

BOARD OF MASSAGE THERAPY
FULL BOARD CONFERENCE CALL
301 S. PARK AVENUE, HELENA, MT
ROOM 439 12:15 P.M.
4/27/2010
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: 12:15 P.M.

Members Present:

Michael Eayrs, Professional Member, Chair
Nick Soloway, DC, LAC Health Care Member, Vice-Chair
Grace Bowman, Public Member
Deborah Kimmet, Professional Member
Stacy Baird, Professional Member

Staff Present:

Cheryl Brandt, Program Manager
Tyler Moss, Board Counsel

Others Present:

Susan Carlson, Rules Committee Member
Rachel Romanelli, Rules Committee Member
Lynn Anne Kogut
Lynn Scoggins

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 not on the current agenda. While the Board cannot take action on the issues presented, the Board will listen to comments and may ask that the issue be placed on a subsequent agenda for possible Board action. The Chairperson of the Board will determine the amount of time allotted for public comment.

Rachel Romanelli noted that dissemination of information that licensure is now available and help for individuals filling out applications should be addressed by the Board at a future meeting.

AGENDA:

The agenda was reviewed and a quorum established.

Motion: Grace Bowman moved to approve the agenda. Dr. Soloway seconded. Motion Carried.

MINUTES:

The minutes of the March 9, 2010 conference call were reviewed.

Motion: Deb Kimmet moved that the minutes be approved as distributed. Dr. Soloway seconded. Motion Carried.

REVIEW COMMENTS RECEIVED ON MAR NOTICE 24-155-2:

A comment was received which said that state licensing boards should not use the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) as a basis for the curriculum guidelines as they are changeable at any time without Board input and 300 hours of distance learning is acceptable under these guidelines.

Members responded that that per §37-33-502, MCA the Board must accept any 500 hours of study that meets or exceeds the curriculum guidelines established by any program or organization that is accredited by the national commission for certifying agencies (NCCA) or its equivalent or successor. One curriculum example is noted in the proposed rule but other curricula can be accepted if from programs or organizations meeting the requirements in statute. The Board discussed that the first sentence of New Rule II could be amended to clarify that NCBTMB is currently accredited by NCCA and as such meets or exceeds the requirements of 37-33-502, MCA.

Motion: Deb Kimmet moved to adopt New Rule II with the amended language to the first sentence as discussed, but if this change is deemed a material change that would require re-noticing the rule, then the original rule language be adopted. Grace Bowman seconded. Motion Carried. The intent is to clarify the language if possible but not to slow down the adoption of the rule that is necessary to process examination licensure applications.

One comment was received that supported the propose rules with the exception of the requirement of letters of reference to help prove good moral character. The members discussed that this issue had been responded to in a

previous rule proposal. Deb Kimmet noted that she remained opposed to the requirement for letters of good moral character.

Motion: Deb Kimmet moved to adopt New Rule I as proposed with the justification expressed by the Board in the previous rule. Dr. Soloway seconded. Motion Carried.

No comments were received on the definition of "school-sanctioned activity" or "supervision".

Motion: Deb Kimmet moved to adopt the definitions of "school-sanctioned activity" and "supervision" exactly as proposed. Dr. Soloway seconded. Motion Carried.

HANDLING OF NON-ROUTINE APPLICATIONS:

Staff has asked that the Board discuss what it would like to see for applications that are non-routine. The Department's non-routine application rule is the only list of criteria currently available for use by staff since this Board has not adopted a rule. The Program Manager read an example of a non-routine application rule from another board that this Board thought was acceptable.

Motion: Grace Bowman moved to use the language of the Alternative Health Care Board's non-routine application rule with the change that all professional licenses disciplined or voluntarily surrendered in another state or jurisdiction will go to the Board of Massage Therapy for review. Dr. Soloway seconded. Motion Carried. A draft of this will be reviewed at a future meeting to determine if additional criteria should be added and a rule adopted.

FINANCIAL REPORT:

The Program Manager presented the financial report for the period covering July 1, 2009 through March 31, 2010. With 75% of the year completed, the Board has collected 0% of its projected income and expended 78% of its appropriation for the year. The Department intends to increase the Board's spending authority by \$10,000 and is watching this Board for possible overspending of appropriation so expenditures must be kept to a minimum. The Program Manager pulled the budget figures as of today. The Board's cash balance is of concern as it is still minus \$30,091. \$7,670 in application revenue has been received to date. Seventy-one grandfathering applications have been received with 25 having letters of approval issued. It is hoped that revenue increases so that a fee increase is not a necessity.

Motion: Dr. Soloway moved to accept the financial report. Grace Bowman seconded. Motion Carried.

DISSEMINATION OF BOARD BOOKS:

In general, materials in the Board book that are discussed in Open Session are available to the public. Board Counsel gave advice to the members that they should not disclose Board book materials to the public. The Chair determines at a Board meeting what will be handled in Executive Session so the materials that are public are determined at the meeting. If members disclose materials, the member would potentially open the Board to liability and the member to personal liability if confidential information is disclosed. A person or group who is interested in agenda items should request them from the Board office to keep the responsibility with the Department. The expense for preparing two separate books was discussed. Lynn Kogut spoke on behalf of the Business League of Massage Therapy and Bodywork (BLMTB) regarding its request for the Board book for each meeting to post on its website to enhance public participation.

Motion: Deb Kimmet moved to disseminate Board book materials to the BLMTB that do not have to do with applications, disciplinary actions, or other confidential materials. Dr. Soloway seconded. Motion Carried.

Motion: Deb Kimmet moved that upon written request, the same information going to the BLMTB be sent also to the American Massage Therapy Association of Montana (AMTA) and Associated Bodywork and Massage Professionals (ABMP). Grace Bowman seconded. Motion Carried.

DISCUSSION OF "ENGAGED IN THE PRACTICE OF MASSAGE THERAPY FOR 100 HOURS" PER 37-33-503, MCA:

Questions have come into the Board office as to whether a student who does massage during training can count those hours to qualify to apply for licensure by grandfathering. The members discussed that the hours would have to be log hours or clinic hours that involved hands-on massage. Classroom training hours giving a massage with an instructor present are not legitimate hours to be counted to meet the language of the statute.

Motion: Deb Kimmet moved that in response to the query about what hours for a student could constitute "engaged in practice of massage therapy", the Board has determined that the 100 hours may include logged hours and clinic hours but not classroom training hours. Stacy Baird seconded. Motion Carried. This agenda item will be discussed again at a future meeting to determine whether the Board wishes to propose a rule addressing this subject.

CORRESPONDENCE:

Questions posed by Jill Scoggins were reviewed by the Chair. Ms. Scoggins was present for the discussion. The Board responded that there is no current requirement for license numbers to be listed in Yellow Page ads or any advertising. Dr. Soloway advised the Board that individuals can be checked by name on the Department's on-line licensee look-up to determine whether they possess a license. License numbers are not required. Board Counsel will research whether there is authority for the Board to require the posting of the massage therapy license in the work place and to require the display of the license number in advertisements. He will report back to the Board at a future meeting to aid this discussion. The Board responded to Ms. Scoggins that there is no requirement for insurance or signed consent forms for treatment. Ms. Scoggins asked if a colleague from another state wished to become licensed, would they be able to apply for a Montana license. Board Counsel responded that if the individual complied with the endorsement rules soon to be adopted by the Board, they could obtain a Montana license. As Ms. Scoggins was present for the discussion, no letter will be sent regarding her questions.

The Program Manager affirmed with the Board that endorsement applications would be reviewed by comparing current statutory and rule requirements of the endorsing state to Montana's licensure requirements. Individual exam scores and curriculum outlines will not generally be the basis for the endorsement review. The Board and staff will review some of the initial exam and endorsement applications together to become familiar with the process.

Lisa Longacre submitted a question on whether breast massage is illegal in Montana and asked if written permission is needed from the client. The Board responded that breast massage is not illegal as long as it does not violate unprofessional conduct regulations and it responded that no separate consent form is required at this time. Board members commented that licensees may want to use a consent form so there is no question as to the intent or the purpose of the breast massage.

Oriana Landt asked if animal massage was addressed in the new law. The Board's response is that animal massage is not currently regulated under the massage therapy statutes. Board Counsel will send a response.

Dr. Soloway had to leave the conference call at 2:53 P.M. A quorum was maintained.

NCBTMB Spanish Version of Exams:

The National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) has notified the Board that a Spanish translation of the National Certification Exams is available.

Motion: Deb Kimmet moved to accept the Spanish language version of the exams. Grace Bowman seconded. Motion Carried.

The Board began discussion of a question from Scott Randall asking if massage therapists are able to perform body wraps and scrubs. There seems to be a distinction as to the purpose for the applications of wraps, paraffin wax, and scrubs as to whether they are for beautification purposes or for the therapeutic purpose of restoration of health and well-being by promoting pain relief, stress reduction and relaxation. The members directed staff to draft a letter to the Board of Barbers and Cosmetologists stating the Board of Massage Therapy's position on these areas for review at the next Board of Massage Therapy Board meeting. The persons posing these questions will be notified that the Board is continuing to address their issues.

Motion: Grace Bowman moved that staff send letters with the responses previously determined by the Board. Stacy Baird seconded. Motion Carried.

The Board addressed a question on whether a reflexologist has to be licensed as massage therapist and whether anyone is attempting to notify them about licensure. The members responded that this individual be referred to statute that states:

37-33-404. Exemptions -- rules (5) (a) The provisions of this chapter do not limit or regulate the practice of any person who uses:

(iv) touch to affect the reflex areas located in the hands, feet, and outer ears. Exempt practices under this subsection (5)(a)(iv) include but are not limited to reflexology.

(b) The exemptions in subsection (5)(a) apply only if:

(i) the person is recognized by or meets the established requirements of either a professional organization or credentialing agency that represents or certifies the respective practice based on a minimum level of training, demonstration of competence, and adherence to ethical standards; and

(ii) the person's services are not designated as or implied to be massage therapy.

Board Counsel will advise Ms. LeFore that she can be added to the Board's Interested Parties list to receive public notice of licensing activities as provided under the Montana Administrative Procedures Act (MAPA).

Motion: Deb Kimmet moved to respond to Ms. LeFore by referencing the statute and the Interested Parties List. Stacy Baird seconded. Motion Carried.

NEXT MEETING:

The next meeting will tentatively be a conference call at 10:00 A.M. on June 22, 2010. The actual timing of the meeting may be determined based on the rule notice and receipt of endorsement and exam applications.

ADJOURNMENT:

Motion: Deb Kimmet moved to adjourn the meeting. Stacy Baird seconded. Motion Carried. The meeting was adjourned at 3:33 P.M.

SUBMITTED BY: Cheryl Brandt, Program Manager

APPROVED BY: Michael Eayrs, Chair

DATE APPROVED: 6/22/2010