

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.155.604 licensure by)
examination, 24.155.608 licensure of)
out-of-state applicants, and)
24.155.613 nonroutine applications)

TO: All Concerned Persons

1. On July 21, 2017, the Board of Massage Therapy (board) published MAR Notice No. 24-155-6 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1085 of the 2017 Montana Administrative Register, Issue No. 14.

2. On August 16, 2017, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the August 18, 2017, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Several commenters supported the proposed changes to ARM 24.155.604 and 24.155.608 that remove the requirement that applicants provide a copy of a certified high school transcript directly from the custodian of record.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: Some commenters did not agree with the board changing the title of ARM 24.155.608 from "Licensure by Credential" to "Licensure of Out-of-State Applicants."

RESPONSE 2: The board is amending the rule title to reflect the language of 37-1-304, MCA, which provides boards with authority to license out-of-state applicants without requiring examination. The board is changing the title to clarify that the rule implements the legislature's directive that boards may issue Montana licenses based on an applicant's licensure in another state.

COMMENT 3: Several commenters supported changing the term "endorsement" to "credential" in ARM 24.155.608(1).

RESPONSE 3: In reviewing this comment, the board noticed an inadvertent housekeeping error by not amending (1) to reflect the change in the title from

"credential" to "out-of-state applicants." Therefore, the board is now correcting (1) to align with the terminology used in 37-1-304, MCA, and this rule's amended title.

COMMENT 4: Some commenters opposed the amendments to ARM 24.155.613(1)(a) that classify as nonroutine any application with three or more pending misdemeanors or convictions. The commenters stated that requiring board review of misdemeanors having no impact on the massage therapy profession is unnecessary and would delay licensure of applicants.

RESPONSE 4: The board agrees the language is overbroad and is amending the rule to align with 37-1-316(1), MCA, and clarify that to be considered nonroutine, misdemeanor charges or convictions must relate to the practice of massage therapy or involve violence, use or sale of drugs, fraud, deceit, or theft.

COMMENT 5: Several commenters objected to the language of "no earlier than" in the proposed amendments to ARM 24.155.613(1)(a) and (b), stating that the language is confusing to applicants.

RESPONSE 5: The board agrees with the commenters and is amending the rule accordingly.

COMMENT 6: Numerous commenters stated the changes to ARM 24.155.613 do not adequately address convictions of violent crimes, and suggested the board require anyone with a conviction of a violent crime to have completed anger management training.

RESPONSE 6: Per 37-1-203, MCA, the board may not deny licensure to an applicant based solely on a conviction. However, if the conviction relates to the public health, safety, or welfare as it applies to the occupation for which the license is sought, the applicant must be given an opportunity to show rehabilitation. Completion of probation or parole supervision, including any treatment recommendations by a court, without any subsequent criminal conviction is evidence of rehabilitation. Given the Montana Legislature's interest in encouraging the licensure of rehabilitated criminal offenders, the board concluded the proposed language of ARM 24.155.613 is adequate to protect the public by requiring criminal offenders with a recent pattern of behavior or felony conviction to appear before the board while still allowing criminal offenders to become licensed. Additionally, staff may forward any application having substantive irregularities to the board for review prior to licensure under ARM 24.155.613(1)(g). The board has directed staff to monitor applications for convictions involving violence and report to the board on any further issues or concerns.

COMMENT 7: Several commenters objected to the rule notice because the board did not pass a "motion to notice" the rules.

RESPONSE 7: Boards are not required to pass a formal motion to notice the rules, but rather must have appropriate motions to approve the language of the rules and

determine whether the proposed changes will have a direct and significant impact on Montana small businesses. The board approved the proposed language and, after discussion, determined there to be no significant and direct impact on Montana small businesses.

COMMENT 8: Some commenters opposed dribbling out a few rules at a time as a waste of licensees' money and stated the changes should be combined into a larger rules project.

RESPONSE 8: The board concluded that smaller rule packages allow the board to better discuss proposed changes and allow for a better overall rulemaking process.

COMMENT 9: Several commenters asserted that public input should have been allowed at the meeting when the rules were discussed and believed these rules were developed without sufficient public input.

RESPONSE 9: The board complied with its statutory duties to allow public participation on this rule project, including board discussion of the proposed rules at multiple open board meetings. The board appreciates all public comment on these changes and recognizes that more public input may be beneficial on occasion. The board will take this into consideration when undertaking future rule projects.

4. The board has amended ARM 24.155.604 exactly as proposed.

5. The board has amended ARM 24.155.608 and 24.155.613 as proposed, but with the following changes to the original proposal, stricken matter interlined, new matter underlined:

24.155.608 LICENSURE OF OUT-OF-STATE APPLICANTS (1) All applicants for licensure ~~by credential~~ with an out-of-state license shall submit a completed application on a form prescribed by the department.

(2) remains as proposed.

24.155.613 NONROUTINE APPLICATIONS (1) remains as proposed.

(a) a total of three or more currently pending charges or past convictions of misdemeanor crimes related to the practice of massage therapy or involving violence, use or sale of drugs, fraud, deceit, or theft if the applicant was sentenced for the past convictions ~~no earlier than~~ within the five years before the board received the application;

(b) a pending charge of any felony crime or a past conviction of any felony crime for which the applicant was either sentenced ~~no earlier than~~ within the ten years before the date the board received the application or for which the sentence has not been fully satisfied and discharged;

(c) through (2) remain as proposed.

BOARD OF MASSAGE THERAPY
ANNE GERGEN, CHAIRPERSON

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 13, 2017.