



**MESSAGE THERAPY AND BODYWORK THERAPY
AFFILIATED CREDENTIALING BOARD
Room 121C, 1400 East Washington Avenue, Madison
Contact: Tom Ryan (608) 266-2112
December 6, 2017**

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

9:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

A) Adoption of Agenda (1-3)

B) Approval of Minutes of September 26, 2017 (4-5)

C) Administrative Updates

- 1) Department and Staff Updates
- 2) Board Members – Term Expiration Dates
 - a) Darlene Campo – 07/01/2018
 - b) Robert Coleman – 07/01/2018 (*confirmation pending*)
 - c) Carla Hedtke – 07/01/2018
 - d) Elizabeth Krizenesky – 07/01/2018
 - e) Mark Richardson – 07/01/2018
- 3) Wis. Stat. s 15.085 (3)(b) – Biannual Meeting with the Medical Examining Board

D) 9:00 A.M. PUBLIC HEARING: CR 17-076-MTBT 7 Relating to Continuing Education (6-12)

- 1) Review and Respond to Public Comments and Clearinghouse Report

E) Legislative/Administrative Rule Matters (13-19)

- 1) Proposals for MTBT 2 and 3 Relating to Application for a License and Approved Training Programs
- 2) Update on Other Legislation and Pending or Possible Rulemaking Projects

F) Occupational License Study (20-21)

- 1) 2017 Wisconsin Act 59 (enacted in State Budget Bill)
- 2) 2017 Wisconsin Senate Bill 288 and Assembly Bill 369 (under consideration)

G) Massage Therapy and Bodywork Therapy Scope of Practice – Discussion (In-Person) (22-28)

H) National Association of Attorneys General Letter Regarding Alternatives to Opioids (29-34)

I) Continuing Education and Teaching Hours - Discussion

J) Federation of State Massage Therapy Boards (FSMTB) Matters

- 1) Report from the FSMTB Annual Meeting – Darlene Campo

K) Credentialing and Application Matters

L) Speaking Engagements, Travel, or Public Relation Requests, and Reports

M) Informational Items

N) 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) Nominations, Elections, and Appointments
- 9) Informational Item(s)
- 10) Disciplinary Matters
- 11) Presentations of Petition(s) for Summary Suspension
- 12) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
- 13) Presentation of Proposed Decisions
- 14) Presentation of Interim Order(s)
- 15) Petitions for Re-Hearing
- 16) Petitions for Assessments
- 17) Petitions to Vacate Order(s)
- 18) Petitions for Designation of Hearing Examiner
- 19) Requests for Disciplinary Proceeding Presentations
- 20) Motions
- 21) Petitions
- 22) Appearances from Requests Received or Renewed
- 23) Speaking Engagement(s), Travel, or Public Relation Request(s), and Reports

K) 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.).

L) Deliberation on Division of Legal Services and Compliance (DLSC) Matters (35-59)

1) Administrative Warnings

- a) 17 MAB 001 – T.S.H

2) Case Closures

- a) 16 MAB 004 – G.L.M.
- b) 16 MAB 007 – S.R.
- c) 16 MAB 010 – H.Y.Z.
- d) 17 MAB 013 – R.J.T.
- e) 17 MAB 014 – A.J.R.

M) 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

N) Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

O) Open Session Items Noticed Above not Completed in the Initial Open Session

P) Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

Q) Delegation of Ratification of Examination Results and Ratification of Licenses and Certificates

R) Future Agenda Items

ADJOURNMENT

NEXT MEETING DATE: MARCH 20, 2018

MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 1400 East Washington Avenue, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board's agenda, please call the listed contact person. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Interpreters for the hearing impaired provided upon request by contacting the Affirmative Action Officer, 608-266-2112.

**MASSAGE THERAPY AND BODYWORK THERAPY
AFFILIATED CREDENTIALING BOARD
September 26, 2017**

PRESENT: Darlene Campo, Carla Hedtke (*via phone*), Elizabeth Krizenesky, Mark Richardson

EXCUSED: Robert Coleman

STAFF: Tom Ryan, Executive Director; Dale Kleven, Administrative Rules Coordinator;
Kimberly Wood, Program Assistant Supervisor-Adv.; and other Department Staff

CALL TO ORDER

Elizabeth Krizenesky, Chair, called the meeting to order at 8:24 a.m. A quorum of four (4) members was confirmed.

ADOPTION OF AGENDA

MOTION: Darlene Campo moved, seconded by Mark Richardson, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES

MOTION: Darlene Campo moved, seconded by Mark Richardson, to approve the minutes of July 18, 2017 as published. Motion carried unanimously.

FEDERATION OF STATE MASSAGE THERAPY BOARDS (FSMTB) MATTERS

FSMTB Annual Meeting – Discussion of FSMTB Resolutions and Other Business

(Tom Ryan recused himself and left the room during Board discussion of FSTMB resolutions.)

CLOSED SESSION

MOTION: Darlene Campo moved, seconded by Mark Richardson, to convene to Closed Session to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), and 448.02(8), 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.). 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: Darlene Campo-yes; Carla Hedtke-yes; Elizabeth Krizenesky-yes; Mark Richardson-yes. Motion carried unanimously.

The Board convened into Closed Session at 9:31 a.m.

RECONVENE TO OPEN SESSION

MOTION: Mark Richardson moved, seconded by Darlene Campo, to reconvene in Open Session. Motion carried unanimously.

The Board reconvened into Open Session at 9:35 a.m.

**VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION,
IF VOTING IS APPROPRIATE**

MOTION: Darlene Campo moved, seconded by Mark Richardson, to affirm all Motions made and Votes taken in Closed Session. Motion carried unanimously.

(Be advised that any recusals or abstentions reflected in the closed session motions stand for the purposes of the affirmation vote).

**DELIBERATION ON DIVISION OF LEGAL SERVICES
AND COMPLIANCE (DLSC) MATTERS**

Proposed Stipulations, Final Decisions and Orders

16 MAB 019 – Christopher J. Ehrett

MOTION: Darlene Campo moved, seconded by Mark Richardson, to delegate, to (the) Department of Safety and Professional Services Chief Legal Counsel, the Board's authority to preside over and resolve the disciplinary matter against Christopher J. Ehrett, DLSC Case No. 16 MAB 019. Motion carried unanimously.

Proposed Stipulations, and Interim Orders

17 MAB 012 – Huaying Sun

MOTION: Darlene Campo moved, seconded by Mark Richardson, to delegate, to (the) Department of Safety and Professional Services Chief Legal Counsel, the Board's authority to preside over and resolve the disciplinary matter against Huaying Sun, DLSC Case No. 17 MAB 012. Motion carried unanimously.

Case Closures

15 MAB 050 – Y.X.

MOTION: Carla Hedtke moved, seconded by Mark Richardson, to close case DLSC Case No. 15 MAB 050, against Y.X., for Insufficient Evidence. Motion carried unanimously.

RATIFICATION OF LICENSES AND CERTIFICATES

MOTION: Mark Richardson moved, seconded by Darlene Campo, to delegate ratification of examination results to DSPS staff and to delegate and ratify all licenses and certificates as issued. Motion carried unanimously.

ADJOURNMENT

MOTION: Mark Richardson moved, seconded by Darlene Campo, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 10:32 a.m.

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

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Dale Kleven Administrative Rules Coordinator		2) Date When Request Submitted: 11/24/17 Items will be considered late if submitted after 12:00 p.m. on the deadline date: ▪ 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Massage Therapy and Bodywork Therapy Affiliated Credentialing Board			
4) Meeting Date: 12/6/17	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? 9:00 A.M. Public Hearing: CR 17-076 – MTBT 7 Relating to Continuing Education 1. Review and Respond to Public Comments and Clearinghouse Report Legislative and Administrative Rule Matters – Discussion and Consideration 1. Proposals for MTBT 2 and 3 Relating to Application for a License and Approved Training Programs 2. Update on Other Legislation and Pending or Possible Rulemaking Projects	
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: 			
11) Authorization			
<i>Dale Kleven</i>		<i>November 24, 2017</i>	
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.			

STATE OF WISCONSIN
MESSAGE THERAPY AND BODYWORK AFFILIATED CREDENTIALING BOARD

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

PROPOSED ORDER

An order of the Massage Therapy and Bodywork Affiliated Credentialing Board to amend MTBT 7.02 (3), relating to continuing education.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

None.

Statutory authority:

Sections 15.085 (5) (b) and 460.10 (1) (a), Stats.

Explanation of agency authority:

Section 15.085 (5) (b), Stats., provides that affiliated credentialing boards, such as the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains . . .”

Section 460.10 (1) (a), Stats., provides the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board may promulgate rules establishing “[r]equirements and procedures for a license holder to complete continuing education programs or courses of study to qualify for renewal of his or her license.”

Related statute or rule:

None.

Plain language analysis:

Chapter MTBT 7 contains the continuing education requirements for renewal of a license in massage therapy or bodywork therapy. Section MTBT 7.02 (3) provides continuing education must be completed “within 2 calendar years immediately preceding the calendar year for which application for renewal is made.” This language is unclear, which has led to difficulty in complying with and administering the continuing education requirement. The proposed rules clarify the requirement by providing continuing education must be completed during the 2-year period immediately preceding the renewal date under s. 440.08 (2) (a) 46r., Stats.

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

None.

Comparison with rules in adjacent states:

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation (IDFPR) specify continuing education requirements for persons licensed to practice massage therapy in the state of Illinois (68 Ill. Adm. Code 1284.90). Twenty four hours of continuing education, including at least 2 hours of ethics, must be completed during the 24 months preceding the expiration date of a license (all massage therapy licenses expire on December 31 of each even-numbered year).

Iowa:

Rules of the Iowa Board of Massage Therapy specify continuing education requirements for persons licensed to practice massage therapy in the state of Iowa (645 IAC 133). A minimum of 16 hours of continuing education must be completed each biennium. A biennium is a 2-year period beginning with the date the license was granted.

Michigan:

Rules of the Michigan Board of Massage specify continuing education requirements for persons licensed to practice massage therapy in the state of Michigan (Mich Admin Code, R 338.731 and R 338.733). An applicant for license renewal who has been licensed for the 3-year period immediately preceding the expiration date of the license shall accumulate not less than 18 hours of continuing education, including at least 1 hour in the area of pain and symptom management and 2 hours in the area of professional ethics or boundaries, during the 3 years immediately preceding the application for renewal.

Minnesota:

The Minnesota Department of Health's Office of Unlicensed Complementary and Alternative Health Care Practice (OCAP) investigates complaints and takes enforcement actions against massage therapists for violations of prohibited conduct. However, neither OCAP nor any other statewide agency or board oversees the licensing of massage therapists. Licensing requirements, if any, for massage therapists are established by the county or city in which the massage therapist practices.

Summary of factual data and analytical methodologies:

The proposed rules clarify the period in which continuing education must be completed. No additional factual data or analytical methodologies were used to develop the proposed rules.

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

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is 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 Kirsten.Reader@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, WI 53708-8935, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 9:00 a.m. on September 26, 2017, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. MTBT 7.02 (3) is amended to read:

MTBT 7.02 (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~~ during the 2-year period immediately preceding the renewal date under s. 440.08 (2) (a) 46r., Stats.

SECTION 2. 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)

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	
2. Administrative Rule Chapter, Title and Number MTBT 7	
3. Subject Continuing education	
4. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	5. Chapter 20, Stats. Appropriations Affected 20.165(1)(hg)
6. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Cost	
7. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
8. Would Implementation and Compliance Costs Be Greater Than \$20 million? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9. Policy Problem Addressed by the Rule Chapter MTBT 7 contains the continuing education requirements for renewal of a license in massage therapy or bodywork therapy. Section MTBT 7.02 (3) provides continuing education must be completed "within 2 calendar years immediately preceding the calendar year for which application for renewal is made." This language is unclear, which has led to difficulty in complying with and administering the continuing education requirement. The proposed rules clarify the requirement by providing continuing education must be completed during the 2-year period immediately preceding the renewal date under s. 440.08 (2) (a) 46r., Stats.	
10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments. The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.	
11. Identify the local governmental units that participated in the development of this EIA. No local governmental units participated in the development of this EIA.	
12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.	
13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is providing clarity to the continuing education requirements under ch. MTBT 7. If the rule is not implemented, the continuing education requirements will remain unclear.	
14. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is clarity and less difficulty in complying with and administering the continuing education requirements under ch. MTBT 7.	

15. Compare With Approaches Being Used by Federal Government
None

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation (IDFPR) specify continuing education requirements for persons licensed to practice massage therapy in the state of Illinois (68 Ill. Adm. Code 1284.90). Twenty four hours of continuing education, including at least 2 hours of ethics, must be completed during the 24 months preceding the expiration date of a license (all massage therapy licenses expire on December 31 of each even-numbered year).

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Minnesota:

The Minnesota Department of Health's Office of Unlicensed Complementary and Alternative Health Care Practice (OCAP) investigates complaints and takes enforcement actions against massage therapists for violations of prohibited conduct. However, neither OCAP nor any other statewide agency or board oversees the licensing of massage therapists. Licensing requirements, if any, for massage therapists are established by the county or city in which the massage therapist practices.

17. Contact Name

Dale Kleven

18. Contact Phone Number

(608) 261-4472

This document can be made available in alternate formats to individuals with disabilities upon request.



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 17-076

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 December 2014.]

2. Form, Style and Placement in Administrative Code

a. In the rule summary’s listing of statutes interpreted, consider listing the same statute that provides statutory authority for the rulemaking, as it appears to be the only statute that addresses continuing education.

b. It appears that the deadline to submit comments should be corrected, as the date that is given has already occurred.

Note: Substantive changes from the version of this document reviewed by the Board on September 26, 2017, are shown in red

Chapter MTBT 2 APPLICATION

MTBT 2.01 Application for a license. An ~~individual applying~~ applicant for a ~~certificate as a~~ license to practice ~~massage therapist therapy or bodyworker bodywork therapy~~ shall submit all of the following to the ~~department~~ board:

(1) An application on a form provided by the ~~department~~ board.

Note: Application forms are available upon request to the ~~Department of Safety and Professional Services~~ department of safety and professional services at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 ~~or at the department's website at <http://dsps.wi.gov>.~~

(2) The fee ~~specified~~ required under s. 440.05 (1), Stats.

(3) Evidence satisfactory to the ~~department~~ board that ~~he or she~~ the applicant meets all of the following requirements:

(a) Has graduated from a school of massage therapy or bodywork approved by the educational approval board at the time of the applicant's graduation or completed an approved training program under s. MTBT 3.01.

Note: A list of approved schools is available upon request to the Educational Approval Board, ~~30 West Mifflin Street, 9th Floor, P.O. Box 8696, Madison, Wisconsin 53708~~ at (608) 266-1996 or eamail@cab.wisconsin.gov.

(b) Has successfully completed at least 6 classroom hours of study in the laws of this state and rules of the ~~department~~ board relating to the practice of massage therapy or bodywork in a course of instruction offered by any of the following:

1. A school of massage therapy or bodywork approved by the educational approval board, whether or not the course of instruction was completed to meet a requirement for graduation.

2. An approved training program under s. MTBT 3.01, whether or not the training program is completed by the ~~individual~~ applicant for purposes of satisfying par. (a).

3. A school ~~approved by an accrediting agency~~ meeting one of the following requirements at the time the course of study was completed:

a. The school is accredited by an accrediting agency as defined in s. MTBT 1.02 (1) (a) and approved or recognized by an accrediting agency as defined in s. MTBT 1.02 (1) (b).

b. The school is approved or recognized by an accrediting agency as defined in s. MTBT 1.02 (1) (b) that is authorized to regulate massage therapy in the state in which the school is located.

4. A technical college established pursuant to s. 38.02, Stats.

5. A school described in s. 38.50 (1) (e) 1., Stats.

(c) Is 18 years of age or older.

(d) Has graduated high school or attained high school equivalency as determined by the department of public instruction under s. 115.29 (4), Stats.

(e) Has not been convicted of an offense under s. 940.22, 940.225, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.085, 948.09, 948.095 or 948.10, Stats., or a comparable offense under federal law or a law of any other state.

(f) Subject to ss. 111.321, 111.322 and 111.335, Stats., has not been convicted of any other offense not listed in par. (e), the circumstances of which substantially relate to the practice of massage therapy or bodywork.

(g) Has passed ~~either the national certification examination for therapeutic massage and bodywork or the national certification examination for therapeutic massage that are offered by the national certification board for therapeutic massage and bodywork~~, or another examination relating to the practice of massage therapy or bodywork that is administered by a national board that is accredited by the national

~~commission for certifying agencies or a substantially equivalent examination approved by the department.~~
one of the following examinations:

1. The Board Certification Examination for Therapeutic Massage and Bodywork offered by the National Certification Board for Therapeutic Massage and Bodywork.
 2. The Massage and Bodywork Licensing Examination offered by the Federation of State Massage Therapy Boards.
 3. The National Certification Examination for Therapeutic Massage and Bodywork offered by the National Certification Board for Therapeutic Massage and Bodywork prior to February 1, 2015.
 4. The National Certification Examination for Therapeutic Massage offered by the National Certification Board for Therapeutic Massage and Bodywork prior to February 1, 2015.
 5. The Asian Bodywork Therapy Examination offered by the National Certification Commission of Acupuncture and Oriental Medicine prior to December 31, 2012.
 6. An examination relating to the practice of massage therapy or bodywork that is administered by a national board that is accredited by the National Commission for Certifying Agencies.
 7. An examination that is substantially equivalent to an examination under **subds. 1. to 5.**, as determined by the board.
- (h) Has passed an examination on state laws and administrative rules governing massage therapy or bodywork.
- (i) 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.
- (j) Has successfully completed a course consisting of 5 classroom hours in adult cardiopulmonary resuscitation and standard first aid if the ~~individual has not graduated from a school of massage therapy or bodywork approved by the educational approval board and the 5 classroom hours are not completed by the individual as part of an~~ the course of study or approved training program as provided under s. MTBT 3.01 completed by the applicant for purposes of meeting the requirement under par. (a).
- (k) Has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

MTBT 2.015 Waiver of education requirements. The requirements of s. MTBT 2.01 (3) (a) and (b) shall be waived if an ~~individual applicant~~ individual applicant submits evidence satisfactory to the department that ~~he or she~~ the applicant has successfully completed a course consisting of 5 classroom hours in adult cardiopulmonary resuscitation and standard first aid and satisfied one of the following:

- (1) Is currently either certified or recertified by the ~~national certification board for therapeutic massage and bodywork~~ National Certification Board for Therapeutic Massage and Bodywork.
- (2) Is currently either certified or recertified as active and in good standing by any other organization accredited to certify massage therapy or bodywork by the ~~national commission for certifying agencies~~ National Commission for Certifying Agencies.

MTBT 2.03 Reciprocal license.

(1) An ~~individual applying~~ applicant for a license on the basis of a similar license, registration, or license in another state or territory of the United States or another country shall submit all of the following to the board:

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

Note: Application forms are available upon request to the department of safety and professional services at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 or at the department's website at <http://dsps.wi.gov>.

- (b) ~~Pay the~~ The fee required under s. 440.05 (2), Stats.

- (c) ~~Submit evidence~~ Evidence satisfactory to the board that the ~~individual~~ applicant meets all of the following requirements:

1. Holds a current similar license, registration or certificate to practice massage therapy or bodywork in another state or territory of the United States or another country, the requirements for which are substantially equivalent to the requirements under s. 460.05, Stats.
 2. Has not been convicted of an offense under s. 940.22, 940.225, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.085, 948.09, 948.095 or 948.10, Stats., or a comparable offense under federal law or a law of any other state.
 4. Subject to ss. 111.321, 111.322 and 111.335, Stats., has not been convicted of any other offense not listed under subd. 2., the circumstances of which substantially relate to the practice of massage therapy or bodywork.
 7. Has in effect as a policyholder and insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.
- (2) Requirements for a current similar license, registration or certificate to practice massage therapy or bodywork in another state or territory of the United States or another country, are substantially equivalent to the requirements under s. 460.05, Stats., if the requirements include either of the following:
- (a) Certification by the national certification board for therapeutic massage and bodywork or any other organization accredited by the national commission for certifying agencies to certify massage therapy or bodywork.
 - (b) ~~Completion~~ Passing an examination under s. MTBT 2.01 (3) (g) and completion of at least 500 classroom hours of instruction in massage therapy or bodywork at a school approved by an accrediting agency, and passing an examination relating to the practice of massage therapy or bodywork that is administered or approved by an accrediting agency meeting the requirements under s. MTBT 2.01 (3) (b) 3. a. or b. at the time of the applicant's graduation.

MTBT 2.04 Accommodations relating to a disability. A qualified ~~individual~~ applicant with a disability shall be provided with reasonable accommodations requested in connection with the completion of an application for certification as a massage therapist or bodyworker.

MTBT 3.01 Approved training program.

- (1) An ~~individual applying for a license as a massage therapist or bodywork therapist~~ applicant 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~~ the applicant has completed an approved training program.
- (2) Credit may be granted for an approved training program regardless of when the program was completed.
- (4) In addition to satisfying the requirements of sub. (5), an approved training program shall be one of the following:
 - (a) An associate degree program, or a technical diploma program in massage therapy or bodywork offered by a technical college established pursuant to s. 38.02, Stats.
 - (b) A course of instruction in massage therapy or bodywork offered by a school ~~accredited by an accrediting agency at the time the individual completes the course of instruction.~~ meeting one of the following requirements at the time of the applicant's graduation:
 - a. The school is accredited by an accrediting agency as defined in s. MTBT 1.02 (1) (a) and approved or recognized by an accrediting agency as defined in s. MTBT 1.02 (1) (b).
 - b. The school is approved or recognized by an accrediting agency as defined in s. MTBT 1.02 (1) (b) that is authorized to regulate massage therapy in the state in which the school is located.
- (c) A course of instruction in massage therapy or bodywork offered by a school described in s. 38.50 (1) (e) 1., Stats.

- (5) An approved training program shall consist of a minimum of 600 classroom hours of study and shall include the following subject areas:
- (a) ~~Anatomy~~ One hundred twenty five classroom hours in anatomy, physiology, pathology, and kinesiology:
~~125 classroom hours.~~
 - (b) ~~Business~~ Fifty classroom hours in business, law and ethics:~~50 classroom hours,~~ which shall include at least 6 classroom hours in the laws of this state and rules of the board relating to the practice of massage therapy or bodywork therapy required by s. MTBT 2.01 (3) (b).
 - (c) ~~Massage~~ Three hundred classroom hours in massage therapy or bodywork theory, technique, and practice:
~~300 classroom hours,~~ which shall include 100 classroom hours of supervised hands-on practice.
 - (d) ~~Student~~ Twenty classroom hours in student clinic:~~20 classroom hours.~~
 - (e) ~~Adult~~ Five classroom hours in adult cardiopulmonary resuscitation (CPR) and standard first aid:~~5 classroom hours.~~ The requirement of this paragraph may be alternatively satisfied as provided under s. MTBT 2.01 (3) (j).
 - (f) ~~Additional~~ One hundred classroom hours in additional massage therapy or bodywork course offerings meeting the objectives of the course of instruction:~~100 classroom hours.~~

**Comparison of Massage Therapy Education
Approval/Recognition Agencies**

Revised: 10/29/17

Agency	Pros	Cons	Additional Commentary
<p>Accredited by an accrediting agency recognized by the USDOE</p>	<ul style="list-style-type: none"> • "Gold standard" for rigor. • Reviewed at renewal. • Easy to obtain accurate information. • USDOE site updated frequently. 	<ul style="list-style-type: none"> • Expensive and requires time and resources to maintain compliance. • Smaller schools (bulk of MT education providers) are not accredited, mostly due to the expense, but also because there is an instate process (usually requiring a fee), so accreditation can be redundant. • Graduates from fine legitimate schools that have not sought accreditation are prevented from being licensed. 	<ul style="list-style-type: none"> • Applicants from unaccredited schools can seek a waiver of education requirements if they are Board Certified by the NCBTMB. That would require work experience, more clock-hours than we currently require, and additional expenses (e.g., app fee, LiveScan, etc.). • What happens when accreditor is derecognized by DOE (ACICS)?
<p>Approved, recognized or licensed by State Massage Therapy Board</p>	<ul style="list-style-type: none"> • State boards should be aware of the questionable schools in their jurisdictions. 	<ul style="list-style-type: none"> • Not all state boards approve or recognize schools and programs. • Some state boards delegate that authority to other agencies within the state (e.g., Wisconsin EAB, TX Board of Health until recently). We would need to compile a 	<ul style="list-style-type: none"> • FSMTB is considering creating a list of the agency and contact person for education approval for all Member Boards. • If the school or program is accredited, the state massage board's decision

Agency	Pros	Cons	Additional Commentary
		<p>list of the approving authorities, and then check it periodically for accuracy as statutes and rules change, along with the creation, conflation, or elimination of state agencies.</p> <ul style="list-style-type: none"> • We do not have visibility to each state's process, how rigorous it is (i.e., similar to EAB or complete an app and pay a fee), especially the renewal of their approval, recognition or licensure (i.e., site visit vs. only a renewal fee). • Accurate, timely information is often difficult to find (e.g., Florida). 	<p>may take precedence (e.g., Santa Ana Beauty College in CA).</p>
<p>Dept. of Education OR Dept. of Higher Education</p>	<ul style="list-style-type: none"> • These agencies should have a process to approve reputable schools. 	<ul style="list-style-type: none"> • Works best for public degree-granting institutions that are already accredited. • Many states do not consider private massage therapy schools within their Depts. of Education or Higher Education. Rather, they are regulated by Workforce 	

Agency	Pros	Cons	Additional Commentary
		<p>Development, Consumer Protection or another agency with responsibility for business, occupational, or vocational schools</p>	
<p>Approved or recognized curriculum</p>	<ul style="list-style-type: none"> Offers a lower price point for schools who cannot afford accreditation (e.g., COMTA) 	<ul style="list-style-type: none"> Michigan’s practice act states that as long as it meets the statutory requirements, the curriculum is approved. Only addresses curriculum, no other components of school operation. 	<ul style="list-style-type: none"> Currently, there are only two COMTA-approved curriculum schools.
<p>All Other Entities Bureau of Private Postsecondary Education Office of Career and Technical Schools Department of Labor and Workforce Development</p>	<ul style="list-style-type: none"> Depends on rigor of approval process. 	<ul style="list-style-type: none"> Difficult to find information, especially if multiple entities share jurisdiction depending on the type of school or program (e.g., CO). Information may not be accurate or current (e.g., CA’s BPPE). 	

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

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Emily Handel, Bureau Assistant on behalf of Thomas Ryan, Executive Director		2) Date When Request Submitted: 11/16/17 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting									
3) Name of Board, Committee, Council, Sections: Occupational Therapists Affiliated Credentialing Board											
4) Meeting Date: 11/28/17	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Occupational License Study: <ul style="list-style-type: none"> • 2017 Wisconsin Act 59 (enacted in State Budget Bill) • 2017 Wisconsin Senate Bill 288 and Assembly Bill 369 (under consideration) 									
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes <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: Board review of a provision in the enacted 2017 budget creating an occupational license review council (attached). Board review of similar legislation is pending in the state legislature, 2017 Senate Bill 288 and Assembly Bill 369. The links to the legislature's web pages regarding Senate Bill 288 and Assembly Bill 369 are included here: https://docs.legis.wisconsin.gov/2017/related/acts/59/9139 (Attached) https://docs.legis.wisconsin.gov/2017/related/proposals/ab369 https://docs.legis.wisconsin.gov/2017/related/proposals/sb288											
11) Authorization <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; border-bottom: 1px solid black;"><i>Emily Handel</i>.....</td> <td style="width: 30%; border-bottom: 1px solid black; text-align: right;">11/16/17</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Signature of person making this request</td> <td style="border-bottom: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Supervisor (if required)</td> <td style="border-bottom: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td colspan="2" style="border-bottom: 1px solid black;">Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date</td> </tr> </table>				<i>Emily Handel</i>	11/16/17	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	
<i>Emily Handel</i>	11/16/17										
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: <ol style="list-style-type: none"> 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. 											

enue shall prescribe a form for the property tax bills prepared under section 74.09 of the statutes that indicates that the state no longer imposes the forestation state tax. The form shall also indicate the amount of the forestation state tax that the taxpayer paid in the previous year.

(1f) SALES AND USE TAX AUDITS; STATISTICAL SAMPLING. Using the procedure under section 227.24 of the statutes, the department of revenue shall promulgate the rules required under section 77.59 (2g) of the statutes for the period before the effective date of the permanent rule promulgated under section 77.59 (2g) of the statutes but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

SECTION 9139. Nonstatutory provisions; Safety and Professional Services.

(12) PROFESSIONAL ASSISTANCE PROCEDURES; EMERGENCY RULES. The department may use the procedure under section 227.24 of the statutes to promulgate rules under section 440.03 (1c) of the statutes for the period before the effective date of the permanent rule promulgated under section 440.03 (1c) of the statutes but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to one extension of 60 days under section 227.24 (2) of the statutes. If the department uses this procedure to promulgate these rules, the department shall promulgate the rules no later than the 60th day after the effective date of this subsection. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

(17w) OCCUPATIONAL LICENSE STUDY.

(a) *Definitions.* In this subsection:

1. "Department" means the department of safety and professional services.
2. "Occupational license" means any of the following:
 - a. A license, permit, certification, registration, or other approval granted under section 167.10 (6m) or chapters 101, 145, or 440 to 480 of the statutes.
 - b. A license, permit, certification, registration, or other approval not included under subdivision 2. a. if granted to a person by this state in order that the person may engage in a profession, occupation, or trade in this

state or in order that the person may use one or more titles in association with his or her profession, occupation, or trade.

(b) *Report.* No later than December 31, 2018, the department shall submit a report to the governor and the chief clerk of each house of the legislature for distribution to the legislature under section 13.172 (2) of the statutes. The report shall include the department's recommendations for the elimination of occupational licenses based on all of the following:

1. The department's evaluation of whether the unregulated practice of the profession, occupation, or trade can clearly harm or endanger the health, safety, or welfare of the public, and whether the potential for the harm is recognizable and not remote or speculative.
2. The department's evaluation of whether the public reasonably benefits from the occupational license requirement.
3. The department's evaluation of whether the public can be effectively protected by any means other than requiring an occupational license.
4. The department's analysis of whether licensure requirements for the regulated profession, occupation, or trade exist in other states.
5. The department's estimate of the number of individuals or entities that are affected by the occupational license requirement.
6. The department's estimate of the total financial burden imposed on individuals or entities as a result of the occupational licensure requirement, including education or training costs, examination fees, private credential fees, occupational license fees imposed by the state, and other costs individuals or entities incur in order to obtain the required occupational license.
7. Any statement or analysis provided by the agency or board administering the occupational license.
8. The department's evaluation of the tangible or intangible barriers people may face in obtaining an occupational license.

SECTION 9140. Nonstatutory provisions; Secretary of State.

SECTION 9141. Nonstatutory provisions; State Fair Park Board.

SECTION 9142. Nonstatutory provisions; Supreme Court

(5f) DECISIONS OF LABOR AND INDUSTRY REVIEW COMMISSION. The chief justice of the supreme court is requested to do all of the following:

- (a) Conduct a survey of decisions and orders of the labor and industry review commission under chapters 102 and 108 and sections 106.52 (4), 106.56 (4), and 111.39 of the statutes, citing the statutes interpreted by the commission and whether the decisions and orders were the subjects of actions for judicial review filed in circuit court.

**Vetoed
In Part**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Dale Kleven on behalf of Amber Cardenas, Board Counsel		2) Date When Request Submitted: 10/26/17	
		Items will be considered late if submitted after 12:00 p.m. on the deadline date: ▪ 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Massage Therapy and Bodywork Therapy Affiliated Credentialing Board			
4) Meeting Date: 12/6/17	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Massage Therapy and Bodywork Therapy Scope of Practice	
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:			
11) Authorization			
<i>Dale Kleven</i>		<i>October 26, 2017</i>	
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.			

Chapter MTBT 1

AUTHORITY, INTENT AND DEFINITIONS

MTBT 1.01 Authority and intent.

Note: Chapter RL 90 was renumbered chapter SPS 90 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671. Chapter SPS 90 was renumbered MTBT 1 under s. 13.92 (4) (b) 1., Stats., Register August 2012 No. 680.

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

History: Cr. Register, February, 1999, No. 518, eff. 3-1-99; CR 06-069; am. Register December 2006 No. 612, eff. 1-1-07; correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; correction made under s. 13.92 (4) (b) 7., Stats., Register August 2012 No. 680; CR 13-055; am. Register May 2014 No. 701, eff. 6-1-14.

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 a 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 lead 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 con-

MTBT 1.02 Definitions.

tact 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. All of the following apply to informed consent:

- (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 percussing 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 a massage therapy intern or bodywork therapy intern or more intensive supervision if required to avoid unacceptable risk of harm to the client.

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

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

(d) Clients have given informed consent to be treated by a massage therapy intern or 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 entity that offers or provides any of the following for a fee:

(a) Sexually explicit conversation.

(b) Exposure of any person’s intimate parts except as necessary for legitimate massage therapy and bodywork therapy.

(c) Direct and indirect contact with any person’s intimate parts unless necessary for legitimate massage therapy 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.

History: Cr. Register, February, 1999, No. 518, eff. 3-1-99; emerg. cr. (1), (2) and (11), renum. (1) to (8) to be (3) to (10) and am. (4), eff. 9-3-00; cr. (1), renum. (1) to (8) to be (2) to (9) and am. (3), Register, January, 2001, No. 541, eff. 2-1-01; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 2006, No. 612; CR 06-069: r. and recr. (1) (b), cr. (1g), (1r), (5m), and (10) to (13), am. (2), (6) and (8), r. (3) and (9), Register December 2006 No. 612, eff. 1-1-07; correction in (intro.), (1g), (4) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671; renumber (4) to be (1m) under s. 13.92 (4) (b) 1., Stats., correction in (1m) made under s. 13.92 (4) (b) 6., Stats., Register August 2012 No. 680; CR 13-055: r. and recr. Register May 2014 No. 701, eff. 6-1-14; correction in (11) made under s. 35.17, Stats., Register May 2014 No. 701.

CHAPTER 460

MASSAGE THERAPY AND BODYWORK THERAPY

460.01	Definitions.	460.095	Massage therapy and bodywork therapy school, training program, and instructor requirements.
460.02	License required.	460.10	Continuing education.
460.03	Applicability.	460.11	Practice requirements.
460.04	Duties of affiliated credentialing board.	460.12	Duty to make reports.
460.05	Licensure of massage therapists and bodywork therapists.	460.13	Advertising.
460.06	Examinations.	460.14	Disciplinary proceedings and actions.
460.07	Display of certificate; expiration and renewal.	460.15	Penalty.
460.08	Temporary license.	460.17	Local regulation.
460.09	Reciprocal license.		

Cross-reference: See also chs. [MTBT 1](#), [2](#), [3](#), [4](#), and [5](#), Wis. adm. code.

460.01 Definitions. In this chapter:

(1g) “**Adjunctive therapy**” means any of the following:

- (a) The use of a device that simulates or enhances a manual action.
- (b) The application of water, lubricants, or other non-prescription topical agents to the skin.
- (c) The application of heat or cold to the skin in the absence of an electromagnetic device.

(1r) “**Affiliated credentialing board**” means the massage therapy and bodywork therapy affiliated credentialing board.

(2m) “**License holder**” means a person granted a license under this chapter.

(3) “**Manual action**” includes holding, positioning, rocking, kneading, compressing, decompressing, gliding, or percussing the soft tissue of the human body or applying a passive range of motion to the human body without joint mobilization or manipulation.

(4) “**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 or contraindicated, or whether a referral to another health care practitioner is appropriate. “**Massage therapy**” or “**bodywork therapy**” does not include making a medical, physical therapy, or chiropractic diagnosis.

(5) “**Physician’s office**” means a place, other than a residence or a hospital, that is used primarily to provide medical care and treatment.

(6) “**Sexual contact**” has the meaning given in s. [939.22 \(34\)](#).

(7) “**Sexual intercourse**” has the meaning given in s. [948.01 \(7\) \(a\)](#).

History: 2001 a. 74; 2009 a. 12, 355.

460.02 License required. Except as provided in s. [460.03](#), no person may provide massage therapy or bodywork therapy, designate himself or herself as a massage therapist or bodywork therapist or masseur or masseuse, or use or assume the title “massage therapist and bodywork therapist” or “massage therapist” or “bodywork therapist” or “masseur” or “masseuse” or any title that includes “massage therapist,” “bodywork therapist,” or “bodyworker,” or append to the person’s name the letters “M.T.,” “R.M.T.,” “L.M.T.,” “C.M.T.,” “B.T.,” “B.W.,” “L.B.W.,” “R.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 licensed under this chapter, unless the person is licensed under this chapter.

History: 2001 a. 74; 2009 a. 355.

460.03 Applicability. A license under this chapter is not required for any of the following:

(1) A person holding a license, permit, registration, or certification granted by this state or the federal government who engages in a practice of massage therapy or bodywork therapy within the scope of his or her license, permit, registration, or certification and who does not imply that he or she is licensed under this chapter. A person who is exempt from licensure under this subsection may use the terms “bodywork,” “bodyworker,” and “bodywork therapy” to identify his or her practice.

(2) A person who is authorized to practice massage therapy or bodywork therapy in another state or country and is providing a consultation to or demonstration with a license holder. A person who is exempt from licensure under this subsection may use the terms “bodywork,” “bodyworker,” and “bodywork therapy” to identify his or her practice.

(2m) (a) A person who does any of the following and who satisfies the requirements of par. (b):

1. Uses touch, words, and directed movement to deepen a client’s awareness of his or her existing patterns of movement and to suggest to the client new patterns of movement.
2. Uses touch to affect the energy systems of the human body.
3. Uses touch and education to effect change in the structure of the body while engaged in the practice of structural integration.

(b) The person is recognized by or meets the established standards of either a professional organization or credentialing association that recognizes a person in a practice after that person demonstrates an adequate level of training and competency and adherence to ethical standards.

(c) A person who is exempt from licensure under this subsection may use the terms “bodywork,” “bodyworker,” and “bodywork therapy” to identify his or her practice.

(3) A person who manipulates only the soft tissues of the hands, feet, or ears of the human body, provided that the services are not represented or implied to be massage therapy or bodywork therapy.

History: 2001 a. 74; 2009 a. 355; 2011 a. 260 s. 80.

Cross-reference: See also chs. [MTBT 1](#), [2](#), [3](#), [4](#), and [5](#) Wis. adm. code.

460.04 Duties of affiliated credentialing board.

(1m) The affiliated credentialing board shall prepare an examination on state laws and administrative rules governing massage therapy and bodywork therapy.

(2) The affiliated credentialing board shall promulgate rules that establish all of the following:

- (a) Standards that govern the professional conduct of license holders in practicing massage therapy or bodywork therapy. The standards shall prohibit a license holder from having sexual contact or sexual intercourse with a client.

(b) Criteria for approving a training program for purposes of s. 460.05 (1) (e) 1. Rules promulgated under this paragraph shall require the training program to meet the requirements under s. 460.095 and to consist of at least 600 classroom hours.

(c) Requirements and procedures for obtaining the informed consent of a client under s. 460.11 (1) and for making a report required under s. 460.12 (1).

(d) A definition of “sexually oriented business” for purposes of s. 460.11 (3).

(e) A requirement that an applicant for a license under this chapter submit evidence satisfactory to the affiliated credentialing board that the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38) to provide such instruction.

(f) Requirements to be satisfied by a person seeking a temporary license under s. 460.08. The rules promulgated under this subsection shall require the person to be a graduate of a massage therapy or bodywork therapy school or program and may require the holder of a temporary license to make disclosures to clients and to practice under the supervision of a massage therapist or bodywork therapist licensed under this chapter.

(g) A requirement that an applicant for a license under this chapter pass an examination on state laws and administrative rules governing massage therapy and bodywork therapy.

History: 2001 a. 74; 2007 a. 104; 2009 a. 355.

Cross-reference: See also chs. MTBT 1, 2, 3, 4, and 5, Wis. adm. code.

460.05 Licensure of massage therapists and bodywork therapists. (1) The affiliated credentialing board shall grant a license as a massage therapist or bodywork therapist to a person who satisfies all of the following:

(a) The person is 18 years of age or older.

(b) The person has graduated from high school or attained high school graduation equivalency as determined by the department of public instruction under s. 115.29 (4).

(c) The person submits an application for the license to the affiliated credentialing board on a form provided by the affiliated credentialing board.

(d) The person pays the fee specified in s. 440.05 (1).

(e) Except as provided in sub. (2), the person submits evidence satisfactory to the affiliated credentialing board that he or she has done all of the following:

1. Graduated from a school of massage therapy or bodywork therapy approved by the educational approval board under s. 38.50 that meets the requirements under s. 460.095 or completed a training program approved by the affiliated credentialing board under the rules promulgated under s. 460.04 (2) (b).

2. Completed at least 6 classroom hours in the laws of this state and rules of the affiliated credentialing board relating to the practice of massage therapy or bodywork therapy in a course of instruction approved by the affiliated credentialing board.

(f) The person passes the examinations under s. 460.06.

(g) The person submits evidence satisfactory to the affiliated credentialing board that he or she has in effect 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.

(h) The person has not been convicted of any of the following:

1. An offense under s. 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, or 948.10.

2. An offense under federal law or a law of any other state that is comparable to an offense under subd. 1.

(i) The person submits evidence satisfactory to the department that he or she has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an

individual, organization, or institution of higher education approved under s. 46.03 (38) to provide such instruction.

(2) The affiliated credentialing board may waive a requirement specified in sub. (1) (e) if a person establishes, to the satisfaction of the affiliated credentialing board, that he or she has education, training, or other experience that is substantially equivalent to the requirement.

(4) The affiliated credentialing board may assign a unique license number to each person licensed under this chapter.

History: 2001 a. 74; 2005 a. 22, 25, 254, 277; 2007 a. 104; 2009 a. 355 ss. 21, 28 to 34; 2013 a. 362.

460.06 Examinations. The affiliated credentialing board may not grant a license under this chapter unless the applicant achieves a passing grade on the following examinations:

(1) A nationally administered, entry-level competency examination for therapeutic massage and bodywork therapy that meets generally accepted psychometric principles and standards or a substantially equivalent examination approved by the affiliated credentialing board.

(2) The examination on state laws and administrative rules governing massage therapy and bodywork therapy required under s. 460.04 (2) (g).

History: 2001 a. 74 s. 16; 2009 a. 355; 2013 a. 168 s. 21.

460.07 Display of certificate; expiration and renewal.

(1) Each person who is licensed under this chapter shall conspicuously display the license in the place of business where he or she practices massage therapy or bodywork therapy so that the license can easily be seen and read.

(2) Renewal applications shall be submitted to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include all of the following:

(a) The renewal fee determined by the department under s. 440.03 (9) (a).

(b) If applicable, proof of completion of continuing education under s. 460.10.

(c) Evidence satisfactory to the affiliated credentialing board that the applicant has in effect 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.

(d) Evidence satisfactory to the affiliated credentialing board that the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38) to provide such instruction.

History: 2001 a. 74; 2007 a. 20, 104; 2009 a. 355.

460.08 Temporary license. The affiliated credentialing board may grant a temporary license for a period not to exceed 6 months to an applicant who satisfies the requirements established in the rules under s. 460.04 (2) (f). A temporary license may not be renewed.

History: 2009 a. 355.

460.09 Reciprocal license. Upon application and payment of the fee specified in s. 440.05 (2), the affiliated credentialing board shall grant a massage therapist or bodywork therapist license to a person who holds a similar license in another state or territory of the United States or another country if the affiliated credentialing board determines that the requirements for receiving the license in the other state, territory, or country are substantially equivalent to the requirements under s. 460.05.

History: 2001 a. 74; 2009 a. 355.

460.095 Massage therapy and bodywork therapy school, training program, and instructor requirements. Each massage therapy or bodywork therapy school located in this

state and each massage therapy or bodywork therapy training program offered in this state shall do all of the following:

(1) Provide and require as a prerequisite to graduation completion of a course of instruction on state laws and regulations applicable to massage therapy and bodywork therapy.

(2) Administer, score, and require as a prerequisite to graduation, the examination required under s. 460.06 (2).

(3) Ensure that each instructor hired by the school or training program on or after December 1, 2010, to teach courses in anatomy, physiology, kinesiology, and pathology has at least one of the following:

(a) Professional training and 2 years of experience in a health-related field.

(b) Two years of post-secondary education and training.

(4) Ensure that each instructor hired by the school or training program on or after December 1, 2010, to teach courses in theory and the practice of massage therapy or bodywork therapy is licensed under this chapter and has at least one of the following:

(a) Two years experience as a practicing professional.

(b) Formal education and training as a massage therapy or bodywork therapy instructor.

History: 2009 a. 355.

460.10 Continuing education. (1) The affiliated credentialing board may promulgate rules establishing all of the following:

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

(b) Qualifications applicable to providers of continuing education programs and courses required under par. (a).

(2) The affiliated credentialing board may waive all or part of any requirement established in rules promulgated under sub. (1) (a) if it determines that prolonged illness, disability, or other exceptional circumstances have prevented a license holder from completing the requirement.

History: 2001 a. 74; 2009 a. 355; 2011 a. 260.

460.11 Practice requirements. (1) A license holder may not practice massage therapy or bodywork therapy on a client unless the license holder first obtains the informed consent of the client and has informed the client that he or she may withdraw the consent at any time.

(2) A license holder shall keep confidential any information that a client in confidence gives to the license holder and any other information that the 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.

(3) A license holder may not, whether for compensation or not, practice massage therapy or bodywork therapy for a sexually oriented business, as defined by the affiliated credentialing board by rule.

History: 2001 a. 74; 2009 a. 355.

460.12 Duty to make reports. (1) A license holder shall submit a report to the affiliated credentialing board if he or she has reasonable cause to believe that another license holder has committed a crime relating to prostitution under ss. 944.30 to 944.34 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) The affiliated credentialing board may use a report made under sub. (1) as the basis for an investigation under s. 460.14 (1). If, after an investigation, the affiliated credentialing board has reasonable cause to believe that a license holder has committed a crime, the affiliated credentialing board shall report the belief to the district attorney for the county in which the crime, in the opinion of the affiliated credentialing board, occurred.

(3) If, after an investigation, the affiliated credentialing board determines that a report submitted under sub. (1) is without merit, the affiliated credentialing board shall remove the report from the record of the license holder who is the subject of the report.

(4) All reports and records made from reports under sub. (1) and maintained by the affiliated credentialing board, the department, district attorneys, and other persons, officials, and institutions shall be confidential and are exempt from disclosure under s. 19.35 (1). Information regarding the identity of a client with whom a license holder is suspected of having sexual contact or sexual intercourse shall not be disclosed by persons who have received or have access to a report or record unless disclosure is consented to in writing by the client. The report of information under sub. (1) and the disclosure of a report or record under this subsection does not violate any person's responsibility for maintaining the confidentiality of patient health care records, as defined in s. 146.81 (4) and as required under s. 146.82. Reports and records may be disclosed only to the affiliated credentialing board, the department, and the appropriate staff of a district attorney or a law enforcement agency within this state for purposes of investigation or prosecution.

(5) (a) In this subsection, "violation" means a violation of any state or local law that is punishable by a forfeiture.

(b) A license holder shall submit a written report to the affiliated credentialing board if he or she is convicted of a felony or misdemeanor, or is found to have committed a violation, in this state or elsewhere, and if the circumstances of the felony, misdemeanor, or violation substantially relate to the practice of massage therapy or bodywork therapy. The report shall identify the date, place, and nature of the conviction or finding and shall be submitted within 30 days after the entry of the judgment of conviction or the judgment finding that he or she committed the violation. If the report is submitted by mail, the report is considered to be submitted on the date that it is mailed.

History: 2001 a. 74; 2009 a. 355.

460.13 Advertising. Except as provided in s. 460.03 (1) and (2), a license holder may not advertise that he or she practices massage therapy or bodywork therapy unless the advertisement includes a statement that the license holder is a "licensed massage therapist and bodywork therapist" or "licensed massage therapist" or "licensed bodywork therapist."

History: 2001 a. 74; 2009 a. 355; 2011 a. 260 s. 80.

460.14 Disciplinary proceedings and actions. (1) Subject to the rules promulgated under s. 440.03 (1), the affiliated credentialing board may make investigations and conduct hearings to determine whether a violation of this chapter or any rule promulgated under this chapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the affiliated credentialing board may reprimand a license holder or deny, limit, suspend, or revoke a license under this chapter if it finds that the applicant or license holder has done any of the following:

(a) Made a material misstatement in an application for a license or for renewal of a license.

(b) Subject to ss. 111.321, 111.322, and 111.335, been convicted of an offense the circumstances of which substantially relate to the practice of massage therapy or bodywork therapy.

(c) Advertised in a manner that is false, deceptive, or misleading.

(d) Advertised, practiced, or attempted to practice under another's name.

460.14 MASSAGE THERAPY AND BODYWORK THERAPY

Updated 15–16 Wis. Stats. 4

(e) Subject to ss. 111.321, 111.322, and 111.34, practiced massage therapy or bodywork therapy while his or her ability to practice was impaired by alcohol or other drugs.

(f) Intentionally made a false statement in a report submitted under s. 460.12 (1).

(g) Engaged in unprofessional conduct in violation of the standards established in rules promulgated under s. 460.04 (2) (a).

(h) Engaged in conduct while practicing massage therapy or bodywork therapy that jeopardizes the health, safety, or welfare of a client or that evidences a lack of knowledge of, inability to apply, or the negligent application of, principles or skills of massage therapy or bodywork therapy.

(j) Violated this chapter or any rule promulgated under this chapter.

(2m) Subject to the rules promulgated under s. 440.03 (1), the affiliated credentialing board shall revoke a license under this chapter if the license holder is convicted of any of the following:

(a) An offense under s. 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, or 948.10.

(b) An offense under federal law or a law of any other state that is comparable to an offense under par. (a).

(3) The affiliated credentialing board may restore a license that has been suspended or revoked on such terms and conditions as the affiliated credentialing board may deem appropriate.

History: 2001 a. 74; 2005 a. 277; 2009 a. 355; 2013 a. 362.

460.15 Penalty. Any person who violates this chapter or any rule promulgated under this chapter shall forfeit not more than \$1,000 for each violation.

History: 2001 a. 74; 2009 a. 355.

460.17 Local regulation. A city, village, town, or county may not enact an ordinance that regulates the practice of massage therapy or bodywork therapy by a person who is licensed by the affiliated credentialing board under this chapter. No provision of any ordinance enacted by a city, village, town, or county that is in effect before February 1, 1999, and that relates to the practice of massage therapy or bodywork therapy, may be enforced against a person who is licensed by the affiliated credentialing board under this chapter.

History: 2001 a. 74 s. 19; 2009 a. 355.

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

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Kimberly Wood, Program Assistant Supervisor-Adv. On behalf of Tom Ryan, Executive Director		2) Date When Request Submitted: 10/2/2017 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Massage Therapy and Bodywork Therapy Affiliated Credentialing Board			
4) Meeting Date: 12/6/2017	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? National Association of Attorneys General Letter Regarding Alternatives to Opioids	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (<u>Fill out Board Appearance Request</u>) <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:			
11) Authorization			
<i>Kimberly Wood</i>		10/2/2017	
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.			

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September 18, 2017

Marilyn Tavenner
President and CEO
America's Health Insurance Plans
601 Pennsylvania Avenue, NW
Washington, DC 20004

Re: Prescription Opioid Epidemic

Dear Ms. Tavenner,

The undersigned State Attorneys General are sending you this letter to urge America's Health Insurance Plans (AHIP) to take proactive steps to encourage your members to review their payment and coverage policies and revise them, as necessary and appropriate, to encourage healthcare providers to prioritize non-opioid pain management options over opioid prescriptions for the treatment of chronic, non-cancer pain. We have witnessed firsthand the devastation that the opioid epidemic has wrought on our States in terms of lives lost and the costs it has imposed on our healthcare system and the broader economy. As the chief legal officers of our States, we are committed to using all tools at our disposal to combat this epidemic and to protect patients suffering from chronic pain or addiction, who are among the most vulnerable consumers in our society.

The opioid epidemic is the preeminent public health crisis of our time. Statistics from the Surgeon General of the United States indicate that as many as 2 million Americans are currently addicted to or otherwise dependent upon prescription opioids.¹ Millions more are at risk of developing a dependency—in 2014, as many as 10 million people reported using opioids for nonmedical reasons.² The economic toll of the epidemic is tremendous, costing the U.S. economy an estimated \$78.5 billion annually.³ State and local governments alone spend nearly 8 billion dollars a year on criminal justice costs related to

¹ Surgeon General of the United States, *Opioids*, <https://www.surgeongeneral.gov/priorities/opioids/index.html> (last updated June 1, 2017); Nora D. Volkow, M.D., *America's Addiction to Opioids: Heroin and Prescription Drug Abuse*, National Institute on Drug Abuse (May 14, 2014), <https://www.drugabuse.gov/about-nida/legislative-activities/testimony-to-congress/2016/americas-addiction-to-opioids-heroin-prescription-drug-abuse>.

² See Surgeon General, *supra* fn. 1 (citing *National Survey on Drug Use and Health*, Substance Abuse and Mental Health Services Administration, 2014).

³ Healthday News, *Opioid Epidemic Costs U.S. \$78.5 Billion Annually: CDC* (Sept. 21, 2016), <http://www.health.com/healthday/opioid-epidemic-costs-us-785-billion-annually-cdc>.

opioid abuse.⁴ The human cost is even more staggering: Opioid overdoses kill 91 Americans *every single day*.⁵ More than half of those deaths involve prescription opioids.⁶

The unnecessary over-prescription of opioid painkillers is a significant factor contributing to the problem. Although the amount of pain reported by Americans has remained steady since 1999, prescriptions for opioid painkillers have nearly quadrupled over the same timeframe.⁷ This four-fold increase in prescriptions has contributed to a commensurate increase in the number of opioid overdose deaths.⁸ The dramatic increase in supply has also made it relatively easy to obtain prescription opioids without having to resort to the black market: Over 50% of people who misuse opioids report that they obtained them for free from a friend or relative, while another 22% misused drugs that they obtained directly from a doctor.⁹ While illegal opioids like heroin remain a serious problem that also must be addressed, the role played by prescription opioids cannot be ignored. While there is no panacea, any comprehensive effort to address and end the opioid epidemic must tackle the ever-increasing number of prescriptions for opioid painkillers.

Reducing the frequency with which opioids are prescribed will not leave patients without effective pain management options. While there are certainly situations where opioids represent the appropriate pain remedy, there are many other circumstances in which opioids are prescribed despite evidence suggesting they are ineffective and even dangerous. For example, the American Academy of Neurology has explained that while the use of opioid painkillers can provide “significant short-term pain relief,” there is “no substantial evidence for maintenance of pain relief or improved function over long periods of time.”¹⁰ Another recent study concluded that the use of opioids to treat chronic, non-cancer related pain lasting longer than three months is “ineffective and can be life-threatening.”¹¹ When patients seek treatment for any of the myriad conditions that cause chronic pain, doctors should be encouraged to explore and prescribe effective non-opioid alternatives, ranging from non-opioid medications (such as NSAIDs) to physical therapy, acupuncture, massage, and chiropractic care.

⁴ *Id.* See also *Costs of US Prescription Opioid Epidemic Estimated at \$78.5 Billion*, Wolters Kluwer (Sept. 14, 2016), <http://wolterskluwer.com/company/newsroom/news/2016/09/costs-of-us-prescription-opioid-epidemic-estimated-at-usd78.5-billion.html>

⁵ *Understanding the Epidemic: Drug overdose deaths in the United States continue to increase in 2015*, Centers for Disease Control and Prevention, <https://www.cdc.gov/drugoverdose/epidemic/> (last updated Dec. 16, 2016).

⁶ *Prescription Opioid Overdose Data*, Centers for Disease Control and Prevention, <https://www.cdc.gov/drugoverdose/data/overdose.html> (last updated Dec. 16, 2016).

⁷ See *Surgeon General*, supra fn. 1; *Opioid Addiction 2016 Facts and Figures*, American Society of Addiction Medicine (2016), <https://www.asam.org/docs/default-source/advocacy/opioid-addiction-disease-facts-figures.pdf>.

⁸ Vivek Murthy, *The Opioid Crisis: Our Solution*, TIME (Oct. 13, 2016), <http://time.com/4521562/2016-election-opioid-epidemic/>

⁹ *Opioids*, Substance Abuse and Mental Services Administration, <https://www.samhsa.gov/atod/opioids> (last updated Feb. 23, 2016).

¹⁰ Gary M. Franklin, MD, MPH, *Opioids for chronic noncancer pain: A position paper of American Academy of Neurology*, 83 *Neurology* 1277 (2014).

¹¹ Eric Scicchitano, *Geisinger doctors: Opioids ineffective for chronic pain put patients at risk*, The Daily Item (Dec. 7, 2016), http://www.dailyitem.com/news/local_news/geisinger-doctors-opioids-ineffective-for-chronic-pain-put-patients-at/article_2d66014f-511e-554f-bed5-768886b48616.html (citing, generally, Mellar P. Davis & Zankhana Mehta, *Opioids and Chronic Pain: Where is the Balance?* 18 *Current Oncology Reports* 71 (2016), available at <https://link.springer.com/epdf/10.1007/s11912-016-0558-1>)

Insurance companies can play an important role in reducing opioid prescriptions and making it easier for patients to access other forms of pain management treatment. Indeed, simply asking providers to consider providing alternative treatments is impractical in the absence of a supporting incentive structure. All else being equal, providers will often favor those treatment options that are most likely to be compensated, either by the government, an insurance provider, or a patient paying out-of-pocket. Insurance companies thus are in a position to make a very positive impact in the way that providers treat patients with chronic pain.

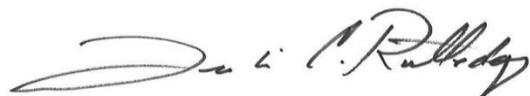
Adopting an incentive structure that rewards the use of non-opioid pain management techniques for chronic, non-cancer pain will have many benefits. Given the correlation between increased supply and opioid abuse, the societal benefits speak for themselves. Beyond that, incentivizing opioid alternatives promotes evidence-based techniques that are more effective at mitigating this type of pain, and, over the long-run, more cost-efficient.¹² Thus, adopting such policies benefit patients, society, and insurers alike.

The undersigned Attorneys General serve an important role in combating the opioid epidemic. As the chief legal officers of our States, we are charged with protecting consumers, including patients suffering from chronic pain and opioid addiction. Among other things, we are committed to protecting patients from unfair or deceptive business practices and ensuring that insurers provide consumers with transparent information about their products and services.

We are thus committed to utilizing all the powers available to our individual offices to ameliorate the problems caused by the over-prescription of opioids and to promote policies and practices that result in reasonable, sustainable, and patient-focused pain management therapies. In the near future, working in conjunction with other institutional stakeholders (such as State Insurance Commissioners), we hope to initiate a dialogue concerning your members' incentive structures in an effort to identify those practices that are conducive to these efforts and those that are not. We hope that this process will highlight problematic policies and spur increased use of non-opioid pain management techniques. The status quo, in which there may be financial incentives to prescribe opioids for pain which they are ill-suited to treat, is unacceptable. We ask that you quickly initiate additional efforts so that you can play an important role in stopping further deaths.

We look forward to having this discussion with you.

Sincerely,



Leslie Rutledge
Arkansas Attorney General



Pamela Jo Bondi
Florida Attorney General

¹² Harrison Jacobs, *Pain doctors: Insurance companies won't cover the alternatives to opioids*, Business Insider (Aug. 10, 2016), <http://www.businessinsider.com/doctors-insurance-companies-policies-opioid-use-2016-6> (“If you look at the long-term cost of [opioids], plus monitoring, office visits and drug screenings . . . it’s cheaper long-term to do the more advanced therapy,”) (quoting Dr. Timothy Deer, co-chair, West Virginia Expert Pain Management Panel).

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