

BOARD OF MASSAGE THERAPY  
MINUTES OF RULES COMMITTEE MEETING  
301 SOUTH PARK AVE, LARGE 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: Committee Chairperson, Rachel Romanelli called the meeting to order at 10:08.

Members Present:

Grace Bowman, (by phone from Billings), Deborah Kimmet, Rachel Romanelli, Nick Soloway, Michael Eayrs, and Susan Carlson

Members Absent: Stacy Baird

Staff Present:

Anne O'Leary, Board Counsel  
Marilyn Kelly-Clark, Unit 2 Supervisor & temporary Program Manager  
Cheryl Brandt, newly assigned Program Manager  
Traci Collett, newly assigned Unit Supervisor

Susy Benjamin was present in the audience.

PUBLIC COMMENT STATEMENT:

"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."

Agenda Item #1

APPROVAL OF MINUTES FROM 10-19-09

Committee Members had clarifications of acronyms and two motions to the minutes that will be made prior to posting the minutes to the board website.

MOTION: By Michael Eayrs to approve the minutes with corrections.  
Second by Nick Soloway. Motion passed.

## Agenda Item #2

### REVIEW OF REVISED APPLICATION INCLUDING LETTER OF CHARACTER REFERENCE AND ATTESTMENT FOR THE "GRANDFATHER" CLAUSE

The Committee reviewed the draft application that included changes suggested at the October committee meeting. Committee members questioned whether the application needed to have a companion to the affidavit giving examples of what items a potential licensee might want to have on hand if someone questioned whether they indeed had 100 hours of massage experience. Anne O'Leary, Board Counsel, explained that the board does not have authority to ask for these items. Ms. Kimmet stated that she would still like a list of documentation examples in rule in case a complaint was filed so that people would have notice not to destroy various business documents. Ms. O'Leary explained that if a complaint is filed against a licensee, that complaint goes to the Department Counsel for the Board (Prosecutor) and Board Screening Panel and they would then decide what documentation they may or may not want to see; the request for documentation and the type of documentation requested is at the discretion of the panel. Ms. O'Leary suggested that the association could certainly put some suggestions and examples in their newsletter, but to put this in rule would limit the Board's ability to deal with complaints.

Ms. Carlson brought up her concerns regarding letters of reference and said she and many others have a big issue with providing the letters of reference. She does not feel they are necessary. Ms. Kimmet said that she had spoken to the legislative audit division, specifically Tori Hunthausen, and asked what the criteria was to prove good moral character. Her response was that if audited, the department would be asked to show that they have a procedure in place to address the legislative requirement. Ms. Kimmet said that Ms. Hunthausen said that the use of the application alone would "absolutely" be adequate to address the issue. After further discussion via email, Ms. Hunthausen clarified that although she believed the questions on the application, while self-reported were helpful, management, (the party charged with ensuring licensure requirements are met, i.e. the Board) would need to decide if it was comfortable relying on the application questions alone.

Ms. Bowman stated that the subject had already been discussed and voted on at the last meeting and she did not understand why it was being brought up. She asked the Board to remember that their primary charge is to protect the public. She does not think requesting two letters of reference is an unnecessary burden.

Ms. O'Leary said that the department is still the ultimate agency that must go through an audit and provide the information as requested. She asked that future correspondence between board members and agencies regarding the board be copied at least to the Program Manager prior to the meeting. She believes it is a department obligation to ensure that applications under department policy can stand up to an audit. The department is charged with development of forms.

Ms. Kimmet questioned if the board still needed to adhere to department policy if they were in disagreement.

Ms. Benjamin made public comment as to how the inclusion of "good moral character" could be changed. Ms. Romanelli responded that the only way to change it or remove it would be through a legislative change, but in asking to open the statute to change would open the whole bill to other changes as well. She asked Ms. Carlson what the primary objections are. Ms. Carlson responded that people who have been in massage therapy for a very long time have fought the attitude that massage therapists are prostitutes. She said that to request the letters is redundant and does not serve a purpose. She said many feel it's an invasion of privacy.

Ms. Bowman said that letters of reference are required many times for employment; applying for a license is not any different. She has never heard of anyone objecting to providing such letters.

Ms. O'Leary offered to bring the question to Pam Bucy, Chief Legal Counsel for the department, to weigh in on this issue.

Mr. Eayrs asked Ms. O'Leary what is mandated. Her response was that good moral character is in the statute as a minimal qualification needs to be addressed in some fashion. The Board does not have the right to ask for and conduct background checks. Mr. Eayrs does not think asking for the letters is an invasion of privacy and it is a privilege to practice the profession. He said that if the profession wants to be on the same level as other health care professions, people need to go through the same process as other professions.

Committee members continued the discussion. Ms. Kelly-Clark told the committee that the reference letter has already been revised and any reference to ability to practice versus character has been removed.

Ms. Kimmet wanted the letter changed further and requested the question at the end of the form "would you recommend this applicant for approval to be licensed as a Massage Therapist to practice in Montana" be removed. Following discussion, Ms. O'Leary suggested changing the language to "based on the comments above, would you recommend this applicant for approval to be licensed as a Massage Therapist to practice in Montana".

MOTION: By Deborah Kimmet to change the language of the question on the letter of character reference to state "based on the comments above, would you recommend this applicant for approval to be licensed as a Massage Therapist to practice in Montana". Second by Nick Soloway. Motion passed with 4 yes and 1 abstain.

Ms. Romanelli stated that the recommendations to the board would be to make the change to the letter and to require two letters of character reference. Ms. Kimmet said asking for the letters was a separate issue. Ms. Kelly-Clark reminded Ms.

Romanelli that a motion had already been made and passed at the last meeting to include two letters of character reference from individuals who are not related to the applicant.

MOTION: By Deborah Kimmet for the committee to reconsider the motion to require two letters of character reference made at the October 19<sup>th</sup> meeting based on the new information she presented. Second, none. Motion tabled based on the discussion below.

Ms. O'Leary said she was not willing to use the information presented until she had time to read it and study it. Ms. Kimmet gave the emails received and sent between herself and Ms. Hunthausen to Ms. Kelly-Clark. Ms. Romanelli asked Ms. O'Leary to check with Ms. Bucy and report back to the committee on the two issues of the reference even being part of the application or the questions being sufficient.

Ms. Kimmet requested a third listing under license requirements to include separate sections to list examination, endorsement and grandfathering. Ms. Kelly-Clark will make the changes.

#### Agenda Item 3: REVIEW OF FSMTB BYLAWS

Ms. Romanelli discussed membership in FSMBT and reminded committee members that they had discussed joining at the last meeting. Ms. Kelly-Clark stated that the information regarding joining FSMBT is not in the committee book, it is in the board book as the decision to join or not to join is the Board's decision. She did include the bylaws of the organization in the committee book in case members wanted to use the bylaws as any sort of guide in rule making. Ms. Romanelli asked for discussion, there was none offered, everyone felt they were familiar with the bylaws.

#### Agenda Item 4: FOLLOW UP ON QUESTIONS FROM LAST MEETING: Background checks Notarization of affidavit for grandfather clause

Ms. O'Leary reported that she had researched the questions and background checks cannot be done because there is no statutory authority to perform or require them. Ms. Romanelli added that some schools do perform background checks as part of their admission process; this is "information only" for the committee.

Ms. O'Leary reported that she had met with the managing attorney for the division about affidavits and by their very nature they are a document signed before a notary or other official. Ms. Kimmet stated that the nursing application used the term affidavit and they don't require notarization. Ms. Kelly-Clark said the concern for this board is that the actual word "affidavit" is in statute; the nursing board may have used the term on the application, but they may not have the term in statute. Ms. Carlson said that in conversation with Rep. Arntzen they were promised they

would not have to notarize anything on the application. Ms. O'Leary said that regardless of the conversations that may have taken place; the language of the bill as it's codified in statute uses the word affidavit. Ms. Collett stated that if the term is on the nursing application it shouldn't be and she will have it corrected. She explained that the department has been moving to have the language requiring notarization removed from applications for boards that don't have it in statutory language because the expectation is that license applications will move online in the near future.

There was further discussion as to whether there was any way to avoid notarization. The term in statute is affidavit, not declaration, or statement. Ms. Kelly-Clark said that the term dictates that requirement. Mr. Eayrs and Ms. O'Leary both thought it is a simple requirement. Ms. Carlson said there are several people from the massage community that do see it as an issue. Ms. Soloway stated that he had to have fingerprint background checks for one of his licenses and that was a much bigger process. Ms. Carlson said that the ease of the process described in the legislature is not what is happening. She expressed concern that more people who are upset about licensure have not attended meetings. Ms. Romanelli said that everyone on the committee and board are volunteers and didn't have the knowledge of what licensing entailed as far as the application process goes. Mr. Soloway suggested that the language on the form needs to indicate that a notarization is required. Ms. Romanelli said that in defense of Rep. Arntzen, she felt sure that language that ended up in statute reflected not only discussions and intent, but what Rep. Arntzen needed to include in order to get the bill passed, i.e. minimal requirements.

Agenda Item 5:

REVIEW OF RULE DRAFTS FROM PAST DISCUSSION: Department Draft and Draft from Deborah Kimmet

NEW RULE IV-Definitions

Ms. Kelly-Clark went through the department rule draft and explained the inclusion of rules common to all boards such as public participation, etc. She added a definitions section and explained that the board may not need to have this section now, but she added it for example. The committee had many organization names that they would like to have added.

MOTION: By Michael Eayrs to add all the definitions of acronyms suggested such as MBLEx, etc. Second by Deborah Kimmet. Motion passed.

NEW RULE V-Fees

Ms. Romanelli went through the proposed rule containing fees. Deborah asked that the language in the fees be standardized to read application by endorsement, application by examination, etc. Ms. Kelly-Clark will make the changes. Ms. Benjamin asked to make public comment; she said that during the last meeting, a statement was made that there would be at least a 20% discount on the application fee from grandfathering versus endorsement or application. Mr. Eayrs went over

the fees and explained that there is a 20% reduction in the application fees. The fee proposed for exam or endorsement is \$50 and the fee proposed for grandfathering is \$40 which is 20% less.

#### NEW RULE VI-License requirements by Grandfather Clause

Ms. Kimmet asked the requirement of a high school diploma be stricken from proposed new rule VI regarding grandfathering-it is a requirement of exam and endorsement applicants but not of grandfathering applicants. The correction will be made. Ms. Carlson asked that the requirement of notarizing the affidavit also be added to the proposal. Correction will be made.

#### NEW RULE VII Licensure requirements by Examination

The only change noted was the misplacement of letters of an acronym, it will be corrected.

#### NEW RULE VIII Licensure requirements by Endorsement

After discussion regarding people who may have licensure in another state for many years but may have attended a school that required fewer hours than the statute requires now. A change in language was suggested by Ms. Kimmet; the change will be made to the proposal. The question arose as to what to do with individuals coming from non- licensure states; they would need to come in by examination versus endorsement.

MOTION: By Ms. Kimmet to change the language in the draft proposal for new rule VIII, Licensure by Endorsement, (d) & (e) to be combined to read: must possess and provide verification of an active license, certification, or registration in good standing, from another state, whose current requirements include 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 have received a passing score on either the MBLEx, NCETMB, or the NCETM examination or a state examination deemed to be equivalent. Second by Nick Soloway. Motion Passed.

Continuation of Agenda Item: Discussion of rule draft by Deborah Kimmet

Proposed New Rule I-Outline of basic curriculum to clarify education requirements

**As provided for in 37-33-502(2)(a), 1) a program or organization accredited by the national commission for certifying agencies or its equivalent or successor includes but is not limited to the National Certification Board for Therapeutic Massage and Bodywork.**

**2) As of October 26, 2009, the curriculum guidelines established by the National Certification Board for Therapeutic Massage and Bodywork are as follows:**

**a) 200 hours of massage and bodywork assessment, theory, and application instruction.**

**b) 125 hours of instruction on the body systems (anatomy, physiology and kinesiology).**

**c) 40 hours of Pathology.**

**d) 10 hours of business and ethics instruction (a minimum of 6 hours in ethics).**

**e) 125 hours of instruction in an area or related field that theoretically completes the massage program of study.**

The main discussion focused on (e); Ms. O'Leary thought the word theoretically was too confusing and following discussion, it was decided it was probably not necessary to include it.

MOTION: By Michael Eayrs to remove the word "theoretically" from the proposed rule draft on curriculum guidelines and adopt the rule draft. Second by Nick Soloway. Motion passed.

Policy proposals: Ms. Kimmet suggested that individuals processing the applications should become familiar with the NCBTMB website which might be a good first place to check on minimum curriculum and questions on transcripts. Schools on the NCBTMB list meet the curriculum guideline requirements in 37-33-502(2) (a). If a school is not listed with NCBTMB, department staff would need to attempt other means to verify the school meets minimum curriculum, i.e. contacting the school or the student/applicant to provide a content outline. This is a policy suggestion not a rule proposal.

**Rule Proposal #2:**

"As provided for in 37-33-404(3), "board-approved program" means any massage therapy program that meets or exceeds the curriculum guidelines as provided for in 37-33-502(2) (a)"

Ms Kimmet made this proposal so that rather than looking at just the term "board-approved" it's better to look at the whole term and to clarify that the program is a massage therapy program, ensuring that this term is not confused with a program accredited by NCCA.

Discussion occurred regarding defining a "school- sanctioned activity" so that while students are practicing gaining the skills of a massage therapist while not yet licensed, the board could define parameters of activities students would be allowed to perform. An example was given of another profession with student interns who were being paid and the question was raised by the public regarding paying students, etc. The conclusion of the discussion was that school- sanctioned activities are normally supervised to some extent and the definition should probably flesh out by whom and in what manner students are supervised. Rachel Romanelli offered to draft a definition for supervision and bring it back to the next meeting.

MOTION: By Deborah Kimmet to table the discussion of what is a school sanctioned activity. Second by Susan Carlson. Motion passed.

MOTION: By Deborah Kimmet to accept rule proposal #2 as written. Second by Susan Carlson. Motion passed.

Agenda Item #6: Continued discussion of items brought forward from last meeting agenda

Establishment of continuing education rules

MOTION: By Deborah Kimmet to defer further discussion of continuing agenda items until the next meeting. Second by Susan Carlson. Motion passed.

Ms. Romanelli asked Ms. Kelly-Clark to go through the next steps of the rule making process giving timelines, etc. Ms. Kelly-Clark explained the process in detail.

MOTION: By Michael Eayrs to move the rule draft to the full board to approve and proceed to notice. Second by Nick Soloway. Motion Passed.

MOTION: By Deborah Kimmet to adjourn the rules committee meeting. Second by Susan Carlson. Motion Passed. Meeting adjourned at 12:20.

SUBMITTED BY: Marilyn Kelly-Clark, Unit 2 Supervisor

APPROVED BY: Michael Eayrs, Chair

DATE APPROVED: 1/25/2010