

BEFORE THE BOARD OF MASSAGE THERAPY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.101.413 renewal dates, and) ADOPTION
the adoption of NEW RULES I)
through VII pertaining to massage)
therapy)

TO: All Concerned Persons

1. On January 28, 2010, the Board of Massage Therapy (board) published MAR Notice No. 24-155-1 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 207 of the 2010 Montana Administrative Register, issue no. 2.

2. On February 18, 2010, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the February 26, 2010, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: Nearly 30 comments were directed to fees or renewal periods as proposed in New Rule V and the proposed amendments to ARM 24.101.413. These comments opposed the amount of the fee or the frequency of the renewal period for various reasons. Collectively, these comments suggested that the proposed fee should be applicable to a two-year period, that the proposed fee should be no more than the fees required of other professions such as cosmetologists and chiropractors, or that fee should be reduced to reflect the income of a massage therapist. An objection was also raised to the proposed fee because of the mistaken belief that the board members were paid "salaries" from licensing fees.

RESPONSE 1: The board recognizes that the proposed fee amount is more than what is required of a few other license types. However, the board is required by law to ensure that fees are commensurate with costs, and the proposed fee is necessary based upon the estimated costs the board will incur and the expected number of licensees who will pay the proposed fee. Many costs are fixed or vary based on factors independent of the number of licensees. In addition, the number of licensed massage therapists is estimated to be relatively small in comparison to the number of licensees governed by other boards.

As a result, the massage therapist fee will be more than the fee that is required of some professions that have more licensees to share the costs of licensure. An annual renewal period and an annual fee are beneficial for purposes of administration, especially with respect to a new board. A two-year license cycle

would mean that the fee would likely be twice the amount proposed. Also, annual license renewal is a common and acceptable practice in this state and elsewhere.

While board members are reimbursed for some of their costs and their time for serving on the board, their service is otherwise voluntary and without compensation. Reimbursements to board members are a very minor part of the board's overall costs. The board has amended ARM 24.101.413 and adopted New Rule V exactly as proposed.

COMMENT 2: A few commenters voiced disapproval of documentary requirements contained in New Rule VI and VII regarding licensure by grandfathering and examination. The commenters argued that the documentary requirements have little or no use or are an unnecessary burden on license applicants.

RESPONSE 2: The board respectfully disagrees with the argument that the letters regarding good moral character are useless. Letters attesting to good moral character are similar to letters of recommendation, which are commonly used and generally viewed as valuable in connection with employment decisions. The letters have a benefit in that there is an additional witness of the applicant's good moral character, and this requirement does not represent an unnecessary barrier to applicants.

Arguments for and against documentary support required by New Rules VI and VII, including the suggestion that a photocopy of records would be sufficient, have been thoroughly discussed throughout the rulemaking process. The board has determined that the proposed documentary requirements are appropriate and reasonable requirements, leading the board to adopt New Rules VI and VII exactly as proposed.

COMMENT 3: The board received a few comments addressing issues not included in the original rulemaking notice, such as national certification, continuing education, unprofessional conduct, and insurance coverage for massage therapy.

RESPONSE 3: Because these comments are outside the scope of this rulemaking notice, the board would need to address the issues at future meetings and through future rulemaking projects.

5. The board has amended ARM 24.101.413 exactly as proposed.

6. The board has adopted NEW RULE I (24.155.201), NEW RULE II (24.155.202), NEW RULE III (24.155.203), NEW RULE IV (24.155.301), NEW RULE V (24.155.401), NEW RULE VI (24.155.601), and NEW RULE VII (24.155.604) exactly as proposed.

BOARD OF MASSAGE THERAPY
MICHAEL EAYRS, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 15, 2010