

BOARD OF MASSAGE THERAPY
FULL BOARD MEETING
301 S. PARK AVENUE, HELENA, MT
ROOM 439 10:00 A.M.
7/27/2010
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: 10:03 A.M.

Members Present:

Nick Soloway, DC, LAC Health Care Member, Acting Chair
Grace Bowman, Public Member
Deborah Kimmet, Professional Member
Stacy Baird, Professional Member

Members Absent:

Michael Eayrs, Professional Member, Chair

Staff Present:

Cheryl Brandt, Program Manager
Tyler Moss, Board Counsel
Traci Collett, Unit Supervisor

Others Present:

Susan Carlson, Rules Committee Member
Lynn Anne Kogut
Teresa R. Miller

Others present are named as they appear.

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.

AGENDA/MINUTES:

The agenda was reviewed, a quorum established, and the minutes of the 6/22/2010 conference call considered.

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

EPASS TRAINING ON TRANSFER OF BOARD BOOKS:

The Department is recommending the distribution of Board books through the State Portal (EPass). This provides for greater security and allows larger amounts of information to be transferred via the internet. Paul Mickelson, Network Administrator, conducted training on how to establish an EPass account. The members will establish the account and will then let the Program Manager know the email used. The Board books will now be sent to that email address. An email notification will come to members when a Board book is available. The member will download the book to the member's laptop if they are bringing the laptop to the meeting or to a flash drive if they are planning to use Department laptops. The Program Manager will contact Board members in one week to see if the accounts are setup and will send a practice document to ensure the process is working for all.

FINANCIAL REPORT/OFFICE REPORT:

The Program Manager presented the financial report for the period covering July 1, 2009 through June 30, 2010. With 100% of the year completed, the Board has collected 151% of its projected income and expended 137% of its appropriation for the year. The Department intends to increase the Board's spending authority by \$20,000 to avoid a negative appropriation balance. The Program Manager pulled the budget figures as of today. The Board's cash balance is \$69,292. \$133,658 in application revenue has been received to date. One thousand twenty eight applications have been received with 633 having licenses issued. Additional Department staff is now working on processing the applications so personal service costs will be higher than normal. Board staff is also working overtime hours during this busy time.

ENDORSEMENT/EXAMINATION APPS:

The members discussed how to handle the endorsement applications if the state statutes and rules have been reviewed and previously approved by the Board.

Motion: Deb Kimmet moved that if a state has been approved based on a previous Board review and the statutes and rules have not changed, that the

staff may approve the endorsement applications in the office. If the statutes and rules of a previously approved state have changed licensure requirements, staff will bring the application to the Board at a meeting for approval. Dr. Soloway seconded. Motion Carried.

The application by endorsement from Arizona for Simone Hernandez was discussed by the members.

Upon review of the statutes and rules, there were questions on whether the Arizona State curriculum breakdown requirement was equivalent and whether an equivalent national exam is required. The Program Manager will ask for information from the Arizona Massage Therapy Board on the breakdown of the curriculum requirement and whether an examination is required for licensure by everyone.

Motion: Deb Kimmet moved that Ms. Hernandez's application for licensure by endorsement be considered pending and that she may choose to amend her application to apply by examination or grandfathering and be licensed by staff upon receipt of a completed application. Grace Bowman seconded the motion. Motion Carried.

The application by endorsement from the State of Oregon for Danielle Phillips Dorsett was reviewed by the members. The Program Manager will ask for information from the Oregon Massage Therapy Board on whether there is a further curriculum breakdown and requirement of in-class hours and whether Oregon conducts a state prepared examination.

Motion: Grace Bowman moved that Ms. Phillips Dorsett's application for licensure by endorsement from Oregon be considered pending and that she may choose to amend her application to apply by examination or grandfathering and be licensed by staff upon receipt of a completed application. Stacy Baird seconded the motion. Motion Carried. It was noted that if she applies by the grandfather method, she should amend her work history to reflect her practice in Montana to meet the 100 hours.

The application by endorsement from the State of Nebraska for Joseph Puckett was reviewed by the Board.

Motion: Stacy Baird moved to approve the application of Mr. Puckett for licensure by endorsement from Nebraska. Dr. Soloway seconded. Motion Carried.

NON-ROUTINE APPLICATIONS:

The draft rule defining non-routine applications was included for use in addressing the non-routine applications on this agenda. Staff asked the Board about an application where there were no criminal charges concerning chemical dependency and no diagnosis of chemical dependency, but the applicant self-referred to Alcoholics Anonymous (AA). An AA sponsor has documented a current non-abuse status. The Board indicated they would not need to review an application of this type and it could be considered routine.

The non-routine application for licensure by grandfathering from Janice Mayernik was discussed.

Motion: Deb Kimmet moved to license Ms. Mayernik upon receipt of a completed application. Dr. Soloway seconded. Motion Carried.

The non-routine application for licensure by grandfathering from Rebecca Maicki was reviewed. Ms. Maicki was present for the Board's discussion.

Motion: Stacy Baird moved to approve the application conditioned upon receipt of a completed application as one reference letter was missing. Grace Bowman seconded. Motion Carried.

Ms. Maiki left the meeting at the conclusion of this discussion.

The non-routine application from Hayley Anderson applying for licensure by grandfathering was reviewed.

Motion: Deb Kimmet moved to approve the application from Ms. Anderson upon receipt of all required documents. Dr. Soloway seconded. Motion Carried.

REVIEW OF COMMENTS RECEIVED ON MAR NOTICE 24-155-3:

A comment was received which said that proposed amendment to ARM 24.155.301 (Definitions) was fair because it brings the policies of the Board with respect to lapsed, expired, and terminated licenses in line with other boards.

Response: The members thanked the respondent for the comment.

All of the commenters were generally in favor of New Rule I (Continuing Education). However, all but one of the commenters suggested that the Board should amend subsection (5) of New Rule I as follows:

(5) Acceptable continuing education courses include but are not limited to:

(a) courses, seminars, or workshops taken in person or by correspondence or online or by other electronic means;

(5)(b) through (5)(c) as proposed

(d) ~~correspondence courses~~, books, or audio tapes documented by notes summarizing the course content; and

Response: The Board responded that the proposed change is a logical and appropriate amendment and it accepts the change as proposed.

One commenter specifically addressed New Rule II Unprofessional Conduct. Generally in favor of New Rule II, this commenter expressed the belief that the Board can only perform inspections in conjunction with discipline. Out of concern for client privacy, this commenter suggested that the Board should establish guidelines for such inspections.

Response: The Board thanked the commenter and will place the subject of inspections and inspection guidelines for discussion on a future agenda.

Motion: Deb Kimmet moved to adopt the proposed amendment to ARM 24.155.301 Definitions as proposed. Stacy Baird seconded. Motion Carried.

Motion: Deb Kimmet moved to adopt New Rule I Continuing Education as amended. Dr. Soloway seconded. Motion Carried.

Motion: Deb Kimmet moved to adopt New Rule II Unprofessional Conduct as proposed with the provision that the inspection issue be placed on a future agenda. Dr. Soloway seconded. Motion Carried.

CORRESPONDENCE:

Correspondence from Dustin Fox suggested that massage therapists be required to list license numbers on all forms of advertising. Board Counsel responded that as directed at the April 27, 2010 meeting, he had researched whether there is authority for the Board to require the posting of massage therapy licenses in the work place and whether there is authority to require the display of license numbers in advertisements. He directed the Board to the following statute:

37-1-131. Duties of boards -- quorum required. (1) A quorum of each board within the department shall:

(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

This statute could be used for authority to propose such rules. The members discussed these issues.

Motion: Deb Kimmet moved that at this time, the Board not require that the license number be posted in all advertising. Dr. Soloway seconded. Motion Carried.

Motion: Grace Bowman moved that a rule be drafted that requires the posting of licenses in a massage therapist's place of business. Stacy Baird seconded. Motion Carried.

Jessica Fields had contacted the Board regarding her inability to obtain her transcript from a Montana Massage school. The issue has now been resolved.

Motion: Deb Kimmet moved that Ms. Fields and future individuals with questions about schools be informed that the Board currently does not have jurisdiction over schools but that concerns can be referred to the school's accrediting body or the Montana Office of Consumer Affairs. Grace Bowman seconded. Motion Carried.

Correspondence from the National Practitioner Database was reviewed. The Program Manager noted that all disciplinary actions taken against massage therapists must be reported to this national database. There is also the option to require a query of this databank as part of the discipline check for the Board's massage licensure application. Deb Kimmet noted that the Federation of State Massage Therapy Boards also plans to establish a disciplinary databank which would compile disciplinary actions from its member boards.

Cynthia Marble asked why the Board sought comments on rules when it seemed like merely a formality. The members asked that the Program Manager respond to Ms. Marble that her correspondence was discussed at the meeting, that they acknowledged her concern and appreciated her participation in the rule making process.

Kevin Hale had asked how he could be sure which massage schools are approved by the State before he spends money on massage education. The members discussed his question.

Motion: Deb Kimmet moved that Mr. Hale be notified that by law the Board (State) does not approve schools. In order for education to meet the licensing requirements, it must meet the curriculum guidelines of ARM 24.155.605. Schools listed by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) at www.ncbtmb.org/schools.php

have been determined by the Board to have met the curriculum guidelines. If a school is not listed with NCBTMB, the individual will have to ensure that his/her education meets the curriculum guidelines. Grace Bowman seconded. Motion Carried.

Correspondence from the Commission on Massage Therapy Accreditation (COMTA) was reviewed with no action deemed necessary.

An email from Laura Russell asked if cranial sacral therapy is within the scope of massage therapy. The members responded that it is within the scope of massage therapy and that the person practicing only cranial sacral therapy may not need a massage license if he/she meets the requirements for the exemption listed in 37-33-404(5)(b), MCA.

Aaron Zum-Mallen had written to the Board to ask if ortho-bionomy is exempt from massage therapy licensure. The members responded that it is within the scope of massage therapy and that the person practicing only ortho-bionomy may not need a massage license if he/she meets the requirements for the exemption listed in 37-33-404(5)(b), MCA. Board Counsel will add language on the possibility of seeking a declaratory ruling should Mr. Zum-Mallen seek a Board response on his personal situation.

Correspondence from Lynn Evertz stated that because she is a nurse and the exemption statute states that the provisions of this chapter do not limit or regulate the scope of practice of any other profession such as nursing, she believes she would not have to get a massage therapy license. The members responded that being a nurse does not exempt one from licensure requirements for massage therapy except to the extent that the massage practice falls within the scope of the nurse practice act. This allows nurses as part of their nursing duties to perform massage without requiring a massage therapy license. However, if a nurse is performing massage therapy separate or apart from nursing duties or is holding himself or herself out as a massage therapist, then a massage therapist license is required. Using the designation "Nurse Massage Therapist" would require a massage therapy license.

RECESSED: The meeting was recessed for lunch at 1:09 P.M.

RECONVENED: The meeting was reconvened at 2:16 P.M.

TRAINING ON SCREENING PANEL/ADJUDICATION PANEL

PROCESSES: Gene Allison, Attorney

Mr. Allison gave a power point presentation on the Screening Panel and Adjudication Panel processes. The members addressed questions to Mr.

Allison and were very appreciative of the time spent on this training to handle disciplinary complaints filed with the Board.

Dr. Soloway had to return to his office and left the meeting at 3:18 P.M. A quorum of Deb Kimmet, Stacy Baird, and Grace Bowman was maintained. Ms. Kimmet assumed the Chair.

The members reviewed the memo from Commissioner Kelly on the legislation being proposed by the Department of Labor for the 2011 Legislative Session. The Board of Massage Therapy did not have any proposed legislation. Questions concerning some of the Department legislation were answered by the Program Manager.

ADOBE Connect Meetings will be an option for meetings that are not face-to-face such as conference calls. Ms. Brandt reported on software that provides the opportunity to view a white board that allows for the real time sharing of documents during a conference call. This software will comply with the Governor's directive to reduce travel and energy use. It is likely that a future conference call will be attempted via this software.

The members reviewed the letter to Representative Arntzen responding to her request to hold informational meetings throughout the state with no further action deemed necessary.

The response from the State of Washington regarding the status of the examinations accepted by the state was reviewed.

Motion: Deb Kimmet moved that based on the exam information received from Kris Waidely from the Washington Board of Massage Therapy, that the two pending Washington endorsement applications from the June 22, 2010 meeting are now approved. Stacy Baird seconded the motion. Motion Carried.

Miranda McCaslin had asked about salt glows and body wraps which is a pending matter and whether massage therapists were no longer allowed to do energy work such as reiki under the new law.

Motion: Stacy Baird moved that Ms. McCaslin be advised that exemptions mentioned in the law, such as reiki, do not disqualify a licensed massage therapists from doing those exempted practices. Grace Bowman seconded. Motion Carried.

The correspondence with a question concerning whether chair massage qualifies for the 100 hours for practice was discussed.

Motion: Stacy Baird moved that chair massage hours counts toward the 100 hours for licensure by grandfathering. Grace Bowman seconded.
Motion Carried.

The following agenda items were deferred until the next meeting:

- Licensed Massage Therapists Able to Use FDA Class I Medical Devices?
- Draft Letter Re Use of term Medical Massage
- Volunteer Massage Count Toward Licensure?
- Massaging Friends Count Toward Licensure?
- Discussion of "engaged in the practice of massage therapy for 100 hours"
- FAQs on Board Website

NEXT MEETING:

The next meeting will tentatively be a conference call at 12:30 P.M. on September 7, 2010.

ADJOURNMENT:

As the time for the meeting had concluded, Stacy Baird moved to adjourn the meeting at 4:29 P.M. Grace Bowman seconded. Motion Carried.

SUBMITTED BY: Cheryl Brandt, Program Manager

APPROVED BY: Michael Eayrs, Chair

DATE APPROVED: