

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 24.155.604 licensure by)	PROPOSED AMENDMENT AND
examination, 24.155.608 licensure of)	ADOPTION
out-of-state applicants, 24.155.801)	
continuing education requirements,)	
24.155.901 unprofessional conduct,)	
and the adoption of NEW RULE I)	
school instructors and assistants)	
requiring a license in massage)	
therapy and exemption)	

TO: All Concerned Persons

1. On April 23, 2018, at 10:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, 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 no later than 5:00 p.m., on April 16, 2018, to advise us of the nature of the accommodation that you need. Please contact Steve Gallus, Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdlt@mt.gov (board's e-mail).

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

24.155.604 LICENSURE BY EXAMINATION (1) All applicants for licensure by examination shall:

- (a) submit a completed application on a form prescribed by the department with:
 - (i) the appropriate fee;
 - (ii) a copy of an official transcript or certificate of completion evidencing to the board's satisfaction that the applicant has a high school diploma or its equivalent;
 - (iii) proof that the applicant is 18 years of age or older;
 - ~~(iv) two letters attesting to the good moral character of the applicant, submitted directly to the board office by individuals who are not the applicant's family members;~~
 - ~~(v)~~ (iv) proof of successful completion of a massage therapy educational program of 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

(A) if the massage therapy transcript is not available from the custodian of record, the board may consider accepting a transcript that has been issued by the school and signed by the owner or person responsible for issuing the transcript; and
(vi) remains the same but is renumbered (v).

AUTH: 37-1-131, 37-33-405, MCA
IMP: 37-1-131, 37-33-502, MCA

REASON: Following a suggestion from the department, the board determined it is reasonably necessary to strike (1)(a)(iv) and no longer require two letters attesting to an applicant's good moral character. The board concluded that good moral character is adequately demonstrated through other application materials and acknowledges that these letters do not always accurately represent an applicant's character.

After receiving several applications where the applicant was unable to provide transcripts directly from an educational program, the board is amending this rule to allow applicants alternative methods of demonstrating educational qualifications. The board determined there are other reliable methods to ensure the adequacy of an applicant's required education.

24.155.608 LICENSURE OF OUT-OF-STATE APPLICANTS (1) through (2)(b) remain the same.

(c) proof that the applicant is eighteen years of age or older; and
~~(d) two letters attesting to the good moral character of the applicant, submitted directly to the board office by individuals who are not the applicant's family members; and~~
(e) remains the same but is renumbered (d).

AUTH: 37-1-131, 37-33-405, MCA
IMP: 37-1-131, 37-1-304, 37-33-502, MCA

REASON: See REASON for ARM 24.155.604.

24.155.801 CONTINUING EDUCATION REQUIREMENTS (1) and (2) remain the same.

(3) In general, one continuing education credit will be granted for each hour of participation in the continuing education activity. Credit will not be awarded for activities lasting less than one hour.

(4) and (4)(a) remain the same.
(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.~~ Active licensees will be required to affirm their understanding of the basic requirement upon annual renewal.

~~(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 the following:

(a) remains the same.

(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;~~ Documentation for this activity includes:

(i) course name;

(ii) teaching format (in person, webinar, correspondence, online, etc.);

(iii) number of hours in the course;

(iv) a statement that demonstrates the activity is substantially related to your role as a massage therapist;

(v) number of hours preparing the course not to exceed the number of course hours;

(vi) the date and location of the course taught; and

(vii) the course outline;

(c) published articles or books applicable to the practice of massage authored by the licensee with the hours awarded as determined at the discretion of the board;. Documentation for this activity includes:

(i) a copy of the publication;

(ii) the source of publication;

(iii) the date of publication; and

(iv) number of credit hours requested;

~~(d) books, or audio, tapes documented by notes summarizing the course content; and or other media with the hours to be awarded as determined at the discretion of the board. Trade magazines and journals do not qualify for credit.~~

Documentation for this activity includes:

(i) the title of the presentation;

(ii) the author of the presentation;

(iii) the number of pages in the book or number of hours' duration of the media;

(iv) a summary of what was learned from the presentation;

(v) notes regarding how this material applies to your massage therapy

practice;

(vi) dates when the activity occurred; and

(vii) number of credit hours requested;

(e) cardiopulmonary resuscitation (CPR) with certificate.;

(f) two hours per renewal cycle will be allowed for voluntarily attending the Montana Board of Massage Therapy meetings. Each licensee will be required to identify themselves at the board meeting and must be physically present or in person for at least two hours.

(6) and (7) remain the same.

AUTH: 37-1-131, 37-1-319, 37-33-405, MCA
IMP: 37-1-306, 37-33-405, MCA

REASON: The board determined it is reasonably necessary to amend (3) to address questions from the department audit unit and provide guidance to licensees on appropriate length of CE activities. The board decided this clarification will help licensees select adequate CE courses and facilitate the audit processes.

Following a recommendation by department legal staff, the board is amending (4)(b) to align the affirmation of continuing education (CE) required at renewal with the provisions of 37-1-306, MCA. The change will conform with a standardized department procedure by having licensees with mandatory CE affirm an understanding of the requirement and the potential of being audited for compliance.

In response to a staff request, the board is striking from (4)(c) the specific percentage range for CE audits to allow greater flexibility in conducting the audits. The current rule limits the random audit to between two and five percent of all renewed licensees each reporting period. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of audited licensees, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

After reviewing CE audit submissions and following suggestions by the rules committee, the board determined it is reasonably necessary to amend (5) and clearly set forth the supporting documentation required in a CE audit response. While the current rule requires certificates of completion or program documentation, the board concluded more detail is needed to address licensee questions and guide the audit process. The board is also amending (5)(d) to allow forms of media in addition to books and audio tapes, if documented by appropriate information.

Following a request from licensees, the board is amending (5)(f) to expand CE opportunities by allowing licensees to receive CE credit by attending a board meeting. While limiting licensees to two hours per cycle, the board determined that board meetings provide some intellectual or practical information that is relevant to the practice of massage therapy.

24.155.901 UNPROFESSIONAL CONDUCT (1) through (1)(c) remain the same.

(d) advertising massage therapy services or instruction in a manner that is inaccurate, deceptive, sexually suggestive, or explicitly sexual;

(d) and (e) remain the same but are renumbered (e) and (f).

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

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

(i) failing to display licensee's license conspicuously in licensee's principal place of business while performing any activities related to massage therapy.

Licensees with a mobile practice will show the license upon request by the client.

(2) remains the same.

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

IMP: 37-1-136, 37-1-316, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend this rule by adding to the actions considered by the board as unprofessional conduct. The board discussed that, upon enacting similar requirements, other states reported decreases in human trafficking and other illegal activities under the guise of the massage therapy profession. The board concluded these additions will better protect public health, safety, and welfare by ensuring the board is able to address complaints of this nature in the future.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

4. The proposed new rule is as follows:

NEW RULE I SCHOOL INSTRUCTORS AND ASSISTANTS REQUIRING A LICENSE IN MASSAGE THERAPY AND EXEMPTION (1) School instructors and assistants requiring a massage therapy license include anyone demonstrating massage therapy techniques or techniques considered to be within the scope of massage therapy.

(2) School instructors and assistants demonstrating palpatory anatomy that includes touching a person must either hold a license in massage therapy or hold a professional license that falls under the exemption provided for in 37-33-404(1), MCA.

(3) School instructors and assistants demonstrating a technique that requires a person meet the requirements for an exemption as provided for in 37-33-404(5), MCA, must either be licensed in massage therapy or meet the requirements of the exemptions provided for in 37-33-404(5), MCA.

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

IMP: 37-1-131, 37-33-404, 37-33-501, MCA

REASON: Following a recommendation from board legal counsel, the board is adopting this new rule to clarify licensure requirements for instructors when teaching the practice of massage therapy. Noting that this is a long-standing board opinion, the board determined it is reasonable and necessary to utilize the rulemaking process to establish the standards in administrative rule.

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 e-mail to dlibsdmt@mt.gov, and must be received no later than 5:00 p.m., April 27, 2018.

6. An electronic copy of this notice of public hearing is available at www.massagetherapists.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons

should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site 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, do not apply.

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.155.604, 24.155.608, 24.155.801, and 24.155.901 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; facsimile (406) 841-2305; or to dlibsdlmt@mt.gov.

10. Steve Gallus, Executive Officer, has been designated to preside over and conduct this hearing.

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 March 20, 2018.