

**BOARD OF MASSAGE THERAPY
MINUTES OF FULL BOARD MEETING
301 SOUTH PARK AVE, 4TH FLOOR CONFERENCE ROOM
HELENA, MONTANA
9/28/2009**

AMERICANS WITH DISABILITIES ACT:

The Department of Labor and Industry is committed to providing meeting access through reasonable accommodation under the Americans with Disabilities Act. Please contact the Board Office prior to the proposed meeting date for further information.

CALL TO ORDER: Board Staff Marilyn Kelly-Clark called the meeting to order in absence of a board chairperson at 10:05

Members Present:

Grace Bowman, Public Member
Deborah Kimmet, Professional Member
Nick Soloway, Health Care Member
Stacy Baird, Professional Member
Michael Eayrs, Professional Member

Staff Present:

Anne O'Leary, Board Counsel
Marilyn Kelly-Clark, Unit 2 Supervisor & temporary Program Manager

INTRODUCTION OF BOARD MEMBERS AND STAFF:

Board Members and staff introduced themselves and explained their position on the board and in the department

Nomination & election of Board Chairperson and Vice Chairperson:

Ms. Kelly-Clark & Ms. O'Leary explained the nomination process to the board and the need for a Board Chairperson and possibly for a Vice Chairperson to conduct meetings in the Chairperson's absence.

MOTION: Grace Bowman nominated Michael Eayrs for Chairman.

SECOND: Stacy Baird

VOTE: Passed-unanimous vote

At this time, Michael Eayrs took over facilitation of the meeting.

MOTION: Stacy Baird moved to nominate Nick Soloway as Vice Chairman,

SECOND: Deborah Kimmet.

VOTE: Passed-unanimous vote.

Board Member Training:

Anne O'Leary used a power point presentation from the department's regular board member training and went over the organizational structure of the department and the division and bureau. All board members were provided with a cd copy of the training to take home for their use. Maggie Connor, Bureau Chief and Jack Kane, Division Administrator introduced themselves to the board members. Mr. Kane encouraged board members to attend the next "live" board member training that is held at the Capitol every other year. Board members requested a list of contact numbers for the bureau and division.

Ms. O'Leary explained that boards are appointed by the Governor and are part of the Executive Branch of government. She further explained the different roles of the boards and the department; the department is attached to the board, supplies the staff and support work, creates the budget, assists with rule making, etc. All boards are required by law to pay their pro rata share of the support work including overhead and personal services.

Ms. O'Leary briefly went over the complaint process, the board's quasi judicial powers, explained board member duties, and situations that board members might encounter in the course of their duties. Ms. O'Leary asked the board to consider what they will do with anonymous complaints. She explained that some boards will consider them, others won't. She went over the complaint process in depth, explaining reasonable cause and how screening panels and adjudication panels operate, the difference between complaints with merit and complaints that end up being dismissed; all complaints, however, must be reviewed by the board and it is the board's decision as to the final outcome. She reviewed conflict of interest issues when board members may know about a complaint prior to the remainder of the screening panel knowing about it. She explained the process of taking a complaint through the compliance process of the board up to the licensee or individual requesting a hearing, to taking a case to district court. Ms. O'Leary explained the makeup of a screening panel and adjudication panel.

Ms. O'Leary went through the statutes that govern all boards and discussed the powers and duties of the board and their authority. She discussed the rule making that will be required in order to implement the statutes, and in addition made suggestions as to other rules the board might want to consider in addition to those mentioned in statute. Statutes are the governing language and grant authority; rules implement those statutes and are meant to further explain statutory language.

APPOINTMENT OF SCREENING AND ADJUDICATION PANEL:

Four individuals volunteered to be on the screening panel. Ms. Kelly-Clark and Ms. O'Leary explained that with an odd number of board members (5), normally there are two professional members and one public member on screening and the remaining two members are on adjudication.

MOTION: Deborah Kimmet moved to appoint Grace Bowman, Stacy Baird and Deborah Kimmet to the Screening Panel.

SECOND: Grace Bowman

VOTE: Passed-unanimous vote

Remaining Board Members, Michael Eayrs and Nick Soloway will make up the Adjudication Panel.

PUBLIC COMMENT STATEMENT: Ms. O'Leary gave instructions to the new board Chairman on the public comment period and the requirement for the public comment statement to be read at every meeting.

"In accordance with 2-3-103(1), MCA, the Board will hold a public comment period. Please note that Open Forum is the public's opportunity to address the Board on any topic that is not already on the agenda for this meeting. While the Board cannot take action on the issues presented, the Board will listen to comments and may ask the issue be placed on a subsequent agenda for possible action by the Board. The Chairperson of the Board will determine the amount of time allotted for public comment."

Representative Elsie Arntzen phoned joined the meeting by phone at 11:01 to make comment. She wished the board well. She appreciates the time and energy that goes into being a board member and knows careful thought went into picking the board and it will be important to the industry in Montana. She encouraged the board to look for any changes that might be necessary in future legislative sessions. She offered to be of assistance and encouraged board members to contact her if they wished to.

Rachel Romanelli made public comment to introduce herself and the association she is connected to; the American Massage Therapy Association. She is the Government Relations Chairperson. She will attend board meetings as often as possible and will share the views of her organization as well as other organizations that were involved in the crafting of the legislation.

The interested parties list was discussed by Anne O'Leary and instructions given to all people who were present at the meeting as to how to get on the "interested parties list" if they desire and what information they would likely receive by being on the list.

REVIEW OF STATUTES GOVERNING THE BOARD

Ms. O'Leary went through the statutes in Title 37 that resulted from the 2009 legislation that created the board. She read through all sections and gave explanation of the various terms that might cause question. She went over areas she thought might need further review for rule making. Ms. Kimmet gave a history of how the list of exemptions was developed prior to the legislative effort being put forward. The possibility of dual backgrounds, i.e. Feldenkrais and massage therapy might result in someone needing to license the massage therapy portion of their practice even through Feldenkrais is one of the exempted practices.

Ms. Romanelli expanded on the discussion of the history of the legislative language and also asked about public comment – when it could be made and about what. Ms. O’Leary gave specifics on public comment-what can be considered at the time, what needs to be put on a future agenda, etc. Ms. O’Leary mentioned that the lead time between the legislation and the end of the grandfather period will give enough time for individuals who advertise massage therapy services to either license or pull their advertising.

REVIEW OF RULE MAKING PROCESS

Ms. O’Leary briefly explained the rule making process for the board as far as sequence of events and time frames involved. Rule making will be one of the first tasks the board needs to undertake. She made various suggestions about rule writing; i.e. reviewing what other states with similar licensure have done, reviewing the applicable board statutes for areas that actually instruct the board to write rules, etc. She explained the differences between having just the board work on the rules versus the board appointing a committee to work on the rules and report back to the board for the board to make a final decision and vote.

Board members discussed the option of a committee; some members felt that the board was small enough that rule writing should not be a problem to undertake as a board. Other members desired additional people from the public to assist in order to have involvement from interested parties outside of the board.

MOTION: Nick Soloway moved to establish a subcommittee for rule drafting to include all board members and two members who are not on the board. Additional members recommended are Rachel Romanelli and Susan Carlson.

SECOND: Deborah Kimmert

VOTE: Motion passed unanimously

SABHRS REPORT/OFFICE REPORT: Ms. Kelly-Clark went over the present financial picture of the board. She had given the board a fiscal report as of 9/23/09. She explained that boards are billed based on time distribution and that her time has partially been billed, but prior to the board receiving accounting codes, there was time that was not directly billed. She explained that the board will probably be in the red quite a bit before revenues begin coming in to cover expenses. She explained that boards are required to meet their expenses and keep a positive cash balance, particularly at the end of the fiscal year; boards are not allowed to cross the biennium in debt. At this time the board is in the negative in the amount of \$510.11 for time billed, postage and mailing.

Ms. Kelly-Clark also went over the fiscal note that was presented to the legislature and explained how the figures were obtained. She explained establishing a licensing process for a new board and how fiscal notes are based conservatively as far as the number of anticipated licensees. The fiscal note is not set in stone, but it is fairly accurate as far as the expected expenses for the first two years. All boards must set their fees commensurate with costs; this is a law. Boards must be self

supporting. Boards do not receive general revenue and must cover all costs with licensing fees.

MOTION: Grace Bowman moved to adjourn for a lunch break at 12:16.

SECOND: Deborah Kimmet

VOTE: Passed – unanimous

The Board reconvened at 12:50.

REVIEW OF FISCAL NOTE FROM '09 LEGISLATIVE SESSION & PRELIMINARY DISCUSSION OF FEES

Ms. Kelly-Clark explained that she had included information on fees from other states. She requested direction from the board as to what they would need if they chose to have the committee look at fees versus having the board discuss it at this meeting. Ms. Kimmet asked for further explanation of the fiscal note. Ms. Kelly-Clark went through the various assumptions in the fiscal note and briefly explained the assumptions and how they came about. Ms. Kelly-Clark recommended that the board consider complaints and how much they might cost to review and act on when they begin their fee discussion. The cost of membership for the Federation of State Massage Therapy Boards was also discussed.

DISCUSSION OF COMMON APPLICATION AND ADDITIONS OR CHANGES FOR MASSAGE THERAPIST APPLICANTS

Unlicensed practice and development of the application were discussed. Confusion concerning the application process and information on the board website was brought forward by Deborah Kimmet that potential licensees may be thinking that they can initially grandfather in but then when 2012 comes and the grandfather clause expires; they will have to license again under the requirement of 500 hours of education and national exam. Ms. Kelly-Clark will check the website and make the necessary change to clarify that once a person is licensed it is permanent unless they fail to renew or lose their license through discipline. Board members discussed how potential licensees will get the word that licensure is required and how to go about it. Ms. Kelly-Clark said that letters will most likely go out to association members and associations will be asked if they would provide their mailing lists to assist. Board members also inquired about the possibility of notices in newspapers. Ms. Kelly-Clark will explore this option; she would prefer that newspapers be willing to print a story versus an ad as an ad will be an expense to the board. Whether or not a notarized signature is necessary for the statement attesting to 100 hours of practice will also be researched by Board Counsel Anne O'Leary.

There was additional discussion regarding "massage parlors" and whether the board would want to identify those in case individuals attempt to apply licensure that may not be legitimate massage therapists. Ms. Kelly-Clark will contact the Dept. of Justice to see if they have any information.

Ms. Kelly-Clark went through the licensure and renewal process, explaining laws pertaining to deadlines, late fees, discipline for renewing late, the 45 day grace period, expiration and termination of a license. Ms. O'Leary told board members

they can also create an inactive status-this is allowed in general board statutes and they can also allow a temporary license under general statutes. Ms. Kelly-Clark recommended that the board look at a temporary license possibility after 2012 when applicants are possibly just out of school and waiting to take the national exam.

Standardized questions on the application were discussed. Ms. Kelly-Clark asked the board to review the draft application; there are portions that are open to change and some are required of all applicants. Board members asked whether background checks were possible-no, not as requirement unless the Legislature grants authority. There is some authority under general statutes but no specific authority for this board.

Determination of good moral character was discussed. Ms. Kelly-Clark and Ms. O'Leary gave various examples of what other boards have done; most require letters of reference, some must be from clinical professionals aware of the applicant's skills, some require that they only be from members of the public. Rachel Romanelli asked to address the board and gave information that when applicants for national examination apply for the exam, they are asked specific questions as to legal issues, etc. and they must attest to the accuracy of those answers. Ms. Kimmet questioned whether this particular application needs to have all the legal questions included in it. Ms. Kelly-Clark and Ms. O'Leary explained that the legal questions asked on the application have been researched by the Legal Unit and are required of all license applicants. If there are legal questions that absolutely don't apply to a profession, such as information asked on prescriptive authority, they can be omitted. Ms. O'Leary noted that individuals who have not been honest on their application are often found through these questions as they may have undergone discipline in another state and have record in the National Practitioner Data Bank.

Ms. Kelly-Clark went over license verification requests, verification of education forms, request for letters of reference, etc. All of these items are currently standard portions of applications. Ms. Kimmet noted that the name of the board needs to be changed to Board of Massage Therapy versus Board of Massage Therapists. Ms. Kelly-Clark will make the correction. Ms. Kimmet expressed concern over utilizing letters of reference; she does not think they get at the issue of good moral character and had concerns of liability for the person writing the letter. Mr. Eayrs did not think the author of a letter could be held liable and he did not think it was a burden to ask for the letters considering that the Grandfather clause is fairly liberal. There was further discussion that despite the drawbacks of letters of reference, there is a legislative prerogative to make an attempt to verify each requirement of a license that is listed in statute. No conclusion was reached. Ms. O'Leary went through some of the legal questions in the applicant and did not believe the questions necessarily got to the question of good moral character. She stated that despite the drawbacks, having the requirement at least indicates that the applicant knows two or three individuals who can vouch for them. The discussion will be continued at future meetings.

DISCUSSION OF NATIONAL EXAMS AVAILABLE FOR LICENSURE PURPOSES

Ms. Kelly-Clark explained that the application process cannot move forward until the board agrees which exams will be allowed for licensure. Even though most of the initial licensure will be through the Grandfather Clause, the board will still need to have the application process in place for those applicants who *do* want to license under their education and exam completion.

Ms. Kelly-Clark presented information on three national exams. Mr. Eayrs gave some background information on exams he is familiar with. Board members discussed pass rates, specifics about the exams, content, etc. Ms. Romanelli responded to several questions she was asked in her capacity with the American Massage Therapy Association, one of which was whether portfolio reviews were still part of any exam process-they are not. The board discussed three national exams; the MBLEX, NCETM, and NCETMB as far as exams they will look at for inclusion and approval for licensure. The board also discussed other national exams that deal more specifically with oriental medicine. They did not reach conclusion, but did agree that the three main exams they want to consider are MBLEX, NCETM, and NCETMB.

SCHEDULE OF UPCOMING MEETINGS

Following discussion, Board Members agreed to schedule the Rules Committee Meeting for October 19th and the next Full Board Meeting for November 16th. Ms. O'Leary expressed concern that she will be unable to put a draft rule package together that quickly.

ADJOURNMENT

MOTION: Grace Bowman moved to adjourn the meeting.

SECOND: Nick Soloway seconded the motion.

VOTE: Passed-unanimous