

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 24.155.301 definitions,) PROPOSED AMENDMENT AND
24.155.401 fee schedule, 24.155.604) ADOPTION
licensure by examination, and)
24.155.608 licensure by)
endorsement, and the adoption of)
NEW RULE I military training or)
experience, NEW RULE II)
anonymous complaints, NEW RULE)
III nonroutine applications, and NEW)
RULE IV inactive license)

TO: All Concerned Persons

1. On April 3, 2014, at 3:30 p.m., a public hearing will be held in the Small Conference Room, 4th Floor, 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 March 28, 2014, to advise us of the nature of the accommodation that you need. Please contact Jason Steffins, Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdlmt@mt.gov.

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

24.155.301 DEFINITIONS (1) through (4) remain the same.

(5) "NESL" means national examination for state licensing as provided by the NCBTMB.

(5) through (7) remain the same but are renumbered (6) through (8).

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

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

REASON: The board is amending this rule to establish a definition of the NESL to coincide with the addition of this examination to those accepted by the board for massage therapist licensure in ARM 24.155.604 and 24.155.608.

24.155.401 FEE SCHEDULE (1) The department will collect the following fees:

- ~~(a) application/licensing by grandfather clause~~ \$130
- ~~(b) (a) application/licensing by endorsement credential~~ \$140
- (c) and (d) remain the same but are renumbered (b) and (c).
- (d) annual inactive license renewal 45
- (2) and (3) remain the same.

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 is striking (1)(a) from this rule to remove the application fee associated with licensure by grandfather clause. Section 37-33-503, MCA, provided for this type of licensure to be effective only from July 1, 2010 to July 1, 2012. The board intends to seek the repeal of this statute in the next legislative session, as the statutory authority for licensure by grandfathering has terminated. The board is also amending the implementation citations to remove this statute.

The board is updating the term "endorsement" to "credential" in (1)(b) to assist the department in streamlining and standardizing licensure processes for all the administratively attached licensing boards. Using consistent terms among numerous boards will help in this effort.

The board determined it is reasonably necessary to set a fee for annual renewal of inactive license to coincide with the establishment of inactive licensure in proposed New Rule IV. This new fee will affect approximately 135 licensees and result in a reduction in annual revenue of approximately \$6,075, since it is expected that the 135 affected will not pay the full active status renewal fee.

24.155.604 LICENSURE BY EXAMINATION (1) through (1)(a)(v) remain the same.

(vi) a passing score on either the MBLEx, NCETMB, NESL, 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

REASON: Like the NCETMB (national certification examination for therapeutic massage and bodywork) and the NCETM (national certification examination for therapeutic massage), the NESL (national examination for state licensing) is administered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB). In fact, the NESL is the same exam as the NCETMB, but it is a noncertifying or credentialing exam used by those who want to take the test for state licensing, but do not wish to carry NCBTMB certification. Because the board currently accepts the NCETMB, the board concluded that it is appropriate to accept the NESL and is amending this rule and ARM 24.155.608(2)(e)(ii) accordingly.

24.155.608 LICENSURE BY ENDORSEMENT CREDENTIAL (1) through (2)(e) remain the same.

(i) ~~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 proof of completing a program demanding a course of studies that includes, at a minimum, each of the following:~~

(A) 200 hours of in-class and instructor-supervised massage and bodywork assessment, theory, and application instruction;

(B) 150 hours combined of instruction on the body systems (anatomy, physiology, and kinesiology) and pathology; and

(C) 150 hours combined of business and ethics instruction and instruction in an area or related field that completes the massage program of study; and

(ii) a passing score on either the MBLEx, NCETMB, NESL, or the NCETM examination, or a state examination deemed to be equivalent.

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

IMP: 37-1-131, 37-1-304, 37-33-502, MCA

REASON: The board determined it is reasonably necessary to amend (2)(e)(i) to specify the complete curriculum requirements and clearly define what is needed from out-of-state applicants to obtain Montana licensure. The current rule language does not break down the 500 total hours and does not adequately show equivalency to Montana's curriculum guidelines as provided by NCBTMB.

The board is amending (2)(e)(ii) for the reasons stated in ARM 24.155.604. The board is amending the rule's catchphrase to coincide with standardization of license terms within the department.

4. The rules proposed to be adopted provide as follows:

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as a massage therapist.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

(a) United States Armed Forces;

(b) United States Reserves;

(c) state national guard; or

(d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a massage therapist. At a minimum, satisfactory evidence shall include:

(a) a copy of the applicant's military discharge document (DD 214);

(b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and

(c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule I to coincide with and further implement the legislation.

NEW RULE II ANONYMOUS COMPLAINTS (1) Anonymous complaints will be viewed with greater skepticism than other complaints. The screening panel for the board is less likely to investigate an anonymous complaint to seek information regarding witnesses or other corroborative evidence. An anonymous complaint may also be dismissed whenever a reasonable basis for the use of anonymity is not apparent to the screening panel.

AUTH: 37-1-131, 37-33-405, MCA
IMP: 37-1-307, 37-1-308, MCA

REASON: The board determined it is reasonably necessary to adopt New Rule II and address the receipt of complaints from anonymous sources. Some anonymous complaints have appeared to be baseless and improperly motivated. While the board recognizes a legitimate purpose for anonymous complaints in some circumstances, the board believes that it is reasonably necessary to adopt this rule and put complainants on notice of how the board generally views anonymous complaints. The board intends for New Rule II to discourage baseless complaints brought under the cover of anonymity and to encourage full disclosure to assist the board in pursuing legitimate complaints.

NEW RULE III NONROUTINE APPLICATIONS (1) An application for licensure as a massage therapist must be considered nonroutine in nature requiring

board review and approval prior to issuance of the license if the application discloses:

- (a) that the applicant has a prior felony conviction of any nature or a prior misdemeanor conviction relating to sex or violence;
 - (b) that the applicant has had two or more alcohol or drug related convictions within the last three years;
 - (c) that any professional license held by the applicant was disciplined or was voluntarily surrendered in another state or jurisdiction, or that the applicant's massage therapy license was denied in another state or jurisdiction;
 - (d) that the applicant's education program does not clearly meet the board's requirements;
 - (e) that the applicant passed a licensing examination other than MBLEx, NCETMB, NESL, or NCETM;
 - (f) that the applicant has been a respondent in a complaint for unlicensed practice of massage therapy that led to a cease and desist letter or an injunctive action; or
 - (g) any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.
- (2) Any disposition in a criminal case other than acquittal will be deemed a "conviction" for purposes of this rule without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence.

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

IMP: 37-1-101, 37-1-131, 37-33-501, 37-33-502, MCA

REASON: Section 37-1-101, MCA, specifies that the department is responsible for receipt and processing of routine applications for all boards administratively attached to the department. Because the board meets only quarterly, the requirement that the board review all applications having some type of irregularity has resulted in unnecessary delays in issuing licenses. The board concluded that with the guidance provided in this new rule, as well as in the board's current rules and Title 37, chapter 33, MCA, department staff will be able to competently process more applications and issue original licenses and renewals without additional board review.

NEW RULE IV INACTIVE LICENSE (1) A licensee who wishes to retain a license, but who will not be practicing massage therapy, may place the license on inactive status by submitting a written request on a form prescribed by the department.

(2) An individual licensed on inactive status may not practice massage therapy during the period in which the license remains on inactive status.

(3) A licensee on inactive status shall:

(a) renew along with active licensees according to renewal dates specified in ARM 24.101.413;

(b) pay the annual inactive status fee specified in ARM 24.155.401; and

(c) be exempt from continuing education requirements.

(4) A licensee on inactive status may change to active status by:

(a) submitting a written request on a form prescribed by the department;

(b) paying the balance of the renewal fee that would be due for an active license in the then-current renewal period; and

(c) providing proof that either of the following were completed within 12 months of activation:

(i) six hours of continuing education; or

(ii) any of the examinations identified in ARM 24.155.604.

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

IMP: 37-1-131, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to adopt New Rule IV to establish criteria for massage therapists to place their licenses on inactive status. The board notes that, at times, massage therapists may have periods without work, but may still want to maintain their license and not practice. This new rule will allow those individuals to maintain their licenses without the additional costs of reapplying and testing.

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., April 11, 2014.

6. An electronic copy of this notice of public hearing is available at www.massagetherapists.mt.gov (department and board's web site). 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 that 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 sponsors were contacted on December 16, 2013, by electronic mail.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.155.301, 24.155.401, 24.155.604, and 24.155.608 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rules I through IV will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; facsimile (406) 841-2305; or e-mail dlibsdlmt@mt.gov.

10. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MASSAGE THERAPY
CAROLE LOVE, CHAIR

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 3, 2014