

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

In the matter of the amendment of )  
ARM 24.155.301 definitions, and the )  
adoption of NEW RULES I and II )  
continuing education, unprofessional )  
conduct )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT AND  
ADOPTION

TO: All Concerned Persons

1. On June 17, 2010, at 9:30 a.m., a public hearing will be held in room 439, 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 June 11, 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.

3. 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 and II to further implement the legislation by establishing requirements for continuing education and to specify conduct that would be considered unprofessional for purposes of disciplinary actions by the board.

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

- 24.155.301 DEFINITIONS (1) remains the same but is renumbered (4).
- (2) and (3) remain the same.
- (4) remains the same but is renumbered (1).
- (5) and (6) remain the same.

(7) For purposes of 37-33-501, MCA, a license that "has lapsed and has not been revived" means an "expired license" as defined in ARM 24.101.402.

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

IMP: 37-1-141, 37-33-404, 37-33-501, 37-33-502, MCA

REASON: Section 37-33-501(2), MCA, refers to the circumstance of a person "whose license has lapsed and has not been revived." The board determined it is reasonably necessary to add (7) and clarify the board's intent that this language is consistent with the licensure terminology found in ARM 24.101.402 and 37-1-141, MCA. The board is amending the implementation cites to accurately reflect all statutes implemented through the rule.

5. The proposed new rules provide as follows:

NEW RULE I CONTINUING EDUCATION REQUIREMENTS (1) The board will not preapprove continuing education programs or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensee to select quality programs that contribute to his/her knowledge and competence which also meet these qualifications.

(2) A continuing education activity must meet the following criteria:

(a) The activity must have significant intellectual or practical content. The activity must deal with direct application of massage therapy knowledge, skills, business practices, or ethical standards. 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.

(b) The activity itself must be conducted by an individual or group qualified by practical or academic experience.

(c) Continuing education credit earned by courses, seminars, or workshops must be supportable through a certificate of completion containing the following information:

(i) full name and credentials of the presenter, including provider number, if applicable;

(ii) title of the presentation attended;

(iii) number of hours and date of each presentation attended;

(iv) description of the presentation format; and

(v) name of licensee.

(d) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance for a period of three years, following submission of a continuing education report.

(3) In general, one continuing education credit will be granted for each hour of participation in the continuing education activity.

(4) 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.

(a) No continuing education is required for licensees licensed less than one full year on their first continuing education reporting date. Licensees licensed at least one year but less than two full years on the first continuing education reporting date shall submit six hours of continuing education.

(b) All licensed massage therapists must submit an attestation to the board on each even year's license renewal that they have obtained the required continuing education.

(c) The board will randomly audit between two percent and five percent of the licensees attesting to continuing education. Certificates of completion or program documentation for continuing education credits reported must be submitted upon request of the board.

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

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

(b) teaching a course, with one continuing education credit allowed for each hour of preparation time for each credit hour offered, and one credit of continuing education allowed for each hour of presentation time for each credit hour offered, all credit being subject to proper documentation and none of which may be reused for any future continuing education reporting period;

(c) published articles or books with the hours awarded as determined at the discretion of the board;

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

(e) cardiopulmonary resuscitation (CPR) with certificate.

(6) Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete the previous reporting period may be used to meet the continuing education requirements for the next continuing education reporting period.

(7) If a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request an exemption. All requests for exemptions will be considered by the board and evaluated on an individual basis.

AUTH: 37-1-131, 37-1-319, 37-33-405, MCA

IMP: 37-1-306, 37-33-405, MCA

NEW RULE II UNPROFESSIONAL CONDUCT (1) The following conduct is unprofessional conduct justifying disciplinary action against a licensee:

(a) 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;

(b) accepting and performing massage therapy responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;

(c) engaging in or soliciting sexual contact or sexual intercourse, as those terms are defined in 45-2-101, MCA, with a client, when such act or solicitation is related to the practice of massage therapy;

(d) failing to adequately supervise auxiliary staff or massage therapy students to the extent that the consumer's health or safety is at risk;

(e) failing to comply with continuing education requirements set forth in ARM Title 24, chapter 155, or failing to supply continuing education documentation as requested by the board in accordance with applicable statutes and rules, or

supplying misleading, incomplete, or false information relative to continuing education;

(f) failing to cooperate with an investigation that is the result of a complaint;

or

(g) violation of any of the provisions of statute or rule applicable to the practice of massage therapy.

(2) Upon a finding of unprofessional conduct as defined in (1), and determined in accordance with the Montana Administrative Procedure Act, the board may impose sanctions, including but not limited to those allowed pursuant to 37-1-136 and 37-1-312, MCA. Any additional cost or expense incurred by a licensee as a result of a sanction is the burden of the licensee. As additional forms of sanction, and without limiting the availability of any other sanction, the board may:

(a) require supervision, inspections, reports, additional continuing education or other training;

(b) limit the licensee's scope of practice in any reasonable manner considering the circumstances; and

(c) impose any other condition of licensure, probation, reinstatement, or relicensure the board deems necessary or appropriate to protect the health, safety, or welfare of the public or to rehabilitate the licensee.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-33-405, MCA

IMP: 37-1-136, 37-1-319, MCA

6. 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](mailto:dlibsdlmt@mt.gov), and must be received no later than 5:00 p.m., June 25, 2010.

7. 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](http://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.

8. 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](mailto:dlibsdlmt@mt.gov); or made by completing a request form at any rules hearing held by the agency.

9. 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.

10. 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 May 17, 2010