

BOARD OF MASSAGE THERAPY  
RULES COMMITTEE MEETING  
301 S. PARK AVENUE, HELENA, MT  
ROOM B-7 1:00 P.M.  
2/22/2010  
OPEN SESSION MINUTES

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.

EXECUTIVE SESSION: The decision on whether to hold a meeting in executive session is at the discretion of the Presiding Officer pursuant to Section 2-3-203 MCA.

CALL TO ORDER: 1:04 P.M.

Members Present:

Rachel Romanelli, Chair  
Michael Eayrs  
Nick Soloway, DC  
Grace Bowman  
Deborah Kimmet  
Stacy Baird  
Susan Carlson

Staff Present:

Cheryl Brandt, Program Manager  
Tyler Moss, Board Counsel

Others Present:

Henry Cloud  
Linda Fauhl  
Kelly Baraby  
Patricia Murphy  
Christell Benson  
Harold Achille  
Kerrick Murray  
Elizabeth Roberts, via phone  
Lynne Ann Kogut, via phone

**PUBLIC COMMENT STATEMENT:**

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

No issues were raised during Open Forum.

**REVIEW OF AGENDA:** The agenda was reviewed and a quorum established.

**Motion:** Deb Kimmet moved to approve the agenda. Grace Bowman seconded. Motion Carried.

**MINUTES:** The minutes from the January 25, 2010 Rule Committee Meeting were reviewed.

**Motion:** Deb Kimmet moved to approve the minutes as distributed. Grace Bowman seconded. Motion Carried.

**CONTINUING EDUCATION RULE:**

The members reviewed the continuing education (CE) rule draft and began by discussing the issue of whether or not the number of credits in the area of business practices should be restricted. The concern was raised that for protection of the public, CE should be focused on massage therapy skills and techniques. Board Counsel reminded the Committee that the Board's duty is to regulate to protect the public. The Board must not do what is best to keep people in business at the expense of public protection. Ms. Kimmet reported that a national research entity has studied the issue of continuing education and can find no positive correlation between required CE and increased or continued competency.

**Motion:** Deb Kimmet moved that 6(e) be written as "business practices with certificate of completion." Michael Eayrs seconded the motion. There were five votes in favor. Grace Bowman voted against the motion. Motion Carried.

The next section addressed was 6(b) teaching a course.

**Motion:** Deb Kimmet moved that 6(b) be written as "teaching a course with one hour of preparation time allowed for each hour of presentation with

documentation and the course may not be used for any future CE reporting period." Dr. Soloway seconded. Motion Carried.

Board Counsel raised the questions of how this would be interpreted for a licensee that teaches a class at a school. It was the consensus of the Committee that a three credit course in a school setting would be credited for three CE credits plus three preparation credits for a total of six CE credits. The licensee would not get CE credits for the actual number of hours they were in class.

Motion: Deb Kimmet moved to reconsider the motion on 6(b) teaching a course for CE credit. Dr. Soloway seconded. Motion Carried.

Motion: Deb Kimmet moved that 6(b) read as "teaching a course with one hour of preparation time and one hour of presentation time allowed for each credit hour offered, with documentation, and the course may not be used for future CE reporting periods." Michael Eayrs seconded. Motion Carried.

Subsection 5 was discussed next. The issue was how to clearly convey to licensees that the first CE reporting period for massage therapists will run from 9/1/2010 through 8/31/2012 and every two consecutive years thereafter.

Motion: Deb Kimmet moved that subsection 5 read "a licensed massage therapist must earn at least 12 continuing education credits every two consecutive years by the licensee renewal date on even numbered years beginning in 2012." Dr. Soloway seconded. Motion Carried.

Motion: Deb Kimmet moved that subsection 5(a) have the references to calendar year removed and to clarify that licensees licensed at least one year but less than two full years on the first CE reporting date shall submit 6 hours of CE. Dr. Soloway seconded. Motion Carried.

It was suggested that the current subsection 7 could be combined with subsection 5 as the subject matter was related.

Motion: Deb Kimmet moved that the first sentence in subsection 7 be 5(b) and the next two sentences of subsection 7 be moved to 5(c). The last sentence of subsection 7 will be stricken as it should be part of the Unprofessional Conduct Rules. Michael Eayrs seconded the motion. Motion Carried.

Board Counsel suggested that there was no need for subsection one.

Motion: Deb Kimmet moved that subsection one be deleted. Grace Bowman seconded. Motion Carried.

Clarification that all courses, seminars and workshops be included as acceptable continuing education was discussed.

Motion: Deb Kimmet moved that 6(a) read "courses, seminars or workshops taken in person, or on-line, or by other electronic means with a certificate of completion." Dr. Soloway seconded. Motion Carried.

Motion: Deb Kimmet moved that subsection 6 read "acceptable CE courses meeting the requirements of (3) and (4) above include but are not limited to:" Stacy Baird seconded. Motion Carried.

Members in the audience with comments regarding the proposed continuing education rules were allowed time for questions to the Committee.

There was a question regarding subsection 3(a) from Ms. Kogut on dual practices and whether CE obtained for a different practice area could count as massage therapy CE. The Committee referred to the portion of 3(a) that states "in addition, the board may accept continuing education activities from other professional groups or academic disciplines if the massage therapist demonstrates that the activity is substantially related to his or her role as a massage therapist."

Kelly Baraby suggested adding the word "related" before the word "skills" in the second sentence of 3(a). The Committee again referred to the section of subsection 3 that states "in addition, the board may accept continuing education activities from other professional groups or academic disciplines if the massage therapist demonstrates that the activity is substantially related to his or her role as a massage therapist."

Motion: Deb Kimmet moved to change "and" to "or" in the second sentence of 3(a). Grace Bowman seconded. Motion Carried.

Recess: The meeting was recessed at 2:40 P.M.

Reconvene: The meeting was reconvened at 2:52 P.M.

#### DEFINITION OF GOOD MORAL CHARACTER:

The draft definition of good moral character was reviewed. Members discussed whether or not they wanted to state this in the form of a definition or address it in rules at all.

Motion: Michael Eayrs moved to accept the definition of good moral definition as drafted. Grace Bowman seconded. Discussion ensued. All members voted against the motion. Motion Failed. This rule will not be recommended to the Full Board.

#### LAPSED BUT NOT REVIVED RULE:

Board statute 37-33-501(2) uses unfortunate language stating that a massage therapist whose license has "lapsed and has not been revived" may not purport to be a massage therapist. All other Boards under 37-1-141, MCA are allowed to practice for 45 days after the renewal date and are not considered to be practicing without a license when their license is lapsed. Board Counsel had drafted rule language to address this issue.

Motion: Deb Kimmet moved to recommend to the full Board to accept the proposed rule on the "lapsed but not revived language." Dr. Soloway seconded. Motion Carried.

#### UNPROFESSIONAL CONDUCT:

The working draft for the topic of Unprofessional Conduct was discussed.

Motion: Deb Kimmet moved to strike 1(a). Susan Carlson seconded. Motion Carried.

Motion: Deb Kimmet moved to strike 1(b) and 1(c) as they are duplicated in the Unprofessional Conduct Statutes. Stacy Baird seconded. Motion Carried.

Motion: Deb Kimmet moved to strike 1(d) as unnecessary for massage therapists. Michael Eayrs seconded. Motion Carried.

Motion: Deb Kimmet moved to strike 1(e) as written and replace it with the language "incompetence, negligence, or use of any modality procedure in the practice of a profession which results in physical injury to the client." Michael Eayrs seconded. Motion Carried.

Motion: Grace Bowman moved to have 1(f) read "accepting and performing massage therapy responsibilities which the licensee knows or has reason to know that he or she is not competent to perform." Stacy Baird seconded. Motion Carried.

Motion: Michael Eayrs moved to strike 1(g). Susan Carlson seconded. Motion Carried.

Motion: Deb Kimmet moved to strike 1(h). Michael Eayrs seconded.  
Motion Carried.

Motion: Grace Bowman moved to have 1(i) read "engaging in or soliciting sexual contact, or sexual intercourse, as defined in 45-2-101, MCA, with a client when such act or solicitation is related to the of practice massage therapy." Dr. Soloway seconded. Motion Carried.

Motion: Deb Kimmet moved to strike 1(j). Susan Carlson seconded.  
Motion Carried.

Motion: Deb Kimmet moved to strike 1(k). Dr. Soloway seconded. Motion Carried.

Motion: Michael Eayrs moved that 1(l) read "failing to adequately supervise auxiliary staff and massage therapy students to the extent that the consumer's health or safety is at risk." Deb Kimmet seconded. Motion Carried.

Motion: Michael Eayrs moved to delete 1(m) as it is covered in 1(l). Dr. Soloway seconded. Motion Carried.

Motion: Deb Kimmet moved to delete 1(n) as it is in the Unprofessional Conduct Statutes. Stacy Baird seconded. Motion Carried.

Motion: Deb Kimmet moved to strike 1(o). Dr. Soloway seconded. Motion Carried.

Motion: Deb Kimmet moved to strike 1(p). Michael Eayrs seconded.  
Motion Carried.

Motion: Grace Bowman moved to approve 1(q) as written. Stacy Baird seconded. Motion Carried.

Motion: Deb Kimmet moved to have 1(r) read "failing to cooperate with an investigation that is the result of a complaint." Stacy Baird seconded.  
Motion Carried.

Motion: Deb Kimmet moved to strike 1(s). Michael Eayrs seconded.  
Motion Carried.

Motion: Michael Eayrs moved to strike 1(t). Susan Carlson seconded.  
Motion Carried.

Motion: Deb Kimmet moved to strike 1(u). Dr. Soloway seconded. Motion Carried.

Motion: Susan Carlson moved to strike 1(v). Deb Kimmet seconded. Motion Carried.

Motion: Michael Eayrs moved to strike 1(w). Grace Bowman seconded. Motion Carried.

Motion: Deb Kimmet moved to strike 1(x) as it is covered as number one in the Unprofessional Conduct Statutes. Michael Eayrs seconded. Motion Carried.

Motion: Grace Bowman moved to accept (2) as written. Michael Eayrs seconded. Motion Carried.

There were no further additional additions suggested for the Unprofessional Conduct Rules.

Susan Carlson submitted a letter from Bill Hunger regarding concerns about the rule making process. The Chair read the letter to the members.

The public was afforded time to comment on the Unprofessional Conduct Rules.

Henry Cloud raised the issue of physical injury mentioned in the Unprofessional Conduct Rule 1(e). He questioned that if a client requests a deep massage and an injury results, if a complaint is filed, could the massage therapist have discipline as a result of the client's request?

Motion: Deb Kimmet moved to restate 1(e) to read "incompetence, negligence, or use of any modality procedure in the practice of a profession which results in an unreasonable risk of physical injury to the client." Stacy Baird seconded. Motion Carried.

Kelly Baraby asked that published articles or books be considered as continuing education.

Motion: Deb Kimmet moved to add to subsection 6 of the CE rule "published articles or books with the hours awarded determined at the discretion of the Board." Dr. Soloway seconded. Motion Carried.

ADJOURNMENT:

As time for the meeting had come to an end, Deb Kimmet moved to adjourn the meeting at 4:51 p.m. Michael Eayrs seconded. Motion Carried.

SUBMITTED BY: Cheryl Brandt, Program Manager

APPROVED BY: Rachel Romanelli, Chair

DATE APPROVED: 3/9/2010