;
  - d. The entities affected by the proposed rule; or
  - e. The overall breadth or scope of the regulation in the proposed rule.
11. If at any time following the Governor's approval of a statement of scope, prior to the submission of a final draft rule to the Legislature for review, the Governor's Office of Regulatory Compliance requests a revised statement of scope from the agency because the rule has been changed in a meaningful or measureable way under Wis. Stat. § 227.135(4), the agency shall submit the revised statement of scope to the Governor's Office of Regulatory Compliance electronically as prescribed in Paragraph I.4. of this Executive Order within fourteen calendar days of receiving the request.

### III. Additional Agency Actions in the Rule-Making Process

1. If an agency intends to establish an advisory committee under Wis. Stat. § 227.13, it shall provide a list of members to the Governor's Office of Regulatory Compliance via [AdministrativeRules@Wisconsin.gov](mailto:AdministrativeRules@Wisconsin.gov) prior to establishing the advisory committee.
2. The agency's draft rule analysis required under Wis. Stat. § 227.14(2) shall be submitted to the Governor's Office of Regulatory Compliance electronically, as prescribed in Paragraph I.4. of this Executive Order, upon completion and prior to finalization and submittal to the Legislative Council under Wis. Stat. § 227.15(1). In accordance with Wis. Stat. § 227.14(2m), the agency shall include a statement within the analysis describing how the requirements for ensuring the accuracy, integrity, objectivity and consistency of data were used in preparing the proposed rule and related analysis.

### IV. Economic Impact Analysis

1. For each proposed rule that is not an emergency rule, an Economic Impact Analysis (EIA) shall be submitted to the Legislative Council, the Governor, the Department of Administration, and the Legislature by the head of the agency proposing a rule as required by § 227.137(4). An EIA shall be submitted electronically to the

Governor's Office of Regulatory Compliance as prescribed in Paragraph I.4. of this Executive Order and this submission shall also fulfill the requirement under § 227.137(4) to submit the EIA to the Governor and the Department of Administration.

2. Prior to initiating an EIA of a proposed rule, the agency shall review the statement of scope to determine whether it was changed in any meaningful or measurable way, under Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order, while the rule was being developed. If a meaningful or measurable change has been made, the agency shall revise and resubmit the statement of scope for approval as required by Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order.
3. In preparing an EIA, under Wis. Stat. § 227.137(3), the agency shall solicit information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule by making information about the rule available and requesting comments.
  - a. Information including the proposed rule language shall be made available by posting on the agency website and the Wisconsin administrative rules website, submitting the information to the Governor's Office of Regulatory Compliance, as prescribed in Paragraph I.4. of this Executive Order, and by e-mailing individuals who have requested to receive information and other persons identified by the agency as potentially interested parties.
  - b. The agency shall accept comments for a period of at least fourteen calendar days if the statement of scope indicates that the draft rule will have no or minimal economic impact locally or statewide, at least thirty calendar days if the statement of scope indicates a moderate economic impact locally or statewide and at least sixty calendar days if the statement of scope indicates that the draft rule may or is likely to have a significant economic impact locally or statewide or on a sector of the economy. If the agency determines that the anticipated economic impact will be greater than indicated in the statement of scope, it shall adjust the comment period accordingly and a revised statement of scope is not required. If an agency determines that the anticipated economic impact will be less than indicated in the statement of scope, it may adjust the comment period accordingly and a revised statement of scope is not required.
  - c. The agency shall review the comments received and the statement of scope description of all of the persons that may be affected by the proposed rule. The agency shall update the list of businesses, business sectors, associations representing businesses, local governmental units, and individuals included in the statement of scope and submit the list to the Governor's Office of Regulatory Compliance via [AdministrativeRules@Wisconsin.gov](mailto:AdministrativeRules@Wisconsin.gov).
4. After soliciting information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule, the agency shall prepare the EIA in coordination with the local governmental units that respond to the agency's solicitation of comments and request to coordinate with the agency, as required by Wis. Stat. § 227.137(3). The agency shall contact those local governmental units to discuss such comments and incorporate them into the EIA to the extent feasible. The agency may at the same time consult with the local governmental units about whether the proposed rule would adversely affect in any material way the economy, a sector of the economy, productivity, jobs or the overall economic competitiveness of the state as required by Wis. Stat. § 227.137(3)(e) and Paragraph IV.3. of this Executive Order.
5. After soliciting information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule, the agency shall make a determination in the EIA as required by Wis. Stat. § 227.137(3)(e), in consultation with those businesses, business sectors, associations representing businesses, local governmental units, and individuals as to whether the proposed rule would adversely affect in a material way

the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state in the following manner:

- a. The agency shall compile a list of affected persons and economic concerns identified in the comments solicited by the agency.
  - b. The agency shall contact those affected persons to discuss economic concerns and give consideration to those concerns in its EIA determination.
  - c. The agency shall document in the EIA the affected persons who were consulted and whether the agency's determination is disputed by any of the affected persons.
6. For purposes of developing an EIA for a proposed rule that is anticipated to have a significant economic impact locally or statewide, or on a sector of the economy, agencies are encouraged to establish an advisory committee of affected persons following its solicitation of comments in order to coordinate with local governmental units and consult with other affected persons. An agency that previously established an advisory committee under Wis. Stat. § 227.13 to advise it during rulemaking, including the development of the EIA, shall add to the committee affected persons, identified following the agency's solicitation of comments, who wish to serve on the committee.
7. The final EIA shall contain the following information as required by Wis. Stat. § 227.137 on the economic impact of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole:
- a. An analysis and quantification of the policy problem that the proposed rule is intending to address, including comparisons with approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address the policy problem and, if the approach chosen by the agency to address that policy problem is different from those approaches, a statement as to why the agency chose a different approach.
  - b. An analysis and detailed quantification of the economic impact of the proposed rule, including the implementation and compliance costs that are reasonably expected to be incurred by the businesses, local government units, and individuals that may be affected by the proposed rule. A summary of comments related to the implementation and compliance costs received by businesses, local governmental units, and individuals shall be included in the final analysis.
  - c. An analysis of the actual and quantifiable benefits of the proposed rule, including an assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.
  - d. An analysis of the alternatives to the proposed rule including the alternative of not promulgating the proposed rule.
  - e. A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. Included in the final analysis shall be a summary of comments related to whether the proposed rule would adversely affect, in a material way, the economic competitiveness of this state received by businesses, local governmental units, and individuals.
  - f. If the agency finds that a proposed rule will not have an economic effect on public utilities or their ratepayers, it shall state this conclusion in the EIA. If the agency finds that a proposed rule will have an economic impact on public utilities or their ratepayers or both, it shall request the information necessary from the Public Service Commission to provide an estimate of the increased costs or resulting savings for public utilities and their ratepayers.

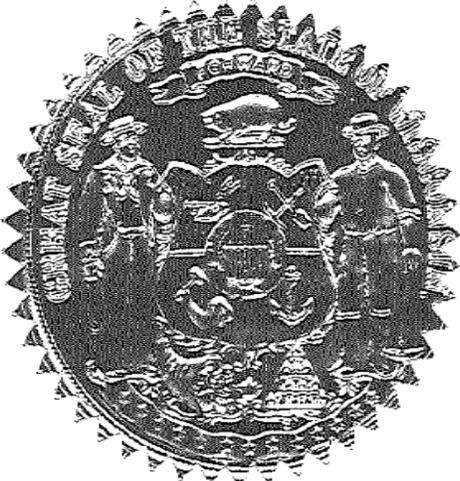


13. If an agency makes modifications to a proposed rule following the agency public hearing, the agency shall review the rule to determine whether the scope has been changed in any meaningful or measurable way under Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order and whether the economic impact of the proposed rule is significantly changed under Wis. Stat. § 227.137(4) and Paragraph IV.9. of this Executive Order.
  - a. The agency shall notify the Governor’s Office of Regulatory Compliance via [AdministrativeRules@Wisconsin.gov](mailto:AdministrativeRules@Wisconsin.gov) if it will submit a revised statement of scope to the Governor’s Office of Regulatory Compliance for approval or a revised EIA to the Governor’s Office of Regulatory Compliance, the Department of Administration, the Legislative Council Rules Clearinghouse and the Legislature, or both a revised statement of scope and a revised EIA. A revised statement of scope shall be submitted to the Governor’s Office of Regulatory Compliance electronically as prescribed in Paragraph I.4. of this Executive Order within seven calendar days of the notification.
  - b. If neither a revised statement of scope nor a revised EIA is required, the agency shall submit the final draft rule to the Governor’s Office of Regulatory Compliance for approval within thirty calendar days of the close of the public comment period following the public hearing if it intends to proceed with rulemaking, unless the agency has a policy making board that is required to approve the final rule language before it is submitted to the Governor’s Office of Regulatory Compliance.

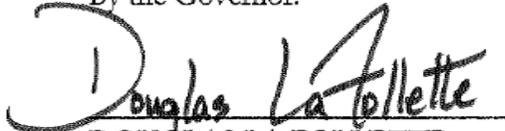
#### V. Final Draft Rule

1. A final draft rule shall be submitted electronically as prescribed in Paragraph I.4. of this Executive Order to the Governor’s Office of Regulatory Compliance for approval by the head of the agency proposing a permanent or emergency rule or by a deputy or executive assistant who has been authorized to do so by the agency head under Wis. Stat. §§15.04(2) or 15.05(3).
2. For each non-emergency rule, the final draft rule submitted to the Governor’s Office of Regulatory Compliance shall contain the following information:
  - a. The documents required under Wis. Stat. § 227.15(1), with any necessary updates;
  - b. A statement describing how the rule complies with any applicable requirement under Wis. Stat. § 227.116;
  - c. The final EIA required under Wis. Stat. § 227.137(2);
  - d. The report of the Department of Administration if required under Wis. Stat. § 227.137(6);
  - e. Any energy impact report completed under Wis. Stat. § 227.117(2), and a statement describing the agency’s consideration of the energy impact report in accordance with Wis. Stat. § 227.117(3);
  - f. The report of the Small Business Regulatory Review Board required under Wis. Stat. § 227.14(2g);
  - g. Any regulatory flexibility analysis completed under Wis. Stat. § 227.114;
  - h. A list of persons who appeared or registered for or against the rule at the hearing;
  - i. A summary of public comments to the proposed rule and the agency’s response to those comments;
  - j. An explanation of any modifications made in the proposed rule as a result of public comments or testimony received at the public hearing; and
  - k. The Legislative Council Rule Clearinghouse report completed under Wis. Stat. § 227.15 and the agency’s response to the report as required by Wis. Stat. § 227.19(3)(d).
3. For each emergency rule, the final draft rule submitted to the Governor’s Office of Regulatory Compliance shall contain the following information:
  - a. A fiscal estimate in the format required by Wis. Stat. § 227.14(4); and

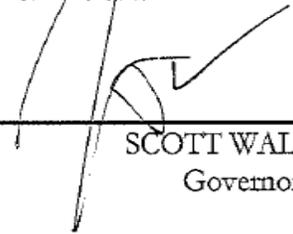
- b. A plain language analysis of the rule in the format required under Wis. Stat. § 227.14(2).
4. Following a review of the final draft rule, the Governor's Office of Regulatory Compliance shall notify the agency in writing whether the rule is approved or disapproved. A disapproval may be accompanied by suggested modifications. The agency may submit a revised rule for approval under the statement of scope that was previously approved by the Governor.



By the Governor:

  
DOUGLAS LA FOLLETTE  
Secretary of State

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this second day of November, in the year two thousand eleven.

  
SCOTT WALKER  
Governor

## **Positions Statements Related to Massage Therapy and Bodywork Issued by the Massage Therapy and Bodywork Affiliated Credentialing Board**

### **Is a “license” needed to practice massage therapy or bodywork in Wisconsin?**

No. In Wisconsin, Wis. Stats., Chapter 460, is a title protection act, not a practice protection act. This allows for voluntary certification of persons as massage therapists or bodyworkers. Persons with a certificate granted under the statute are allowed to use certain protected titles. To become a certificate holder you must meet certain minimum educational and other qualifications. You can work as a massage therapist or bodyworker without being a certificate holder; however, if you do not receive a certificate from the state you are limited in the permissible titles that may be used to call yourself.

### **Can a student in school for massage therapy practice?**

Yes.

### **What names can a certificate holder use?**

Generally, no person may designate himself or herself as a massage therapist or bodyworker, or use or assume the title "massage therapist and bodyworker" or "massage therapist" or "bodyworker" or any title that includes "massage therapist" or "bodyworker," or append to the person's name the letters "M.T.," "C.M.T.," "B.W.," or "C.B.W.," or use any other title or designation that represents or may tend to represent that he or she is certified under this chapter, unless the person is certified under Chapter 460.

### **What names can a NON certificate holder use?**

Commercial speech protections allow non certificate holders to advertise massage therapy or bodyworker services provided the advertisements are not misleading or likely to mislead pertaining to state certification or other qualifications. The use of “Wisconsin” or “certified” combined with any other title wording will be impermissible.

Otherwise, other terms as follow will generally be acceptable.

Acceptable Titles:

- Massage Therapy
- Exact wording on a local license, such as “(City) Licensed Massage Therapist/Therapy”
- Masseuse
- Tissue Palpater
- Tissue Manipulator
- Body Manipulator
- Relaxation Massager
- Body Massager
- Oriental Massage
- Massage Practitioner
- Massage Therapy Practitioner

### **For a state certified massage therapist, are there any other advertising rules?**

Yes, a certificate holder may not advertise that he or she practices massage therapy or bodywork unless the advertisement includes his or her certificate number and a statement that the certificate holder is a "certified massage therapist and bodyworker" or "certified massage therapist" or "certified bodyworker." A telephone directory listing for which no additional advertising charge is made is not considered advertising.

**What is the “scope of practice” for a massage therapist or bodyworker who holds a certificate?**

"Massage therapy or bodywork" means the science and healing art that uses manual actions 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, and includes determining whether massage therapy or bodywork is appropriate or contraindicated, or whether a referral to another health care practitioner is appropriate. "Massage therapy or bodywork" does not include making a medical or chiropractic diagnosis. Massage therapy or bodywork is the manipulation of soft tissue of humans, without use of machines.

**May a massage therapist or bodyworker perform body wraps?**

No. Regardless of whether a massage therapist or bodyworker is a state certificate holder or not; and whether a bodywrap technique is learned at a school or seminar, bodywraps are within the protected practice of Barber/Cosmetology Practice, (including aestheticians). Bodywraps are not the manipulation of soft tissue of humans.

**Note: Also within the protected practice of Barber/Cosmetology Practice are techniques or applications involving the skin which exfoliate, tone, tighten, or are intended to beautify.**

**What are the requirements to obtain a certificate from the state?**

There are three ways to obtain certification, Examination/Education, Reciprocal and Alternate certification. You will need to contact the department to obtain an [application packet](#) for a complete explanation of the requirements.

**Once a person is certified in Wisconsin , can they submit insurance claims for third-party reimbursement for massage and bodywork therapy services?**

Wisconsin law does not require insurance companies or other managed care organizations to provide coverage for massage and bodywork therapy services. That is left up to each company or organization to determine.

**Do practitioners who massage horses or other animals need to be certified by the department as a massage therapist or bodyworker?**

No, massage therapy and bodywork regulation in Wisconsin only applies to humans. However if the massage therapy is deemed to be the practice of veterinary medicine, a license may be needed as a veterinarian or the massage therapy may need to be performed under the supervision

of a licensed veterinarian Please contact the Wisconsin Veterinary Examining Board for further information.

**Is continuing education required to renew a credential as a certified massage therapist or bodyworker?**

Not at this time.

**Does a patient or client need a prescription to see a massage therapist?**

No. While a physician may refer a person to a certified massage therapist, any person can seek the services of a certified massage therapist or bodyworker directly.

**Where can massage therapists or bodyworkers work?**

A certified massage therapist or bodyworker is not restricted by Wisconsin law regarding where they can work or for whom they can work.

**Do certified massage therapists and bodyworkers maintain patient records?**

Yes. Certified massage therapists and bodyworkers must keep a record of client evaluations and treatments. If a person receives massage therapy at a health spa, resort or similar setting, the massage therapist must keep required records as well.

A client has a right to obtain a copy of their records under Wisconsin law. The certified massage therapist or bodyworker who maintains client records can tell a client how to obtain them.

**Am I required to purchase and maintain a defibrillator?**

No, purchasing and maintaining a defibrillator is not required.

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

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b>  Karen Rude-Evans, Bureau Assistant, on behalf of Executive Director Tom Ryan		<b>2) Date When Request Submitted:</b>  7/23/2013 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>	
<b>3) Name of Board, Committee, Council, Sections:</b>  Massage Therapy and Bodywork Therapy Affiliated Credentialing Board			
<b>4) Meeting Date:</b>  August 13, 2013	<b>5) Attachments:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b> Wis. Stat. s. 15.085, Chairperson Meeting with Medical Examining Board to Consider all Matters of Joint Interest	
<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?</b>  <input type="checkbox"/> Yes ( <a href="#">Fill out Board Appearance Request</a> ) <input checked="" type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b>	
<b>10) Describe the issue and action that should be addressed:</b>  Discussion item.			
<b>11) 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	
<b>Directions for including supporting documents:</b> 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.			

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

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b>  <b>Karen Rude-Evans, Bureau Assistant, on behalf of Executive Director Tom Ryan</b>		<b>2) Date When Request Submitted:</b>  <b>8/6/2013</b> <small>Items will be considered late if submitted after 4:30 p.m. and less than:</small> <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>	
<b>3) Name of Board, Committee, Council, Sections:</b>  <b>Massage Therapy and Bodywork Therapy Affiliated Credentialing Board</b>			
<b>4) Meeting Date:</b>  <b>August 13, 2013</b>	<b>5) Attachments:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b> <b>Report from John Anderson regarding his discussions with the Podiatry Affiliated Credentialing Board</b>	
<b>7) Place Item in:</b> <input type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	<b>8) Is an appearance before the Board being scheduled?</b>  <input type="checkbox"/> Yes ( <a href="#">Fill out Board Appearance Request</a> ) <input checked="" type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b>	
<b>10) Describe the issue and action that should be addressed:</b>  <b>John Anderson will report on his discussions with the Podiatry Affiliated Credentialing Board.</b>			
<b>11) Authorization</b>			
<b>Karen Rude-Evans</b>		<b>August 6, 2013</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	
<b>Directions for including supporting documents:</b> 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.			

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

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b>  <b>Karen Rude-Evans, Bureau Assistant, on behalf of Executive Director Tom Ryan</b>		<b>2) Date When Request Submitted:</b>  <b>8/6/2013</b> <small>Items will be considered late if submitted after 4:30 p.m. and less than:</small> <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>	
<b>3) Name of Board, Committee, Council, Sections:</b>  <b>Massage Therapy and Bodywork Therapy Affiliated Credentialing Board</b>			
<b>4) Meeting Date:</b>  <b>August 13, 2013</b>	<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> <b>Federation of State Massage Therapy Boards 2013 Annual Meeting</b>	
<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?</b>  <input type="checkbox"/> Yes ( <a href="#">Fill out Board Appearance Request</a> ) <input checked="" type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b>	
<b>10) Describe the issue and action that should be addressed:</b>  <b>Appoint a member of the Board to represent the Board at the FSMTB 2013 Annual Meeting, October 10-13, 2013, Baltimore, MD</b>			
<b>11) Authorization</b>			
<b>Karen Rude-Evans</b>		<b>August 6, 2013</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	
<b>Directions for including supporting documents:</b> 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.			



CONTACT US |

SUPPORTING THE MISSION OF PUBLIC PROTECTION

Alabama Board of Massage Therapy • Arizona State Board of Massage Therapy • Arkansas State Board of Massage Therapy - California

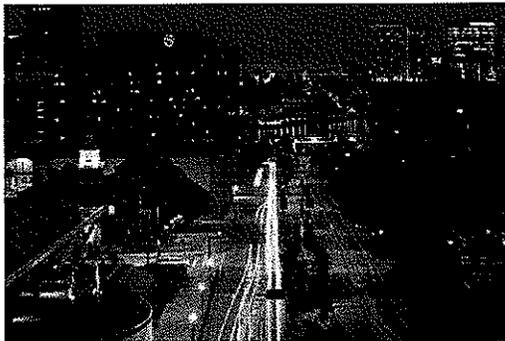
About FSMTB	Member Boards	FSMTB Board of Directors	MBLEx	Forms and Publications	License Renewal
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THE FEDERATION OF STATE MASSAGE THERAPY BOARDS

Previous Years: »

Member Boards

**2013 FSMTB Annual Meeting  
October 10-12, 2013  
Sheraton Inner Harbor Hotel in Baltimore, Maryland**



Baltimore - the colorful, diverse city that is Maryland's largest city and economic hub, is known for its beautiful harbor; quirky, distinct neighborhoods; unique museums and the world-renowned Johns Hopkins Hospital to the east and the University of Maryland Medical Center to the west. With the rich history the city boasts however, it's amazing that Baltimore hasn't been deemed one of America's greatest historical destinations.

**Hotel address:**  
Sheraton Inner Harbor Hotel  
300 South Charles Street  
Baltimore, Maryland  
Website

While the meeting and conference are geared toward the regulatory community, professional educators and the community at large who support FSMTB activities are welcome to attend.

**Guest Room Reservations:** The room rate for the FSMTB Annual meeting is **\$159 + 15.5% tax**.

**State Board Delegates:** Once you have registered for the conference, FSMTB will secure your accommodations for you. For assistance with travel plans, delegates **MUST** contact Joshua Scott at [jscott@fsmtb.org](mailto:jscott@fsmtb.org).

**State Board Members/Staff who are not Delegates and Other Attendees:** Once you have registered here for the conference, please contact the Sheraton directly at **(410) 962-8300** to make your room reservation. \*Mention FSMTB Annual Meeting.

For additional information, meeting agenda and to register for the annual meeting, please **CLICK HERE**

Newsroom

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Online Application

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Social Media

**Government**  
Relations

**Volunteer For**  
**FSMTB**

**FSMTB Executive Office**  
10801 Mastin Boulevard, Suite 420, Overland Park, KS 66210  
Phone: 913.681.0380 Fax: 913.681.0391 Email: [info@fsmtb.org](mailto:info@fsmtb.org)

**Massage & Bodywork Licensing Exam Office**  
150 4th Avenue North, Suite 800, Nashville, TN 37219  
Phone: 866.962.3926 Email: [mblex@fsmtb.org](mailto:mblex@fsmtb.org)



# FSMTB

FEDERATION OF STATE  
MASSAGE THERAPY BOARDS

## Preliminary 2013 Annual Meeting Agenda

### *Dedication to Public Protection*

#### **Thursday**

October 10, 2013

6:00 – 8:00 PM                      Welcome Reception  
Early Registration

#### **Friday**

October 11, 2013

7:30 – 8:45 AM                      Registration  
Breakfast

9:00 AM                                **Opening Session**  
Welcome  
Annual Meeting Procedures - *Parliamentarian*

9:15 AM                                **President's Report**  
Year In Review  
Strategic Plan for Supporting State Licensing Boards and Agencies

9:45 AM                                **Finance Report**

10:00 AM                               **Policy Part I**  
Proposed Bylaws Amendments

11:00 AM                               BREAK

11:20 AM                               **Presentation of Slate of Candidates for Board of Directors Positions**

11:30 AM                               **Entry Level Analysis Project**

12:30 PM                               LUNCH

1:30 PM                                **Model Practice Act**

1:45 PM                                **Regulatory Refresher**  
Past Licensee Activities  
Good Moral Character  
Citizenship Status  
Americans With Disabilities Act

3:10 PM                                BREAK

3:30 PM                                **Member Board Forum**  
Delegate Reports from State Boards and Agencies  
Membership Dues  
Important Issues for State Licensing Boards and Agencies  
Member Requests

5:30 PM                                Daily Recap and Recess



# FSMTB

FEDERATION OF STATE  
MASSAGE THERAPY BOARDS

## Saturday

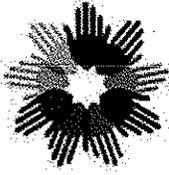
October 12, 2013

7:30 – 9:00 AM	BREAKFAST
9:00 AM	Reconvene and Welcome
9:10 AM	<b>Policy Part II</b> Bylaws Amendments
9:30 AM	<b>License Renewal</b> Ethics and Professional Practice Professional Development Activities and Continuing Education License Renewal Standards
11:00 AM	BREAK
11:20 AM	<b>Message &amp; Bodywork Licensing Examination</b> MBLEx Annual Report Fraudulent Licensing Examination Applications Licensing Examination Security
12:15 PM	<b>Board of Directors Candidate Comments</b>
12:30 PM	LUNCH
1:30 PM	Election Process Advisory, Roll Call and Election for Board of Directors
1:45 PM	<b>Massage Therapy Licensing Database</b>
2:15 PM	<b>Government Relations Panels</b>
3:45 PM	BREAK
4:05 PM	Election Results 2013 Nominating Committee Elections
4:30 PM	Volunteer Recognition
4:50 PM	Announce Nominating Committee Election Results
4:55 PM	FSMTB 2014 Annual Meeting in Tucson, Arizona 2015 Annual Meeting Location Announced
5:00 PM	Adjourn

## Sunday

October 13, 2013

9:00 – Noon	<b>FSMTB Board of Directors Meeting</b> Welcome new board members Election of officers Schedule Orientation Schedule future Board meetings
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**FSMTB**  
FEDERATION OF STATE  
MASSAGE THERAPY BOARDS

OCTOBER 10-12, 2013  
BALTIMORE, MARYLAND



## 2013 Annual Meeting October 10 - 12, 2013 *Baltimore, Maryland*

### MEETING AGENDA

#### **FSMTB 2013 Annual Meeting**

Thursday, October 10, 2013 - Saturday, October 12, 2013

#### **Sheraton Inner Harbor Hotel**

300 South Charles Street  
Baltimore, Maryland 21201  
United States

#### **HOST HOTEL**

The host hotel for this meeting is the Sheraton Inner Harbor Hotel.

Map and Location

Onsite Dining Options

#### **GUEST ROOM RESERVATIONS**

The room rate for the FSMTB Annual meeting is **\$159 + 15.5% tax**.

**\*\*The cut-off for reservations is September 2, 2013.**

**State Board Delegates:** Once you have registered here for the conference, FSMTB will secure your accommodations for you. For assistance with travel plans, delegates **must** contact **Joshua Scott** at [jscott@fsmtb.org](mailto:jscott@fsmtb.org).

**State Board Members/Staff Who are not Delegates and Other Attendees:** Once you have registered here for the conference, please contact the Sheraton directly at **(410) 962-8300** to make your room

reservation. *\*Mention FSMTB Annual Meeting.*

**TRANSPORTATION**

Click [HERE](#) for an overview of your transportation options to get to/from the hotel and Baltimore Washington International airport (BWI) and other area airports.

**PARKING**

Covered Self-Parking: \$27.00/day and Valet: \$33.00/day

**WEATHER**

Check the [weather](#) before you go!

*For information regarding the conference, please contact FSMTB - Mary O'Reilly at [moreilly@fsmtb.org](mailto:moreilly@fsmtb.org) or 913.681.0380.*

[Email Us](#)

[View or Change Your Existing Registration](#)

**Start Your Registration**

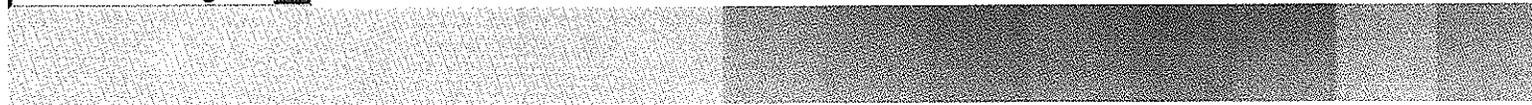
\* Email Address:

- \* Select registration type:
- State Board Delegate
  - State Board Members/Staff Who are not Delegates: \$250.00
  - All Other Attendees: \$350.00
  - FSMTB Administrative Staff

You can also register a group. [Learn More](#)

**Description**

This is the 2013 Annual Meeting of 



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

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b>  Shawn Leatherwood		<b>2) Date When Request Submitted:</b> July 19, 2013 <small>Items will be considered late if submitted after 4:30 p.m. and less than:</small> <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>	
<b>3) Name of Board, Committee, Council, Sections:</b> Massage Therapy and Bodywork Therapy Affiliated Credentialing Board			
<b>4) Meeting Date:</b> August 13, 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> Public Hearing for MTBT 1.01 Temp. Licensure and continuing education	
<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> <input type="checkbox"/> Yes by 10:00 A.M. <small>(name)</small> <input type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b> N/A.	
<b>10) Describe the issue and action that should be addressed:</b>  The Board will conduct a public hearing concerning MTBT 1.01 relating to temporary licensure and continuing education			
<b>11) Authorization</b>			
Shawn Leatherwood		July 19, 2013	
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	
<b>Directions for including supporting documents:</b> <ol style="list-style-type: none"> <li>1. This form should be attached to any documents submitted to the agenda.</li> <li>2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director.</li> <li>3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.</li> </ol>			

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 : MASSAGE 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 repeal MTBT 2.05 and (Note); to amend MTBT 1.01, MTBT 2.01 (title), MTBT 2.03 (title), (1) (a) and (c), MTBT 3.01 (1), MTBT 3.01 (5) (b), MTBT 4.01 (title) (intro.), MTBT 4.02 (title) (intro.) (1) and (3), MTBT 4.03, MTBT 4.04 (1)(a), MTBT 4.04 (1) (c), (2) (a) and (b), MTBT 5.01 (9), (16), (17), (18),(19), (20), (27), (28), (32), MTBT 5.02 (1), (2) (b), (2) (c), (3) and (4);to repeal and recreate MTBT 1.02; to create MTBT 6.01, MTBT 6.02, MTBT 7.01, MTBT 7.02, and MTBT 7.03, relating to temporary licensure and continuing education.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:**

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

**Statutory authority:**

Sections 15.085 (5) (b), 460.04 (2), 460.10 (1), Stats., and 2009 Wisconsin ACT 355

**Explanation of agency authority:**

Affiliated credentialing boards are generally empowered by the legislature pursuant to s. 15.085 (5) (b), Stats., to promulgate rules that govern their profession. The Massage Therapy and Bodywork Therapy Affiliated Credentialing Board has recently been empowered with the passage of 2009 Wisconsin Act 355, to promulgate rules concerning temporary licenses and continuing education. 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 ch. MTBT 1 to 5

**Plain language analysis:**

2009 Wisconsin Act 355 transformed the Massage Therapy and Bodywork Therapy Council into the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board. (Board) The newly formed board, under the oversight of the Medical Examining Board, was granted rule making authority by the legislature as well as the authority to grant licenses instead of certificates. This 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 and bodyworker with bodywork therapist.

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

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

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

SECTION 5. repeals s. MTBT 2.05 and the corresponding note.

SECTIONS 6. to 11 primarily replaces department with board and certificate with license.

SECTION 12. creates provisions regarding temporary licensure.

SECTION 13. 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). The practice act defines such terms as “massage therapist,” and “practice of massage therapy.” The terms bodywork or bodywork therapist 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 bodywork, 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 ensures the accuracy, integrity, objectivity and consistency of data were used in preparing the proposed rule and related analysis. The proposed rule brings current administrative code regarding massage therapy and bodywork therapy into compliance with 2009 Wisconsin Act 355. No other factual data or analytical methodologies were used.

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

This proposed rule was posted on the Department's website for 14 days to solicit comments from small business. No comments were received.

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis are attached.

**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 [Gregg.Gasper@wisconsin.gov](mailto:Gregg.Gasper@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](mailto: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](mailto:Shancethea.L Leatherwood@wisconsin.gov). Comments must be received on or before August 13, 2013, 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 ~~bodyworkers~~ bodywork therapists.

SECTION 2. MTBT 1.02 is repealed and recreated to read:

**MTBT 1.02 Definitions.** As used in chs. MTBT 1 to 7, 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 simulates 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 face-to-face 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 face-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 client's 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 bodywork therapy.

(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

(18) "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 therapy and bodywork 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 and all of the following occur:

(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 bodywork therapy intern

(19) "Massage therapy or bodywork therapy" 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.

(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 therapy and bodywork therapy

(c) direct and indirect contact with any person's intimate parts unless necessary for legitimate massage and bodywork therapy

(d) prostitution

(e) materials depicting 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 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 and (Note) are repealed.

SECTION 6. MTBT 3.01(1) and (5) (b) are amended to read:

(1) An individual applying for a ~~certificate license~~ as a massage therapist or ~~bodyworker~~ bodywork therapist who has not graduated from a school of massage therapy or bodywork therapy 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 therapy required by s. MTBT 2.01 (3) (b).

SECTION 7. MTBT 4.01 (title) and (intro.) are amended to read:

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

SECTION 8. 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 9. MTBT 4.02 (5) is created to read:

MTBT 4.02 (5) Beginning with the biennial registration period commencing on March 1, 2015, unless granted a waiver under s. MTBT 7.02 (4), each licensee is required to complete 24 hours of continuing education prior to renewal of a license to practice as a massage therapist or bodywork therapist, except that between initial licensure and the first renewal period thereafter, a new licensee shall not be required to comply with the continuing education requirements for the first renewal of a license.

SECTION 10. MTBT 4.03 is 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 bodywork therapist until his or her certificate license is renewed under s. MTBT 4.04.

SECTION 11. MTBT 4.04 (1) (a), (1) (c), (2) (a) and (b) are amended to read:

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.

MTBT 4.04 (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 12. MTBT 5.01 (9), (16), (17), (18), (19) (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 therapy 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 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 therapy 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~~ bodywork therapist" or "certified-licensed massage therapist" or "certified licensed ~~bodyworker~~ bodywork therapist." A telephone directory listing for which no additional advertising charge is made is not considered advertising.

SECTION 13. MTBT 5.02 (1), (2) (b), (2) (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 14. 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 a temporary license.

(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 bodywork 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 ensure 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 par. (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 board or of the medical examining board.

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

SECTION 15. 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) Beginning with the biennial registration period commencing on March 1, 2015, unless granted a waiver under s. MTBT 7.02 (4), each licensee is required to complete 24 hours of continuing education prior to renewal of a license to practice as a massage therapist or bodywork therapist, except that between initial licensure and the first renewal period thereafter, a new licensee shall not be required to comply with the continuing education requirements for the first renewal of a license.

(2) Acceptable continuing education must address topics within the scope of practice of massage therapy and bodywork therapy or related business practices. The topic of at least 2 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 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 bodywork 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 bodywork 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.

SECTION 16. EFFECTIVE DATE. 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.

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(END OF TEXT OF RULE)  
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Dated \_\_\_\_\_

Agency \_\_\_\_\_

Chairperson  
Massage Therapy and Bodywork Therapy  
Affiliated Credentialing Board

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

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b>  Shawn Leatherwood		<b>2) Date When Request Submitted:</b> July 19, 2013 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>	
<b>3) Name of Board, Committee, Council, Sections:</b> Massage Therapy and Bodywork Therapy Affiliated Credentialing Board			
<b>4) Meeting Date:</b> August 13, 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> Clearinghouse Report Review for MTBT 1.01 Temp. Licensure and continuing education	
<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> <input type="checkbox"/> Yes by _____ (name) <input type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b> N/A	
<b>10) Describe the issue and action that should be addressed:</b>  The Board will review the Clearinghouse report and accept or reject the clearinghouse's recommendations.  The Board will discuss the public comments that have been received.  The Board will approve the proposed rule draft as amended for filling with the governor's office and the legislature through a designated member of the Board.			
<b>11) Authorization</b>			
Shawn Leatherwood		July 19, 2013	
<b>Signature of person making this request</b>		<b>Date</b>	
<b>Supervisor (if required)</b>		<b>Date</b>	
<b>Bureau Director signature (indicates approval to add post agenda deadline item to agenda)</b>		<b>Date</b>	
<b>Directions for including supporting documents:</b> 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 Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

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**OVERVIEW OF  
DPS REGULATORY  
STRUCTURE**

## The Department and the Boards

The **Department** of Safety and Professional Services (Department) and the attached Boards are distinct legal entities with different functions, working toward the same goal.

The Department was created to perform a wide range of duties, including providing legal expertise and administrative support to the Boards. Legal expertise is provided to the Boards in three ways: by a legal counsel, who has a fiduciary responsibility to provide legal advice to the board in exercising its duties and responsibilities; by the assignment of an administrative law judge when disciplinary action goes to a formal hearing; and by the prosecutor of each case opened for investigation.

The Department provides administrative support by the assignment of an Executive Director, Bureau Assistant and Rules Coordinator to each board. These staff members manage board meeting agendas, handle a range of board related business and serve as a liaison between the board and the Department.

The Division of Legal Services and Compliance (**DLSC**) is the part of the Department tasked with the responsibility of enforcing licensee compliance with State laws and professional codes. DLSC is the physical extension of Boards' authority in disciplining misconduct. DLSC works collaboratively as the Board's partner in ensuring that fair and just discipline is imposed on violators of professional rules in a way that accomplishes the State's goals in protection, deterrence and rehabilitation.

**Boards** are established to perform many functions, including setting entry and practice standards through rule-making and regulating the professions through disciplinary actions. Within disciplinary actions, individual Board members may have two roles: the judicial role of a final decision-maker and the consultant role of case advisor.

As a consultant, the case advisor of a particular case assists DLSC's prosecuting attorney with professional expertise on the licensee's misconduct and necessary discipline to bring the licensee into compliance. If the attorney and licensee reach an informal resolution, the Board as a whole (including the case advisor of that case) will hear relevant facts, as the judge, and determine whether the agreed-upon resolution is sufficient. The consulting and judicial roles must be kept distinct and separate. To blur the line between the roles violates due process. Many of the safeguards and specific prohibitions are discussed below.

### Common terms/definitions

- Respondent
- Licensee

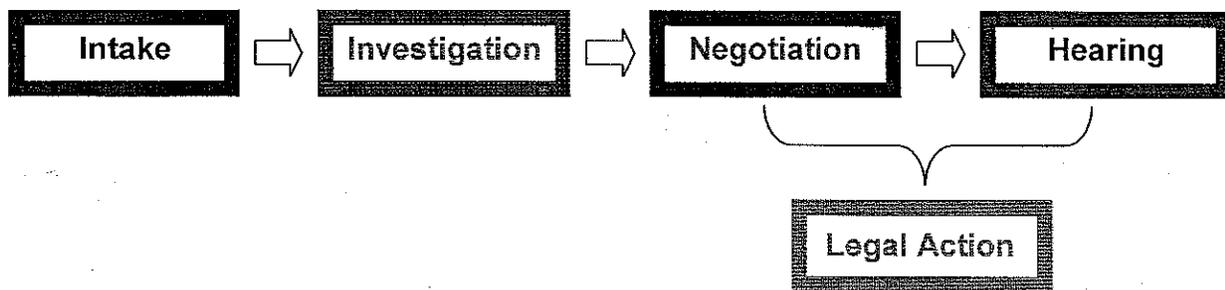
## The Disciplinary Process

The Department operates on a complaint driven process, meaning all compliance actions are results of submitted complaints against alleged licensee misconduct, not from the Department's active search for misconduct. The Complaint itself may come from a variety of sources, such as consumers, professionals, or other cases that alerted us to misconduct of another licensee.

The State of Wisconsin recognizes and respects an individual's interest in earning a living. However, the individual's interest must be balanced with the public's interest in obtaining services that are safe and effective. In disciplining licensees, the State has three goals:

- 1. Protect the public;**
- 2. Deter the conduct; and**
- 3. Rehabilitate the respondent.**

The State does not punish licensees for misconduct, but provides them with the necessary tools and opportunities to regain compliance. This protects both the public's and the individual's interests.



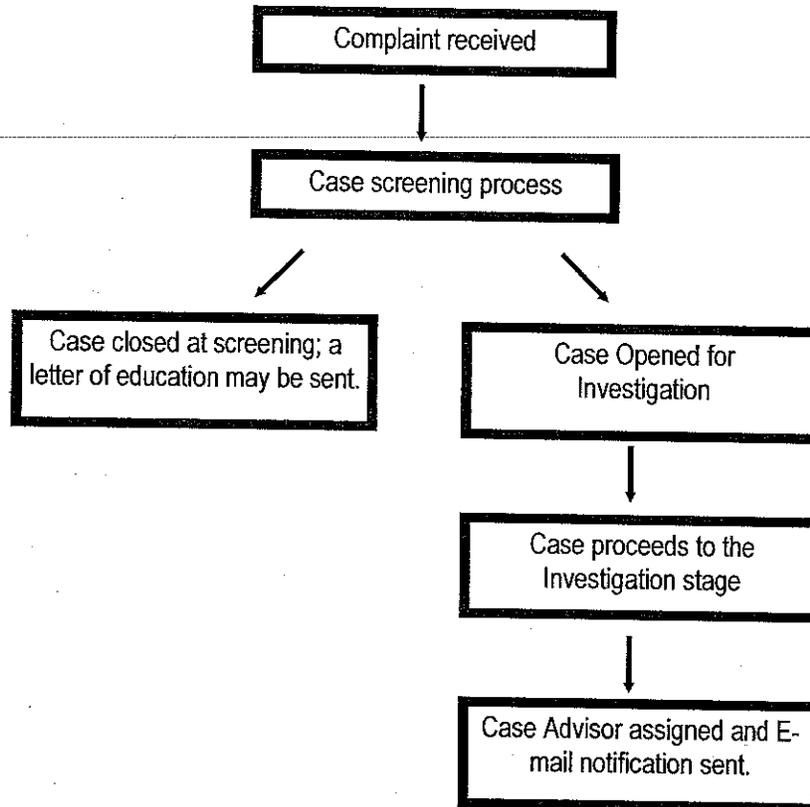
### Intake Process

The Intake stage is the first stage in the case handling process.

As a complaint is received by the Department, Intake Staff collect relevant information (such as records, follow-up from the Complainant if the information is incomplete or an initial response from the accused licensee) and send the complaint to the Screening Panel, which may consist of several Board members and a DLSC attorney. The Screening panel, at a predetermined time, will confer and determine whether, from the information provided, a violation may have occurred. The panel may consider many factors, such as the seriousness of the allegations, the harm or threat of harm, whether the dispute is already resolved, and whether the matter is primarily a civil or private dispute. If a complaint does not warrant further action, it is closed under appropriate codes depending on the facts of the case, and a letter is sent out to the parties. If a complaint does have merit, or require further investigation, the case is opened and goes on to the Investigation stage.

The Intake stage is especially important as a gatekeeper against trivial complaints and cases without proof. This stage protects licensed professionals from meritless attacks on their

reputation and livelihood. In certain circumstances, a licensee may be close to violating a professional standard, but did not violate it. Through the Screening process, the Panel may choose to issue a letter of education that warns the licensee of the risks of his conduct to prevent future violations.



### Case Assigning

When a case is opened, a case advisor will be assigned, along with an investigator, paralegal and attorney. The advisor can be assigned to a particular case by:

1. The screening panel - initial assignment made by screening panel during screening.
2. DLSC staff - when a conflict is identified or replacement for a previous case advisor is necessary, another case advisor will be assigned.
3. Expertise - in some cases the case advisor is assigned (either by the screening panel or DLSC) based on his or her expertise in a particular area relevant to the case. In cases where professional expertise is not required, a Public Member may be assigned as the advisor.
4. General rotation - case advisor assignments are made generally based on a rotation system so that the caseload is distributed as evenly as possible among board members.

5. Geographical area – case advisor is assigned based on *not* being in the same geographical area as Respondent [Exception: Real Estate Appraisers are assigned by geographical area due to the importance of local area knowledge].

Once assigned, the advisor will receive an email or letter from the Intake staff with notification of the assignment. The notification will include the case number, name of the Complainant, Respondent, original complaint and all supplemental information obtained since the complaint was received. At this time, the assigned advisor should review the materials and determine if there is any conflict of interest or bias that would require reassignment. If a conflict does exist, or if the advisor is uncertain if one exists, the advisor should contact DLSC staff immediately.

### Forms of “Discipline”

It is important to understand and remember that almost all professionals hold a certain level of pride in their professional career. The State does not regulate professionals to all operate at the highest standard possible, which is a system better controlled by the market and individual professional’s reputation. Instead, we regulate professionals to operate *above the minimum standard*. At times, licensees may be careless, incompetent or reckless. As the embodiment of the profession, Boards must make sure that the imposed discipline is appropriate to address the misconduct when the entire circumstance is taken into account. In addition to formal discipline, Boards also have non-disciplinary options that may more appropriately correct the licensee’s failure. The case must always be reviewed and determined case-by-case, taking into account all facts specific to that particular case.

### Forms of Informal Discipline: Useful Non-Disciplinary Tools

1. Case Closure: Prosecutorial Discretion
  - a. Sometimes, the simple act of opening a case against the licensee is enough to alert the licensee to improve his practices.
  - b. Some examples of situations:
    - i. The incident in question was not seriously harmful to the public;
    - ii. Compliance with the statutes or rules has been gained;
    - iii. The expenditure of resources to pursue the violation greatly exceeds the value to the public in pursuing the matter; or
    - iv. The Board has taken action in regard to the licensee that addressed the conduct and no further action is necessary.
2. Remedial Education
  - a. Requiring licensee to complete education that addresses his failure through a Board Order that does not include specific finding of a violation.
  - b. Remedial education allows the licensee to gain compliance with less embarrassment to his or her professional pride.
3. Administrative Warning:
  - a. Requires that the misconduct is a minor violation, and the misconduct is a first occurrence for the licensee (Wis. Admin. Code ch. SPS 8)

- b. The fact that the warning was issued is a public record, but the content of the warning is private and confidential.
  - c. Licensee may request review of the warning within 20 days and make an appearance before the Board. If a warning is appealed, the Board may re-examine the case and request DLSC to pursue a different resolution, if warranted.
4. The Professional Assistance Procedure (PAP):
- a. PAP is an alternative to formal disciplinary process for an impaired professional; it encourages individuals to seek help for their impairment in a non-disciplinary environment.
  - b. If an individual is released from PAP for failure to comply with the program, the Department Monitor at that time may refer the individual to DLSC for formal disciplinary procedures, if appropriate.

### Forms of Formal Discipline

If the licensee's misconduct cannot be corrected with a non-disciplinary option, or if the misconduct is common enough that all licensees within the profession must be alerted to its substandard nature, formal discipline may be warranted.

1. Reprimand – to “publicly warn the holder of a credential” (Wis. Stat. § 440.01(1)(e))
2. Limited License – to “impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder’s practice” (Wis. Stat. § 440.01(1)(d))
  - a. A credential can be limited in many ways, allowing Boards to creatively and most appropriately address the credential holder’s deficiency. For example:
    - i. Education – can the misconduct be resolved by re-education?
    - ii. Testing – can the misconduct be resolved by re-testing?
    - iii. Assessment or Treatment – can the licensee practice safely and competently if AODA impairment is treated?
    - iv. Supervision, Work Reports or Auditing
    - v. Other options by limiting:
      1. Practice scope
      2. Geographic practice area
      3. Types of procedures
      4. Types of clients
  - b. Time period – can be permanent or for a set period of time (e.g. until education is completed, testing passed, or licensee is deemed safe to practice).
  - c. Measurability – when determining the appropriate limitation, please choose limitations that are clearly measurable and enforceable. Establish guidelines on how the licensee can show his or her compliance with the Board’s intended restrictions.
3. Suspension – to “completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential” (Wis. Stat. § 440.01(h))
  - a. Suspension should only be used when the conduct was egregious, as it is a form of deterrence rather than rehabilitation.

- b. Suspensions can be imposed by length of time, completion of other Board requirements, or indefinitely, requiring a successful petition to the Board to lift the suspension.
4. Revocation or Voluntary Surrender – to revoke is to “completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential” (Wis. Stat. § 440.01(f))
  - a. Revocation is only appropriate for the most serious conduct
  - b. Not all revocations are permanent: licensees may re-apply (but it is up to the Board whether a license will be granted) unless the Order specifically prohibits or limits it.
  - c. Voluntary surrender is essentially identical to a revocation, except that it causes less embarrassment.
5. Voluntary Surrender or Retirement without a Finding of Violation
  - a. There are instances where, regardless of the egregiousness of the conduct, the licensee wishes to stop practicing.
  - b. In these circumstances, the licensee can retire or surrender his or her license without a formal finding of violation.
6. Forfeiture or Citations - some boards have the ability to impose monetary forfeitures or citations, which serve a deterrent function rather than rehabilitative.

The legal team assigned to a case will always assist the Case Advisor in determining the most appropriate discipline. The legal team may have additional information such as historical data and recent trend or change in discipline for similar conduct. Also, because the legal team has direct interactions with respondents, the team may have important insight as to what may be the most efficient and effective way to bring a particular respondent into compliance.

### Summary Suspensions

Summary suspension is a special tool that allows us to suspend a licensee without a stipulated agreement and before a full hearing. Because this tool circumvents certain due process, it can be used only when the facts establish that the licensee has engaged in and/or is likely to engage in conduct that threatens the health, safety or welfare of the public, which requires emergency suspension.

If a Board uses summary suspension, a formal complaint must be filed shortly after and a hearing held promptly. It is critical that all evidence is ready for the hearing.

Obtaining a summary suspension against a licensee does not necessarily mean that licensee has indeed engaged in misconduct; it only means that we have enough reason to believe he did, **AND** that he will continue to do so, placing the public in danger. Without evidence that the dangerous conduct will continue unless the licensee is suspended, summary suspension should not be granted.

### Informal Settlement Conferences

Another special tool ...

## Costs

The Department has the authority to recoup time and money spent on a case if discipline is ultimately imposed. Costs include recovery for investigator, paralegal and attorney time, Administrative Law Judge's time if the matter goes to hearing, witness fees, postage, costs paid out for certified copies of records, court reporter fees, etc.

## Case Advisor Role

The board member, while acting as a case advisor, has the responsibility to:

1. review the case materials;
2. identify additional materials required in order to make a determination;
3. provide expert and technical advice and assistance to the DLSC staff;
4. assist the attorney in determining the merits of the case;
5. assist the attorney in determining whether a violation occurred;
6. assist the attorney in determining the appropriate discipline if a violation occurred; and
7. assist with finding expert witnesses.

The case advisor is the prosecuting attorney's consultant in determining if a violation occurred, what is the exact nature of that violation, the egregiousness of the violation, and what is necessary to bring the violator back into compliance. While the prosecuting attorney is an expert of the law, without the case advisor's expertise in a particular professional field, the attorney will be unable to adequately determine the facts of the case.

The most important factor in ensuring efficient and effective discipline of a licensee is clear communication between the case advisor and the legal team. With clear direction and expertise, the case advisor can assist the team's investigation and imposition of appropriate discipline. The case advisor and the legal team assigned to a particular case should maintain open communication through telephone, email, fax or regular mail. Complex issues may require telephone discussions. The legal team would always be happy to set up a phone conference at the case advisor's convenience. Communication between the case advisor and the legal team is an on-going process, as the case advisor's expertise may be needed each time new information is discovered.

The case advisor should provide the legal team with an opinion or request for additional information within **two (2) weeks** of receiving the investigative materials (**3 days for appraisers**). Timeliness is critical, allowing the legal team to conduct additional investigation or collect evidence as needed. Licensees also wish to have their cases resolved as soon as possible, as any case open against their license may jeopardize their employment or professional pride and reputation. If a case advisor knows there may be a delay, or if an unexpected event occurs, please contact your legal team immediately and we can set a new date for completion or discuss case transfer options.

The case advisor's opinion/communication should be clear and answer each of these questions: is additional information required? Did a violation occur? What is the violation? What would a *minimally competent* licensee have done in the same circumstance? How egregious is this conduct? What is the root issue? What would adequately address this issue and bring the licensee into compliance?

Please keep in mind that the violation often is not as clear to the legal team as to someone within the particular profession. However, the case advisor's analysis should serve to clear up any confusion or lack of understanding.

Being privy to private (oftentimes unproven) information, the case advisor has a duty to maintain confidentiality. Pending cases cannot be discussed with other board members, colleagues or friends.

#### Curbside consults with other experts

Occasionally, an issue may arise that is outside the case advisor's specialty or area of expertise. In certain circumstances, the advisor may consult with a colleague in that particular field or specialty in order to form an opinion on the violation and appropriate discipline. However, there are two prohibitions:

1. consultations may not be with another board member
2. do not disclose any identifying information specific to the case

If other questions or concerns arise with who may be consulted, the case advisor should discuss those concerns with the legal team assigned to that case.

#### Ex-Parte Communication

As both a board member (who act as the decision maker or "judge") and a case advisor (who act as the expert witness), it is essential that all decisions or recommendations are made with objectivity. The advisor must protect against conflicts of interest, as well as the *perception* of a conflict. As such, the board member/advisor must not communicate with individuals involved in a pending case (including complainant(s), respondent(s) and witness(es)).

If a party of a case (whether it's assigned to you or not) attempts to contact you, please advise him or her that you cannot discuss the case with them, and inform your legal team immediately.

#### Case Advisor Participation in Board Deliberations

When a proposed resolution (whether as a result of a stipulated agreement by the respondent or a proposed decision by the Administrative Law Judge) is before the board for consideration, the board member that served as advisor for the case may or may not be a part of the deliberation, depending on what type of case it is:

- Proposed stipulations, administrative warnings or case closures – the case advisor may participate in discussions and may vote on the matter. The advisor should be prepared to speak in support of the agreed upon resolution, discipline or closure. The advisor can always contact the case’s attorney prior to the meeting in order to refresh his or her memory on why a particular discipline is the most appropriate one.
- Proposed decision following an evidentiary hearing – the case advisor may not participate in discussions. The advisor likely has access to information that was not presented or admitted as evidence during the hearing, and it would be unfair and unjust to the licensee for the advisor to report on conclusions or information that was not proven at the hearing.

### Disposal of Materials

All materials you receive during the course of the case investigation and disposition are confidential. They should be kept in a secure location and not shared with others. When the case is closed, you may destroy all copies or return them to the Division of Legal Services and Compliance for disposal.

*Caution: Please make certain that none of the materials to be destroyed are originals. If they are, please return these items to the Division of Legal Services and Compliance.*

### PURPOSE, MISSION AND CORE VALUES

Purpose: The purpose of the Department of Safety and Professional Services is to ensure:

- The safety of consumers of licensed professional services;
- Licensure to competent professionals;
- Compliance with professional and industry standards; and
- Safety in the construction and use of public and private buildings.

DLSC promotes safety through complaint intake and the investigation, inspection, audit and discipline of regulated professionals and businesses. We provide legal services to professional boards, monitor order compliance and administer a program for impaired professionals. Our stakeholders are the public, boards, regulated professionals/businesses and Agency divisions.

Mission: We provide legal services to ensure consumer protection and we courteously assist professionals in achieving compliance with professional standards. We are responsive and respectful to all stakeholders and fiscally responsible to the taxpayers, boards and licensed professionals who bear our financial burden.

Core Values: Our core values are:

- **Integrity:** We treat each other and our stakeholders with courtesy, ensuring decency, honesty and fairness in all of our efforts and communications. We competently and enthusiastically provide our services in a fair and fiscally prudent manner.

- **Accountability:** We take personal responsibility for our results through objective standards, which help us to deliver measureable results within expected timelines.
  - **Teamwork:** We foster a winning environment and healthy culture by taking pride in our work, displaying a sense of urgency in our mission and elevating Team success above self. We ensure success through strong relationships with our stakeholders.
  - **Service:** We provide exemplary customer-service and value to our stakeholders through effectively responding to their needs in a timely and courteous manner.
- 
- **Continuous Improvement:** We embrace innovative solutions for the continuous improvement of services and efficiency, and we demand an environment of operational excellence and a culture of positive enthusiasm.

### Conclusion

We are here to assist case advisors and board members every step of the way to accomplish our joint mission. We thank you for your voluntary service to the State of Wisconsin and your commitment to your profession.

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