

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.155.608 licensure of out-of-) ADOPTION
state applicants, 24.155.901)
unprofessional conduct, and the)
adoption of New Rules I records, and)
II standards of practice)

TO: All Concerned Persons

1. On January 17, 2020, the Board of Massage Therapy (board) published MAR Notice No. 24-155-8 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 9 of the 2020 Montana Administrative Register, Issue No. 1. On February 14, 2020, the board published an amended notice of public hearing at page 247 of the 2020 Montana Administrative Register, Issue No. 3.

2. On March 11, 2020, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the March 13, 2020 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 work of the rules committee and most of the board's work except staff-influenced board decisions. The commenters opposed the rule changes as proposed and asserted the committee's work was misrepresented and presented in a confusing manner. The commenters recommended the board not amend ARM 24.155.608 and not adopt NEW RULE II, and took no position on NEW RULE I, except suggested using the term "licensee" throughout the rule.

RESPONSE 1: The board agrees with some of the commenters' concerns but not all. Regarding staff, the board understands the process is difficult but believes staff has represented the board's intent to protect the public. The board appreciates all the participation, time, and effort provided to assist the board in this rulemaking process. The board urges continued participation in the process.

COMMENT 2: One commenter was concerned regarding the proposed amendment to ARM 24.155.901 adding failure to maintain records per the requirements of NEW RULE I as unprofessional conduct. The commenter was concerned that a simple paperwork violation could result in unprofessional conduct and asserted the term unprofessional conduct is too loaded with negativity and urged the board to not proceed with this amendment.

RESPONSE 2: The board concluded that it better protects the public to add failure to comply to new standards as unprofessional conduct. These amendments will provide clear direction to licensees, so they can better guide their professional actions.

COMMENT 3: A commenter stated the proposed rule changes are over-regulation and fail to consider the circumstances of practicing in a rural state. The commenter urged the board to exempt practitioners working in clinics, doctor offices, chiropractor offices, and salons, since additional employees in these environments already provide a set of checks and balances.

RESPONSE 3: The board concluded that to protect the public adequately and fairly, it is not advisable to have different standards based on place of employment.

COMMENT 4: One commenter opposed the proposed changes to ARM 24.155.608 because it will lessen the requirements for hands-on training and allow applicants having completed only online coursework to become licensed to practice in Montana.

RESPONSE 4: The board notes that all applicants must meet the licensing criteria set in statute and the board's administrative rules, regardless of residency.

COMMENT 5: A commenter urged the board to not adopt NEW RULE II and stated that the rule was changed by staff and not what the board passed in its original motion. The commenter added that if the board proceeds with NEW RULE II, subsections (6)(e) - (h) should be amended to use the same language regarding licensees authorized or permitted under state law.

RESPONSE 5: See RESPONSE 1. The board agrees the use of different verbiage in the rule could cause confusion. The board's intent is that licensees practice only within the scope of their Montana licenses and is amending the rule to remove the unnecessary and repetitive provisions.

4. The board has amended ARM 24.155.608 and 24.155.901 exactly as proposed.

5. The board has adopted New Rule I (24.155.402) exactly as proposed.

6. The board has adopted New Rule II (24.155.902) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II (24.155.902) STANDARDS OF PRACTICE AND CODE OF ETHICS (1) through (6)(d) remain as proposed.

(e) only perform therapeutic treatments beyond the normal narrowing of the ear canal and normal narrowing of the nasal passages:

(i) as indicated in the plan of care; and

- (ii) after receiving informed voluntary written consent; ~~and~~
- ~~(iii) only if the licensee is expressly authorized under state law;~~
- (f) only perform therapeutic treatments in the oral cavity:
 - (i) as indicated in the plan of care; and
 - (ii) after receiving informed voluntary written consent; ~~and~~
 - ~~(iii) only if the licensee is permitted to do so under state law;~~
- (g) only perform therapeutic treatments into the anal canal:
 - (i) as indicated in the plan of care; and
 - (ii) remains as proposed.
 - ~~(iii) only if the licensee is expressly authorized under state law; and~~
- (h) only provide therapeutic breast massage:
 - (i) as indicated in the plan of care; and
 - (ii) after receiving informed voluntary written consent; ~~and~~
 - ~~(iii) only if the licensee is permitted to do so under state law.~~
- (7) remains as proposed.

BOARD OF MASSAGE THERAPY
TAMARA LEACH, CHAIRPERSON

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

/s/ BRENDA NORDLUND
Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 14, 2020.