

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2011 JUN 17 PM 1:35

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WEST VIRGINIA MASSAGE THERAPY LICENSURE BOARD TITLE NUMBER: 194

RULE TYPE: LEGISLATIVE CITE AUTHORITY: 30-36-7

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 18, 2011 AT 5:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

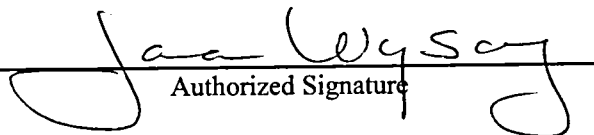
WV MASSAGE THERAPY LICENSURE BOARD

179 SUMMERS STREET

SUITE 711

CHARLESTON, WV 25301

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SUMMARY OF THE RULE

TITLE 194

SERIES 1 GENERAL PROVISIONS

This rule is being submitted to amend and increase the schedule of fees and create a new Series 4 Schedule of Fees. This will allow the fee structure to be in a series relating only to fees.

FACTS AND CIRCUMSTANCES

THIS SERIES IS BEING SUBMITTED TO INCREASE THE SCHEDULE OF FEES. DUE TO A SIGNIFICANT INCREASE IN EXPENSES RELATED TO THE INVESTIGATION AND DISPOSITION OF COMPLAINTS AS WELL AS LEGAL FEES; THIS HAS CREATED AN URGENT NEED FOR ADDITIONAL FUNDS. THIS WILL REQUIRE THE BOARD TO INCREASE FEES IN ORDER TO OPERATE.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 14, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Massage Therapy Licensure Board
179 Summers Street, Suite 711
Charleston, WV 25301
304-558-1060

LEGISLATIVE RULE TITLE: Title 194 Series 1 General Provisions

1. Authorizing statute(s) citation §30-36-7

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 17, 2011

b. What other notice, including advertising, did you give of the hearing?
The board mailed a letter to each licensee with information on the proposed rule and provided the information on the board's website.

c. Date of Public Hearing(s) or Public Comment Period ended:
July 18, 2011@ 5:00 p.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

June 17, 2011

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Linda Lyter, Executive Director
179 Summers Street, Suite 711
Charleston, WV 25301

304-558-1060 Phone #

304-558-1061 Fax #
linda_lyter@frontier.com

- g. **IF DIFFERENT FROM ITEM 'F'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

_____ June 17, 2011 through July 18, 2011 @ 5:00 p.m. _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: General Provisions

Type of Rule: Legislative Interpretive Procedural

Agency: WV Massage Therapy Licensure Board

Address: 179 Summers Street, Suite 711
Charleston, WV 25301

Phone Number: 304-558-1060 Email: linda_lyter@frontier.com

Fiscal Note Summary

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

This will not have any impact on the costs and revenues of state government. This board is a Chapter 30 board and is required to be self-sufficient in regards to its funding. The board operates on its own revenue that is generated by licensure and other related fees. The board does not receive any general revenue funds.

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	150,578.00	127,006.00	127,006.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	180,000.00	130,000.00

Rule Title: _____

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.

The board is increasing the schedule of fees. This includes the initial application and renewal fees for licensure. The license renewal is on a biennial basis so the revenue generated is increased in one fiscal year and decreased in the next consecutive fiscal year depending on the number of license renewals due for that particular fiscal year. It also depends on the total number of new license applications submitted for each fiscal year and those who may be currently licensed that fail to renew due to relocation, exiting the field, etc.

Estimated license applications and renewals for FY 2012 would generate approximately \$80,000.00 in additional revenue.

Estimated license applications and renewals for FY 2013 would generate approximately \$40,000.00 in additional revenue.

This revenue would enable the board to maintain operations and retain a cash balance to cover any extraordinary expenses (e.g. legal fees) incurred during any fiscal year and what is also recommended by the legislative auditors to carryover from one fiscal year to another.

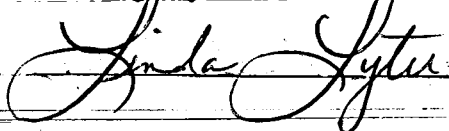
MEMORANDUM

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.

N/A

Date: June 14, 2011

Signature of Agency Head or Authorized Representative



FILED

TITLE 194
LEGISLATIVE RULES
MASSAGE THERAPY LICENSURE BOARD

2011 JUN 17 PM 1:35

SERIES 1
GENERAL PROVISIONS

OFFICE OF THE 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. -- _____, 2011.

1.4. Effective Date. -- July 1, 2008.

§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. Application for licensure.

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

3.1.b. 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.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 Higher Education Policy Commission 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;

3.1.b.3. Proof of the successful completion of the National Certification Board for Therapeutic Massage and Bodywork exam; and

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

3.1.c. A license expires two (2) years

from the end of the month it was issued.

3.2. Renewal of License. Licensees 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 within the preceding two (2) year licensing period that adhere to the NCBTMB guidelines.

3.3. Lapsed Licenses.

3.3.a. If any licensee 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 licensee. If the licensee 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 licensees and the license shall be considered lapsed.

3.3.b. In order for any licensee whose name has been removed from the register of the Board to again become licensed, the licensee 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 lapsed license cases the Board determines necessary, the Board shall require the licensee to comply with all renewal license requirements, and may require a licensee whose license has lapsed to comply with the initial license requirements set forth by W. Va. Code § 30-37-1, et seq., and by rule.

3.4. The Board may issue a reciprocal license

to applicants otherwise qualified for licensure in West Virginia.

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

3.5.a. personal information;

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

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;

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

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.

3.6. 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.

3.7. 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 this rule.

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 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 licensees 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.

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

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.

3.12. The Board may at any time inspect the place of employment of the licensee.

3.13. 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.

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

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

3.14.b. 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.

3.15. A massage therapist applying for a 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. Standards Relating to the Practice of Massage Therapy; Professional Misconduct.

4.1. The licensee 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 a licensee who violates any provision of the West Virginia Code § 30-37-1, et seq., and this rule, or who is guilty of professional misconduct. A licensee shall:

4.1.a. Maintain documentation of compliance with all applicable state or local government rules;

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;

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

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;

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

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;

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 subdivision constitutes 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 licensees 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. 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 imposed by the Board based upon previous disciplinary action of the Board;

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

4.3.k. is addicted to a controlled substance, or is 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 his or her 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 licensee 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 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; or

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.

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

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

~~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 a reciprocal license or to re-apply for a license.~~

~~5.2.b. Two (2) year license fee -- Two hundred dollars (\$200.00) -- a fee to be paid at the time of application for initial 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.~~

~~5.2.c. Two (2) year licensure renewal fee -- One hundred twenty-five dollars (\$125.00) -- 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. This fee is non-refundable after issuance of license.~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

~~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 licensees.~~

~~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.~~

~~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.~~