

**STATE OF WISCONSIN
MESSAGE THERAPY AND BODYWORK THERAPY AFFILIATED
CREDENTIALING BOARD**

IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : CR 19-101
MESSAGE THERAPY AND :
BODYWORK THERAPY :
AFFILIATED CREDENTIALING :
BOARD :

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

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.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Massage Therapy and Bodywork Affiliated Credentialing Board held a public hearing on September 3, 2019. The Board did not receive any written comments or testimony concerning the proposed rules.

VI. RESPONSE TO MEDICAL EXAMINING BOARD AND LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

The proposed rule was submitted to the Medical Examining Board on October 17, 2018. The Medical Examining Board had no recommendations concerning the proposed rule.

All Legislative Council recommendations have been incorporated into the proposed rules.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

N/A

STATE OF WISCONSIN
MASSAGE THERAPY AND BODYWORK THERAPY AFFILIATED CREDENTIALING
BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MASSAGE THERAPY AND BODYWORK
MASSAGE THERAPY AND BODYWORK : THERAPY AFFILIATED CREDENTIALING
THERAPY AFFILIATED : BOARD ADOPTING RULES
CREDENTIALING BOARD : (CLEARINGHOUSE RULE 19-101)

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), 460.04 (2) (a), 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, “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains . . .”

Section 460.04 (2) (a), Stats., provides the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board shall promulgate rules establishing “[s]tandards that govern the professional conduct of license holders in practicing massage therapy or bodywork therapy.”

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.

Section 440.03 (4m), Stats., as created by 2017 Wisconsin Act 59, provides that 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.

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 338.739 (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, 948.02 5, 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 granted 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 licensee holder licensee shall submit a report to the board if he or she the licensee has reasonable cause to believe that another licensee 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 licensee 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 licensee holder licensee, that person engaged in nonmarital sexual contact or sexual intercourse with the other licensee holder that licensee.~~

~~(c) Being The licensee is informed by another licensee 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)

This Proposed Order of the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board is approved for submission to the Governor and Legislature.

Dated

Sept. 27, 2019

Agency

Robert Coleman
Chairperson

Massage Therapy and Bodywork
Therapy Affiliated Credentialing Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date September 20, 2018</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) MTBT 5</p>	
<p>4. Subject Unprofessional conduct</p>	
<p>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</p>	<p>6. Chapter 20, Stats. Appropriations Affected</p>
<p>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</p>	
<p>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)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>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</p>	
<p>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.</p>	
<p>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.</p>	
<p>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.</p>	
<p>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.</p>	
<p>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.</p>	
<p>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.</p>	
<p>17. Compare With Approaches Being Used by Federal Government None</p>	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

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

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

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
-