



**MASSAGE THERAPY AND BODYWORK THERAPY
AFFILIATED CREDENTIALING BOARD
Teleconference/Phone Meeting
Room 121B, 1400 East Washington Avenue, Madison
Contact: Tom Ryan (608) 266-2112
October 24, 2014**

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 record of the actions of the Board.

AGENDA

10:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

- A) Adoption of Agenda (1-3)**
- B) Welcome New Members
- C) Approval of Minutes of July 22, 2014 (4-5)**
- D) Administrative Updates**
 - 1) Appointments/Reappointments/Confirmations
 - 2) Staff Updates
 - 3) Wis. Stat. s 15.085 (3)(b) – Biannual Meeting with the Medical Examining Board **(6)**
- E) Legislative/Administrative Rule Matters:**
 - 1) Current and Future Rule Making and Legislative Initiatives
 - 2) Administrative Rules Report
 - 3) Unprofessional Conduct Rules CR 14-041 **(7-20)**
- F) Federation of State Massage Therapy Boards 2014 Annual Meeting Report**
- G) Presentation of Motion to Authorize Department of Safety and Professional Services Chief Legal Counsel to Serve as Final Decision-Maker in the Matter of Case Number 14 MAB 004, Cynthia E. Licht**
 - 1) **Appearance** – Sandra Nowack, DSPS Attorney
- H) Informational Items

- I) Items Added After Preparation of Agenda:
 - 1) Introductions, Announcements and Recognition
 - 2) Administrative Updates
 - 3) Education and Examination Matters
 - 4) Credentialing Matters
 - 5) Practice Matters
 - 6) Legislation/Administrative Rule Matters
 - 7) Liaison Report(s)
 - 8) Informational Item(s)
 - 9) Disciplinary Matters
 - 10) Presentations of Petition(s) for Summary Suspension
 - 11) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
 - 12) Presentation of Proposed Decisions
 - 13) Presentation of Interim Order(s)
 - 14) Petitions for Re-Hearing
 - 15) Petitions for Assessments
 - 16) Petitions to Vacate Order(s)
 - 17) Petitions for Designation of Hearing Examiner
 - 18) Requests for Disciplinary Proceeding Presentations
 - 19) Motions
 - 20) Petitions
 - 21) Appearances from Requests Received or Renewed
 - 22) Speaking Engagement(s), Travel, or Public Relation Request(s)

- J) Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (§ 19.85 (1) (a), Stats.); to consider licensure or certification of individuals (§ 19.85 (1) (b), Stats.); to consider closing disciplinary investigations with administrative warnings (§ 19.85 (1) (b), Stats. and § 440.205, Stats.); to consider individual histories or disciplinary data (§ 19.85 (1) (f), Stats.); and to confer with legal counsel (§ 19.85 (1) (g), Stats.).

- K) **Motion to Authorize the Department of Safety and Professional Services Chief Legal Counsel to Serve as Final Decision-Maker in the Matter of Case Number 14 MAB 004, Cynthia E. Licht (21-24)**

- L) **Presentation and Deliberation on Proposed Stipulations, Final Decisions and Orders by the Division of Legal Services and Compliance (DLSC)**
 - 1) James S. Storm – 13 MTB 001 **(25-30)**
 - 2) Andrew F. Charland – 13 MAB 004 **(31-37)**

- M) **Presentation and Deliberation on Administrative Warnings**
 - 1) 13 MAB 011 (T.R.F.) **(38-39)**

- N) **Case Status Report (40)**

- O) **Case Closing(s)**
 - 1) 13 MAB 009 (P.J.B.) **(41-43)**

- P) Deliberation of Items Added After Preparation of the Agenda
- 1) Education and Examination Matters
 - 2) Credentialing Matters
 - 3) Disciplinary Matters
 - 4) Monitoring Matters
 - 5) Professional Assistance Procedure (PAP) Matters
 - 6) Petition(s) for Summary Suspensions
 - 7) Proposed Stipulations, Final Decisions and Orders
 - 8) Administrative Warnings
 - 9) Proposed Decisions
 - 10) Matters Relating to Costs
 - 11) Complaints
 - 12) Case Closings
 - 13) Case Status Report
 - 14) Petition(s) for Extension of Time
 - 15) Proposed Interim Orders
 - 16) Petitions for Assessments and Evaluations
 - 17) Petitions to Vacate Orders
 - 18) Remedial Education Cases
 - 19) Motions
 - 20) Petitions for Re-Hearing
 - 21) Appearances from Requests Received or Renewed
- Q) Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

- R) Open Session Items Noticed Above not Completed in the Initial Open Session
- S) Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate
- T) Delegation of Ratification of Examination Results and Ratification of Licenses and Certificates

ADJOURNMENT

**MASSAGE THERAPY AND BODYWORK THERAPY
AFFILIATED CREDENTIALING BOARD
MEETING MINUTES
July 22, 2014**

PRESENT: John Anderson (GoToMeeting); Elizabeth Krizenesky; Carole Ostendorf (GoToMeeting); Cindy Spitz (GoToMeeting); Barbara Yetter (GoToMeeting)

STAFF: Tom Ryan, Executive Director; Gretchen Mrozinski, Legal Counsel; Karen Rude-Evans, Bureau Assistant

CALL TO ORDER

Elizabeth Krizenesky, Chair, called the meeting to order at 9:01 a.m. A quorum of five (5) members was confirmed.

ADOPTION OF AGENDA

MOTION: Cindy Spitz moved, seconded by Barb Yetter, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES

MOTION: Cindy Spitz moved, seconded by Barb Yetter, to approve the minutes of April 11, 2013 as published. Motion carried unanimously.

MOTION: Carole Ostendorf moved, seconded by John Anderson, to approve the minutes of April 21, 2013 as published. Motion carried unanimously.

LEGISLATIVE/ADMINISTRATIVE RULE MATTERS

Public Hearing - Clearinghouse Rule 14-041 Relating to Unprofessional Conduct

MOTION: Carole Ostendorf moved, seconded by Cindy Spitz, to have Shawn Leatherwood research CDC recommendations for universal precautions of transmission of infectious diseases. Motion carried unanimously.

CLOSED SESSION

MOTION: Carle Ostendorf moved, seconded by John Anderson, to convene to closed session to deliberate on cases following hearing (§ 19.85(1) (a), Stats.); to consider licensure or certification of individuals (§ 19.85 (1) (b), Stats.); to consider closing disciplinary investigations with administrative warnings (§ 19.85 (1) (b), Stats. and § 440.205, Stats.); to consider individual histories or disciplinary data (§ 19.85 (1) (f), Stats.); and to confer with legal counsel (§ 19.85 (1) (g), Stats.). The Chair read the language of the motion aloud for the record. The vote of each member was ascertained by voice vote. Roll Call Vote: John Anderson - yes; Elizabeth Krizenesky - yes; Carole Ostendorf - yes; Cindy Spitz - yes; Barbara Yetter - yes. Motion carried unanimously.

The Board convened into closed session at 10:52 a.m.

RECONVENE TO OPEN SESSION

MOTION: Barb Yetter moved, seconded by Cindy Spitzza, to reconvene in open session at 11:19 a.m. Motion carried unanimously.

REAFFIRM ALL VOTES MADE IN CLOSED SESSION

MOTION: Carole Ostendorf moved, seconded by Barb Yetter, to reaffirm all votes made in closed session. Motion carried unanimously.

PROPOSED STIPULATIONS, FINAL DECISIONS AND ORDERS

MOTION: Cindy Spitzza moved, seconded by John Anderson, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against **John B. Porter, 12 MTB 012**. Motion carried unanimously.

ADMINISTRATIVE WARNING

MOTION: Carole Ostendorf moved, seconded by Betsy Krizenesky, to refrain from issuing the Administrative Warning as currently drafted in the matter of DLSC case number **13 MAB 011(T.R.F.)**. Motion carried unanimously.

CASE CLOSING(S)

MOTION: Barb Yetter moved, seconded by Cindy Spitzza, to close case **13 MAB 003 (R.S.N.) for compliance gained (P2)**. Motion carried unanimously.

RATIFICATION OF LICENSES AND CERTIFICATES

MOTION: Carole Ostendorf moved, seconded by John Anderson, to delegate ratification of examination results to DSPS staff and to ratify all licenses and certificates as issued. Motion carried unanimously.

ADJOURNMENT

MOTION: Cindy Spitzza moved, seconded by Barb Yetter, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 11:29 a.m.

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

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Taylor Thompson, Bureau Assistant, On behalf of Thomas Ryan, Executive Director		2) Date When Request Submitted: 09/22/14	
		Items will be considered late if submitted after 5 p.m. and less than: <ul style="list-style-type: none"> ▪ 8 business days before the meeting for paperless boards ▪ 14 business days before meeting for all others 	
3) Name of Board, Committee, Council, Section: Massage Therapy & Bodywork Therapy Affiliated Credentialing Board			
4) Meeting Date: 10/24/2014	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? Wis. Stat. s 15.085 (3)(b) – Biannual Meeting with the Medical Examining Board	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:			
15.085 Affiliated credentialing boards.			
<u>15.085(3) (3)</u> FREQUENCY OF MEETINGS. <u>15.085(3)(b) (b)</u> The chairperson of an affiliated credentialing board shall meet at least once every 6 months with the examining board to which the affiliated credentialing board is attached to consider all matters of joint interest.			
11) Authorization			
Taylor Thompson		9/22/2014	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

Revised 8/13

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

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Shawn Leatherwood, Admin. Rule Coordinator		2) Date When Request Submitted: September 25, 2014 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 08 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Massage Therapy and Bodywork Therapy Affiliated Credentialing Board			
4) Meeting Date: October 24, 2014	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Legislation and Administrative Rule Matters-Discussion and Consideration • Unprofessional Conduct Rules CR 14-041	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: The Board will discuss the Clearinghouse Report. The Board will review and discuss any outstanding issues related to the current draft of CR 14-041 and recommendations made by DLSC. The Board will authorize the chair to approve of the Legislative Report and the proposed final rule draft of CR 14-041 for submission to the Governor's office and Legislature.			
11) Shawn Leatherwood	Authorization		September 25, 2014
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	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the 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.			



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE 14-041

AN ORDER to renumber MTBT 5.02; to amend MTBT 6.02 (2) (am); to repeal and recreate MTBT 5.01; and to create MTBT 5.02 and 5.04, relating to unprofessional conduct.

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

06-16-2014 RECEIVED BY LEGISLATIVE COUNCIL.

07-08-2014 REPORT SENT TO AGENCY.

SG:CB

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

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

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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CLEARINGHOUSE RULE 14-041

Comments

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

2. Form, Style and Placement in Administrative Code

a. Because s. 1.01 (7) (b), Manual, specifies that substantive provisions should not be included in definitions, the board may wish to clarify the actual prohibition against unprofessional conduct either by additional rule text or by statutory reference.

b. Generally, the organizational style of s. MTBT 5.02 should conform to s. 1.03, Manual.

c. In s. MTBT 5.02 (2), “s.” should be replaced by “ss.”.

d. Throughout s. MTBT 5.02, internal cross-references such as “paragraph” should be reviewed. In particular, it appears the references to “paragraph” often may be more appropriately referred to as “subsection”.

e. Section MTBT 5.02 (11) appears to restrict impairment to use of “habit-forming” drugs. If all drugs causing impairment are to be included, “habit-forming” should be stricken.

f. Section MTBT 5.02 (15) (a) should read “Sexual nature of contact or conduct shall be determined...” to eliminate motivation as an element and specify that the totality of circumstances is to be used in all cases, if that is the intent of the rule. Additionally, in s. MTBT 5.02 (15) (intro.), and elsewhere in the proposed rule, use of “may” and “shall” should be reviewed for consistency and alignment with the board’s intent. Also, s. MTBT 5.02 (15) (d) does not appear to relate to pars. (a) to (c), and should be placed elsewhere in the rule text.

g. Section MTBT 5.02 (19) should enumerate specific standards, if such standards exist.

- h. Section MTBT 5.02 (21) contains two unnecessary commas in the last sentence.
- i. Section MTBT 5.02 (24) should replace “whether” with “whether or not” or “if”, depending upon intent. The phrase “or whether or not” should be replaced by “and whether or not”.
- j. In s. MTBT 5.04, the text regarding audits should be clarified. Does the board intend to conduct audits of all licensees, or a random audit of any licensee?

4. Adequacy of References to Related Statutes, Rules and Forms

- a. Section MTBT 5.02 (1) should specify which sections of ch. 448, Stats., apply to massage therapists and bodywork therapists.
- b. Section MTBT 5.02 (2) is vague with regard to the standard of proof for determining that there has been unprofessional conduct. “Being convicted of” would be a standard of proof of conduct that constitutes a violation. Section MTBT 5.02 (25) contains a similar issue.
- c. In s. MTBT 5.02 (23), the board should provide a cross-reference to the specific rules or statutes relating to continuing education.

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

- a. In the section of the rule analysis titled, “Analysis and supporting documents...”, the section should begin with “These”.
- b. In s. MTBT 5.02 (7), “False” should not be capitalized.
- c. Section MTBT 5.02 (8) and (16) should read “Failing to maintain...” and “Falsifying client records.” for consistency of tense within the section.

STATE OF WISCONSIN
MESSAGE THERAPY AND BODYWORK THERAPY
AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	MESSAGE THERAPY AND
MESSAGE THERAPY AND	:	BODYWORK THERAPY
BODYWORK THERAPY AFFILIATED	:	AFFILIATED CREDENTIALING
CREDENTIALING BOARD	:	BOARD
	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 14-041)

PROPOSED ORDER

An order of the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, to renumber MTBT 5.02; to amend MTBT 6.02 (2) (am); to repeal and recreate MTBT 5.01 and to create MTBT 5.02 and 5.04 relating to unprofessional conduct.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 460.04 (2)(a), 460.14 (2) (a) to (j), Stats.

Statutory authority:

Sections 15.085 (5) (b), 227.11 (2) (a), and 460.04 (2) (a), Stats.

Explanation of agency authority:

Pursuant to ss. 15.085 (5) (b), and 227.11 (2) (a), Stats., the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board (Board) is generally empowered by the legislature to promulgate rules that will provide guidance within the profession and rules that interpret the statutes it enforces or administers. Section 460.04 (2) (a), Stats., specifically empowers the Board to draft rules regarding the professional conduct of licensees practicing massage therapy or bodywork therapy. This proposed rule seeks to carry out this mandate by revising the rules related to unprofessional conduct.

Related statute or rule:

None.

Plain language analysis:

The passage of 2009 Wisconsin Act 355 transformed the Massage Therapy and Bodywork Council into the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board (Board). The Act granted the newly formed Board rule-making authority. Pursuant to that authority, the Board reviewed its unprofessional conduct rules and decided the rules were outdated and needed updating. The modernization of the rules will not result in a significant policy change but rather a further clarification of the ethical goals of the profession.

SECTION 1. creates a section identifying the authority to promulgate the proposed rules.

SECTION 2. renumbers MTBT 5.02.

SECTION 3. modernizes the definition of unprofessional conduct for massage therapist and bodywork therapists.

SECTION 4. creates a provision regarding auditing continuing education requirements.

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

None.

Comparison with rules in adjacent states:

Illinois: The grounds for unprofessional conduct for Illinois licensed massage therapists and bodywork therapists are governed by statute, ILL. COMP. STAT. 225/57. The rules are similar to current Wisconsin unprofessional conduct rules in that they are comprehensive ranging from prohibitions against false advertising to inability to practice with reasonable judgment and skill.

Iowa: The Iowa Administrative Code sets forth the grounds for discipline of massage therapists in 645 IAC 134.2. The rules are similar to Wisconsin in that they cover a variety of topics; however the Iowa rules focus primarily on fraudulent behavior such as fraud in procuring a license, untruthful or improbable statements in advertising, and acceptance of any fee by fraud.

Michigan: Prohibited conduct of massage therapists as set forth in Michigan Administrative Code R 338.723, is limited to eight prohibitions. The prohibitions focus primarily on exceeding the boundaries of a professional relationship with clients such as taking on a professional role when a personal, scientific, legal, financial, or other relationship impairs the exercise of professional discretion or being involved in a dual relationship with a current or former client.

Minnesota: In Minnesota massage therapy and bodywork therapy are indentified as complementary and alternative health care practices, Minn. Stat. §146A.01. Those who conduct alternative health care practices are regulated by statute, Minn. Stat. §146A.08. The statute identifies prohibited conduct covering a variety of topics including:

prohibition against sexual contact with clients, adjudication as mentally incompetent and fraudulent billing practices.

Summary of factual data and analytical methodologies:

The Board reviewed its current unprofessional conduct rules and decided that the rules needed to be updated to conform to current practice within the profession. No other factual data or analytical methodologies were used. The Board ensures the accuracy, integrity, objectivity and consistency of data were used in preparing the proposed rule and related analysis.

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

These proposed rule does 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 Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

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 Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-4438; email at Shancethea.L Leatherwood@wisconsin.gov.

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

Comments may be submitted to Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366 Madison, WI 53708-8366, or by email to Shancethea.L Leatherwood@wisconsin.gov. Comments must be received on or before July 22, 2014 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. MTBT 5.01 is repealed and recreated to read:

MTBT 5.01 Authority. The Definitions of this chapter are adopted by the board pursuant to the authority delegated by ss. 15.085 (5) (b) and 460.04 (2) (a), Stats., to establish the standards of ethical conduct for massage therapists and bodywork therapists.

SECTION 2. MTBT 5.02 is renumbered MTBT 5.03.

SECTION 3. MTBT 5.02 is created to read:

MTBT 5.02 Unprofessional conduct. The term “unprofessional conduct” is defined as violating, aiding, abetting, or conspiring to engage in any of the following:

- (1) Violating s. 460.14 (2) (a) to (j), Stats., or any provision of a board order.
- (2) Being convicted of any of the following: ss. 940.22, 940.225, 944.15, 944.17, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.085, 948.09, 948.095, and 948.10, Stats.
- (3) Engaging in fraud, misrepresentation or deceit in applying for or procuring a license to practice massage therapy or bodywork therapy, in connection with applying for or procuring periodic renewal of a license, or in otherwise maintaining a license.
- (4) Engaging in any act of fraud, deceit, or misrepresentation, including acts of omission to the board or any person acting on the board’s behalf, including department of safety and professional services personnel.
- (5) Employing illegal or unethical business practices, including either of the following:
 - (a) Fraud, deceit, or misrepresentation in obtaining or attempting to obtain any fee or third-party reimbursement.
 - (b) Engaging in uninvited, in-person solicitation of actual or potential clients, who because of their particular circumstances are vulnerable to undue influence.
- (6) Knowingly, negligently, or recklessly making any statement, written or oral, in the course of practicing massage therapy, which is likely to deceive, defraud, mislead or create an unacceptable risk of harm to a client, the public, or both.
- (7) Engaging in false, misleading, or deceptive advertising.
- (8) Failing to maintain accurate and timely records necessary for the continuity of a client’s massage therapy or bodywork therapy treatment. Records are to be maintained for a period of at least 5 years.

(9) Performing any act constituting the practice of massage therapy or bodywork therapy on any client without the client's informed consent or after the client has withdrawn informed consent, whether verbally or in writing, or either of the following:

(a) Failure to document informed consent.

(b) Failure to inform the client that any act of massage therapy may or will be performed by unlicensed personnel.

(10) Any practice or conduct that falls below the standard of minimal competence within the profession that results in unacceptable risk of harm to the patient, regardless of whether injury results.

(11) Practicing as a massage therapist or bodywork therapist when physical or mental abilities are impaired by the use of controlled substances or other drugs, chemicals or alcohol, or by other causes.

(12) Practicing as a massage therapist or bodywork therapist with a mental or physical condition that impairs the ability of the licensee to practice within the standard of minimal competence or without exposing a client to an unacceptable risk of harm.

(13) Practicing beyond the scope of massage therapy or bodywork therapy.

(14) Divulging any information that a client gives in confidence to the licensee or any other information that the licensee 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.

(15) Engaging in sexually explicit conduct, sexual contact, exposure, gratification or other sexual behavior with or in the presence of a client, a client's immediate family member, or a person responsible for the client's welfare. For the purposes of this subsection all of the following shall apply:

(a) Sexual nature of contact shall be determined from the totality of the circumstances and is presumed when the massage therapist or bodywork therapist has contact with a client's intimate parts without legitimate professional justification for doing so.

(b) An adult client shall continue to be considered a client for 6 months after the termination of professional services.

(c) If a client is a minor, he or she shall continue to be considered a client for 2 years after the termination of services or for 2 years after the client reaches the age of majority, whichever is longer.

(16) Engaging in any sexual contact or conduct with or in the presence of a client or former client who lacks the ability to consent for any reason, including age, medication, or psychological or cognitive disability.

(17) Falsifying client records.

(18) Failing to provide access to client records when requested by the board or the board's representative.

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

(20) Failing to provide clean clothing, linens and equipment.

(21) Failing to provide draping and treatment that ensures the safety and privacy of a client.

(22) Permitting or assisting any person to perform acts constituting massage therapy or bodywork therapy without sufficient qualifications, necessary credentials, adequate informed consent, or adequate supervision. The licensed massage therapist or bodywork therapist is responsible for determining whether general, one-to-one, or on-premises supervision is necessary to protect the client from an unacceptable risk of harm. The licensed massage therapist or bodywork therapist retains responsibility for delegated or supervised acts unless the board determines that the delegate knowingly and willfully violated the supervisor's direction or instruction.

(23) Failing to inform a client about contraindications of massage therapy or bodywork therapy.

(24) Failing to complete continuing education requirements within the time period established by MTBT 7.02 (3).

(25) Having an adverse action against a credential pertaining to the practice of massage therapy or bodywork therapy by any agency of this or another state, or by an agency or authority within the federal government. This subsection applies whether the adverse action results in a temporary or permanent limitation, restriction, suspension or revocation, and whether or not the adverse action is accompanied by findings of negligence or unprofessional conduct.

(26) Conviction of any federal or state law or rule, including criminal law, which is substantially related to the practice of massage therapy or bodywork therapy. For the purposes of this subsection the following shall apply:

(a) Except as otherwise provided by law, a certified copy of a relevant decision by a state or federal court or agency charged with making legal determinations relevant to this paragraph is conclusive evidence of its findings of facts and conclusions of law.

(b) Under this paragraph, the board has the burden of proving that the act is substantially related to the practice of massage therapy or bodywork therapy.

(27) Failing to report to the board any incident in which the licensee has direct knowledge of reasonable cause to suspect that a massage therapist or bodywork therapist has committed any unprofessional, incompetent, or illegal act in violation of state or federal statute, administrative rule, or orders of the board. Reports shall be made within the time necessary to protect clients from further unacceptable risk of harm.

(28) Failing to display his or her license in his or her place of business or practice so that it can easily be seen and read by the public. In the case of a mobile practice, a licensee is required to be able to present his or her license for public display.

SECTION 4. MTBT 5.04 is created to read:

MTBT 5.04 Audits. The board shall conduct a random audit of any licensee on a biennial basis for compliance with continuing education requirements set forth in MTBT 7.02.

SECTION 5. MTBT 6.02 (2) (am) is amended to read:

MTBT 6.02 (2) (am) 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)~~ s. MTBT 5.02 (8).

SECTION 6. 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.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Chairperson
Massage Therapy and Bodywork Therapy
Affiliated Credentialing Board



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Universal Precautions against Infectious Diseases

(En español, presione aquí)

❶ **What are universal precautions?**

❷ **What precautions should I take if I am caring for an infectious person at home?**

What are universal precautions?

Universal precautions are guidelines you can follow to help to prevent the spread of infection. Follow these guidelines if you are caring for someone with an infectious disease.

Infectious diseases are caused by viruses, bacteria, parasites, and fungi. These organisms can be spread through:

- Blood, body secretions (such as saliva, mucus, pus, and semen and other sexual secretions), urine, and bowel movements
- Droplets breathed, sneezed, or coughed out from the nose or mouth
- Skin-to-skin contact
- Sexual contact

Universal precautions help protect patients and their family, friends, and healthcare providers from infection.

What precautions should I take if I am caring for an infectious person at home?

Gloves

- Wear latex or polyurethane medical gloves when:
 - You touch the person's nose, mouth, genital area, rectum, or infected areas of skin. Also wear gloves when you touch body fluids, such as blood, bowel movements, urine, drainage from a wound, saliva, or vomit.
 - You handle items soiled with blood or body fluids, such as clothing, bed linens, or towels.
 - You treat open sores, such as changing a bandage, or give medicine with a needle.
 - You clean up around the area where you are caring for the person.
- If a glove gets torn or damaged, take your gloves off and wash your hands. If you are not done caring for the person, put on new gloves.
- Put new gloves on each time you perform a procedure.
- Do not wash gloves. Throw them out after each use. Put them in a special container separate from other trash. (See information below about discarding waste items.)

Gloves are not a substitute for hand washing. Always wash your hands after wearing gloves in case the gloves have been damaged.

Hand washing

- Wash your hands with soap and water right after you take your gloves off.
- If you get blood or body fluid on your hands or any other body surface, wash your hands and the exposed part of your body thoroughly right away.
- Wash your hands right before and after each contact with the infected person. Be sure you wash the backs of your hands, between the fingers, and under the fingernails.

Protective clothing, such as masks, goggles, gowns

- Wear a surgical mask and protective eyewear during any task that may expose you to blood or other body fluids. This can prevent exposure of your mouth, nose, and eyes to the infection.

- Wear disposable gowns or aprons when blood or body fluids may splash. If you wear a cloth gown or apron, wash it according to the instructions given below for washing linens soiled with blood.

Safety precautions with needles

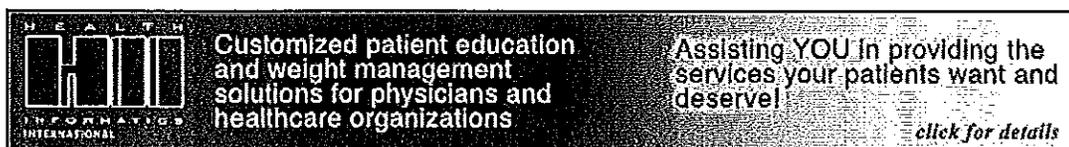
- If possible, always use disposable needles.
- Do not recap or purposely bend needles.
- Discard needles in the way recommended by your healthcare provider. Put used needles in a puncture-proof container. Avoid overfilling the container.
- If you accidentally stick yourself with a needle someone else has used, contact your healthcare provider right away. If you know who used the needle, note that. You both may need to be tested for infections.

Disposal of waste products and washing of soiled linens

- Discard disposable items soiled with blood in red plastic bags. Use 2 bags, putting one inside the other. Make sure you follow your local health department's instructions.
- Check with your healthcare provider and local health department before you pour any liquids such as blood, suctioned fluids, excretions, or secretions carefully down a drain connected to a sanitary sewer.
- Wash linens or clothing soiled with blood separately from other laundry. Use detergent and germicide. Follow your local health department's instructions for safe washing and disposal of the water.

Guidelines for sterilization or disinfection

- Use chemical germicides registered with the Environmental Protection Agency (EPA) to sterilize or disinfect.
- Ask your healthcare provider or local health department what chemicals are safe for home use.
- Use these chemicals only in the recommended concentrations and only with proper ventilation.



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Reference Sources:

Centers for Disease Control and Prevention. Bloodborne Infectious Diseases: HIV/AIDS, Hepatitis B, Hepatitis C. US Dept of Health and Human Services, Centers for Disease Control and Prevention. 12/29/2011. Accessed 11/26/2012 from <http://www.cdc.gov/niosh/topics/bbp/universal.html>.

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