

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

In the matter of the amendment of) AMENDED NOTICE OF PUBLIC
ARM 24.155.608 licensure of out-of-) HEARING ON PROPOSED
state applicants, 24.155.901) AMENDMENT AND ADOPTION
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. A public hearing was scheduled in the notice to be held on February 11, 2020, in Helena.

2. It was subsequently discovered that the proposal notice had not been sent to interested persons as required by the Montana Administrative Procedure Act. Therefore, the board is reissuing this proposal notice and is rescheduling the public hearing as shown below.

3. On March 11, 2020, at 11:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th floor, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

4. 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 March 4, 2020, to advise us of the nature of the accommodation that you need. Please contact Steve Gallus, 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 dlibsdlmt@mt.gov (board's e-mail).

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

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

(d) verification of an active license, certification, or registration in good standing from another state or jurisdiction, whose current requirements ~~include each of the following~~ are substantially equivalent to Montana requirements for licensure, including:

- (i) proof of completing a massage therapy program demanding a course of studies that includes, at a minimum, ~~each of the following: 500 hours; and~~
- ~~(A) 200 hours of in-class and instructor supervised massage and bodywork assessment, theory, and application instruction;~~
 - ~~(B) 150 hours combined of instruction on the body systems (anatomy, physiology, and kinesiology) and pathology; and~~
 - ~~(C) 150 hours combined of business and ethics instruction and instruction in an area or related field that completes the massage program of study; and~~
- (ii) remains the same.

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

IMP: 37-1-131, 37-1-304, ~~37-33-502~~, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align with the department's standardized application procedures and facilitate effective and timely processing of applications. By repealing the requirements of proof of education in specific areas, staff may assess substantial equivalency with a broader comparison of licensing standards in various states where applicants hold a current, active license. The board concluded the amendments will remove an unnecessary obstacle to timely licensure while still ensuring licensure of qualified applicants. Authority and implementation citations are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.155.901 UNPROFESSIONAL CONDUCT (1) The following conduct is unprofessional conduct justifying disciplinary action against a licensee:

- (a) and (b) remain the same.
- (c) engaging in or soliciting sexual contact or sexual intercourse, as those terms are defined in 45-2-101, MCA, with a client, when such act or solicitation is related to the practice of massage therapy, or failing to refrain from any provision of [NEW RULE II(6)];
- (d) through (g) remain the same.
- (h) failing to maintain records in accordance with [NEW RULE I];
- (h) and (i) remain the same but are renumbered (i) and (j).

~~(2) Upon a finding of unprofessional conduct as defined in (1), and determined in accordance with the Montana Administrative Procedure Act, the board may impose sanctions, including but not limited to those allowed pursuant to 37-1-136 and 37-1-312, MCA. Any additional cost or expense incurred by a licensee as a result of a sanction is the burden of the licensee. As additional forms of sanction, and without limiting the availability of any other sanction, the board may:~~

- ~~(a) require supervision, inspections, reports, additional continuing education or other training;~~
- ~~(b) limit the licensee's scope of practice in any reasonable manner considering the circumstances; and~~
- ~~(c) impose any other condition of licensure, probation, reinstatement, or relicensure the board deems necessary or appropriate to protect the health, safety, or welfare of the public or to rehabilitate the licensee.~~

AUTH: 37-1-131, 37-1-136, 37-1-319, 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 updating the behavior the board considers to be unprofessional conduct in conjunction with the adoption of NEW RULES I and II. Upon enacting professional conduct standards similar to (1)(c), other states have reported decreases in human trafficking and other illegal activities under the guise of the massage therapy profession. The board further concluded that maintaining adequate records is necessary to enhance public safety and welfare and is adding (1)(h) to clearly establish that violating NEW RULE I is also unprofessional conduct. The board is striking the provisions of (2) as an unnecessary duplication of statutory language.

6. The proposed new rules are as follows:

NEW RULE I RECORDS (1) Licensees must maintain the following records for each client:

(a) an initial intake form which includes:

- (i) name of client;
- (ii) health history;
- (iii) current health status;
- (iv) consent of the client to treat;
- (v) date; and
- (vi) client signature; and

(b) session notes, including:

- (i) date;
- (ii) services provided;
- (iii) comments from licensed therapist; and
- (iv) signature or initials of licensed therapist.

(2) Licensees must document in the client's records, at the time the initial intake form is required, if the client refuses to complete the client intake form.

(3) Licensees are required to maintain records for four years from the last date of service to the client.

(4) Any violation of this rule is considered unprofessional conduct.

AUTH: 37-1-131, 37-1-136, 37-1-319, MCA
IMP: 37-1-131, 37-1-136, 37-1-319, MCA

REASON: The board is adopting this new rule to clearly establish requirements for licensee recordkeeping. The board concluded that requiring licensees to maintain certain records will facilitate more effective complaint processing and assist both the public and licensees throughout the process. Furthermore, the board determined it is reasonably necessary to require that licensees collect and maintain certain data to elevate professionalism and enhance client protection.

NEW RULE II STANDARDS OF PRACTICE AND CODE OF ETHICS

(1) **PROFESSIONALISM.** The licensee must provide optimal levels of professional therapeutic massage and bodywork services and demonstrate excellence in practice by promoting healing and well-being through responsible, compassionate, and respectful touch. In the licensee's professional role, the licensee shall:

- (a) treat each client with respect, dignity, and worth;
- (b) use professional verbal, nonverbal, and written communications;
- (c) provide an environment that is safe and comfortable for the client and which, at a minimum, meets all legal requirements for health and safety;
- (d) use standard precautions to ensure professional hygienic practices and maintain a level of personal hygiene appropriate for practitioners in the therapeutic setting;
- (e) wear clothing that is clean, modest, and professional;
- (f) obtain voluntary and informed consent from the client prior to initiating the session;
- (g) if applicable, conduct an accurate needs assessment, develop a plan of care with the client, and update the plan as needed;
- (h) use appropriate draping to protect the client's physical and emotional privacy;
- (i) be knowledgeable of the licensee's scope of practice and practice only within these limitations;
- (j) refer to other professionals when in the best interest of the client and practitioner;
- (k) seek other professional advice when needed;
- (l) respect the traditions and practices of other professionals and foster collegial relationships; and
- (m) not falsely impugn the reputation of any colleague.

(2) **LEGAL AND ETHICAL REQUIREMENTS.** The licensee must comply with all the legal requirements in applicable jurisdictions regulating the profession of therapeutic massage and bodywork. In the licensee's professional role, the licensee shall:

- (a) obey all local, state, and federal laws;
- (b) refrain from any behavior that results in illegal, discriminatory, or unethical actions;
- (c) accept responsibility for the licensee's own actions;
- (d) report to the proper massage therapy regulatory body within 30 days of discovery of any evidence, such as first-hand knowledge, indicating any unethical, incompetent, or illegal act committed by other licensees;
- (e) maintain accurate and truthful records.

(3) **CONFIDENTIALITY.** The licensee shall respect the confidentiality of client information and safeguard all records. In the licensee's professional role, the licensee shall:

- (a) protect the confidentiality of the client's identity and information in all conversations, advertisements, and any and all other matters unless disclosure of identifiable information is requested by the client in writing, is medically necessary, or is required by law;

(b) protect the interests of clients who are minors or clients who are unable to give voluntary and informed consent by obtaining prior written permission from a legal guardian;

(c) solicit only information that is relevant to the professional client/therapist relationship;

(d) securely retain client files for a minimum period of four years from the termination of the therapeutic relationship; and

(e) dispose of client files in a secure manner.

(4) BUSINESS PRACTICES. The licensee shall practice with honesty, integrity, and lawfulness in the business of therapeutic massage and bodywork. In the licensee's professional role, the licensee shall:

(a) provide a physical setting that is safe and meets all applicable legal requirements for health and safety;

(b) maintain adequate progress notes for each client session, if applicable;

(c) accurately and truthfully inform the public of services provided;

(d) honestly represent all professional qualifications and affiliations;

(e) promote the licensee's business with integrity and avoid potential and actual conflicts of interest;

(f) advertise in a manner that is honest, dignified, accurate and representative of services provided and remains consistent with board statutes and rules;

(g) advertise in a manner that is not misleading to the public and shall never use sensational, sexual, or provocative language and/or pictures to promote the licensee's business;

(h) comply with all laws regarding sexual harassment;

(i) not exploit the trust and dependency of others, including clients and employees/co-workers;

(j) disclose a schedule of fees in advance of the session;

(k) make financial arrangements in advance which are clearly understood by, and safeguard the best interests of, the client or consumer;

(l) follow Generally Accepted Accounting Principles;

(m) file all applicable municipal, state, and federal taxes;

(n) maintain accurate financial records, contracts and legal obligations, appointment records, tax reports, and receipts for the most recent three fiscal years;

(o) act in a manner that justifies public trust and confidence, enhances the reputation of the profession, and safeguards the interest of individual clients. The licensee will:

(i) have a sincere commitment to provide the highest quality of care to those who seek their professional services;

(ii) represent their qualifications honestly, including education and professional affiliations, and provide only those services that they are qualified to perform;

(iii) accurately inform clients, other health care practitioners, and the public of the scope and limitations of their discipline;

(iv) acknowledge the limitations of and contraindications for massage and bodywork and refer clients to appropriate health professionals;

(v) provide treatment only where there is reasonable expectation that it will be advantageous to the client;

(vi) consistently maintain and improve professional knowledge and competence, striving for professional excellence through regular assessment of personal and professional strengths and weaknesses and through continued education training;

(vii) conduct their business and professional activities with honesty and integrity, and respect the inherent worth of all persons;

(viii) refuse to unjustly discriminate against clients and/or health professionals;

(ix) safeguard the confidentiality of the client's identity and information in all conversations, advertisements, and any and all other matters unless disclosure of identifiable information is requested by the client in writing, is medically necessary, or is required by law;

(x) respect the client's right to treatment with informed and voluntary consent. The licensee will obtain and record the informed consent of the client, or client's advocate, before providing treatment. This consent may be written or verbal;

(xi) respect the client's right to refuse, modify, or terminate treatment regardless of prior consent given;

(xii) provide draping and treatment in a way that ensures the safety, comfort, and privacy of the client;

(xiii) exercise the right to refuse to treat any person or part of the body for just and reasonable cause;

(xiv) refrain, under all circumstances, from participating in a sexual relationship or sexual conduct with the client, whether consensual or otherwise, from the beginning of the client/therapist relationship and for a minimum of six months after the termination of the client therapist relationship, unless an ongoing current sexual relationship existed prior to the date the therapeutic relationship began;

(xv) avoid any interest, activity, or influence which might be in conflict with the practitioner's obligation to act in the best interests of the client or the profession;

(xvi) respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, and the client's reasonable expectations of professional behavior. Practitioners will respect the client's autonomy; and

(xvii) refuse any gifts or benefits that are intended to influence a referral, decision or treatment, or that are purely for personal gain and not for the good of the client.

(5) **ROLES AND BOUNDARIES.** The licensee shall adhere to ethical boundaries and perform the professional roles designed to protect both the client and the practitioner, and safeguard the therapeutic value of the relationship. In the licensee's professional role, the licensee shall:

(a) recognize the licensee's personal limitations and practice only within these limitations;

(b) recognize the licensee's influential position with the client and not exploit the relationship for personal or other gain;

(c) recognize and limit the impact of transference and counter-transference between the client and the licensee;

(d) avoid dual or multidimensional relationships that could impair professional judgment or result in exploitation of a client, student, employee, supervisee, mentee, trainee, or anyone else with whom a power differential exists;

(e) acknowledge and respect the client's freedom of choice in the therapeutic session;

(f) respect the client's right to refuse the therapeutic session or any part of the therapeutic session;

(g) refrain from practicing under the influence of alcohol, drugs, or any illegal substances, with the exception of a prescribed dosage of prescription medication which does not impair the licensee;

(h) have the right to refuse and/or terminate the service to a client who is abusive or under the influence of alcohol, drugs, or any illegal substance; and

(i) have the right to refuse and/or terminate the service to a client who exhibits language or behavior which the therapist deems as an immediate or potential risk to the safety of the client, the licensee, or the therapeutic relationship.

(6) PREVENTION OF SEXUAL MISCONDUCT AND INAPPROPRIATE TOUCH. The licensee shall refrain from any behavior that sexualizes, or appears to sexualize, the client/therapist relationship. The licensee recognizes the intimacy of the therapeutic relationship may activate practitioner and/or client needs and/or desires that weaken boundaries which may lead to sexualizing the therapeutic relationship. In the licensee's professional role, the licensee shall:

(a) refrain from participating in a sexual relationship or sexual conduct with the client, whether consensual or otherwise, from the beginning of the client/therapist relationship and for a minimum of six months after the termination of the client/therapist relationship, unless an ongoing current sexual relationship existed prior to the date the therapeutic relationship began. In the case of a pre-existing ongoing sexual relationship, providing therapeutic massage and bodywork on such a person is discouraged, but may be done with informed consent which acknowledges the power differential in a therapeutic relationship and the complexities of dual relationships;

(b) in the event the client initiates sexual behavior, interrupt therapy to clarify the purpose of the therapeutic session. Provided that the client's initial sexual behavior ceases, the licensee may, at the licensee's discretion, take action to terminate or continue the session. The licensee shall terminate the session if the sexual conduct continues;

(c) with the exception of a pre-existing ongoing sexual relationship, as set forth in (a), recognize that sexual activity with clients, students, employees, supervisees, mentees, trainees, or anyone else with whom a power differential exists, is prohibited even if consensual;

(d) not touch the genitalia;

(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;

(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;

- (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;
 - (ii) after receiving informed voluntary written consent; and
 - (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;
 - (ii) after receiving informed voluntary written consent; and
 - (iii) only if the licensee is permitted to do so under state law.
- (7) Any violation of this rule is unprofessional conduct and may subject a licensee to disciplinary proceedings.

AUTH: 37-1-131, 37-1-136, 37-1-319, MCA

IMP: 37-1-131, 37-1-136, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule and clearly establish licensee standards of practice and ethical guidelines to enhance the profession and elevate public health, safety, and welfare. The board notes that this rule incorporates an amended version of a nationally accepted standard that is accessible and comprehensible to readers. While adopting this rule, the board is also incorporating the violation of certain standards and ethics into the unprofessional conduct rule at ARM 24.155.901 in this notice.

7. 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 dlibsdlmt@mt.gov, and must be received no later than 5:00 p.m., March 13, 2020.

8. 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.

9. 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.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.155.608 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 Rules I and II 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.

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

BOARD OF MASSAGE THERAPY
TAMARA LEACH, CHAIRPERSON

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

/s/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 4, 2020.