

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

**FILED**  
2006 JUN 16 P 12:26  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: WV Massage Therapy Licensure Board TITLE NUMBER: 194

RULE TYPE: Legislative CITE AUTHORITY: § 30-37-6

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: General Provisions

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 16, 2006 AT 9:00am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Massage Therapy Licensure Board  
200 Davis Street  
Princeton, WV 24740

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

### BRIEF SUMMARY OF PROPOSED RULE

This Rule clarifies the procedure for licensure requirements; amends educational and testing prerequisites for licensure consistent with W. Va. Code § 30-37-7; and establishes a procedure for the consideration of lapsed licenses, pursuant to W. Va. Code § 30-37-7. Further, the Rule expands and clarifies the standards of practice required of licensed massage therapists, and details certain acts of professional misconduct with specificity.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: General Provisions

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WV Massage Therapy Licensure Board

Address: 200 Davis Street  
Princeton, WV 24740

---

Phone Number: (304) 487-1400 Email: julieparke@wvdhhr.org

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

N/A

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: General Provisions

Rule Title: General Provisions

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

N/A

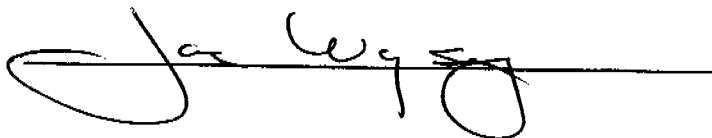
### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Language is being added to clarify re-application and lapsed licenses. No changes in revenue.

Date: July 16, 2006

Signature of Agency Head or Authorized Representative



## FACTS AND CIRCUMSTANCES

During the Regular Session of 2006, the West Virginia Legislature introduced, passed, and the Governor signed, House Bill 4279. In particular, and among other things, HB 4279 amended certain massage therapy licensure requirements by providing that massage therapist applicants must complete an approved educational program of massage therapy, and must successfully complete a national certification examination relating the massage therapy.

In this regard, the West Virginia Massage Therapy Licensure Board determined it was necessary to amend Series 1 of its rules to reflect the legislative changes made through the amendment of West Virginia Code § 30-37-1, et seq., earlier this year. Thus, the current proposed rule requires an applicant for licensure to successfully complete both the aforementioned educational program and national certification examination, as opposed to merely completing one or the other for purposes of licensure.

Further, HB 4279 also provided the Board with a statutory mechanism for the consideration of lapsed licenses. Accordingly, the Board has proposed in the instant rule a procedure in which lapsed licenses are considered by the Board, and clarified the discretion statutorily provided to the Board in cases where a licensee's license has lapsed.

Last, as pertinent herein, HB 4279 codified additional grounds upon which the Board may impose disciplinary sanctions against a licensee. As with State government in general, the Board's regulatory functions, oversight responsibilities, and decisions regarding how it handles complaints alleging violations of law has evolved through the years, given the Board's acquisition of additional experience and education.

As a result, through licensee input, continuing education, and the consideration of disciplinary and administrative matters, the Board has determined that it is necessary by rule to clarify and expand upon its standards of conduct, and expound upon what actions constitute professional misconduct.

In this manner, the Board believes that it may better serve and protect the interests of the public by specifying by rule a licensee's duty to his or her client(s), and by additionally clarifying certain actions that constitute a breach of the therapist-client relationship and / or violation of law and professional responsibility.

Moreover, the Board contends that providing increased specificity of the standards of conduct and definition of professional misconduct will assist its licensees in practicing massage therapy within the confines of the law. Where certain unlawful acts are currently construed in the abstract, and may be open to differing interpretations of law, the intent to clarify the current meaning of the same, with specific regulatory examples, will assist licensees in providing the services expected of them, and refrain from activities that are unlawful.

However, it is important to note that the Board recognizes that not every unlawful act initiated by a licensee can be accounted for with specificity by a rule. Thus, in addition to those specific acts outlined in the proposed rule, the Board shall retain all discretion it deems necessary, as promulgated to it by the Legislature, to achieve its mandate and protect the interests in State and the welfare of the public.

TITLE 194  
LEGISLATIVE RULES  
MESSAGE THERAPY LICENSURE BOARD

FILED

SERIES 1  
GENERAL PROVISIONS

2006 JUN 16 P 12: 26

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§194-1-1. General.**

1.1. Scope. -- This rule establishes procedures for conducting the business of the Board, as well as establishing licensing procedures.

1.2. Authority. -- W. Va. Code 30-37-6.

1.3. Filing Date. --

1.4. Effective Date. --

**§194-1-2. Massage Therapy Board Fund; Expenses; Disposition of Funds.**

2.1 All fees shall be made payable to the West Virginia Massage Therapy Licensure Board and deposited by the Board in its account established in the state treasurer's office.

2.2 Members of the Board shall receive the following compensation for their administration of the Board:

2.2.a The members of the Board shall receive the same compensation and expense reimbursement for their services as is paid to members of the Legislature for interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion of a day that the Board member engaged in the discharge of official duties.

2.2.b The member may be reimbursed for his or her actual and necessary expenses incurred for each day or portion of a day that the Board member is engaged in the discharge of official duties in a manner consistent with the guidelines of the travel management office of the department of administration.

**§194-1-3. Requirements for Licensure.**

3.1. ~~The applicant shall complete the application forms provided by the Board and supply the following:~~ Application for licensure.

3.1.a. ~~personal information;~~ The Board shall furnish any person requesting an application for a license or temporary permit the necessary forms, and any other

information or questionnaires as the Board considers desirable;

~~3.1.b. the fee required by Board and one (1) of the following: The application forms shall be designed to require the information necessary to satisfy the Board that all requirements pertaining to the West Virginia Code are being fulfilled; and shall require the applicant to provide the following:~~

3.1.b.1. All relevant personal information as determined by the Board;

~~3.1.b.1. 3.1.b.2. An official letter proving graduation from a program of massage therapy education approved by a state agency in another state, the District of Columbia or a United States territory which approves educational programs, and which meets qualifications for the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork or the West Virginia state college system Board approved massage education both requiring a diploma from an accredited high school or the equivalent and completion of at least five hundred (500) hours of supervised academic training; -using a current Board approved curriculum;~~

~~3.1.b.2. proof that the applicant has been employed or self-employed as an actively practicing massage therapist prior to the first day of December, one thousand nine hundred ninety four verified by signed and notarized affidavits from at least five (5) different clients unrelated to the applicant and who received massage therapy from the applicant prior to the first day of December, one thousand nine hundred ninety four, and other evidence acceptable to the Board, which may include a photocopy of tax return for 1994; or~~

~~3.1.b.3. a photocopy of a current certificate of the Proof of the successful completion of the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) exam; and~~

3.1.b.4. All applicable fees as set forth by this rule;

~~4.7 3.1.c. All licenses issued prior to June 23, 2003, shall the effective date of these rules expire on July 1st every two (2) years. All initial licenses issued after June 23, 2003, shall expire A new license issued under subdivision 4.6.j of this section expires two (2) years from the end of the month it was issued.~~

3.2. Renewal of License. Licensed massage therapists applying for renewal shall complete the application form provided by the Board with the following:

3.2.a. personal information;

3.2.b. the fee required by the Board; and

3.2.c. documentation of completion of twenty five (25) continuing education units (CEU'S) within the two (2) year licensing period that adhere to the NCBTMB



guidelines.

### 3.3. Lapsed Licenses.

3.3.a. If any massage therapist fails for a period of thirty days after his or her license expires to apply to the Board for a renewal of his or her license, the Board shall send notification of the required renewal to the last known address of the massage therapist. If the massage therapist fails to apply to the Board for a renewal of his or her license within thirty days after receipt of the notification, the Board shall remove his or her name from the register of massage therapists and the license shall be considered lapsed.

3.3.b. In order for any massage therapist whose name has been removed from the register of the Board to again become licensed, the massage therapist shall appear personally before the Board, or an authorized committee of the Board, to show cause for permitting the license to lapse. If the person submits to the Board satisfactory reasons for allowing the license to lapse and satisfies the Board as to his or her qualifications to practice the profession, the Board shall reinstate that person upon payment of a reinstatement fee plus the renewal fee.

3.3.c. In such lapsed license cases the Board determines necessary, and in the Board's discretion, the Board may require a massage therapist whose license has lapsed to comply with the initial license requirements set forth by West Virginia Code § 30-37-1, et seq., and by rule.

~~3.3.~~ 3.4. The Board may issue a reciprocal license at it's discretion.

~~3.4.~~ 3.5. A massage therapist licensed outside of ~~WV~~ West Virginia applying for reciprocal ~~WV~~ West Virginia licensure, shall complete the application forms provided by the Board with the following:

~~3.4.a.~~ 3.5.a. personal information;

~~3.4.b.~~ 3.5.b. a photocopy of his or her current or most recent license;

~~3.4.c.~~ 3.5.c. any information regarding any pending or prior investigations or disciplinary actions pertaining to his or her licensure. This shall include statements from any and all states in which the applicant is currently or formerly licensed,

~~3.4.d.~~ 3.5.d. documentation of the applicant's continuing education units (CEU'S) completed in the last two (2) years; and

~~3.4.e.~~ 3.5.e. for an applicant who is Nationally Certified, a photocopy of his or her current National Certification Board for Therapeutic Massage and Bodywork certificate.

~~3.4.e.~~ 3.6. Massage therapists applying for a renewal or reciprocal license

shall meet the current standards for continuing education hours required to conform to the National Certification Board for Therapeutic Massage and Bodywork guidelines.

~~3.6.~~ 3.7. An applicant who applies for a license in West Virginia and who is not licensed in any other state, the District of Columbia or a United States territory or any other country or province shall meet the requirements as set forth in subsection one of this rule.

~~3.7.~~ 3.8. All licensees and those applicants who apply for a license in West Virginia are required to keep or have a record of continuing education units (CEU'S) including the title, (workshop, etc.), the date, place, number of hours of instruction, instructor's name, sponsor of the class, and the person to call to verify attendance (sponsoring group or instructor). The Board may audit a certain number of licensed massage therapists every two (2) years, and may ask applicants to provide the information listed in this subsection.

3.9. Applicants for licensure who have completed a program of massage therapy two years or more prior to making application for licensure shall additionally be required to complete and provide proof of completion of all continuing educational requirements as if the applicant had been licensed by the Board during the time prior to the submission of the applicant's application for licensure.

~~3.8.~~ 3.10. The Board may audit any applicant to verify credentials or request information.

~~3.9.~~ 3.11. Each licensee shall publicly display his or her current valid license at his or her primary work site. A duplicate license, issued by the Board, shall be displayed at his or her secondary place of employment.

3.11.a The Board may at any time inspect the place of employment of the massage therapist.

3.12. If an applicant fails to complete all forms and to provide all information as required by an application for licensure or renewal of licensure, the Board may reject and return the application to the applicant.

~~4.1.~~ 3.13. The Board shall grant a license to any applicant who meets all the requirements set forth in this rule.

~~4.1.a.~~ 3.13a. The Board may suspend, revoke or impose probationary conditions on a licensee who fails to comply with the requirements of this rule.

~~4.1.b.~~ 3.13b. A license shall include at least the following information: the licensee's full name; the date of issuance; the seal of West Virginia; the license number; and the signature of the chairperson or the secretary of the Board.

~~4.2.~~ 3.14. A massage therapist applying for renewal, or reciprocal license shall

meet the current standards for continuing education hours required under the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) guidelines. Failure to comply with the current standards for continuing education as required by NCBTMB, is grounds for revocation or suspension under the provisions of this rule.

**§194-1-4. Duties of Board; Authorization to Propose Rules and Fees. Standards Relating to the Practice of Massage Therapy; Professional Misconduct.**

4.1. The massage therapist shall know the statutes and rules governing massage therapy and function within the legal boundaries of the massage therapy practice. The Board may suspend, revoke, or otherwise discipline the license of a licensee who violates any provision of this rule, West Virginia Code § 30-37-1, et seq., or who is guilty of professional misconduct. Specifically, but not limited to, a massage therapist shall:

~~4.3~~—A licensee shall

~~4.3.a.~~ 4.1.a. Maintain documentation of compliance with all applicable state or local government regulations;

~~4.3.b.~~ 4.1.b. Conduct massage therapy only in rooms which are adequately lighted and ventilated, and which are kept clean. Restroom facilities with a toilet, sink with hot and cold running water, soap, and clean towels and adequate toilet tissue must be available;

~~4.3.c.~~ 4.1.c. Maintain a reasonable effort for sanitation for temporary locations such as athletic events or public service fund raisers in temporary venues;

~~4.3.d.~~ 4.1.d. Maintain all equipment and supplies used to perform massage services in a safe and sanitary condition. Lotions, creams, and oils shall be kept free of possible bacterial contamination;

~~4.3.e.~~ 4.1.e. Wash his or her hands in hot, soapy water or other antibacterial substance before and after each massage therapy treatment;

~~4.3.f.~~ 4.1.f. Launder, before reuse, all materials furnished for the personal use of the massage therapy client, such as towels, linens and any draping materials; and

~~4.3.g.~~ 4.1.g. Before proceeding with the massage of a client, explain expected draping techniques and provide the client a clean drape or drapes for the purpose of covering the body in accordance with generally-accepted standards of practice;

4.1.h. Obtain informed, voluntary consent in writing prior to performing breast massage. A breast massage may only be performed as indicated in a plan of care.

Failure to comply with this rule shall constitute grounds for revocation of license:

4.1.i. Obtain instruction and supervision as necessary when implementing massage therapy techniques or practices;

4.1.j. Report any unsafe massage therapy practice and / or violation of law by other massage therapists to the Board and recognized legal authorities;

4.1.k. Conduct practice without discrimination on the basis of age, race, religion, gender, sexual preference, socio-economic status, national origin, handicap, or disease;

4.1.l. Respect the dignity and rights of clients regardless of social or economic status, personal attributes, or nature of the client's health problems;

4.1.m. Respect the client's right to privacy by protecting confidential information unless obligated by law to disclose the information;

4.1.n. Obtain voluntary and informed consent from the client prior to initiating the massage therapy session;

4.1.o. Be knowledgeable of his or her competent scope of practice and practice only within these limitations;

4.1.p. Refer to other professionals when in the best interest of the client and / or practitioner;

4.1.q. Maintain accurate and truthful records;

4.1.r. Maintain client files for a minimum period of four years, and store and dispose of client files in a secure manner;

4.1.s. Refrain from engaging in any sexual activity with a client;

4.1.t. Refrain from massaging, touching or otherwise exposing the genitalia of the client; and

4.1.u. Refrain from practicing massage therapy while under the influence of alcohol, drugs, or any illegal substances.

4.2. 4.4. A licensee shall acknowledge and sign an agreement to uphold the Code of Ethics adopted by the National Certification Board for Therapeutic Massage and Bodywork, and comply with the Standards of Practice promulgated by the National Certification Board for Therapeutic Massage and Bodywork.

4.3. Conduct including, but not limited to, the following constitutes professional misconduct where the licensee:

4.3.a. failed to adhere to common and current standards for professional massage therapy practice, including but not limited to standards established by a national massage therapy organization, or the Board;

4.3.b. knowingly committed an act which could adversely affect the physical or psychological welfare of a client;

4.3.c. practiced or offered to practice beyond the scope permitted by law or accepted and performed professional responsibilities that the licensee knows or has reason to know that he or she is not licensed, qualified, or competent to perform;

4.3.d. impersonated another licensed practitioner;

4.3.e. permitted another person to use the licensee's license for any purpose;

4.3.f. permitted, aided, or abetted an unlicensed, uncertified, or unregistered person to perform activities requiring a license, certificate, or registration;

4.3.g. delegated professional responsibilities to a person when the licensee delegating the responsibilities knows or has reason to know that person is not qualified by training, experience or licensure to perform them;

4.3.h. practiced massage therapy while his or her license is suspended, lapsed, or inactive;

4.3.i. failed to comply with terms and conditions as may be imposed by the Board based upon previous disciplinary action of the Board;

4.3.j. practiced massage therapy while the ability to safely and effectively practice is compromised by alcohol or drugs;

4.3.k. is addicted to a controlled substance, or a chronic or persistent alcoholic;

4.3.l. engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member of the public; thus, not exercising good professional character;

4.3.m. practiced massage therapy while the ability to safely and effectively practice was compromised by physical or mental disability;

4.3.n. provided false or incorrect information to an employer or potential employer regarding the status of a license, or failed to inform an employer or potential employer of a change in the status of a license;

4.3.o. knowingly falsified an application for employment;

4.3.p. knowingly provided false information regarding completion of educational programs;

4.3.q. falsified client records;

4.3.r. knowingly made or filed a false report;

4.3.s. knowingly or negligently failed to file a report or record required by state or federal law;

4.3.t. willfully impeded or obstructed the filing of a report or record required by state or federal law;

4.3.u. induced another person to file a false report or obstructed the filing of a report required by state or federal law;

4.3.v. failed to report to the Board within thirty (30) days, knowledge of a violation by a licensed massage therapist of W. Va. Code §30-37-1 et seq., this rule, any other applicable state law or rule or any applicable federal law or regulation;

4.3.w. failed to report through proper channels a violation of any applicable state law or rule, any applicable federal law or regulation or the incompetent, unethical, illegal, or impaired practice of another person who provided health care;

4.3.x. impeded or obstructed an investigation by the Board by failing to comply or respond to requests for action or information, whether the failure was known or negligent;

4.3.y. violated any provision of W. Va. Code §30-37-1 et seq., or rules governing the practice of massage therapy, or a rule or order of the Board, or failed to comply with a subpoena or subpoena duces tecum issued by the Board;

4.3.z. failed to register or notify the Board of any changes of name or mailing address;

4.3.aa. failed to accept certified mail from the Board, when mailed to the licensee's last address on record in the Board's office;

4.3.bb. provided false information on any application, or any other document submitted to the Board for the purpose of licensure;

4.3.cc. misappropriated medications, supplies, or personal items of a client or employer;

4.3.dd. self-administered or otherwise took into his or her body any prescription drug in any way not in accordance with a legal, valid prescription or used any illicit drug;

4.3. ee. physically or verbally abused, or failed to provide adequate protection or safety for an incapacitated individual in the context of a therapist/client relationship;

4.3. ff. used the therapist-patient/client relationship to exploit a patient or client;

4.3. gg. engaged a patient or client in sexual activity or became romantically involved with a patient or client while still responsible for the care of that patient or client;

4.3. hh. failed to maintain appropriate professional boundaries in the therapist-patient/client relationship;

4.3. ii. failed to report that his or her license to practice massage therapy in any other state, territory, jurisdiction or foreign nation was revoked, suspended, restricted or limited, or otherwise acted against, that he or she was subjected to any other disciplinary action by the licensing authority, or that he or she was denied licensure in any other state, territory, jurisdiction, or foreign nation;

4.3. jj. was found guilty for improper professional practice or professional misconduct by a duly authorized professional disciplinary agency or licensing or certifying body or Board in this or another state or territory, where the conduct upon which the finding was based would, if committed in this state, constitute professional misconduct under the laws of this state, may serve as a basis for disciplinary action by this Board.

#### **§194-1-5. Licensure and Administrative Fees.**

~~4.5.~~ 5.1. Each applicant for licensure is responsible for paying the appropriate fees specified in this rule.

~~4.6.~~ 5.2. The fees authorized to be established by the Board and necessary to the operation of the Board are as follows:

~~4.6.a.~~ 5.2.a. Application fee -- Twenty-five dollars (\$25.00) -- a non-refundable fee to be paid by all applicants for a massage therapy license including those seeking reciprocal or ~~provisional~~ re-application of license.

~~4.6.b.~~ 5.2.b. Two (2) year licensure renewal fee -- One hundred dollars (\$100.00) -- a fee to be paid prior to the issuance of the license. This fee must be received by June 30 of the renewal year or by the end of the month before the license expires. (~~see 4.7.~~) This fee is non-refundable after issuance of license.

~~4.6.c.~~ 5.2.c. Two (2) year license fee -- Two hundred dollars (\$200.00) -- a fee to be paid at the time of application for initial, re-application OR reciprocal license. This fee does not include the twenty-five dollars (\$25.00) application fee. This fee is non-refundable after issuance of a license.

4.6.d. 5.2.d. Late fee -- Twenty-five dollars (\$25.00) -- a non-refundable fee to be paid when a licensee fails to submit application and fees on or after July 1 or the date the license expires. This is in addition to the other required fees.

4.6.e. 5.2.e. Duplicate or replacement license fee -- Ten dollars (\$10.00) -  
- a non-refundable fee to be paid when a licensee requests a replacement for a lost or destroyed license, renewal or duplicate license or a license request due to a name change.

4.6.f. 5.2.f. Certified statement fee -- Ten dollars (\$10.00) -- a fee to be paid at the time of request the Board verify that a licensee is licensed in West Virginia.

4.6.g. 5.2.g. Failure to report change of address fee in writing fee -- Ten dollars (\$10.00) -- a fee that is to be paid by the applicant when he or she has failed to notify the Board in writing within thirty (30) days of changing his or her address.

4.6.h. 5.2.h. Re-application fee -- Two hundred twenty-five dollars (\$225.00) -- a fee to be paid when re-applying for licensure after the license lapsed sixty days after the expiration date of the license.

4.6.i. 5.2.i. Failure to report name change in writing fee -- Ten dollars (\$10.00) -- a fee that is to be paid by the applicant when he or she has failed to notify the Board in writing within thirty (30) days of changing their name.

4.6.j. 5.2.j. Roster fee -- Fifty dollars (\$50.00) -- a fee that is to be paid by at the time of the request for a copy of the roster of current licensed massage therapists.

4.6.k. 5.2.k. License fee for a new license issued after the effective date of this rule. Two hundred dollars (\$ 200.00) The license will be renewable two (2) years from the end of the month it was issued. This fee is non-refundable after issuance of a license.

4.6.l. 5.2.l. Photocopy per page fee -- a twenty-five cent (\$.25) per page photocopying fee shall be paid at the time information is requested.

~~4.7 All licenses issued prior to the effective date of these rules expire on July 1st every two (2) years. A new license issued under subdivision 4.6.j of this section expires two (2) years from the end of the month it was issued.~~