

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

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

TO: All Concerned Persons

1. On February 18, 2010, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Massage Therapy (board) no later than 5:00 p.m., on February 12, 2010, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdlmt@mt.gov.

GENERAL STATEMENT OF REASONABLE NECESSITY: The 2009 Montana Legislature enacted chapter 451, laws of 2009 (House Bill 662), creating the Board of Massage Therapy (board) and setting forth the requirements for the licensure and regulation of massage therapists. The bill was signed by the Governor and became effective on May 5, 2009.

The board determined it is reasonable and necessary to adopt New Rules I through VII to establish requirements for licensure of massage therapists to efficiently implement the legislation. The department is amending ARM 24.101.413 to set the annual renewal period for massage therapists in conjunction with the board's new rules. Where an additional specific basis for a proposed action exists, the board will identify those reasons immediately following that rule.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(p) remain the same.

<u>(q)</u>	<u>Massage Therapy</u>	<u>Licensed Massage Therapist</u>	<u>Annually</u>	<u>August 31</u>
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(q) through (an) remain the same but are renumbered (r) through (ao).
(6) and (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

4. The proposed new rules provide as follows:

NEW RULE I BOARD ORGANIZATION (1) The Board of Massage Therapy hereby adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, 37-33-405, MCA
IMP: 2-4-201, MCA

NEW RULE II PROCEDURAL RULES (1) The Board of Massage Therapy hereby adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, 37-33-405, MCA
IMP: 2-4-201, MCA

NEW RULE III PUBLIC PARTICIPATION (1) The Board of Massage Therapy hereby adopts and incorporates by this reference the public participation rules of the Department of Commerce as listed in chapter 2 of title 8.

AUTH: 2-3-103, 37-33-405, MCA
IMP: 2-3-103, MCA

NEW RULE IV DEFINITIONS (1) "NCETMB" means national certification examination for therapeutic massage and bodywork.

(2) "MBLEx" means massage and bodywork licensing examination.

(3) "NCETM" means national certification examination for therapeutic massage.

(4) "Board approved program" means any massage therapy program that meets or exceeds the curriculum guidelines as provided for in 37-33-502, MCA.

AUTH: 37-1-131, 37-33-405, MCA
IMP: 37-33-502, MCA

NEW RULE V FEE SCHEDULE (1) The department will collect the following fees:

- | | |
|---|-------|
| (a) application/licensing by grandfather clause | \$130 |
| (b) application/licensing by endorsement | 140 |
| (c) application/licensing by examination | 140 |
| (d) annual license renewal | 90 |
- (2) Additional standardized fees are specified in ARM 24.101.403.

(3) All fees are nonrefundable.

AUTH: 37-1-131, 37-33-405, MCA

IMP: 37-1-134, 37-1-141, 37-33-502, 37-33-503, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule and set licensure fees to further implement the 2009 legislation. The board is statutorily required to set fees at a level commensurate with associated costs per 37-1-134, MCA. The legislation requires the board to license and regulate massage therapists and the proposed fees will enable the board to meet this mandate.

The board is setting application/licensing fees for each type of licensure contemplated by the legislation to cover the board's expenses for the initial license processing of an estimated 500 applicants. The annual renewal fee is proposed at \$90, which will be charged beginning in fiscal year 2011. It is estimated that the new fees will affect approximately 500 individuals and result in approximately \$65,500 of board revenue for fiscal year 2010 and approximately \$45,000 in annual revenue thereafter.

NEW RULE VI LICENSURE BY GRANDFATHER CLAUSE (1) All applicants for licensure by grandfathering shall:

(a) submit a completed application on a form prescribed by the department with:

(i) the appropriate fee;
(ii) proof that the applicant is 18 years of age or older;
(iii) two letters attesting to the good moral character of the applicant, submitted directly to the board office by individuals who are not the applicant's family members; and

(iv) a signed and notarized affidavit stating the applicant has practiced massage therapy in the state of Montana for at least 100 hours on or before July 1, 2010.

AUTH: 37-1-131, 37-33-405, MCA

IMP: 37-1-131, 37-33-503, MCA

NEW RULE VII LICENSURE BY EXAMINATION (1) All applicants for licensure by examination shall:

(a) submit a completed application on a form prescribed by the department with:

(i) the appropriate fee;
(ii) a copy of a certified transcript or certificate of completion sent directly from the official custodian of the record, evidencing to the board's satisfaction that the applicant has a high school diploma or its equivalent;

(iii) proof that the applicant is 18 years of age or older;
(iv) two letters attesting to the good moral character of the applicant, submitted directly to the board office by individuals who are not the applicant's family members;

- (v) proof of successful completion of a massage therapy educational program of 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
- (vi) a passing score on either the MBLEx, NCETMB, or the NCETM examination or a state examination deemed by the board to be equivalent.

AUTH: 37-1-131, 37-33-405, MCA
IMP: 37-1-131, 37-33-502, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdlmt@mt.gov, and must be received no later than 5:00 p.m., February 26, 2010.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.massagetherapists.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdlmt@mt.gov, or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on November 16, 2009, by telephone.

9. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

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 January 19, 2010