

Report From Agency

**STATE OF WISCONSIN
MASSAGE THERAPY AND BODYWORK THERAPY
AFFILIATED CREDENTIALING BOARD**

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IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE :
MASSAGE THERAPY AND : **CR 13-055**
BODYWORK THERAPY AFFILIATED :
CREDENTIALING BOARD :

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

None.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA are attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The Massage Therapy and Bodywork Therapy Council was transformed into the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board by the passage of 2009 Wisconsin Act 355 (2009 Assembly Bill 588). The newly formed board became an affiliate of the Medical Examining Board. The Act also granted the board authority to issue a massage therapy or bodywork therapy license instead of a certificate. Lastly, the affiliated credentialing board was granted rule writing authority.

This proposed rule carries out the legislature's purpose by updating the rules to reflect the changes necessitated by the passage of 2009 Wisconsin Act 355. The necessary changes include replacing the word "certificate" for "license" throughout the MTBT rules chapters, defining additional terms such as informed consent, intimate parts, and sexually oriented business and creating provisions for temporary licenses and continuing education.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Board held a public hearing on August 13, 2013. The following people either testified at the hearing, or submitted written comments or both:

Megan Carranza of Anthem College Brookfield, WI

Leora Weitzman of Back in Harmony LLC Middleton, WI

Joan Hamilton of Globe University Eau Claire, WI

Patrick Sweeney of the Educational Approval Board, Madison, WI

Casey Guilfoyle American Massage Therapy Association, WI Chapter Sobieski, WI

Mya Rowe, of American Massage Therapy Association, WI Chapter, President

Jean Robinson of the Associated Bodywork & Massage Professionals, Golden, CO

Kay S. Peterson, Altoona, WI

The Board summarizes the comments received either by hearing testimony or by written submission as follows:

Ms. Megan Carranza attended the public hearing in support of the proposed rules.

Ms. Leora Weitzman provided testimony in support of the rule and advocated that approved providers for continuing education should include individuals and organizations that meet appropriate standards, specifically standards such as the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB).

Ms. Joan Hamilton testified in support of the rule and submitted written comments. Ms. Hamilton had two questions regarding the rules. Her first question was whether other healthcare professionals could supervise MTBT externs in a hospital or clinic setting. The second question was whether MTBT externs could receive any compensation such as tips. The Board addressed Ms. Hamilton's questions during open session and stated MTBT externs are to be supervised by MTBT credential holders in order to facilitate proper mentoring in the fundamentals of massage therapy and bodywork therapy. The Board also stated externs were not to receive any remuneration for their work including tips.

Mr. Patrick Sweeney testified in support of the rule. He was supportive of the temporary licensure provisions and the definitions section.

Ms. Casey Guilfoyle testified in support of the rule. She particularly supported the continuing education requirement by asserting that the public expects health care professionals to maintain advanced training in their given specialty.

Ms. Rowe submitted written comments in favor of the continuing education requirement. She argued that it would be irresponsible for a massage therapist or bodywork therapist to fail to stay informed of new developments in the health care field.

Ms. Robinson submitted written comments. She argued against the continuing education requirement. She stated the lack of disciplinary actions against massage therapists in Wisconsin and the expense to massage therapists were just two reasons why 24 hours of continuing education should not be required. She further argued that if continuing education was required the amount of continuing education should be reduced from 24 hours to 6 hours.

Ms. Peterson provided written comments favoring continuing education. She stated that 24 hours of continuing education would elevate the standards within the massage therapy and bodywork therapy profession state wide.

The Board explains modifications to its rule-making proposal prompted by public comments as follows: The Board did not make any changes in response to public comments.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment: 1. Statutory Authority a. It appears that the proposed rule fails to incorporate the requirements for training programs that were added to ch. 460, Stats., by 2009 Wisconsin Act 355. See ss. 460.04 (2) (b) and 460.095, Stats.

Response: The Board purposefully decided not to address this topic in this rules project.

Comment: 2 c. Provisions of the current rules that are not affected should not be repealed and recreated, and renumbering of existing rule sections should be avoided. Section 2 of the rule-making order should be rewritten to conform to these drafting conventions.

Response: The section required a significant amount of new material. The new material had to be inserted in sequential order with the old material. This renumbering and insertion of new material required a repeal and recreation of the section for clarity.

Comment: 2. e. The entire rule should be reviewed to ensure that all occurrences of the term “bodyworker” are replaced with the term “body work therapist”, all occurrences of “bodywork” are replaced with the term “body work therapy”, and all occurrences of the term “certificate” are replaced with the term “license”.

Response: The terms “bodyworker” and “bodywork” are industry terms widely used in the profession. Therefore, the Board declines substituting the terms as recommended.

Comment: 1. g. Several of the definitions created in the rule-making order contain substantive requirements and as such, should be placed in the text of the rule rather than

in the definitional section. This comment applies to s. MTBT 1.02 (7), (8), (9), (11), and (18).

Response: The definition section is meant to be comprehensive encompassing all of the MTBT chapters and not embedded in individual sections.

Comment: 5. a. In s. MTBT 1.02 (23), the definition of “sexually oriented business” is limited to for profit entities. In this limitation appropriate? Should the definition instead apply to any entity that offers or provides any of the listed services for a fee?

Response: The terms “for profit” were deleted from the section. The sentence now reads “...means any entity that offers or provides any of the following for a fee”.

Comment: 5. e. Section MTBT 7.02 (4) should specify the standards the board will use in considering request for waivers and a process for a license to appeal a denial of a waiver.

Response: The Board has determined that the current language of MTBT 7.02 (4) expresses the standards the Board will use on its face and gives the Board discretion and flexibility to weigh the factors and on a case-by-case basis. If a licensee seeks to appeal the Board’s decision the Department has an appeals process in place.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in their entirety.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

None.