

BOARD OF MASSAGE THERAPY
MINUTES OF FULL BOARD MEETING
301 SOUTH PARK AVE, 4TH FLOOR CONFERENCE ROOM
HELENA, MONTANA
12/07/2009

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: Chairman Michael Eayrs called the meeting to order at 1:19 p.m.

Members Present:

Grace Bowman, Public Member, (attended by phone from Billings)
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
Traci Collett, Unit 1 Supervisor
Cheryl Brandt, Program Manager

Public Present:

Susan Carlson
Jaelene Jolson

Agenda Item 1:

REVIEW OF AGENDA

Mr. Eayrs reviewed the agenda, there were no changes or corrections requested

Agenda Item 2:

REVIEW AND APPROVAL OF MINUTES FROM 9/28/09 MEETING

Deborah Kimmet asked for correction of a misspelling on page 5. There were no further corrections.

MOTION: By Grace Bowman to approve the minutes from 9/28/09.
Second by Nick Soloway. Motion Passed.

Agenda Item 3:

BUDGET REPORT-SABHRS

Ms. Kelly-Clark reported on the budget as of the end of November. The board has no revenue. Total expenses are 7824.44 as of the end of November. The board currently is in the negative and will remain so until the rule notice and application process is complete and the board can begin to accept applications.

Agenda Item 4:

GOVERNOR SCHWEITZER'S MEMO ON PUBLIC PARTICIPATION

Mr. Eayrs read the Governor's memo on public participation. The Board reviewed the memo and Ms. Kelly-Clark explained that the memo covers the Governor's expectations regarding the legal requirements of public participation in board meetings, hearings, notices, etc.

Agenda Item 5:

BOARD MEMBER TRAINING SCHEDULED IN HELENA FOR JANUARY 26, 2010

Ms. Kelly-Clark explained the board member training and encouraged board members to attend if at all possible. It will be a full day of training in the House of Representatives with lunch in the Capitol rotunda. More information will be coming.

Agenda Item 6:

FOLLOW UP ON OLD BUSINESS FROM SEPTEMBER MEETING

- Correction of website and board title on documents
- Contact with Dept of Justice regarding massage parlors
- Notarization of affidavit-is it necessary?
- Background checks-board authority to request
- Feasibility of announcements in newspapers regarding licensure
- Application and invoice information from FSMTB

Most of these items were research items given to staff to gather information on behalf of the board.

- Corrections requested to the board website have been made. A statement on licensure for those considering grandfathering has been posted. Ms. Kimmet believes the statement is sufficient and adds clarity.
- Ms. Kelly-Clark has contacted the Department of Justice and they do not have a section of their agency that deals with specific vice issues outside of gambling. She has been referred to one of the department's attorneys but hasn't been able to reach her as of yet. Mr. Eayrs asked that the department continue to try to see if there is anything the board can do; his concern is allowing continuation of advertising for those individuals who state they are massage therapists but clearly are not. Ms. Carlson, in public comment stated that her spouse is in law enforcement and the only method to go after individuals operating massage parlors is to have a complaint filed and normally clients of these businesses do not file complaints. Ms. O'Leary said the only thing the department has authority for is to license individuals who have complete applications and meet qualifications. She does not believe there is much the board can do if complaints are not filed. Ms. Kimmet stated the law refers to those who are exempt from licensure; those individuals who

are exempt cannot advertise themselves as being massage therapists without a license. She worries that the board is going to try to influence people to stop prostitution; she does not believe this is possible or is the board's charge. Ms. Kelly-Clark suggested that massage therapists may want to approach the publishers of the phone books to establish another heading under "licensed massage therapists" versus just "massage" or "massage therapy". Individuals who advertise under this heading as being licensed when they are not would be practicing without a license. The board can issue a board generated complaint when they receive information, but to go out and look for problems the same way another board that has statutory authority to inspect or investigate can, is out of the limits of authority for this board.

- Notarization of an affidavit is necessary per research from Ms. O'Leary. The very description of the word affidavit is that it is a statement sworn to be true before someone legally authorized to administer an oath. She does not see a way around notarization without a legislative change as the term "affidavit" is what was used in the massage therapy statutes.
- Background checks-board authority to request-the board does not have statutory authority to require background checks of applicants. Boards that do have authority to do background checks have the authority clearly outlined in statute. All boards can request a name check by general board statutes as part of an investigation, but boards must have authority to request fingerprint checks.
- Checking on feasibility of advertising the need for licensure in newspapers statewide. Ms. Kelly-Clark investigated the possibility of advertising the requirement for licensing. The board does not have income at this time and thus the costs are prohibitive. Board members suggested letters of notice to the schools, associations, continuing education providers, etc.
- Application and invoice information from FSMTB-the board has received a welcome letter and packet from FSMTB. Membership the first year is complimentary. The board directed office staff to complete the application for membership.

Agenda Item 7:

PRESENTATION OF ITEMS BROUGHT FORWARD FROM RULES COMMITTEE FOR BOARD REVIEW AND ACTION

Rules Draft from Department:

Fees

Acceptance of Examinations

Application Requirements

Common Rules

Ms. Kelly-Clark went through the rule draft and the changes recommended by the Rules Committee from the meeting held earlier this date. Ms. Kimmet requested that the board vote on each rule as it is discussed. Ms. Kelly-Clark explained the common rules that apply to all boards dealing with board organization, public participation, etc. These common fees comprise new rules 1, 2, and 3. Proposed definitions comprise new rule 4.

MOTION: By Nick Soloway to move forward to notice rule proposals # 1, 2, 3, and 4; rule draft #4 will include additional definitions such as acronyms for exam names. Second by Deborah Kimmet. Motion passed.

New Rule V – Fees; Ms. Kelly-Clark suggested the board consider combining the application and license fee into one fee for ease for applicants and to avoid confusion.

MOTION: By Grace Bowman to combine the application and licensure fee into one fee; application and licensure by grandfather clause; application and licensure by examination; application and licensure by endorsement. Second by Stacy Baird. Motion passed.

Ms. Kelly-Clark discussed New Rule VI, licensure by grandfather clause. The Committee had discussed that the initial draft contained an error stating that a high school diploma was required under the grandfather clause when it is not. In addition, the committee had requested the addition of the requirements of notarization to the draft. These changes will be made to the final draft.

MOTION: By Nick Soloway to move New Rule VI forward for notice following the recommended changes from the Committee. Second by Grace Bowman. Motion passed.

Ms. Kimmet pointed out to the audience member that the term "affidavit" in the statute requires notarization and is not optional.

Ms. Kelly-Clark went through New Rule VII-changes will be made to the licensure by examination qualifications rule to correct exam title acronyms.

MOTION: By Deborah Kimmet to notice New Rule VII with recommended changes. Second by Nick Soloway. Motion passed.

Ms. Kelly-Clark discussed changes recommended to New Rule VIII, licensure by endorsement. The rule will be reworded to combine the requirements for endorsement to note that the requirement of 500 hours of education is the current requirement of the state an individual is endorsing from and that individuals who have been actively licensed in good standing in another state will not be penalized if the required hours of education were less when they initially applied for licensure in that state.

MOTION: By Deborah Kimmet to move New Rule VIII forward for notice once the recommended changes have been made. Second by Nick Soloway. Motion passed.

Rules draft and policy suggestions from Deborah Kimmet

Ms. Kelly-Clark went over the rule drafts received from Deborah Kimmet. Rule proposal one clarifies the minimum curriculum required. The Rules Committee had recommended the removal of the word "theoretically".

MOTION: By Deborah Kimmet to move proposed Rule #1 forward to notice with recommended changes. Second by Nick Soloway. Motion passed.

Ms. Kelly-Clark went over rule proposal number two to add to the definitions section-this is an explanation of what constitutes a "board approved program".

MOTION: By Deborah Kimmet to move proposed Rule #2 to notice. Second by Nick Soloway. Motion passed.

Ms. Kelly-Clark went over the final rule proposal that had recommended that applicants applying by the grandfather clause be given some idea of the records they might need to keep on hand in case the 100 hours by which they were licensed was ever questioned. The Rules Committee had determined that the Board does not have authority to do this; the Department Compliance Unit would ask for whatever information they deemed necessary should a complaint ever be filed against an individual. Ms. Kimmet said that despite the lack of authority, she would still like some information on record keeping made available to applicants in the event of a complaint.

Ms. Kelly-Clark said that the Compliance Unit might be able to give an idea of what documents might be asked for, but there were no guarantees. Ms. Collett said that whatever information might be requested would come before the board's screening panel and those members would still have input as to what documents were needed. The final decision still rests with the board through the compliance process and recommendations by department counsel.

Ms. Kelly-Clark clarified that if an applicant answered "yes" to any of the legal questions on an application, office staff would ask for whatever documents that would prove that all requirements had been met; the application would still come to the board as a non-routine application.

Ms. Carlson asked if conviction or probation for a criminal matter would keep someone from being licensed. Ms. O'Leary stated that a criminal conviction or probation cannot be the sole reason for denial of a license; this is in statute.

Ms. Kelly-Clark suggested that perhaps massage therapy associations might want to give some information in newsletters or on web sites to members as to what business records might be wise to keep in any case.

FSMTB By-laws to consider in rule making

Ms. Kelly-Clark said that the By-laws were sent by Rachel Romanelli for the Board's information. The By-laws seem to be more in the nature of procedural regulations for the organization versus codes of conduct. Ms. Brandt questioned whether the

FSMTB has a "model act" which would contain information pertaining to unprofessional conduct. Ms. Kelly-Clark agreed that the office staff could investigate if FSMTB has a model act that could be used by the Board to adopt by reference or use as a guide in crafting unprofessional conduct rules.

Mr. Eayrs said that if FSMTB does not have one, he believes some of the other organizations do, such as NCBTMB. Board Members requested Office Staff to check with NCBTMB and National Massage Therapy Association on whether codes of conduct and scope of practice information is available that the board and rules committee can use in drafting the balance of the rules.

Agenda Item 8:

APPLICATION DRAFT FOR FINAL REVIEW AND ACTION

Ms. Kelly-Clark went through the revised application draft noting that changes would be made per the Rules Committee meeting such as combining the fees. Ms. Baird asked about the renewal process and how long the initial license will be good for. She questioned if those coming in by grandfather clause would be licensed through 2012 when the clause expires. Ms. Kelly-Clark responded that the licenses will be renewed annually, so once a person is licensed and the expiration date is set by the board, it is up to the licensee to be sure their license is renewed annually and on time. The two year time frame to come in by grandfathering does not affect renewing the license once a license has been granted.

Ms. Kelly-Clark stated that other changes suggested by the Rules Committee to the application will also be made to the final draft such as splitting out the requirements for licensure by grandfathering, examination, and endorsement. The letter of reference will also be changed per the Rules Committee suggestion, but Ms. Kelly-Clark suggested that the Board probably wants a motion to that effect. Ms. O'Leary will also be asking for an opinion from Pam Bucy on the use of reference letters for good moral character as a department policy per a request from Deborah Kimmet made at the Rules Committee meeting. Ms. Kimmet summarized the committee's discussion for the member not present at the committee meeting and clarified that the question was whether or not the questions on the application are adequate or is it department policy that the letters have to be used. Mr. Eayers agreed that this was a fair summarization of what was discussed.

MOTION: By Deborah Kimmet to go forward with the application as amended by the Rules Committee with the provision that the Board see how that conversation with the Department Chief Legal Counsel turns out regarding letters of reference. Second by Nick Soloway.

Grace Bowman had questions on what was being changed because the Board had a motion and vote at a prior meeting that letters of reference would be required as part of the application. Following discussion the vote was called for. Motion passed.

Ms. Kelly-Clark summarized that her understanding was that staff could move forward with recommended changes to the application with the exception of changes to the letter of reference, pending the response from Chief Legal Counsel, Pam Bucy. She concluded that all items from the 12/7 Rules Committee had been brought forward to the Board. Other items that still need to be reviewed and discussed by the Rules Committee are continuing education and unprofessional conduct rules.

Agenda Item 9:

LETTER TO BLMTB FOR BOARD REVIEW FROM MR. DUSTIN FOX

Mr. Fox sent a letter to the Board via Ms. Kimmet with various suggestions and concerns as to what he felt the Board's chief tasks should be and questions or suggestions as to process. Ms. Kelly-Clark asked Ms. Kimmet if there were specifics she could address in the letter. Ms. Kimmet stated that the letter was public participation and Mr. Fox was expressing his opinion on what he believed the board should do. Board staff will respond to Mr. Fox and thank him for his comments.

Agenda Item 10:

SCHEDULE UPCOMING MEETINGS

Prior to scheduling upcoming meetings, Ms. Kelly-Clark advised the board that they would be working with a new Program Manager, Ms. Cheryl Brandt, and a new Board Counsel, Mr. Tyler Moss. Ms. Kelly-Clark has moved both boards she was managing to other Program Managers due to workload in her unit. Ms. Traci Collett will take over Unit Supervision for this particular board.

Discussion took place on scheduling a conference call to take a final look at the rules draft before it moves forward to notice; that call will most likely take place late in December or early in January.

The Board agreed to schedule the next meeting for Monday, January 25th. The department is planning a board member training for Tuesday, January 26th and this date will be most convenient to tie into that training for those planning to attend. The Rules Committee will meet from 10-12 and the Board will meet from 1-conclusion.

Ms. Kelly-Clark suggested that board members bring their personal calendars to the next meeting and schedule their meetings for the year; most boards meet quarterly, some meet less. She went through the rules process as far as meetings; the board will need to meet to answer comments from the rules notice and hearing in addition to the conference call to approve the final draft.

Agenda Item 11:

ADJOURNMENT

MOTION: By Deborah Kimmet and Second by Nick Soloway to adjourn the meeting. Motion passed. Meeting adjourned at 3:04 p.m.

APPROVED BY: Michael Eayrs, Chair

DATE APPROVED: 1/25/2010