

**BOARD OF MASSAGE THERAPY
MINUTES OF RULES COMMITTEE MEETING
301 SOUTH PARK AVE, BASEMENT CONFERENCE ROOM
HELENA, MONTANA
10/19/2009**

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, Deborah Kimmet, Rachel Romanelli, (by phone), Nick Soloway, Stacy Baird, Michael Eayrs, and Susan Carlson

Staff Present:

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

Sue Benjamin joined on the phone as a public member, Susy Benjamin & Jaeline Johnson were present in the audience.

Debra Presinger joined the meeting by phone in the afternoon for a presentation on the MBLEx and Federation of State Massage Therapy Boards

REVIEW OF AGENDA:

The agenda was reviewed. Board Chairman Michael Eayrs questioned how agendas are put together and who is consulted in the process; Ms. Kelly-Clark explained that in the instance of a new board, staff put together an agenda that they believe will include all the topics the board or committee needs to consider, but that in the future, the Board Chairman and Board Counsel are normally consulted prior to the agenda being posted.

INTRODUCTIONS:

Committee Members introduced themselves as well as members of the audience both in person and on the phone.

PUBLIC COMMENT STATEMENT: Board Chairman, Michael Eayrs read the public comment statement and went through the agenda. He asked questions as to the time periods allowed for public comment and Ms. O'Leary responded.

"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."

FEES:

Because fees are noted in the legislation as one of the first items the board is to establish, Chairman Eayrs listed several fees he thought should be considered. Ms. O'Leary explained that some fees that are common to all boards are the same for all boards, such as duplicate license fees, license verification fees, etc. Other fees are determined in statute, such as late penalty fees which are required by law to be 100% of the license renewal fee. She suggested that the board needs to look at an application fee, license fee, and renewal fee.

Before discussion continued, committee members Susan Carlson and Rachel Romanelli discussed the possible need for a separate chairperson for the committee. Rachel Romanelli volunteered for the role should the committee decide to have officers. Ms. Romanelli requested clarification of the role of the chairperson. Ms. Kelly-Clark stated the role of chairperson is to keep the committee on track with their agenda, be sure all committee members have adequate access to input in the discussion and present a completed idea to the board for a final decision.

MOTION: By Michael Eayrs to nominate Rachel Romanelli to Chair the Rules Committee for the Board of Massage Therapy. Seconded by Nick Soloway. Motion Passed.

Discussion continued regarding the need for a Vice Chairperson.

MOTION: By Deborah Kimmet to nominate Michael Eayrs to be Vice Chair for the Rules Committee, Board of Massage Therapy. Seconded by Nick Soloway. Motion Passed.

At this point Rachel Romanelli took over as Chairperson of the Committee. The committee continued with their fee discussion. The timelines of the committee were discussed; Ms. Kelly-Clark explained that the legislation dictates that the fees be noticed and decided as soon as possible and that the first license be issued by July 1, 2010. She explained the length of time that rule making can take. She expanded on Ms. O'Leary's introduction of common fees and explained how some of them came about as result of a legislative audit. The subject of background checks came up and Ms. Kelly-Clark explained that the fee for a background check is set by the Department of Justice. She asked Ms. O'Leary to comment on board authority to require background checks; some boards have specific. There is an argument for the board having power to require them under 37-33-405 shall adopt rules

necessary and proper to enforce this chapter, exam reasonable requirements for CE.

Some boards have specific authority in their statutes to require background checks, but other boards have similar language as the language in massage therapy statutes but don't require background checks. She offered to research the matter further. Ms. Kimmet did not think Board Counsel should do any research until the board decides if they want to require background checks. Ms. Romanelli felt additional research would be helpful in the decision making process but agreed that the topic could wait for another meeting. Ms. Bowman stated she would also like research done by Ms. O'Leary. Ms. Carlson believes criminal background checks are expensive and are not necessarily current. She is concerned over how they will be used and that there could be some items in the background check that might be negative but would not have any effect on whether someone can safely practice massage therapy.

MOTION: By Rachel Romanelli to direct Board Counsel to research background checks and board authority for an item on the next meeting agenda. Seconded by Deborah Kimmet. Motion Passed.

Continuation of fee discussion; Ms. Romanelli stated that continuation of the fee discussion should look at all items that might be included in the application process, one of which would be examinations. In order to move forward, she suggests the committee look at examinations which is the second item on the agenda.

EXAMINATIONS:

Ms. Romanelli has a representative from the Federation of State Massage Therapy Boards that would like to address the committee by phone during this meeting. Ms. Romanelli discussed the various exams and purposes of those exams and costs. Ms. Kimmet stated that exam fees may not need to be considered as part of the application as examinations in the manner the statute has been written are to be taken by the time the individual applies for licensure. Ms. O'Leary suggested the committee review the fiscal note that was done for the legislation to get an idea of estimated costs and to remember that boards must be self sufficient and all costs needs to be covered by fees; there is no general fund money for boards or licensing. Ms. Romanelli discussed MBLEx and other exams and how the scores come to the states involved, etc. Ms. Kimmet made a motion to require all applicants to pay for their examinations prior to application and be responsible for those fees separate from the application fee. Ms. Baird asked whether the final decision making should not come back to the board versus the committee making decisions. Ms. Kelly-Clark concurred that the final decision is the boards. She further explained that the board cannot collect exam fees for another entity, although they can register or make applicants eligible to examine under agreements with exam providers, can receive and record scores, etc. Ms. O'Leary clarified that the board's only authority as the legislation was written is to require a passing score on an exam approved by the board; the role of the Rules Committee is to decide which exams to recommend to the board to approve for applicants.

Ms. Kimmet and Ms. Romanelli discussed the process of the committee making recommendations to the board and should vote on those items. She withdrew her motion. She gave information on the Federation of State Massage Therapy Boards and suggested that Montana should consider joining.

FEES-Continued:

Ms. O'Leary read fees from various states that were put together from several states as examples for the committee to consider. Approximate range of application fees from five states is 100.00-205.00. Questions were asked of Ms. Kelly-Clark about the fiscal note. Ms. Kelly-Clark said that the expenses noted in the fiscal note were fairly accurate, but the big missing piece is the cost of processing and adjudicating complaints. She suggested that the board needs a cushion to cover these instances. One complaint can cost a board thousands of dollars; other boards never have complaints at all. Over the course of time, once the board grows they may see a pattern of how many complaints are average and an average cost of compliance. She explained fee abatement, boards raising fees, lowering fees, etc.

Ms. Kimmet estimated that the correct number of licensees would be 1000 versus the 500 the fiscal note suggested. She provided some fee estimates she had come up with based on the expenses in the fiscal note, a cushion to cover complaints and divide that by 1000 licensees. Mr. Eayrs suggested that they consider 500 licensees and be sure they have enough money to cover expenses. Ms. Carlson asked for an explanation of the fiscal note which Ms. Kelly-Clark provided.

Fees being commensurate with costs and the costs of different types of application processes were discussed. Ms. Kimmet discussed the intent of the legislation and expressed concern of whether there would be some type of prejudice by the board towards those people who come in by the grandfather clause versus examination if the method of licensing were tracked via different fees, etc. Ms. Carlson expressed similar concerns and discussed how the legislation came about. There was further discussion by the committee and department staff as to the reasons for separate fees, or acknowledgement of how an individual applies for licensure. Ms. O'Leary and Ms. Kelly-Clark explained that the fees by being commensurate with costs may require different fees for different application types based on the complexity of the application process for that particular method of applying. Ms. O'Leary further explained that applications are public documents and following redacting personal information such as address, phone number, social security numbers, etc.

MOTION: By Deborah Kimmet to propose a license renewal fee of \$90 per renewal period plus whatever the costs is per licensee for membership in the Federation of State Massage Therapy Boards based on 500 licensees. Seconded by Nick Soloway. Motion passed.

MOTION: By Deborah Kimmet to propose an application fee of \$90 plus any fee charged by the FSMTB for exam applicants. Seconded by Nick Soloway. Motion passed unanimously.

EXAMINATIONS & FEES Continued

The Committee broke for lunch between noon and 1:00 p.m. and resumed discussion of fees and membership with the Federation of State Massage Therapy Boards. Rachel Romanelli asked that Debra Persinger from the FSMTB be allowed to join the meeting by phone to explain the purpose of the FSMTB and their role in individual state boards. Prior to Ms. Persinger joining the meeting, there was a discussion of fees to join the FSMTB; the initial year for a new board is free, following that the fee is \$500 and .40 cents per licensee, capped at a maximum of \$2800.00. Department staff advised the committee that the membership dues for the FSMTB could be considered the same as any other expense and would not need to be directly passed on to license applicants. Following discussion a change to the fees motioned prior to the lunch break was proposed.

MOTION: By Nick Soloway to propose an initial application fee by examination or endorsement of \$50 and license fee of \$90; a \$40 application fee for licensure by grandfathering and license fee of \$90; and a renewal fee for all licenses of \$90 per renewal period. Seconded by Michael Eayrs. Motion carried unanimously.

Nick Soloway asked for consideration of accepting all the examinations particularly during the grandfather period. Rachel asked that the discussion of examinations be held until after Ms. Persinger visits with the committee.

Ms. Persinger joined the discussion via conference call. Introductions were made. Ms. Persinger discussed the MBLEx exam; it has a pass rate of 74% nationwide. State boards own the examination and maintain greater control, although a state does not have to be a member of FSMTB in order to use the examination. The exam is issued through Pearsonview exam contractors; they have the highest level of security and have over 200 test sites in the United States. Once an applicant is approved; they have up to 90 days to test. The results are sent directly to the state board the applicant is applying through. Fingerprints and facial identification are done for each examination and the test sites are monitored both by audio and video. Over 1/3 of the MBLEx exam covers boundary issues and public protection issues. Ms. Persinger believes this is what sets this exam apart from others. There are 34 member boards participating. There are a few boards that use MBLEx exclusively. The MBLEx is supported by the AMTA (American Massage Therapy Association) and ABMP (Associated Bodywork and Massage Professionals) Ms. Eayrs asked for some comparison between the MBLEx and the other two certification examinations. Ms. Persinger explained that the examination looks at core competencies to enter the profession; the certification exams are more specific to their particular special area, i.e. certified in reflexology or pregnancy massage. Mr. Eayrs asked if the organization is doing anything to help schools to fine tune their curriculum in order to be more in line with the areas of the examination. She explained that because the exam focuses on core competencies, schools should not have to change their curriculum to conform to the exam. Ms. Persinger finished her presentation accepting questions from department staff as to whether the FSMTB is in a membership status with the Health Care Practitioner Data Bank. At this time,

no, they are not a member as massage therapy is not viewed as necessarily a medical treatment in all states. They do not have a method of verifying licenses from other states; that information would still need to be gathered from those individual states where an applicant may have had licenses.

The committee continued their discussion of examinations available. Ms. O'Leary recommended that the committee and board look to the national committee for certifying agencies for guidelines or information as to what the board should look at for curriculum oversight or acceptance, but that the board can accept any examination per 37-33-502. Ms. Kimmet stated that if a school meets the curriculum requirements and then students must take a test that raises the bar beyond what their education provided it is not fair. She believes all examinations should be accepted for ten years and then transition to the MBLEx.

Information as to which states accept which examinations was discussed. State exam equivalency was also discussed as to whether there is a body of experts who review equivalency; Rachel will research this.

Nick Soloway felt that most people will apply via the grandfather clause in which the exam selection is moot, if they come in from another state by endorsement, they have already taken an exam, the people most likely to be affected will most likely not seek licensure until after July 1, 2012. Equivalency of licensure between states was also discussed at length.

MOTION: By Michael Eayrs proposed that the Board of Massage Therapy of Montana use all three national examinations for licensure; MBLEx, NCETMB or NCETM and any state examinations deemed by the board to be equivalent. Seconded by Grace Bowman. Motion passed unanimously.

MOTION: By Deborah Kimmet to propose the Montana Board of Massage Therapy joins the Federation of State Massage Therapy Boards. Seconded by Grace Bowman. Motion passed unanimously.

Michael Eayrs will obtain the application for membership and complete on behalf of the board as Board Chairperson.

HIGH SCHOOL GRADUATION REQUIREMENT - VERIFICATION?

The statutory language for the board requires that applicants have a minimum of a high school diploma. The committee discussed whether this needs to be verified. Anne O'Leary recommended that the language speak to a high school diploma or its equivalent such as a GED. After discussion it was agreed that the requirement exists in statute which is sufficient, and most boards don't require any verification; it was agreed not to require verification.

GRANDFATHER CLAUSE-wording of affidavit to attest to 100 hours of professional massage therapy experience.

There was discussion of whether notarization would be necessary for the affidavit. Ms. Carlson said that individuals involved in the legislative discussions were assured

that they would not have to have a notary. Ms. O'Leary said that most courts don't recognize affidavits that have not been notarized. There was further discussion as to the ease of obtaining a notary in rural areas. Ms. O'Leary will research this further. Meanwhile, Ms. Kelly-Clark will have a standard affidavit language drafted to accompany the application.

GOOD MORAL CHARACTER-HOW TO DETERMINE; USE OF REFERENCE LETTERS?

There was discussion as to how other boards handle this requirement – for most boards, letters directly sent to the board office are the best way to meet the legislative requirement of “good moral character”. Discussion centered on the ease of getting them and if they met the requirements or are really pertinent to the application process.

Ms. Kimmert recommended that the letters only pertain to good moral character and not a recommendation for licensure. Ms. Romanelli stated that if a person takes the national certification test, a background check is part of the testing process. Other discussion centered on whether information is available regarding particular issues such as whether an applicant has sexual offender legal issues. Ms. Carlson stated that the letters are very subjective because applicants are not going to request a letter from someone who would have reason to say something negative. She does not think they are useful. Ms. Kimmert stated that as part of the negotiation process at the legislature, it was agreed that this item would stay while other items that had been included in the original bill could go. Having this phrase in the legislation would be a tool if it was necessary to revoke or discipline a license versus having a concern up front during the application process. Ms. O'Leary stated that the department, in order to avoid concerns during a legislative audit, needs something on the front end during the application process to show a good faith effort to comply because the statute states it is a “must” in order to be eligible for licensure. Mr. Eayrs agreed with Ms. Romanelli that two letters of reference from people who are not relatives of the applicant seems like the most reasonable method. He also suggested as part of the office process of application review, that applicants be checked on the national sex offender registry to be sure there are no issues. Ms. Carlson disagreed and stated there are sexual assault laws on the books already to protect the public.

MOTION: By Michael Eayrs to propose requiring two letters of character reference for each applicant from people who are not family members. Seconded by Nick Soloway. Motion passed; 4 yes, and 2 no.

There was further discussion on changing the letter that accompanies the application and if the changes would come back to the committee or go directly to the board. The discussion continued further regarding timing of the rule making process and the items that were left to cover on the agenda. It was agreed that the final three agenda items, continuing education, establishment of rules to endorse equivalent licensure from other states, and discussion of terminology or definitions to accompany rules will be placed on a future agenda.

BOARD APPROVED PROGRAM-HOW TO DETERMINE

The Committee discussed the statutory requirement for the board to approve programs. There was considerable discussion as to whether schools need to be accredited or only meet or exceed the curriculum of a school that is accredited. Ms. Kimmet stated that she did not think a rule is necessary-the statute can be referred to as it presently reads. Ms. Kelly-Clark stated that office staff will need to have better direction as to what education will qualify for licensure as committee members are stating that provider numbers that show a prior qualification to educate will not be necessary. She explained that staff time will expand considerably if staff are required to review course content and costs can also go up for processing. Ms. Romanelli suggested that the board make a rule to adopt the national certification board curriculum guidelines. Presently only one program is accredited. Mr. Eayrs stated that if an applicant has passed an exam, they will by default have attended a program that provides curriculum that meets or exceeds accredited standards.

NCTMB lists schools on their website that meet or exceed curriculum requirements. NCTMB also has guidelines for curriculum requirements. MBLEx doesn't have guidelines for curriculum, but they do have guidelines as to the content areas covered on the examination and the percentage of each area out of the whole that is tested. The discussion ended with the acknowledgement that accreditation is very expensive and it was never the intent of the legislation to require programs to be accredited. Office staff will need to review educational content if the school attended does not appear on the list of schools that meet the guidelines. Rules to address the process will need to be drafted.

ADJOURNMENT

MOTION: By Michael Eayrs to adjourn the meeting. Seconded by Grace Bowman. Motion passed unanimously.