



**MASSAGE THERAPY AND BODYWORK THERAPY AFFILIATED
CREDENTIALING BOARD**

Room N208, 4822 Madison Yards Way, 2nd Floor, Madison

Contact: Yolanda Y. McGowan (608) 266-2112

September 3, 2019

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 June 4, 2019 (4-11)

C. Introductions, Announcements and Recognition

1) New Members

a. Jeff Miller, Public Member (Replaces: Ostendorf)

b. Ramona Trudeau, School (approved by DSPPS) Representative Member
(Replaces: Pollock)

D. Conflicts of Interest

E. Administrative Matters – Discussion and Consideration

1) Department, Staff and Board Updates

2) Appointment of Liaisons and Alternates

3) Board Members – Term Expiration Dates

4) Wis. Stat. s 15.085 (3)(b) – Biannual Meeting with the Medical Examining Board

F. 9:00 A.M. PUBLIC HEARING: Clearinghouse Rule CR 19-101 – MTBT 5 Relating to Unprofessional Conduct (13-21)

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

G. 9:00 A.M. PUBLIC HEARING: Clearinghouse Rule CR 19-102 – MTBT 4 Relating to Requirements for Renewal and Reinstatement (22-32)

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

H. Legislative and Administrative Rule Matters – Discussion and Consideration

1) Possible Apprenticeship Pathway to Massage Therapy Licensure (33)

2) Legislation and Pending or Possible Rulemaking Projects

I. Federation of State Massage Therapy Boards (FSMTB) Matters – Discussion and Consideration

J. Discussion and Consideration of Items Added After Preparation of Agenda:

- 1) Introductions, Announcements and Recognition
- 2) Nominations, Elections, and Appointments
- 3) Administrative Matters
- 4) Election of Officers
- 5) Appointment of Liaisons and Alternates
- 6) Delegation of Authorities
- 7) Education and Examination Matters
- 8) Credentialing Matters
- 9) Practice Matters
- 10) Legislative and Administrative Rule Matters
- 11) Liaison Reports
- 12) Board Liaison Training and Appointment of Mentors
- 13) Informational Items
- 14) Division of Legal Services and Compliance (DLSC) Matters
- 15) Presentations of Petitions for Summary Suspension
- 16) Petitions for Designation of Hearing Examiner
- 17) Presentation of Stipulations, Final Decisions and Orders
- 18) Presentation of Proposed Final Decisions and Orders
- 19) Presentation of Interim Orders
- 20) Petitions for Re-Hearing
- 21) Petitions for Assessments
- 22) Petitions to Vacate Orders
- 23) Requests for Disciplinary Proceeding Presentations
- 24) Motions
- 25) Petitions
- 26) Appearances from Requests Received or Renewed
- 27) Speaking Engagements, Travel, or Public Relation Requests, and Reports

K. Public Comments

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.).

L. Deliberation on DLSC Matters

- 1) Proposed Stipulations Final Decisions and Orders**
 - a.17 MAB 006 – Cathryn A. Davis **(34-39)**
- 2) Case Closing(s)**
 - a.17 MAB 022 – R.H. **(40-43)**
 - b.18 MAB 007 – Unknown **(44-46)**

M. Deliberation of Items Added After Preparation of the Agenda

- 1) Education and Examination Matters
- 2) Credentialing Matters
- 3) DLSC Matters

- 4) Monitoring Matters
- 5) Professional Assistance Procedure (PAP) Matters
- 6) Petitions for Summary Suspensions
- 7) Petitions for Designation of Hearing Examiner
- 8) Proposed Stipulations, Final Decisions and Order
- 9) Proposed Interim Orders
- 10) Administrative Warnings
- 11) Review of Administrative Warnings
- 12) Proposed Final Decisions and Orders
- 13) Matters Relating to Costs/Orders Fixing Costs
- 14) Case Closings
- 15) Board Liaison Training
- 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. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

P. Open Session Items Noticed Above Not Completed in the Initial Open Session

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

ADJOURNMENT

NEXT DATE: DECEMBER 3, 2019

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 4822 Madison Yards Way, 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
JUNE 4, 2019**

PRESENT: Robert Coleman, Jr., Carla Hedtke, Elizabeth Krizenesky, Jaime Ehmer, Gregory Quandt (*Excused at 10:34 a.m.*)

STAFF: Yolanda McGowan, Division Administrator; Dale Kleven, Administrative Rules Coordinator; Kimberly Wood, Program Assistant Supervisor; and other Department Staff

CALL TO ORDER

Robert Coleman, Jr., Vice Chairperson, called the meeting to order at 9:18 a.m. A quorum of five (5) members was confirmed.

ADOPTION OF AGENDA

Amendments to the Agenda

- Open Session – Under item “C. Introductions, Announcements and Recognition; 2. Appointments” **ADD:** “b. Gregory Quandt – Massage Therapist/Bodyworker Member”
- Open Session – Under item “C. Introductions, Announcements and Recognition” **ADD:** “3. Reappointments, a. Robert Coleman, Jr. – Massage Therapist/Bodyworker Member”

MOTION: Carla Hedtke moved, seconded by Jaime Ehmer, to adopt the Agenda as amended. Motion carried unanimously.

APPROVAL OF MINUTES

MOTION: Carla Hedtke moved, seconded by Elizabeth Krizenesky, to approve the Minutes of September 4, 2018 as published. Motion carried unanimously.

INTRODUCTIONS, ANNOUNCEMENTS, AND RECOGNITION

Resignations

Darlene Campo & Mark Richardson

MOTION: Gregory Quandt moved, seconded by Robert Coleman, Jr., to recognize and thank Darlene Campo and Mark Richardson for their years of dedicated service to the Board and State of Wisconsin. Motion carried unanimously.

ADMINISTRATIVE MATTERS

Elections

CHAIRPERSON

NOMINATION: Carla Hedtke nominated Robert Coleman, Jr. for the Office of Chairperson.

Yolanda McGowan, Division Administrator, called for nominations three (3) times.

Robert Coleman, Jr. was elected as Chairperson by unanimous voice vote.

VICE CHAIRPERSON

NOMINATION: Robert Coleman, Jr. nominated Carla Hedtke for the Office of Vice Chairperson.

Yolanda McGowan, Division Administrator, called for nominations three (3) times.

Carla Hedtke was elected as Vice Chairperson by unanimous voice vote.

SECRETARY

NOMINATION: Robert Coleman, Jr. nominated Gregory Quandt for the Office of Secretary.

NOMINATION: Elizabeth Krizenesky nominated Jaime Ehmer for the Office of Secretary.

Yolanda McGowan, Division Administrator, called for nominations three (3) times.

Roll Call Vote: Robert Coleman-Jaime Ehmer; Carla Hedtke-Jaime Ehmer; Elizabeth Krizenesky-Jaime Ehmer; Jaime Ehmer-Jaime Ehmer; Gregory Quandt-Jaime Ehmer.

Jaime Ehmer was elected as Secretary by unanimous roll call vote.

| 2019 ELECTION RESULTS | |
|-----------------------|---------------------|
| Chairperson | Robert Coleman, Jr. |
| Vice Chairperson | Carla Hedtke |
| Secretary | Jaime Ehmer |

Appointment of Liaisons

| 2019 LIAISON APPOINTMENTS | |
|---|--|
| Credentialing Liaison(s) | Robert Coleman, Jr. <i>Alternate:</i> Carla Hedtke |
| Office of Education and Examinations Liaison(s) | Carla Hedtke <i>Alternate:</i> Gregory Quandt |
| Monitoring Liaison(s) | Elizabeth Krizenesky <i>Alternate:</i> Jaime Ehmer |
| Professional Assistance Procedure (PAP) Liaison(s) | Carla Hedtke <i>Alternate:</i> Gregory Quandt |
| Legislative Liaison(s) | Elizabeth Krizenesky <i>Alternate:</i> Carla Hedtke |
| Travel Liaison(s) | Robert Coleman, Jr. <i>Alternate:</i> Jaime Ehmer |
| Website Liaison(s) | Robert Coleman, Jr. <i>Alternate:</i> Gregory Quandt |
| Administrative Rules Liaison(s) | Elizabeth Krizenesky <i>Alternate:</i> Jaime Ehmer |
| Screening Panel | Robert Coleman, Jr., Carla Hedtke, Gregory Quandt <i>Alternate:</i> Jaime Ehmer, Elizabeth Krizenesky |

Delegation of Authorities

Document Signature Delegations

MOTION: Robert Coleman, Jr. moved, seconded by Gregory Quandt, to delegate authority to the Chairperson (or in absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) to sign documents on behalf of the Board in order to carry out its duties. Motion carried unanimously.

MOTION: Gregory Quandt moved, seconded by Jaime Ehmer, in order to carry out duties of the Board, the Chairperson (or in absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) has the ability to delegate signature authority for purposes of facilitating the completion of assignments during or between meetings. The members of the Board hereby delegate to the Executive Director or DPD Division Administrator, the authority to sign on behalf of a board member as necessary. Motion carried unanimously.

Delegated Authority for Urgent Matters

MOTION: Robert Coleman, Jr. moved, seconded by Carla Hedtke, that in order to facilitate the completion of urgent matters between meetings, the Board delegates its authority to the Chairperson (or, in the absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession), to appoint liaisons to the Department to act in urgent matters. Motion carried unanimously.

Monitoring Delegations

MOTION: Robert Coleman, Jr. moved, seconded by Gregory Quandt, to adopt the “Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor” as presented in the 6/4/2019 meeting agenda materials. Motion carried unanimously.

Credentialing Authority Delegations

Delegation of Authority to Credentialing Liaison (Denial Decisions)

MOTION: Jaime Ehmer moved, seconded by Gregory Quandt, to delegate authority to the Credentialing Liaison(s) to serve as a liaison between DSPS and the Board and to act on behalf of the Board in regard to credentialing applications or questions presented to them except that potential denial decisions shall be referred to the full Board for final determination. Motion carried unanimously.

Delegation of Authority to DSPS When Credentialing Criteria is Met

MOTION: Carla Hedtke moved, seconded by Jaime Ehmer, to delegate credentialing authority to DSPS to act upon applications that meet all credentialing statutory and regulatory requirements without Board or Board liaison review. Motion carried unanimously.

Delegated Authority for Application Denial Reviews

MOTION: Gregory Quandt moved, seconded by Robert Coleman, Jr., that the Department’s Attorney Supervisors, DLSC Administrator, or their designee are authorized to serve as the Board’s designee for purposes of reviewing and acting on requests for hearing as a result of a denial of a credential. Motion carried unanimously.

Voluntary Surrenders

MOTION: Robert Coleman, Jr. moved, seconded by Gregory Quandt, to delegate authority to the assigned case advisor to accept or refuse a request for voluntary surrender pursuant to Wis. Stat. § 440.19 for a credential holder who has a pending complaint or disciplinary matter. Motion carried unanimously.

Continuing Education and Education Delegation(s)

MOTION: Jaime Ehmer moved, seconded by Gregory Quandt, to delegate authority to the Office of Education and Examination Liaison(s) to address all issues related to continuing education and examinations. Motion carried unanimously.

Authorization for DSPS to Provide Board Member Contact Information to National Regulatory Related Bodies

MOTION: Robert Coleman, Jr. moved, seconded by Jaime Ehmer, to authorize DSPS staff to provide national regulatory related bodies with all Board member contact information that DSPS retains on file. Motion carried unanimously.

Optional Renewal Notice Insert Delegation

MOTION: Gregory Quandt moved, seconded by Robert Coleman, Jr., to designate the Chairperson (or, in the absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) to provide a brief statement or link relating to board-related business within the license renewal notice at the Board's or Board designee's request. Motion carried unanimously.

Legislative Liaison Delegation

MOTION: Robert Coleman, Jr. moved, seconded by Carla Hedtke, to delegate authority to the Legislative Liaisons to speak on behalf of the Board regarding legislative matters. Motion carried unanimously.

Travel Liaison Delegation

MOTION: Gregory Quandt moved, seconded by Jaime Ehmer, to delegate authority to the Travel Liaison to approve any board member travel. Motion carried unanimously.

LEGISLATIVE AND ADMINISTRATIVE RULE MATTERS

Adoption Order: CR 18-053, Relating to Application for a License and Approved Training Programs

MOTION: Robert Coleman, Jr. moved, seconded by Gregory Quandt, to approve the Adoption Order for Clearinghouse Rule 18-053, relating to application for a license and approved training programs. Motion carried unanimously.

(Gregory Quandt was excused at 10:34 a.m.)

FEDERATION OF STATE MASSAGE THERAPY BOARDS (FSMTB) MATTERS

MOTION: Robert Coleman, Jr. moved, seconded by Jaime Ehmer, to designate Carla Hedtke as the Board's delegate, and Jaime Ehmer as alternate delegate, to attend the FSMTB Annual Meeting in Atlanta, GA on October 3-5, 2019 and to authorize travel. Motion carried unanimously.

CLOSED SESSION

MOTION: Robert Coleman, Jr. moved, seconded by Carla Hedtke, 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.). Robert Coleman, Jr., Chairperson, read the language of the motion aloud for the record. The vote of each member was ascertained by voice vote. Roll Call Vote: Robert Coleman, Jr.-yes; Carla Hedtke-yes; Elizabeth Krizenesky-yes; Jaime Ehmer-yes. Motion carried unanimously.

The Board convened into Closed Session at 10:43 a.m.

CREDENTIALING MATTERS

Education Review

MOTION: Robert Coleman, Jr. moved, seconded by Jaime Ehmer, to authorize the Credentialing Liaison and Board Legal Counsel to offer a Limited License to M. Sarah Goldberg. If the Limited License is not accepted by the applicant, then a denial will be issued. Reason for Denial: Applicant did not provide evidence sufficient to establish that she has education, training, or other experience that is substantially equivalent to the requirement under Wis. Stats. § 460.05 (1)(e), therefore the Board declines to waive the educational requirement as permitted under Wis. Stats. § 460.05(2). Motion carried unanimously.

Application Review

MOTION: Jaime Ehmer moved, seconded by Robert Coleman, Jr., to issue a notice of intent to deny the application of Christine Wolf for licensure. Reason for Intent to Deny: Applicant is applying for renewal more than 5 years after her renewal date and did not provide proof that she has met the requirements of MTBT 4.04(2), Wis. Admin. Code. Motion carried unanimously.

DELIBERATION OF DLSC MATTERS

Proposed Stipulations, Final Decisions and Orders

MOTION: Robert Coleman, Jr. moved, seconded by Carla Hedtke, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings of the following cases:

1. 16 MAB 020 – Hanshuang Ouyang
2. 16 MAB 020 – YaQin Yang
3. 17 MAB 005 – Dongmei Li
4. 17 MAB 011 – Lanyu Jiang
5. 17 MAB 028 – William S. Freier
6. 18 MAB 001 & 18 MAB 011 – Xiao Li
7. 19 MAB 002 – Jvon S. Clemmer

Motion carried unanimously.

16 MAB 001 – Huiming Ren, L.M.T.

MOTION: Robert Coleman, Jr. moved, seconded by Jaime Ehmer, to delegate to Department Chief Legal Counsel the Board's authority to preside over and resolve the matter of disciplinary proceedings against Huiming Ren, L.M.T., DLSC Case Number 16 MAB 001. Motion carried unanimously.

Proposed Interim Order

18 MAB 022 – Matthew R.L. Marks, L.M.T.

MOTION: Robert Coleman, Jr. moved, seconded by Jaime Ehmer, to delegate to Department Chief Legal Counsel the Board's authority to preside over and resolve the matter of disciplinary proceedings against Matthew R.L. Marks, L.M.T., DLSC Case Number 18 MAB 022. Motion carried unanimously.

Case Closings

MOTION: Robert Coleman, Jr. moved, seconded by Carla Hedtke, to close the following DLSC Cases for the reasons outlined below:

1. 17 MAB 002 – A.W. – No Violation
2. 17 MAB 019 – Unknown – No Violation
3. 17 MAB 020 – J.G. – Prosecutorial Discretion (P2)
4. 17 MAB 023 – M.J. – Prosecutorial Discretion (P2)
5. 17 MAB 024 – A.C.R. – Prosecutorial Discretion (P2)
6. 18 MAB 010 – R.L. – Insufficient Evidence
7. 18 MAB 011 – Y.L. (R2) – Insufficient Evidence
8. 18 MAB 011 – Y.L. (R3) – Insufficient Evidence
9. 18 MAB 018 – E.L. – Lack of Jurisdiction (L.3.)

Motion carried unanimously.

RECONVENE TO OPEN SESSION

MOTION: Robert Coleman, Jr. moved, seconded by Carla Hedtke, to reconvene in Open Session. Motion carried unanimously.

The Board reconvened into Open Session at 12:21 p.m.

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

MOTION: Robert Coleman, Jr. moved, seconded by Jaime Ehmer, 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).

DELEGATION OF RATIFICATION OF EXAMINATION RESULTS AND RATIFICATION OF LICENSES AND CERTIFICATES

MOTION: Robert Coleman, Jr. moved, seconded by Carla Hedtke, 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: Robert Coleman, Jr. moved, seconded by Carla Hedtke, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 12:24 p.m.

AGENDA REQUEST FORM

| | | | |
|---|--|---|---|
| 1) Name and Title of Person Submitting the Request: Dale Kleven Administrative Rules Coordinator | | 2) Date When Request Submitted: 8/21/19 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date: ▪ 8 business days before the meeting</small> | |
| 3) Name of Board, Committee, Council, Sections: Massage Therapy and Bodywork Therapy Affiliated Credentialing Board | | | |
| 4) Meeting Date: 9/3/19 | 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 19-101 – MTBT 5 Relating to Unprofessional Conduct 1. Review and Respond to Public Comments and Clearinghouse Report 9:00 A.M. Public Hearing: CR 19-102 – MTBT 4 Relating to Requirements for Renewal and Reinstatement 1. Review and Respond to Public Comments and Clearinghouse Report Legislative and Administrative Rule Matters – Discussion and Consideration 1. 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 <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="width: 45%;"><i>Dale Kleven</i></div> <div style="width: 45%; text-align: right;"><i>August 21, 2019</i></div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Signature of person making this request</div> <div style="width: 40%; text-align: right;">Date</div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Supervisor (if required)</div> <div style="width: 40%; text-align: right;">Date</div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Executive Director signature (indicates approval to add post agenda deadline item to agenda)</div> <div style="width: 40%; text-align: right;">Date</div> </div> | | | |
| 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 THERAPY AFFILIATED CREDENTIALING
BOARD

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

PROPOSED ORDER

An order of the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board to repeal MTBT 5.03 (2) (intro.); to renumber and amend MTBT 5.03 (1) and (2) (a) to (c); and to amend MTBT 5.02 (2), (6), (11), (14), (15) (intro.) and (c), (20), (24), (25), (26) (intro.), (a), and (b), (28), and (29), 5.03 (3) and (Note), and 5.04, relating to unprofessional conduct.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 440.03 (4m), Stats.

Statutory authority:

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

Explanation of agency authority:

Section 15.085 (5) (b), Stats., provides an affiliated credentialing board, 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:

Chapter MTBT 7 provides continuing education requirements for renewal of a license as a massage therapist or bodywork therapist. As provided under s. MTBT 5.02 (24), failing to complete these requirements is considered unprofessional conduct.

Plain language analysis:

Section MTBT 5.04 is revised to comply with s. 440.03 (4m), Stats., as created by 2017 Wisconsin Act 59. Under this provision, the Board may require a credential holder to submit proof of completing continuing education programs or courses only if a complaint is made against the credential holder. Other provisions throughout ch. MTBT 5 have been revised to ensure consistency with current standards for drafting style and format and applicable Wisconsin statutes.

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

None.

Comparison with rules in adjacent states:**Illinois:**

Illinois' continuing education requirements include provisions for retention and production of evidence of compliance [68 Ill. Admin. Code 1284.90 d) 2)]. The Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation may require additional evidence demonstrating compliance with the continuing education requirements. It is the responsibility of each applicant for renewal to retain or otherwise produce evidence of such compliance. Such additional evidence is required in the context of the Division's random audit.

Iowa:

Iowa's continuing education requirements include provisions for retention and production of evidence of compliance (645 IAC 4.11). The Iowa Board of Massage Therapy may select licensees for audit following license renewal. Upon audit, a licensee is required to provide an individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor. All licensees must retain documentation of compliance with the continuing education requirements for two years following license renewal.

Michigan:

Michigan's continuing education requirements include provisions for certification of compliance and retention of evidence of compliance [Mich Admin Code, R 338.731 (3)]. Submission of an application for renewal constitutes an applicant's certification of compliance with the continuing education requirements, and all licensees are required to retain documentation of meeting the requirements for a period of 4 years from the date of applying for license 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 were developed by reviewing the provisions of ch. MTBT 5 to ensure consistency with current standards for drafting style and format and applicable Wisconsin statutes. 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 Daniel.Hereth@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, P.O. Box 8366, Madison, Wisconsin 53708-8366; 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, P.O. Box 8366, Madison, WI 53708-8366, 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 3, 2019, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. MTBT 5.02 (2), (6), (11), (14), (15) (intro.) and (c), (20), (24), (25), (26) (intro.), (a), and (b), (28), and (29) are amended to read:

MTBT 5.02 (2) Being convicted of ~~any of the following: ss.~~ 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, and or 948.10, Stats.

(6) Knowingly, negligently, or recklessly making any written or oral statement, ~~written or oral, in the course of while~~ practicing massage therapy, ~~which~~ that is likely to deceive, defraud, mislead, or create an unacceptable risk of harm to a client, the public, or both.

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

(14) ~~Divulging any information that a client gives in confidence to the licensee or any other information that the licensee obtains about a client in the course of practicing massage therapy or bodywork therapy that a reasonable person in the client's position would want kept confidential unless the information is otherwise required by law to be disclosed or the client specifically authorizes the disclosure of the information is required under s. 460.11 (2), Stats., to be kept confidential.~~

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

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

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

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

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

(26) (intro.) ~~Conviction of any federal or state law or rule, including criminal law, Subject to ss. 111.321, 111.322, and 111.335, Stats., being convicted of an offense the circumstances of which is substantially related~~ relate to the practice of massage therapy or bodywork therapy. For the purposes of this subsection, all of the following shall apply:

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

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

(28) Failing to display ~~his or her~~ the license under ch. 460, Stats., in his or her the licensee's place of business or practice as required under s. 460.07 (1), Stats. so that it can easily be seen and read by the public. In the case of a mobile practice, a licensee ~~is required to~~ shall be able to present ~~his or her~~ the license for public display.

(29) Failing to maintain liability insurance coverage ~~in an amount not less than~~ of at least \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year, ~~pursuant to~~ as required under s. 460.05 (1) (g), Stats.

SECTION 2. MTBT 5.03 (1) is renumbered MTBT 5.03 (1) (intro.) and amended to read:

MTBT 5.03 (1) (intro.) ~~A license holder~~ licensee shall submit a report to the board if ~~he or she the licensee~~ has reasonable cause to believe ~~that another license holder licensee~~ has committed a crime relating to prostitution under ss. 944.30 to 944.34, Stats., or has had sexual contact or sexual intercourse with a client. ~~If the report relates to sexual contact or sexual intercourse with a client, the report may not identify the client unless the client has provided written consent for disclosure of this information.~~ For purposes of this subsection, a licensee shall be considered to have reasonable cause upon occurrence of any of the following:

SECTION 3. MTBT 5.03 (2) (intro.) is repealed.

SECTION 4. MTBT 5.03 (2) (a) to (c) are renumbered MTBT 5.03 (1) (a) to (c) and amended to read:

MTBT 5.03 (1) (a) ~~Being~~ The licensee is informed by a person that, he or she has while a client of another licensee, that person engaged in an act with another license holder prohibited by ss. 944.30 to 944.34, Stats., with that licensee.

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

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

SECTION 5. MTBT 5.03 (3) and (Note) are amended to read:

MTBT 5.03 (3) The report shall be made on a complaint form provided by the board. 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. The board may use the report as the basis for an investigation under s. 460.14 (1), Stats.

(Note) Complaint forms are available from the Department department of Safety safety and Professional Services, Division of Legal Services and Compliance, 1400 East Washington Avenue, P.O. Box 7190, Madison, Wisconsin 53707, professional services at (608) 266-2112 or from the department's website at: <http://dsps.wi.gov>.

SECTION 6. MTBT 5.04 is amended to read:

MTBT 5.04 Audits. ~~The Any licensee who is under investigation by the board may conduct a random audit of any licensee on a biennial basis for alleged misconduct shall be audited by the board for compliance with the continuing education requirements set forth in~~ under s. MTBT 7.02.

SECTION 7. 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. Date September 20, 2018 |
| 3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) MTBT 5 | |
| 4. Subject Unprofessional conduct | |
| 5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S | 6. Chapter 20, Stats. Appropriations Affected |
| 7. 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"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget | |
| 8. 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) | |
| 9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0 | |
| 10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| 11. Policy Problem Addressed by the Rule Section MTBT 5.04 is revised to comply with s. 440.03 (4m), Stats., as created by 2017 Wisconsin Act 59. Under this provision, the Board may require a credential holder to submit proof of completing continuing education programs or courses only if a complaint is made against the credential holder. Other provisions throughout ch. MTBT 5 have been revised to ensure consistency with current standards for drafting style and format and applicable Wisconsin statutes. | |
| 12. 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. | |
| 13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of this EIA. | |
| 14. 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) The 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. | |
| 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is providing clarity, consistency, and conformity with the Wisconsin Statutes. If the rule is not implemented, it will continue to contain outdated references. | |
| 16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is clarity, consistency, and conformity with the Wisconsin Statutes. | |
| 17. Compare With Approaches Being Used by Federal Government None | |

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

Illinois:

Illinois' continuing education requirements include provisions for retention and production of evidence of compliance [68 Ill. Admin. Code 1284.90 d) 2)]. The Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation may require additional evidence demonstrating compliance with the continuing education requirements. It is the responsibility of each applicant for renewal to retain or otherwise produce evidence of such compliance. Such additional evidence is required in the context of the Division's random audit.

Iowa:

Iowa's continuing education requirements include provisions for retention and production of evidence of compliance (645 IAC 4.11). The Iowa Board of Massage Therapy may select licensees for audit following license renewal. Upon audit, a licensee is required to provide an individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor. All licensees must retain documentation of compliance with the continuing education requirements for two years following license renewal.

Michigan:

Michigan's continuing education requirements include provisions for certification of compliance and retention of evidence of compliance [Mich Admin Code, R 338.731 (3)]. Submission of an application for renewal constitutes an applicant's certification of compliance with the continuing education requirements, and all licensees are required to retain documentation of meeting the requirements for a period of 4 years from the date of applying for license 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.

19. Contact Name

Dale Kleven

20. Contact Phone Number

(608) 261-4472

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

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☐ Less Stringent Compliance or Reporting Requirements
 - ☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
 - ☐ Consolidation or Simplification of Reporting Requirements
 - ☐ Establishment of performance standards in lieu of Design or Operational Standards
 - ☐ Exemption of Small Businesses from some or all requirements
 - ☐ Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- ☐ Yes ☐ No
-



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Anne Sappenfield
Legislative Council Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 19-101

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.]

1. Statutory Authority

Should s. 460.04 (2) (a), Stats., relating to the requirement that rules be promulgated by the board regarding standards that govern the professional conduct of license holders in practicing massage therapy or bodywork therapy, be cited as additional statutory authority for the rule?

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

Should s. 440.03 (4m), Stats., relating to limitations on the board’s authority to require a credential holder to submit proof of completing continuing education programs or courses, be included in the “Related statute or rule” section of the plain language analysis?

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

Should the word “issued” or “granted” be added between the word “license” and “under” in s. MTBT 5.02 (28)?

STATE OF WISCONSIN
MESSAGE THERAPY AND BODYWORK THERAPY AFFILIATED CREDENTIALING
BOARD

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

PROPOSED ORDER

An order of the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board to repeal MTBT 4.04 (2) (a) and (b); to renumber and amend MTBT 4.04 (2) (intro.); to amend ch. MTBT 4 (title), 4.02, 4.03, and 4.04 (intro.) and (1) (intro.), (b), and (c); and to create MTBT 4.04 (1) (d) and (e) and 4.05, relating to requirements for renewal and reinstatement.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 460.14 (3), Stats.

Statutory authority:

Sections 15.085 (5) (b), 440.08 (3) (b), and 460.10 (1) (a), Stats.

Explanation of agency authority:

Section 15.085 (5) (b), Stats., provides an affiliated credentialing board, 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 440.08 (3) (b), Stats., provides authority for the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board to promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, Stats., that the Board determines are necessary to protect the public health, safety, or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed to obtain an initial credential from the Board.

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. 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.”

Related statute or rule:

Chapter MTBT 7 provides continuing education requirements for renewal of a license as a massage therapist or bodywork therapist.

Plain language analysis:

Sections MTBT 4.02 and 4.04 contain the provisions for renewal and late renewal of a license as a massage therapist or bodywork therapist. These provisions are not clear concerning educational and examination requirements for late renewal and do not specify the requirements for reinstatement when a licensee has unmet disciplinary requirements, or a license has been revoked or surrendered. In addition, s. MTBT 4.04 does not reflect the requirement under s. 460.07 (2) (d), Stats., that a renewal application include evidence satisfactory to the Board that the applicant has current proficiency in the use of an automated external defibrillator (AED).

The proposed rules clarify the requirements in ss. MTBT 4.02 and 4.04 for renewal and late renewal of a license and create s. MTBT 4.05 to specify the requirements for reinstatement of a license. The proposed rules also update provisions throughout ch. MTBT 4 for clarity and to conform with current drafting standards and applicable Wisconsin statutes.

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 requirements for renewal and restoration of a license to practice massage therapy in the state of Illinois (68 Ill. Adm. Code 1284.60 and 1284.80).

The holder of a license may renew the license during the month preceding the expiration date by paying the required fee and completing the continuing education requirements under 68 Ill. Adm. Code 1284.90.

A person seeking restoration of a license after it has expired or has been placed on inactive status for less than 5 years must file an application with the required fee and proof of 24 hours of continuing education as defined in 68 Ill. Adm. Code 1284.90 in the 2 years immediately preceding the restoration application.

A person seeking restoration of a license after it has expired or has been placed on inactive status for 5 years or more must file an application with the required fee, proof of 24 hours of continuing education as defined in 68 Ill. Adm. Code 1284.90 in the 2 years immediately preceding the restoration application, and one of the following:

- Certification of current licensure and proof of current active practice in another jurisdiction.
- An affidavit attesting to military service (any person seeking restoration of a license within 2 years after discharge from military service must pay the current renewal fee, but is not required to submit proof of meeting the continuing education requirements).

- Proof of successful completion of an exam approved by IDFPR within 2 years prior to the restoration application.

Iowa:

Rules of the Iowa Board of Massage Therapy specify requirements for renewal, reactivation, and reinstatement of a license to practice massage therapy in the state of Iowa (645 IAC 131.8, 131.14, and 131.15).

A licensee seeking renewal must submit a completed renewal application and renewal fee before the license expiration date, meet the continuing education requirements under 645 IAC 133.2, and certify completion of all training in child and dependent adult abuse identification and reporting required under 645 IAC 131.8(4).

To apply for reactivation of an inactive license, a licensee must submit all of the following:

- A completed reactivation application and reactivation fee
- Verification of completing 16 hours of continuing education within 2 years of application
- Verification of the status of the license from every jurisdiction in which the applicant practiced massage therapy during the time the Iowa license has been inactive
- If the license has been on inactive status for more than 5 years, verification of successful completion of a Board-approved examination within 2 years of application.

A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reactivation of the license as provided above and apply for and receive reinstatement of the license. The application for reinstatement must, as required under 645 IAC 11.31, be filed in accordance with any applicable terms and conditions of the order of revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, the application may not be filed until one year from the date of the order or the date of voluntary surrender. The application must allege facts which, if established, will be sufficient to enable the board to reinstate the license.

Michigan:

Rules of the Michigan Board of Massage specify requirements for renewal of a license and relicensure to practice massage therapy in the state of Michigan (Mich Admin Code, R 338.719 and R 338.731).

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 in activities approved by the Board during the 3 years immediately preceding the application for renewal. Submission of an application for renewal and required fee constitutes the applicant's certification of compliance with these requirements.

An applicant whose license has lapsed for less than 3 years preceding the date of application may be relicensed if the applicant submits a completed application and required fee along with verification of having completed at least 18 hours of Board-approved continuing education during the 3 years immediately preceding application.

An applicant whose license has lapsed for 3 years or more preceding the date of application may be relicensed if the applicant submits a completed application and required fee. In addition, the applicant must satisfy one of the following requirements:

- Successful completion of the Massage and Bodywork Licensing Examination (MBLEX) or the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB)
- Registration or licensure as a massage therapist in another state during the 3 years immediately preceding application.

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 requirements in ch. MTBT 4 for renewal and reinstatement of a license as a massage therapist or bodywork therapist. 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 Daniel.Hereth@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, P.O. Box 8366, Madison, Wisconsin 53708-8366; 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, P.O. Box 8366, Madison, WI 53708-8366, 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 3, 2019, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapter MTBT 4 (title) is amended to read:

CHAPTER MTBT 4

REQUIREMENTS FOR RENEWAL AND REINSTATEMENT

SECTION 2. MTBT 4.02 and 4.03 are amended to read:

MTBT 4.02 Renewal of license. ~~In order to~~ To renew a license, ~~on or before the renewal date, the license holder~~ a licensee shall, by the renewal date under s. 440.08 (2) (a) 46r., Stats., and s. MTBT 4.01, submit all of the following to the board:

- (1) ~~A renewal~~ An application for renewal on a form provided by the board.
- (2) The renewal fee required under s. 440.08 (2) ~~(a) 46r. (c), Stats.~~
- (3) Evidence satisfactory to the board ~~that he or she~~ the licensee 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.
- (4) Evidence satisfactory to the board ~~that he or she~~ the licensee 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.
- (5) ~~Beginning with the biennial registration period commencing on March 1, 2015, unless granted a waiver under s. MTBT 7.02 (4), each licensee is required to complete 24 hours of continuing education prior to renewal of a license to practice as a massage therapist or bodywork therapist, except that, a new licensee shall not be required to comply with the continuing education requirements for the first renewal of a license. The signed statement required under s. MTBT 7.02 (3).~~

4.03 Failure to renew. A ~~license holder~~ licensee who fails to renew a license by the applicable renewal date may not use any title or description that implies that he or she is credentialed by the board as a massage therapist or bodywork therapist until ~~his or her~~ the license is renewed under s. MTBT 4.04 or reinstated under s. MTBT 4.05.

SECTION 3. MTBT 4.04 (intro.) and (1) (intro.), (b), and (c) are amended to read:

MTBT 4.04 (intro.) Late renewal. A massage therapist or bodywork therapist who fails to renew ~~his or her~~ a license by the renewal date may renew the license by satisfying ~~all~~ one of the following requirements:

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

(b) The ~~applicable~~ renewal ~~fees~~ fee and late fee required under s. 440.08 (2) ~~(a)~~ (c) and (3), Stats.

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

SECTION 4. MTBT 4.04 (1) (d) and (e) are created to read:

MTBT 4.04 (1) (d) Evidence satisfactory to the board 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), Stats., to provide the instruction.

(e) The signed statement required under s. MTBT 7.02 (3).

SECTION 5. MTBT 4.04 (2) (intro.) is renumbered MTBT 4.04 (2) and amended to read:

MTBT 4.04 (2) If applying ~~5 years or more~~ than 5 years after the renewal date, satisfying the requirements ~~in~~ under sub. (1); and submitting ~~proof evidence of all of the following:~~ successful completion of educational coursework or an examination required by the board to ensure protection of the public health, safety, and welfare. Except as provided under s. MTBT 4.05 (1), this subsection does not apply to licensees who have unmet disciplinary requirements or whose licenses have been surrendered or revoked.

SECTION 6. MTBT 4.04 (2) (a) and (b) are repealed.

SECTION 7. MTBT 4.05 is created to read:

MTBT 4.05 Reinstatement. A massage therapist or bodywork therapist who has unmet disciplinary requirements and has failed to renew a license within 5 years of the renewal date or whose license has been surrendered or revoked may apply for reinstatement of the license by submitting all of the following:

(1) Evidence of completion of the requirements under s. MTBT 4.04 (2).

(2) Evidence of completion of disciplinary requirements, if applicable.

(3) Evidence of rehabilitation or change in circumstances warranting reinstatement of the license.

SECTION 8. 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. Date September 20, 2018 |
| 3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) MTBT 4 | |
| 4. Subject Requirements for renewal and reinstatement | |
| 5. 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 | 6. Chapter 20, Stats. Appropriations Affected 20.165(1)(g) |
| 7. Fiscal Effect of Implementing the Rule <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues </div> <div> <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget </div> </div> | |
| 8. The Rule Will Impact the Following (Check All That Apply) <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units </div> <div> <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A) </div> </div> | |
| 9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0 | |
| 10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| 11. Policy Problem Addressed by the Rule Sections MTBT 4.02 and 4.04 contain the provisions for renewal and late renewal of a license as a massage therapist or bodywork therapist. These provisions are not clear concerning educational and examination requirements for late renewal and do not specify the requirements for reinstatement when a licensee has unmet disciplinary requirements, or a license has been revoked or surrendered. In addition, s. MTBT 4.04 does not reflect the requirement under s. 460.07 (2) (d), Stats., that a renewal application include evidence satisfactory to the Board that the applicant has current proficiency in the use of an automated external defibrillator (AED). The proposed rules clarify the requirements in ss. MTBT 4.02 and 4.04 for renewal and late renewal of a license and create s. MTBT 4.05 to specify the requirements for reinstatement of a license. The proposed rules also update provisions throughout ch. MTBT 4 for clarity and to conform with current drafting standards and applicable Wisconsin statutes. | |
| 12. 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. | |
| 13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of this EIA. | |
| 14. 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) The 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. The Department estimates one-time administrative costs of \$249.53. These costs may be absorbed in the agency budget. | |

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefit to implementing the rule is providing clear requirements for renewal and reinstatement of a license. If the rule is not implemented, the requirements will remain unclear.

16. Long Range Implications of Implementing the Rule

The long range implication of implementing the rule is clarity concerning the requirements for renewal and reinstatement of a license.

17. Compare With Approaches Being Used by Federal Government

None

18. 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 requirements for renewal and restoration of a license to practice massage therapy in the state of Illinois (68 Ill. Adm. Code 1284.60 and 1284.80).

The holder of a license may renew the license during the month preceding the expiration date by paying the required fee and completing the continuing education requirements under 68 Ill. Adm. Code 1284.90.

A person seeking restoration of a license after it has expired or has been placed on inactive status for less than 5 years must file an application with the required fee and proof of 24 hours of continuing education as defined in 68 Ill. Adm. Code 1284.90 in the 2 years immediately preceding the restoration application.

A person seeking restoration of a license after it has expired or has been placed on inactive status for 5 years or more must file an application with the required fee, proof of 24 hours of continuing education as defined in 68 Ill. Adm. Code 1284.90 in the 2 years immediately preceding the restoration application, and one of the following:

- Certification of current licensure and proof of current active practice in another jurisdiction.
- An affidavit attesting to military service (any person seeking restoration of a license within 2 years after discharge from military service must pay the current renewal fee, but is not required to submit proof of meeting the continuing education requirements).
- Proof of successful completion of an exam approved by IDFPR within 2 years prior to the restoration application.

Iowa:

Rules of the Iowa Board of Massage Therapy specify requirements for renewal, reactivation, and reinstatement of a license to practice massage therapy in the state of Iowa (645 IAC 131.8, 131.14, and 131.15).

A licensee seeking renewal must submit a completed renewal application and renewal fee before the license expiration date, meet the continuing education requirements under 645 IAC 133.2, and certify completion of all training in child and dependent adult abuse identification and reporting required under 645 IAC 131.8(4).

To apply for reactivation of an inactive license, a licensee must submit all of the following:

- A completed reactivation application and reactivation fee
- Verification of completing 16 hours of continuing education within 2 years of application
- Verification of the status of the license from every jurisdiction in which the applicant practiced massage therapy during the time the Iowa license has been inactive
- If the license has been on inactive status for more than 5 years, verification of successful completion of a Board-approved examination within 2 years of application.

A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reactivation of the license as provided above and apply for and receive reinstatement of the license. The application for reinstatement must, as required under 645 IAC 11.31, be filed in accordance with any applicable terms and conditions of the order of revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, the application may not be filed until one year from the date of the order or the date of voluntary surrender. The application must allege facts which, if established, will be sufficient to enable the board to reinstate the license.

Michigan:

Rules of the Michigan Board of Massage specify requirements for renewal of a license and relicensure to practice massage therapy in the state of Michigan (Mich Admin Code, R 338.719 and R 338.731).

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 in activities approved by the Board during the 3 years immediately preceding the application for renewal. Submission of an application for renewal and required fee constitutes the applicant's certification of compliance with these requirements.

An applicant whose license has lapsed for less than 3 years preceding the date of application may be relicensed if the applicant submits a completed application and required fee along with verification of having completed at least 18 hours of Board-approved continuing education during the 3 years immediately preceding application.

An applicant whose license has lapsed for 3 years or more preceding the date of application may be relicensed if the applicant submits a completed application and required fee. In addition, the applicant must satisfy one of the following requirements:

- Successful completion of the Massage and Bodywork Licensing Examination (MBLEX) or the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB)
- Registration or licensure as a massage therapist in another state during the 3 years immediately preceding application.

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.

| | |
|------------------|--------------------------|
| 19. Contact Name | 20. Contact Phone Number |
| Dale Kleven | (608) 261-4472 |

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

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☐ Less Stringent Compliance or Reporting Requirements
 - ☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
 - ☐ Consolidation or Simplification of Reporting Requirements
 - ☐ Establishment of performance standards in lieu of Design or Operational Standards
 - ☐ Exemption of Small Businesses from some or all requirements
 - ☐ Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- ☐ Yes ☐ No
-



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

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Legislative Council Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 19-102

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. SECTION 2 of the proposed rule should be separated into three SECTIONS:
 - (1) To amend s. MTBT 4.02 (intro.) and (1) to (4).
 - (2) To repeal and recreate s. MTBT 4.02 (5).
 - (3) To amend s. MTBT 4.03.

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

In s. MTBT 4.02 (intro.), it is duplicative and potentially confusing to reference both a statute and rule provision for the single renewal date. Consider either referring only to the other rule provision, or referring only to the statute and repealing the other rule provision altogether.

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

In s. MTBT 4.02 (3), a comma should be inserted after the word “effect”, or the comma after the word “insured” should be removed. The same comment applies to s. MTBT 4.04 (1) (c).

PUBLIC AGENDA REQUEST FORM

Instructions:

1. Fill out this form, and then save to your device.
2. Return to the “[Suggest an Agenda Item](#)” page and select the appropriate Board or Council from the Board/Council list.
3. Attach your completed “Public Agenda Request” form and send.

First Name: Monica & Josiah

Last Name: Groth

Association/Organization: Back To Bliss in association with the Department of Workforce Development

Address Line 1: 204990 State Hwy 97

City: Marshfield

State: WI

Zip: 54449

Phone Number:(715) 897 - 6824

Email: Monica.groth@gmail.com

Subject: Massage Apprenticeship Pathway Creation

Issue to Address: The creation of an apprenticeship pathway for massage therapy licensure in the state of Wisconsin. State board approval and coordination to change state legislation regarding licensure via an apprenticeship pathway is the main item of discussion. We are working directly with DWD apprenticeship coordinator Benjamin Stahlecker to bring together the successful elements of apprenticeship to massage therapy education and licensure to provide another needed pathway for successfully overcoming the hurdles of obtaining licensure in the state of Wisconsin.