

STATE OF WISCONSIN
MESSAGE THERAPY AND BODYWORK THERAPY AFFILIATED CREDENTIALING
BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MASSAGE THERAPY AND BODYWORK
MESSAGE THERAPY AND BODYWORK : THERAPY AFFILIATED CREDENTIALING
THERAPY AFFILIATED : BOARD ADOPTING RULES
CREDENTIALING BOARD : (CLEARINGHOUSE RULE 19-102)

PROPOSED ORDER

An order of the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board to repeal MTBT 4.04 (2) (a) and (b); to renumber and amend MTBT 4.04 (2) (intro.); to amend ch. MTBT 4 (title), 4.02 (intro.) and (1) to (4), 4.03, and 4.04 (intro.) and (1) (intro.), (b), and (c); to repeal and recreate MTBT 4.02 (5); and to create MTBT 4.04 (1) (d) and (e) and 4.05, relating to requirements for renewal and reinstatement.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 460.14 (3), Stats.

Statutory authority:

Sections 15.085 (5) (b), 440.08 (3) (b), and 460.10 (1) (a), Stats.

Explanation of agency authority:

Section 15.085 (5) (b), Stats., provides an affiliated credentialing board, such as the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains . . .”

Section 440.08 (3) (b), Stats., provides authority for the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board to promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, Stats., that the Board determines are necessary to protect the public health, safety, or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed to obtain an initial credential from the Board.

Section 460.10 (1) (a), Stats., provides the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board may promulgate rules establishing “[r]equirements and procedures for a license holder to complete continuing education programs or courses of study to qualify for

renewal of his or her license. The rules promulgated under this paragraph may not require a license holder to complete more than 24 hours of continuing education programs or courses of study in order to qualify for renewal of his or her license.”

Related statute or rule:

Chapter MTBT 7 provides continuing education requirements for renewal of a license as a massage therapist or bodywork therapist.

Plain language analysis:

Sections MTBT 4.02 and 4.04 contain the provisions for renewal and late renewal of a license as a massage therapist or bodywork therapist. These provisions are not clear concerning educational and examination requirements for late renewal and do not specify the requirements for reinstatement when a licensee has unmet disciplinary requirements, or a license has been revoked or surrendered. In addition, s. MTBT 4.04 does not reflect the requirement under s. 460.07 (2) (d), Stats., that a renewal application include evidence satisfactory to the Board that the applicant has current proficiency in the use of an automated external defibrillator (AED).

The proposed rules clarify the requirements in ss. MTBT 4.02 and 4.04 for renewal and late renewal of a license and create s. MTBT 4.05 to specify the requirements for reinstatement of a license. The proposed rules also update provisions throughout ch. MTBT 4 for clarity and to conform with current drafting standards and applicable Wisconsin statutes.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation (IDFPR) specify requirements for renewal and restoration of a license to practice massage therapy in the state of Illinois (68 Ill. Adm. Code 1284.60 and 1284.80).

The holder of a license may renew the license during the month preceding the expiration date by paying the required fee and completing the continuing education requirements under 68 Ill. Adm. Code 1284.90.

A person seeking restoration of a license after it has expired or has been placed on inactive status for less than 5 years must file an application with the required fee and proof of 24 hours of continuing education as defined in 68 Ill. Adm. Code 1284.90 in the 2 years immediately preceding the restoration application.

A person seeking restoration of a license after it has expired or has been placed on inactive status for 5 years or more must file an application with the required fee, proof of 24 hours of continuing education as defined in 68 Ill. Adm. Code 1284.90 in the 2 years immediately preceding the restoration application, and one of the following:

- Certification of current licensure and proof of current active practice in another jurisdiction.
- An affidavit attesting to military service (any person seeking restoration of a license within 2 years after discharge from military service must pay the current renewal fee, but is not required to submit proof of meeting the continuing education requirements).
- Proof of successful completion of an exam approved by IDFPR within 2 years prior to the restoration application.

Iowa:

Rules of the Iowa Board of Massage Therapy specify requirements for renewal, reactivation, and reinstatement of a license to practice massage therapy in the state of Iowa (645 IAC 131.8, 131.14, and 131.15).

A licensee seeking renewal must submit a completed renewal application and renewal fee before the license expiration date, meet the continuing education requirements under 645 IAC 133.2, and certify completion of all training in child and dependent adult abuse identification and reporting required under 645 IAC 131.8(4).

To apply for reactivation of an inactive license, a licensee must submit all of the following:

- A completed reactivation application and reactivation fee
- Verification of completing 16 hours of continuing education within 2 years of application
- Verification of the status of the license from every jurisdiction in which the applicant practiced massage therapy during the time the Iowa license has been inactive
- If the license has been on inactive status for more than 5 years, verification of successful completion of a Board-approved examination within 2 years of application.

A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reactivation of the license as provided above and apply for and receive reinstatement of the license. The application for reinstatement must, as required under 645 IAC 11.31, be filed in accordance with any applicable terms and conditions of the order of revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, the application may not be filed until one year from the date of the order or the date of voluntary surrender. The application must allege facts which, if established, will be sufficient to enable the board to reinstate the license.

Michigan:

Rules of the Michigan Board of Massage specify requirements for renewal of a license and relicensure to practice massage therapy in the state of Michigan (Mich Admin Code, R 338.738 and R 338.739).

An applicant for license renewal who has been licensed for the 3-year period immediately preceding the expiration date of the license shall accumulate not less than 18 hours of continuing education in activities approved by the Board during the 3 years immediately preceding the application for renewal. Submission of an application for renewal and required fee constitutes the applicant's certification of compliance with these requirements.

An applicant whose license has lapsed for less than 3 years preceding the date of application may be relicensed if the applicant submits a completed application, the required fee, verification of having completed at least 18 hours of Board-approved continuing education during the 3 years immediately preceding application, and evidence the applicant is of good moral character.

An applicant whose license has lapsed for 3 years or more preceding the date of application may be relicensed if the applicant submits a completed application, the required fee, evidence the applicant is of good moral character, and the applicant's fingerprints. In addition, the applicant must satisfy one of the following requirements:

- Successful completion of the Massage and Bodywork Licensing Examination (MBLEX) or the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB)
- Registration or licensure as a massage therapist in another state during the 3 years immediately preceding application.

Minnesota:

The Minnesota Department of Health's Office of Unlicensed Complementary and Alternative Health Care Practice (OCAP) investigates complaints and takes enforcement actions against massage therapists for violations of prohibited conduct. However, neither OCAP nor any other statewide agency or board oversees the licensing of massage therapists. Licensing requirements, if any, for massage therapists are established by the county or city in which the massage therapist practices.

Summary of factual data and analytical methodologies:

The proposed rules clarify the requirements in ch. MTBT 4 for renewal and reinstatement of a license as a massage therapist or bodywork therapist. No additional factual data or analytical methodologies were used to develop the proposed rules.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 9:00 a.m. on September 3, 2019, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapter MTBT 4 (title) is amended to read:

CHAPTER MTBT 4

REQUIREMENTS FOR RENEWAL AND REINSTATEMENT

SECTION 2. MTBT 4.02 (intro.) and (1) to (4) are amended to read:

MTBT 4.02 Renewal of license. ~~In order to~~ To renew a license, ~~on or before the renewal date, the license holder~~ a licensee shall, by the renewal date under s. MTBT 4.01, submit all of the following to the board:

- (1) ~~A renewal~~ An application for renewal on a form provided by the board.
- (2) The renewal fee required under s. 440.08 (2) ~~(a) 46r.~~ (c), Stats.
- (3) Evidence satisfactory to the board ~~that he or she~~ the licensee has in effect, as a policyholder and insured, malpractice liability insurance coverage in an amount ~~that is~~ not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.
- (4) Evidence satisfactory to the board ~~that he or she~~ the licensee has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

SECTION 3. MTBT 4.02 (5) is repealed and recreated to read:

MTBT 4.02 (5) The signed statement required under s. MTBT 7.02 (3).

SECTION 4. MTBT 4.03 is amended to read:

MTBT 4.03 Failure to renew. A ~~license holder~~ licensee who fails to renew a license by the applicable renewal date may not use any title or description that implies that he or she is credentialed by the board as a massage therapist or bodywork therapist until ~~his or her~~ the license is renewed under s. MTBT 4.04 or reinstated under s. MTBT 4.05.

SECTION 5. MTBT 4.04 (intro.) and (1) (intro.), (b), and (c) are amended to read:

MTBT 4.04 (intro.) Late renewal. A massage therapist or bodywork therapist who fails to renew ~~his or her~~ a license by the renewal date may renew the license by satisfying all one of the following requirements:

(1) (intro.) If applying ~~less than~~ within 5 years ~~after~~ of the renewal date, submitting to the board all of the following:

(b) The ~~applicable~~ renewal ~~fees~~ fee and late fee required under s. 440.08 (2) (a) (c) and (3), Stats.

(c) Evidence satisfactory to the board that ~~he or she~~ the applicant has in effect, as a policyholder and insured, malpractice liability insurance coverage in an amount ~~that is~~ not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

SECTION 6. MTBT 4.04 (1) (d) and (e) are created to read:

MTBT 4.04 (1) (d) Evidence satisfactory to the board the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

(e) The signed statement required under s. MTBT 7.02 (3).

SECTION 7. MTBT 4.04 (2) (intro.) is renumbered MTBT 4.04 (2) and amended to read:

MTBT 4.04 (2) If applying ~~5 years or more~~ than 5 years after the renewal date, satisfying the requirements ~~in~~ under sub. (1); and submitting proof evidence of all of the following: successful completion of educational coursework or an examination required by the board to ensure protection of the public health, safety, and welfare. Except as provided under s. MTBT 4.05 (1), this subsection does not apply to licensees who have unmet disciplinary requirements or whose licenses have been surrendered or revoked.

SECTION 8. MTBT 4.04 (2) (a) and (b) are repealed.

SECTION 9. MTBT 4.05 is created to read:

MTBT 4.05 Reinstatement. A massage therapist or bodywork therapist who has unmet disciplinary requirements and has failed to renew a license within 5 years of the renewal date or whose license has been surrendered or revoked may apply for reinstatement of the license by submitting all of the following:

(1) Evidence of completion of the requirements under s. MTBT 4.04 (2).

(2) Evidence of completion of disciplinary requirements, if applicable.

(3) Evidence of rehabilitation or change in circumstances warranting reinstatement of the license.

SECTION 10. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

This Proposed Order of the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Chairperson
Massage Therapy and Bodywork
Therapy Affiliated Credentialing Board