



# Business League for Massage Therapy & Bodywork (BLMTB)

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## Newsletter Update

#038 February 3, 2010

Deborah Kimmet, BLMTB board member and also a member of the Montana state Board of Massage Therapy, recently spoke with us about the state board and what she learned at a training on January 26 for people who volunteer to serve on state boards. Besides making it very clear that she cannot speak for or represent the board, she mainly educated us about the rule-making process, what board members are permitted to say and not say, and what information is accessible to the public. She also let us know about some important deadline dates. We'll incorporate that information in our report below.

We also received an eloquent letter concerning licensure from one of our members, Bill Hunger. That letter is posted on-line as its length prohibits us from adding it to the print version of the newsletter. The BLMTB board doesn't take a position on his letter – but we think it's important that his viewpoint be aired.

Happy Reading!

Patty & Vianna

### What you can do: The TOP Priorities (in order):

- Attend the Rules Committee Meeting: **February 22** at 1pm in Helena (301 South Park).  
Why? Our best bet to influence the rule-making process is when the rules are being **formulated, NOT at a hearing (see "More Rule Making on the Way" for a better explanation)**.  
You can attend in person or by phone. If you attend by phone, you must contact the board office the week before to reserve a phone line (Cheryl Brandt at 406-841-2394 or [dlibsdlmt@mt.gov](mailto:dlibsdlmt@mt.gov)).

Here's an example why it's important to attend: do you want to be forced to report on another practitioner's behavior or lose your license if you don't? This is just one rule under consideration. We were successful in removing this from the statute during the negotiations to pass the bill during the legislature. But it still can become a rule – and given that members of the board have said that they don't feel bound by those negotiated agreements, we need you to attend and tell the board how you feel. **By the time it gets to a hearing it is too late.**

- Comment on the rules that already have been noticed by sending in an email, letter, or fax. Comments must be **received** by the Board office no later than 5pm, February 26 Or attend the Hearing on February 18. (see "The Rule-Making Process")  
Hearing: February 18, 10am at 301 South Park  
Emails: [dlibsdlmt@mt.gov](mailto:dlibsdlmt@mt.gov)  
Letters: Board of Massage Therapy, 301 South Park, PO Box 200513, Helena, MT 59620-0513  
Fax: 406-841-2305  
Do NOT call and leave a message – the only ways to leave valid comments are verbally (or in writing) at the hearing or by sending in written comments via snail mail, email or fax.

We can't do it all ourselves. We can only let you know what's happening, and it's up to you to do your part. Our belief is that the more people who watch the meetings, comment at the meetings, the board will have to pay attention. If there is no pressure put on the board by the public to do the right thing, then our community will get exactly what it deserves.

### More Rule Making On the way:

Rules Committee Meeting  
February 22 - 1pm Helena (301 South Park)

We think this is an important meeting because what constitutes "unprofessional conduct" will be discussed. These are the things that, if you do them, could cause you to lose your license. Do you work in the mouth? Washington state doesn't let

you do that unless you have special permission. The board will be looking at rules from Washington state, the OTs, PTs and cosmetologists. (Click Here to read those rules).

Since the Rules Committee consists mostly of Board members plus Rachel Romanelli and Susan Carlson, if the Committee votes for it, chances are the Board will too.

Deborah Kimmet told us that at the Board training, participants were told that when a rule is noticed, this is the board telling the public what they plan to adopt. The hearing and comment period gives the public the opportunity to participate, to tell the board whether or not that's a good rule, but unless there is some compelling reason that comes up not to adopt the rule, it will be adopted – even if most people are against it.

Given that bit of information, the BLMTB Board believes that **the best time to influence this process is while the rule is being formulated** at the Rules Committee meeting. So we highly encourage you to attend those meetings, Please attend to ensure that nothing gets on the list that you don't want to be on the list. Ask to be recognized and give your opinion.

The Committee will also make a recommendation on continuing education rules and other issues.

### **The Rule-Making Process:**

1. First, the Rules Committee reviews materials and makes recommendations to the Board.
2. The Board reviews the recommendations, makes necessary changes.  
By this time, the board has already made up its mind what it wants to do. The rest of the process is just to let you know what they are going to do and give you an opportunity to comment. The board will not likely change its mind, unless something **really** compelling comes up during the hearing and comment period.
3. The attorneys review the information and put the proposed rules into the "official" legal form.
4. The Board reviews them again, then moves to Notice the Rules for Comments and a Hearing.
5. The proposals are forwarded to The Secretary of State's office, which publishes the Notice and a comment period opens and a hearing is scheduled.
6. A Hearing is held, comments are received.
7. Comments are forwarded to the board for review and the board responds.
8. The rules are adopted.

Here is what you need to know about the process:

### **The Hearing:**

**Remember: Attending the hearing is important because you get to give your opinion, but the board is only telling you what they plan to do. The committee meetings (steps 1 & 2 above) are more important because of the ability to influence the process.**

The hearing is NOT like a legislative hearing: Massage Therapy Board members are NOT even going to be present. So there is no personal connection and no lobbying, per se. All the hearing is, is an opportunity for someone to come and say their piece. A court reporter will record and transcribe all of the comments. There are a few advantages to going to the hearing:

- If you are more of a verbal person, this is your opportunity to be heard verbally. Otherwise, you'd have to submit your comments in written form.
- If a bunch of people go, in our opinion, it gives the crowd ideas to bring up and bounce off of each other, so that you can get some ideas as to what to say, and build on the comments that have already been made. And the more people that object to or support a rule, the better.

All of the comments including the verbal comments that are transcribed into a written document by the court reporter, will then be collated, categorized and similar comments grouped together into one document. This will all be done by department staff. All comments will be forwarded to the Board for review. If nothing really sticks out as needing to be changed, the board will adopt the rules.

## **Where we are in the Process Now:**

The Board is well along in its first go-round of rules:

They've been noticed and a hearing scheduled.

These are the basic rules that will allow the board to start issue licenses.

## **The Board Decides on March 9: The board will review the comments, respond to them and adopt the final rules put forward in this first round.**

The Board will meet via conference call. You can attend over the phone or go to the meeting in Helena (301 South Park). To attend by phone, you must contact the board office by MARCH 5<sup>th</sup> to reserve your phone line.

The Board's second go-round is moving along.

The Rules Committee has made several recommendations that the Board is reviewing concerning definitions and licensing via endorsement (reciprocity).

The Rules Committee is working on developing more rules concerning "unprofessional conduct" and continuing education. – **This is where we need your help and participation (see above).**

## **What Information is available to the Public?**

Pretty much, if it has been sent to a board member, it is public. Prior to meetings, a "board book" is sent to each board member with all of the background materials for the meeting. You can ask the state to send you that info too. They will take out any info that is not public: anything that relates to a person's identity, social security info, medical records and disciplinary and complaint information – anything that is not already in the public record.

We'll try to publish the board book on line and let you know if there's anything you need to watch out for.

## **What Rules will be decided in this go-round?**

In general, some of them are merely procedural (Rules 1-3). Others clarify and flesh out the law. We've included our opinion on each of the rules.

### **Rules I, II, and III – Supported by BLMTB**

They are standard rules that are at the beginning of every occupation's professional rules, and every board agrees to abide by them.

Rule I adopts the organizational rules of the department listed in the first chapter of the Department of Labor and Industry's (DoLI) rules. FYI: Chapter 1 outlines how the DoLI is structured (organized).

Rule II adopts chapter 2 of the DoLI's rules. FYI: This chapter outlines how the Department incorporates model rules and sets out some rules concerning the use of discovery in contested cases. Included are things that help protect the practitioner from a board abusing its power.

Rule III adopts the rules concerning public participation in the process. FYI: Essentially, boards are required to allow the public to participate at some point in the process. Note, this doesn't mean they get a say – but they must be heard.

### **Rule IV: Definitions - Supported by BLMTB**

The BLMTB Board also has no problems with this section as it clarifies the terms used throughout the rules.

The definition "board approved program" is good: in general, it keeps the board out of the schools' business, which is exactly what we advocated for when we were at the legislature.

### **Rule V: Fees - Supported by BLMTB**

It costs less to verify the information on a grandfather application, so that fee is less.

Not only do the fees have to pay for all the administrative costs of processing the licenses and approving applications and paying for the board to meet, the fees must also pay for any investigations and disciplinary actions when a complaint against a licensee is filed. It also includes all the lawyers' fees and the expense of going through rule making. At this point, it is an educated guess as to how much to charge for all of this. What protects the practitioner from being gouged on fees, is that the board, by law, can only keep so much in reserve. If too much money is collected, then the money is rebated, or the fees reduced accordingly. The BLMTB Board expects this rule to change as the board figures out just how much money it really needs.

Part (2) standardized fees refers to things that are common to all boards, and so all boards should charge the same for them (replacement licenses, photocopies, along with a whole host of things).

#### Rules VI and VII – Portions are NOT Supported by the BLMTB Board

These rules spell out the requirements for Grandfathering and for getting a license by meeting the requirements for education and testing. The rule concerning reciprocity has been held back for now, as there were changes made to it too late in the process to be included in this go-round of rule adoption.

Both rules require 2 letters of reference attesting to the good moral character of the applicant. The BLMTB Board does NOT support this requirement. First, we think these letters are meaningless because who would request a reference from someone who is going to give you a bad reference? Secondly, Boards are supposed to write rules that protect the public, but only those that are necessary to protect the public. If there's a less "invasive" way that meets the statutory requirement of "proving" good moral character, the board should take that route. We believe that the 15 or so questions on the license application that ask the person about their criminal record, substance abuse, disciplinary actions, civil actions, and military record are sufficient to "prove" good moral character. These questions are required of all boards already, and are adequate to meet the statutory requirement. Just because other boards require the letters doesn't mean that we have to also. For most, it's not a big deal to ask someone to fill out a form and send it in. Our objection is based more on principle: It creates one more unnecessary barrier (hoop) to jump through. The BLMTB Board supports the other provisions in the rules.

#### Rule VI: Licensure by Grandfather clause.

CLARIFICATION: the affidavit stating hours of practice (part (iv) in grandfathering) MUST be notarized. This is a requirement out of the hands of the board. The statute uses the term "affidavit" and these require, by law, that they be notarized. While the intention of the parties involved during the negotiations at the legislature was that we not have that requirement, unbeknownst to us the word "affidavit" had legal connotations. We have to abide by it and it can't be changed.

CLARIFICATION: **To be eligible to grandfather, you must have your 100 hours of practice in Montana completed by July 1, 2010** (note: these hours can come from any of the years practiced in Montana not just 2010). **The clock is now ticking!** This rule (part (iv)) makes it crystal clear what wasn't so clear in the statute.

37-33-501 says that by July 1, 2010 anyone not eligible to grandfather has to get a license by exam/hours or reciprocity. And, you're not eligible to grandfather if you don't have your hours in – so you have to have them completed by July 1 to be eligible to grandfather.

It would appear, though that those who grandfather in wouldn't need to have a license until 2012, when the grandfather provision goes away – just as long as they have their hours in by July 1, 2010. **We don't advocate messing around with this or testing this premise. We advocate getting licensed when the applications become available.**

#### Rule VII: Licensure by Examination

CLARIFICATION: concerning the high school diploma: this is very broad language to help home schoolers and others who have taken a non-traditional route.

CLARIFICATION: the board is accepting all of the national exams and open to accepting state exams. This is more than fair.

BEFORE THE BOARD OF MASSAGE THERAPY  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.101.413 renewal dates, and ) PROPOSED AMENDMENT AND  
the adoption of NEW RULES I ) ADOPTION  
through VII pertaining to massage )  
therapy )

TO: All Concerned Persons

1. On February 18, 2010, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Massage Therapy (board) no later than 5:00 p.m., on February 12, 2010, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdlmt@mt.gov.

GENERAL STATEMENT OF REASONABLE NECESSITY: The 2009 Montana Legislature enacted chapter 451, laws of 2009 (House Bill 662), creating the Board of Massage Therapy (board) and setting forth the requirements for the licensure and regulation of massage therapists. The bill was signed by the Governor and became effective on May 5, 2009.

The board determined it is reasonable and necessary to adopt New Rules I through VII to establish requirements for licensure of massage therapists to efficiently implement the legislation. The department is amending ARM 24.101.413 to set the annual renewal period for massage therapists in conjunction with the board's new rules. Where an additional specific basis for a proposed action exists, the board will identify those reasons immediately following that rule.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(p) remain the same.

<u>(q)</u>	<u>Massage Therapy</u>	<u>Licensed Massage Therapist</u>	<u>Annually</u>	<u>August 31</u>
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(q) through (an) remain the same but are renumbered (r) through (ao).  
(6) and (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

4. The proposed new rules provide as follows:

NEW RULE I BOARD ORGANIZATION (1) The Board of Massage Therapy hereby adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, 37-33-405, MCA

IMP: 2-4-201, MCA

NEW RULE II PROCEDURAL RULES (1) The Board of Massage Therapy hereby adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, 37-33-405, MCA

IMP: 2-4-201, MCA

NEW RULE III PUBLIC PARTICIPATION (1) The Board of Massage Therapy hereby adopts and incorporates by this reference the public participation rules of the Department of Commerce as listed in chapter 2 of title 8.

AUTH: 2-3-103, 37-33-405, MCA

IMP: 2-3-103, MCA

NEW RULE IV DEFINITIONS (1) "NCETMB" means national certification examination for therapeutic massage and bodywork.

(2) "MBLEx" means massage and bodywork licensing examination.

(3) "NCETM" means national certification examination for therapeutic massage.

(4) "Board approved program" means any massage therapy program that meets or exceeds the curriculum guidelines as provided for in 37-33-502, MCA.

AUTH: 37-1-131, 37-33-405, MCA

IMP: 37-33-502, MCA

NEW RULE V FEE SCHEDULE (1) The department will collect the following fees:

(a) application/licensing by grandfather clause \$130

(b) application/licensing by endorsement 140

(c) application/licensing by examination 140

(d) annual license renewal 90

(2) Additional standardized fees are specified in ARM 24.101.403.

(3) All fees are nonrefundable.

AUTH: 37-1-131, 37-33-405, MCA

IMP: 37-1-134, 37-1-141, 37-33-502, 37-33-503, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule and set licensure fees to further implement the 2009 legislation. The board is statutorily required to set fees at a level commensurate with associated costs per 37-1-134, MCA. The legislation requires the board to license and regulate massage therapists and the proposed fees will enable the board to meet this mandate.

The board is setting application/licensing fees for each type of licensure contemplated by the legislation to cover the board's expenses for the initial license processing of an estimated 500 applicants. The annual renewal fee is proposed at \$90, which will be charged beginning in fiscal year 2011. It is estimated that the new fees will affect approximately 500 individuals and result in approximately \$65,500 of board revenue for fiscal year 2010 and approximately \$45,000 in annual revenue thereafter.

NEW RULE VI LICENSURE BY GRANDFATHER CLAUSE (1) All applicants for licensure by grandfathering shall:

- (a) submit a completed application on a form prescribed by the department with:
  - (i) the appropriate fee;
  - (ii) proof that the applicant is 18 years of age or older;
  - (iii) two letters attesting to the good moral character of the applicant, submitted directly to the board office by individuals who are not the applicant's family members; and
  - (iv) a signed and notarized affidavit stating the applicant has practiced massage therapy in the state of Montana for at least 100 hours on or before July 1, 2010.

AUTH: 37-1-131, 37-33-405, MCA

IMP: 37-1-131, 37-33-503, MCA

NEW RULE VII LICENSURE BY EXAMINATION (1) All applicants for licensure by examination shall:

- (a) submit a completed application on a form prescribed by the department with:
  - (i) the appropriate fee;
  - (ii) a copy of a certified transcript or certificate of completion sent directly from the official custodian of the record, evidencing to the board's satisfaction that the applicant has a high school diploma or its equivalent;
  - (iii) proof that the applicant is 18 years of age or older;
  - (iv) two letters attesting to the good moral character of the applicant, submitted directly to the board office by individuals who are not the applicant's family members;
  - (v) proof of successful completion of a massage therapy educational program of a minimum of 500 hours of study that meets or exceeds the curriculum guidelines established by any program or organization accredited by the national commission for certifying agencies or its equivalent or successor; and
  - (vi) a passing score on either the MBLEx, NCETMB, or the NCETM examination or a state examination deemed by the board to be equivalent.

AUTH: 37-1-131, 37-33-405, MCA

IMP: 37-1-131, 37-33-502, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdlmt@mt.gov](mailto:dlibsdlmt@mt.gov), and must be received no later than 5:00 p.m., February 26, 2010.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at [www.massagetherapists.mt.gov](http://www.massagetherapists.mt.gov). The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsdlmt@mt.gov](mailto:dlibsdlmt@mt.gov), or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on November 16, 2009, by telephone.

9. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MASSAGE THERAPY  
MICHAEL EAYRS, CHAIRPERSON

/s/ DARCEE L. MOE  
Darcee L. Moe  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 19, 2010