



Business League for Massage Therapy & Bodywork (BLMTB)

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Newsletter Update

#037 November 2009

The Massage Therapy Board met September 28, 2009 and the Rules Committee met on October 19. We only received the recordings of the meetings a short time ago, and since we didn't have a rep at the meeting who could report on the meetings, we could not report on anything until now.

After the reviewing the material, here is our report.

Part 1 is a synopsis of what happened at the meetings, and Part 2 outlines our concerns and there are many – including our concern that the board may not honor the agreements made during the negotiating process that allowed the bill to move forward.

Part 1: Meeting Synopsis

Massage Therapy Board Meeting: Sept. 28, 2009

- All members were present: Michael Eayrs, Stacy Baird, Deborah Kimmet, Nick Soloway and Grace Bowman. Also present were staff: Marilyn Kelly-Clark, the administrator and Anne O'Leary, the board counsel.
- Michael Eayrs was chosen Chair of the board. Nick Soloway is Vice Chair.
- Board training included role of the Department and the Board. The Department provides administrative and legal support. The board has policy-making functions that are independent, although direction may come from the governor, and to quote the board counsel: "you don't obey the mandates or fiats that come down from the department." In short, the department works for the board.
- The complaint procedure was reviewed and the panels were chosen.
The screening panel that reviews the complaint, determines whether the complaint has merit, then, if it does, suggests action: Grace Bowman, Stacy Baird, and Deb Kimmet.
The adjudication panel that determines the action taken against a licensee only when the case has merit: Nick Soloway and Michael Eayrs.
- The rule-making process was reviewed: The board writes the rules, department attorneys put it into legalese and review them, and then they are filed with the Secretary of State. A hearing is scheduled and public comment made.
- A committee was chosen to draft rules to propose to the board. This committee is made up of the board plus Rachel Romanelli and Susan Carlson, both were instrumental in getting the bill passed.
- The rest of the meeting was spent discussing potential areas for rules.

Massage Therapy Rules Committee Meeting: October 19, 2009.

- All members were present: Michael Eayrs, Stacy Baird, Deborah Kimmet, Nick Soloway, Grace Bowman, Rachel Romanelli, and Susan Carlson. Also present were staff: Marilyn Kelly-Clark, the administrator and Anne O'Leary, the board counsel.
- Rachel Romanelli was elected Chair and Michael Eayrs was elected Vice Chair.
- The committee's role is to make recommendations back to the board concerning rules to adopt, and the board will accept them or reject them.
- The committee decided to move the issue of requiring background checks to a later meeting so as to find out whether the board can legally require them.
- The committee decided to recommend to the board the following fees:
The initial application fee for those applying via educational/exam requirements or through licensure from another state: \$50 for the application and \$90 for the license for a total of \$140.
The initial application fee for those applying via the grandfather clause: \$40 for the application and \$90 for the license for a total of \$130. Renewals for everyone will be \$90 per year. Fees are less for those grandfathering, because less staff time is needed to process the application. Fees include the amount necessary to run the program which includes administration of the licenses, the board's expenses, the complaint process and other costs. It also should be noted that boards cannot build up a large reserve. Statutorily, if the board collects over a certain amount, it must be abated (given back) to the licensees.
- The committee decided to recommend that the following exams be acceptable to meet the exam requirement for licensure: NCETMB, NCETM (both by the NCBTMB), the MBLEx, and state exams deemed to be equivalent.

- On a vote of 4-2, the committee recommends the use of 2 letters of character reference from people who are not relatives of the applicant to meet the “good moral character” provision in the statute. According to board counsel, the legislative audit requires a method for showing “good moral character” and in her opinion, the letters do that. Voting no are Deborah Kimmet and Susan Carlson.
- Much discussion on what “board approved” means. Members are to draft language for the next meeting.

Again, all these recommendations will go back to the board for a vote.

One of our board members, Deborah Kimmet, is also on the Massage Therapy (MT) Board. MT Board rules state that she cannot speak for the MT board. There appears to be a gray line on what she can and cannot talk about. To ensure that she does not cross that line, Vianna and Patty are writing this newsletter, and statements by Deborah will appear as attributed to her and will represent her own opinion and not the Massage Therapy board’s. The opinions and information in this newsletter are consistent with the past history of the BLMTB as we represent the profession.

Deborah said this about her activities on the Board:

"I view my role on the board as speaking for those who negotiated agreements during the legislative process. However, I am only one vote on the board, and not everyone on that board feels as I do - that viewpoint is clearly in the record, so I can speak to that. The role of a board, in my opinion, is to protect the public, while at the same time, not putting so many restrictions on practitioners so as to create barriers to practice as a way of limiting competition. Again, if I'm the only one who feels that way, I will have little sway in how the board votes. It is vitally important that you let the board members know how you feel early in the process. Don't sit back on your heels, expecting everything to be ok. Public participation now is just as key as when the bill was going through the process."

Part 2: Analysis & Concerns

We received this letter from Teresa Thormahlen, Kim Keil, Kristi Gardner, Peg Soems and Maureen Howe. Two of them were in Helena and part of the negotiations when the bill was going through the legislature. We feel their concerns are valid and they describe many of our concerns.

Open letter to massage community C/O BLMTB

Attention has been drawn to the comments of a board member who believes measures should be provided that could effectively label people in an attempt to discourage them from applying for licensing as a massage therapist.

Great thought --- and wording of the massage therapy bill was written to prevent the prejudice of prostitution in general having anything to do with a person becoming a licensed massage therapist. There was agreement on both sides of the Bill that these negative impressions would be left out and it was a promise that is manipulated by a member of the board.

In listening to the CD, one comment from a board member implies that the board need not abide by any of the agreements reached in the bill during negotiations. This comment was on the heels of much discussion on massage therapists proving they were of good moral character. This leads us to question the moral character of at least this board member. As we understand the law the boards’ responsibility is to protect the public not denigrate massage therapists in general.

The same board member talks in using letters of recommendation to “scare some people off”. We have a difficult time accepting a board trying to limit the competition of qualified massage therapists.

We would also like to address letters of recommendation concerning good moral character. We feel that this could lead to people being denied licensure. The phrase good moral character would be answered differently depending on whom you were asking. By who & by what criteria will this be judged.

The discussion of background checks in our opinion also smacks of the same prostitution issue. We should not have to prove that we're not prostitutes in order to be licensed as a massage therapist. We believe that PTs and OTs do not have background checks as a requirement for licensure, why should we? Rep. Arntzen assured us that our bill would have no inference to prostitution. The rules should reflect this too.

Teresa Thormahlen, CMT
Kim Keil, LPN, CMT
Kristi Gardner, CMT
Peg Soems, CMT
Maureen Howe, CMT

The four major concerns of the BLMTB are as follows:

(Included are the time stamps where the comments took place. These time stamps correspond to the recordings on the BLMTB website.)

1. **Not honoring agreements:** Many people across the profession put a lot of time and effort into the legislative process. Agreements were made to gain the support of the opponents of the bill. There would not be a law if these agreements had not been made. It's not a good sign to already see the practice of not honoring these agreements. Verbal or written, these are still agreements that were made in good faith. Examples:

- **Ms. Baird** (Committee Part 3, 9:42): "My problem with the agreements is that they were verbal agreements, correct? So the board was not part of that."
- **Ms. Romanelli** (Committee Part 2: 42:00) while discussing educational requirements said "... and we may be able to detail out further in what educational process we're going to accept. Kind of tighten that down."

During negotiations, the agreement was to accept the educational guidelines of an ncca accredited agency (such as NCBTMB). If a school or person meets those requirements, they should be granted a license. Tightening it further goes against the negotiations and exceeds what the statutes allow.

2. **Conflict of interest with the attorney:** The role of the board's attorney is to provide legal advice to the board. In going over some of the comments from the meeting, we feel that she is overstepping her bounds and going beyond just offering legal advice. Even with just looking at her legal advice, there could be a possible conflict of interest as she represents other boards that could conflict with us – the physical therapists and occupational therapists. At some point, Ms. O'Leary is going to be in the middle of a conflict or an agreement where she would have to represent one side or the other. This would be a conflict for both parties involved.

- **Ms. O'Leary** (Board Part 2: 25:49) "There will probably be some rules... to make sure that a massage therapist is not diagnosing... and there'll be some crossover with physical therapy to make sure that... we don't stretch the definition of massage therapists to get into the realm of physical therapy or occupational therapy."

Everything massage therapists do conflicts with PT, so it's impossible not to stretch the definition. But, which group will she advocate for? Here are some examples where she is advocating for restrictions that are unnecessary and some appear to exceed what the statutes allow:

- **Board Part 2, 49:53** – "When we talk about rules, I've got a list of things I want you to consider and one of them is whether or not there are going to be inspections and whether there are going to be health standards that you're going to list for places where massage is going to be done."
- **Stretching the statutes to allow for background checks:**

At the board meeting, she implies that it exceeds the statutes to do background checks on applicants – then by the committee meeting, Ms. O'Leary said the statute could support performing background checks via the general language in the bill, but that there is no specific authority granting the ability. Other boards with this same language do not do background checks, and she would have to find out whether or not we could require them.

3. **Attitudes or opinions indicate a bias against grandfathering and limiting competition.** Grandfathering was high on the list of agreements to get the bill passed. There'd be no law without it, and was fully supported by the legislature. The purpose of licensing isn't about trying to limit therapists coming into this field; it is about protecting the client.
- **Ms Baird** (Board Part 3, 21:45) – inquired about including a base of foundation of education in the grandfather clause. She was informed this was not possible as the clause for grandfathering is set in statute and can't be changed.
 - **Mr. Eayrs** (Board Part 3, 23:25) – about grandfathering: "that's the corner we were forced into to get the bill passed"
 - **Ms. Bowman** – said that a person without training hurt her.
In our view, training does not equal competence. Lack of training does not equal incompetence.
 - Ms. Baird (Board Part 4 later than 12:00) Concerning letters of reference – “It’s also kind of another way to maybe weed out those other people that aren’t... If they have to go through a letter of recommendation, it might scare them away.... If they don’t think they’re going to get a good reference.”
 - Mr. Eayrs (Committee Part 2, 49:34) regarding reciprocity: “...it’s not like we want to make the door into Montana the easiest path in the universe... in my mind. We’re not that heavily populated...” Ms. Carlson: “but the idea of a board is not to exclude people from the profession.”
4. **Hoops, Hoops and More Hoops: Barriers to Practice.** The intention of the law and the negotiations was not to make it harder to get into practice.
The letters of reference do not ensure good moral character. Even the state admits there’s no guarantee:
- Board Part 4: Ms. O’Leary: and then we’ll get letters “that says recommend highly, no problems, and we discover that they’re in jail.... [garbled due to laughter]”
 - Board Part 4 continuation of the meeting - Ms. Kelly-Clark (the board administrator): “...to be honest, it’s frustrating for us when they put it into legislation, must be of good moral character, because it puts the burden on us to be able to come up with a method to satisfy that. There really isn’t a very accurate method to do it with.”
- Background checks are just another hoop that invades the privacy of the practitioner. It is also an extra expense that makes it tougher to apply for a license, creating a financial barrier. We also think that it exceeds the authority of the board to require them.

What you can do:

We still need community participation. You need to let the board know how you feel. There is not that much time – if you don’t voice your opinion, then you might end up with something you don’t like, or limits your ability to practice or get a license.

It is imperative to have a responsive board and if they are not responsive to the community, you do have a few options: the board works for the governor, so you can go to the governor’s office. Also, the committee chairs that heard the bill also have also expressed an interest. You can also talk to them. They are Senator Roy Brown (Billings) and Rep. Wilson (Great Falls).

We encourage you to go listen to the recordings yourselves: we’ve posted them on-line, so you can have ready access to them.

Please feel free to contact us at info@blmtb.org if you have any questions or concerns.

The next Board/Rules Committee Meeting is:

December 7 at 10am in Helena
301 South Park Avenue

We encourage you to attend.