

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

FILED

Mar 5 1 29 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Massage therapy licensure Board TITLE NUMBER: 194

CITE AUTHORITY 30-37-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 1

TITLE OF RULE BEING PROPOSED: Massage therapy licensure Rules

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Anna Petar
Authorized Signature

\$4.00

Title 194
Legislative Rules
Massage Therapy Licensure Board

Series 1
GENERAL PROVISIONS

FILED
MAR 5 1 23 PM '98
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

194-1-1. General

1.1. Scope. These rules establish procedures for conducting the business of the Licensure Board, as well as establishing licensing procedures.

1.2 Authority. WV Code 30-37-6

1.3 Filing Date - _____

1.4 Effective Date - _____

194-1-2. **Massage Therapy Board fund; fees; expenses; disposition of funds.**

2.1 All fees collected by the Board shall be deposited into the Massage Therapy Licensure Board 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:

- (a) Each member shall receive \$100 for each meeting attended to conduct the business of the Board
- (b) Each member shall receive expenses for travel to conduct the business of the Board, meeting the requirements for such travel as set down in the provisions of section ten, article one, chapter thirty.
- (c) Each member shall receive reimbursements for all expenses incurred in conducting the business of the Board

194-1-3 **Duties of board; authorization to propose rules and fees.**

3.1 The Board shall grant a license to any applicant who meets all the requirements as set forth in these rules.

- a. A license shall include at least the following information: full name, date of issuance, seal of WV, license number, signature of Chairperson or Secretary of Board.
- b. Each licensed massage therapist shall publicly display their current valid license at their worksite (or copy thereof).

3.2 Massage therapists applying for renewal, reciprocal, or provisional license must 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, shall be grounds for discipline under W.Va. Code 30-37-8. These guidelines and a list of approved providers for continuing education are available from NCBTMB on the internet at: <http://www.ncbtmb.com> or by calling 1-800-296-0664 or 1-703-610-9015. NCBTMB's address is 8201 Greensboro Dr., Suite 300, McLean, VA 22102. Their fax number is 1-703-610-9005.

3.3. The holder of a massage therapy license shall comply with the following requirements. Failure to comply with these requirements shall be grounds for discipline under W.Va. Code 30-37-8:

- a. Maintain documentation of compliance with all applicable state or local government regulations.
- b. Massage therapy shall be conducted only in rooms which are adequately lighted and ventilated, and which are kept clean. Rest room facilities with toilet, sink with hot and cold running water, soap, and clean towels and adequate toilet tissue must be available.
- c. Reasonable effort for sanitation shall be maintained for temporary locations such as athletic events or public service fund raisers in temporary venues.
- d. All equipment and supplies used to perform massage services must be maintained in a safe and sanitary condition. Lotions, creams, and oils must be kept free of possible bacterial contamination.
- e. All licensees shall wash their hands in hot, soapy water or other antibacterial substance before and after each massage therapy treatment.
- f. All licensees shall launder, before reuse, all materials furnished for the personal use of the massage therapy client, such as towels, linens and any draping materials.
- g. Before proceeding with the massage of a client, each massage therapist shall have explained expected draping techniques and provide the client a clean drape or drapes for the purpose of covering the ~~buttocks, genitalia, and in the case of a female client, her breasts.~~ body in accordance with generally-accepted standards of practice.

3.4 All licensed massage therapists must acknowledge and sign an agreement to uphold the Code of Ethics adopted by the National Certification Board for Therapeutic Massage and Bodywork. Failure to adhere to the Code of Ethics shall be grounds for discipline under W.Va. Code 30-37-8.

3.5 Each applicant for licensure is responsible for paying the appropriate fees as adopted by the Board.

3.6 The fees authorized to be established by the board and necessary to the operation of the board are as follows:

- a. \$25 Application fee- a non-refundable fee to be paid by all applicants for a massage therapy license including those seeking reciprocal or provisional license.
- b. \$50 One year licensure renewal fee- a fee to be paid prior to the issuance of the license. This fee must be received by April 30 of the year that the license is to be renewed. This fee is non refundable after issuance of license.
- c. \$100 Initial license fee- a fee to be paid at the time of application for initial licensure. This fee is nonrefundable after issuance of license.
- d. \$25 Late fee- a non-refundable fee to be paid when a licensee fails to submit application and fees on or before April 30. This is in addition to the other required fees.
- e. \$10 Duplicate or replacement license fee- a non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed license, renewal or duplicate license.
- f. \$225 Two year-provisional license fee- a fee to be paid at the time of application for a provisional license. This fee is non-refundable after issuance of license.
- g. \$10 Certified statement fee - a fee to be paid at the time of request that a licensee is licensed in West Virginia.
- h. \$10 Failure to report change of address fee in writing fee- a fee that is to be paid by the applicant when they have failed to notify the Board in writing within 30 days of changing their address.
- i. \$10 Failure to report name change in writing fee - a fee that is to be paid by the applicant when they have failed to notify the Board in writing within 30 days of changing their name.
- j. \$25 Roster fee- a fee that is to be paid by at the time of the request for a copy of the roster of current licensed massage therapist.
- k. \$50 Six-month prorated license fee- a fee that is to be paid by the applicant when license is issued less than a year.

1. Photocopy per page fee- a \$.025 per page photocopying fee shall be paid at the time information is requested.

3.7 All fees shall be made payable to the West Virginia Massage Therapy Licensure Board and deposited by the Board in their account.

3.8. All licenses will expire on July 1st of each year.

194-1-4 Requirements for licensure.

4.1 The applicant must complete the application forms provided by the Board and supply the following information:

- (a) personal information, **and**
- (b) official letter proving graduation from the Commission on massage training accreditation/approval (COMTAA) **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 hours of supervised academic training, **or** completion of the educational and testing requirements of the American Massage Therapy Association (AMTA) prior to the first day of December, one thousand nine hundred ninety-four **or**,
- (c) signed affidavits from at least five different clients who massage therapist worked on prior to the first day of December, one thousand nine hundred ninety-four, **or** other evidence acceptable to the board, which may include a photocopy of tax return for 1994, **and**
- (d) photocopy of current certificate of the National Certification Board for Therapeutic Massage and Bodywork (NCTMB) exam **and**
- (e) payment of fees required by Board

4.2 Licensed massage therapists applying for renewal must complete the application form provided by the Board with the following information:

- (a) personal information, **and**
- (b) documentation of completion of continuing education requirements that adhere to the NCTMB guidelines, **and**
- (c) payment of fees required by Board

4.3 Massage therapists licensed outside of WV applying for reciprocal WV licensure, must complete the application form(s) provided by the Board with the following information:

- (a) personal information, **and**
- (b) photocopy of current certificate of the National Certification Board for Therapeutic Massage and Bodywork exam **and**,
- (c) a copy of their current or most recent license **and**,
- (d) any information regarding any pending or prior investigations or disciplinary actions pertaining to such licensure. This shall include statements from any and all states in which the applicant is currently or formerly licensed, **and**
- (e) payment of fees required by Board

4.4 The board may issue a reciprocal license at it's discretion.

4.5 The applicant applying for a two year provisional license must complete the application form provided by the Board with the following information:

- (a) personal information **and**,
- (b) verification of current practice, such as photocopy of current appointment book **and**,
- (c) verification of completion of the educational and testing requirements of the American Massage Therapy Association (AMTA) prior to the first day of December, one thousand nine hundred ninety-four **and**,
- (d) payment of fees required by Board.

4.6 Massage therapists applying for renewal or reciprocal license must meet the current standards for continuing education hours required to conform to the National Certification Board for Therapeutic Massage and Bodywork guidelines.

4.7 The board may issue a provisional license at it's discretion.

194-1-5 Hearing for revocation, suspension, nonrenewal.

5.1 **Scope.** - These procedural rules establish procedures for hearings before the Board.

5.2 **Definitions.** - The following words and phrases as used in these rules shall have the following meanings.

- (a) "Board" means the West Virginia Massage Therapy Licensure Board.
- (b) "Demanding party" means an individual who has been denied a license to practice massage therapy by the Board and who demands that the Board hold a hearing on the denial.
- © "Charged party" means an individual who holds a license to practice massage therapy issued by the Board and who has been charged by the board as described in subsections © and (d) of section 1.3 of these rules.
- (d) "Licensee" means an individual who holds a license to practice massage therapy issued by the Board.
- (e) "Chair" means chairperson of the Board.

5.3 Hearing Procedures.

(a) Any person denied a license by the Board who believes the denial was in violation of W. Va. Code §30-1-1 et seq. and/or 30-37-1 et seq. shall be entitled to a hearing on the denial upon presenting a written demand for hearing to the Board.

(b) When a written demand for hearing is received by the Board, the chair of the Board or the chair's authorized designee shall schedule a hearing within forty-five (45) days of receipt of the demand, unless postponed to a later date by mutual agreement of the demanding party and the chair or chair's designee.

© The Board may institute charges against any licensee when probable cause exists that the licensee has engaged in conduct that violates W. Va. Code § 30-37-1 et seq. or the Board's legislative rules. Charges may be based upon a verified written complaint filed with the Board and information gathered pursuant to the Board's investigation of the complaint. Charges may also be based on information gained solely through investigation by the Board.

(d) Charges initiated against a licensee as described in subsection © of this section shall be set forth in a Complaint and Notice of Hearing issued in the name of the Board as the agency of the state regulating the practice of massage therapy. The complaint and notice of hearing shall designate the Board as "Complainant", and designate the licensee involved as the "Respondent"; shall state the substance of each offense charged with sufficient particularity to reasonably apprise the Respondent of the nature, time and place of the conduct or condition which is the subject of the complaint; shall state the time, date and place of hearing; and, shall contain a statement of intention by the Board to appoint a hearing examiner.

(e) Upon receipt of a demand for a hearing described in subsection (a) and (b) of this section, the Chair of the Board or the chair's designee shall provide the demanding party with a Complaint and Notice Of Hearing issued in the name of the Board as the agency of the state regulating the practice of massage therapy.

Such Complaint and Notice of Hearing shall designate the demanding party as the "Complainant", and shall designate the Board as the "Respondent"; shall set out the substance of each and every reason that the Board has denied the demanding party a license with sufficient particularity to reasonably apprise the demanding party of the nature, time and place of the conduct or condition at issue therein; shall state the date, time and place for the hearing; and, shall contain a statement of intention by the Board to appoint a hearing examiner.

(f) The Board may amend the charges set forth in a Complaint and Notice Of Hearing as it deems proper.

(g) A complaint and Notice Of Hearing, original or amended, shall be served on the demanding or charged party at least thirty (30) days prior to the date of hearing.

(h) Upon written motion received by the Board no later than twenty (20) days prior to the date of hearing, a more definite statement of the matters charged or the reasons stated for denial of licensure shall be provided to the demanding or charged party or his or her counsel.

(i) Hearings shall be conducted as follows:

(1) Each party to a hearing shall be entitled to be represented by an attorney-at-law, duly qualified to practice law in the State of West Virginia.

(2) The Board may be represented by counsel from the West Virginia Attorney General's office.

(3) The rules of evidence as applied in civil cases in the circuit courts of this State shall be followed, but shall be liberally construed to achieve justice.

(4) The rules of privilege recognized by State law shall be followed.

(5) Objections to offers of evidence shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

(6) Any party to a hearing may present witnesses to testify; may be heard in person, by counsel, or both; may present such other evidence as deemed appropriate by the Board or its hearing examiner; and, may cross-examine witnesses.

(7) The hearing shall be held at a time and place designated by the Board, but no hearing shall be conducted unless and until at least thirty (30) days written notice is provided. Service shall be in accordance with the State Administrative Procedure Act.

(8) The hearing shall be open to the general public.

(9) Members of the Board and its officers, agents and employees shall be competent to testify at the hearing as to material and relevant matters.

(10) The hearing may be conducted by one or more Board members or by a hearing examiner appointed by the Board.

(11) A record of the hearing, including all pleadings, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Board's files. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

(12) In a hearing initiated by the Board as a result of charges against a licensee pursuant to subsections (b) and © of this section, the Board shall present its evidence and/or testimony first, and shall have the burden of proof.

(13) Where a hearing is held upon demand under provisions of subsections (a), (b), and (d) of this section, the demanding party shall present evidence first, and shall have the burden of proof.

(14) The Board may call witnesses to testify in support of its decision to deny licensure or in support of the charges instituted against a licensee; may present such other evidence to support its position; and, may cross-examine witnesses called by the demanding party or charged party.

(15) All parties shall have the right to present opening and closing arguments, the length of which may be set by the Board or hearing examiner, except that each party shall be given equal time for closing arguments.

(16) Hearings held as a result of charges instituted by the Board against a licensee may be continued to a later date or a different place by the Board or its designee by appropriate notice to all parties.

(17) Motions for continuance of a hearing may be granted upon a showing of good cause. Motions for continuance must be in writing and received in the office of the Board no later than seven (7) days prior to the hearing date. In determining whether good cause exists consideration will be given to the ability of the party requesting the continuance to proceed effectively without the requested continuance. A motion for continuance filed less than seven (7) days from the date of hearing shall be denied unless the reason for the motion could not by due diligence have been ascertained earlier. Motions for continuance filed prior to the date of hearing may be ruled on by the chair of the Board or the chair's designee, or an appointed hearing examiner. The Board member(s) or presiding hearing examiner shall rule on all other motions for continuance.

(18) All motions in a case set for hearing, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Board at least ten (10) days before the hearing. Prehearing motions shall be heard at a prehearing conference set by the Board or hearing examiner, or, at the hearing prior to commencement of testimony.

5.4 Transcription of Testimony and Evidence

(a) All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be recorded by stenographic notes or by mechanical means.

(b) All recorded materials shall be transcribed. The Board shall have the responsibility to make arrangements for the transcription of the recorded testimony and evidence.

(c) Upon motion of the Board or any party assigning error or omission in any part of a transcript, the Board or its appointed hearing examiner shall settle all differences arising as to whether the transcript truly discloses what occurred at the hearing, and shall direct that the transcript be corrected and/or revised as appropriate so as to make it conform to the hearing.

(d) A transcript of the hearing shall be provided to all members of the Board for review at least ten (ten) days before the Board's vote is taken on its decision in any licensure or licensure disciplinary matter.

5.5 Submission of Proposed Findings of Fact and Conclusions of Law.

(a) Any party may submit proposed findings of fact and conclusions of law at a time and in a manner designated by the Board or its appointed hearing examiner.

5.6 Hearing Examiner.

(a) The Board may appoint a hearing examiner who shall be empowered to subpoena witnesses and documents, administer oaths and affirmations, examine witnesses under oath, rule on evidentiary matters, hold conferences for the settlement or simplification of issues by consent of the parties, cause to be prepared a record of the hearing so that the Board is able to discharge its functions, and otherwise conduct hearings.

(b) The hearing examiner shall prepare recommended findings of fact and conclusions of law for submission to the Board. The Board may adopt, modify or reject the hearing examiner's findings of fact and conclusions of law.

5.7 Conferences: Informal Disposition of Cases.

(a) At any time prior to the beginning of the hearing or thereafter, the Board, its designee or its appointed hearing examiner may hold conferences with the "demanding" or "charged party" for the following purposes:

- (1) To dispose of procedural requests, prehearing motions or similar matters;
- (2) To narrow or settle issues by consent of the parties; or
- (3) To provide for the informal disposition of cases by stipulation or agreement.

(b) The Board or its appointed hearing examiner may cause such conferences to be held on its own motion or by the request of a party.

(c) The Board may also initiate or consider stipulation or agreement proposals with regard to the informal disposition of cases and may enter into stipulations and/or consent agreements without conference.

5.8 Depositions.

(a) Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this State.

5.9 Subpoena.

(a) Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by the Board, the Board's designee, or by the hearing examiner appointed by the Board. Subpoenas shall be issued pursuant to W. Va. Code §29A-5-1(b).

(b) Written requests by a party for the issuance of subpoenas or subpoenas duces tecum must be received by the Board no later than ten (10) days before a scheduled hearing. Any party requesting the issuance of subpoenas or subpoenas duces tecum is responsible for having them properly served in accordance with W. Va. Code §29A-5-1(b).

5.10 Orders.

(a) Any final order entered by the Board following a hearing conducted by these rules shall be entered within 45 days following the submission to the Board of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law, pursuant to W. Va. Code §§29A-5-3 and 30-1-8(d).

(b) The findings of fact and conclusions of law must be approved by a majority of the Board by vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the Board shall be served upon the demanding or charged party and/or his attorney of record, if any, within five (5) days after entry by the Board by personal service or by registered or certified mail.

5.11 Appeal.

(a) An appeal from any final order entered in accordance with these rules shall comply with W. Va. Code §30-1-9.

5.12 Severability.

(a) If any provision of this rule, or the application thereof, to any person or circumstance is determined to be invalid, the invalidity shall not affect the provisions or applications of this rule which can be given effect without the invalid provision or application, and to this end, the provisions of this rule are severable.

WEST VIRGINIA MASSAGE THERAPY LICENSURE BOARD

P. O. BOX 8038

SOUTH CHARLESTON, WV 25303

Linda Sodaro, Sec/Treas.
South Charleston

Sharon Steorts
Sutton

Wendy Higgins
Rock Cave

Dr. Ken D'Amato
Elkins

Anna Pekar, Chair
Barboursville

February 16, 1998

Secretary of State
State Capitol
Main Unit, Room 157K
1900 Kanawha Blvd. E.
Charleston, WV 25305
Attn: Judy Cooper

Dear Judy,

This is in response to the comments our Board has received in filing the Legislative Rules, Title 194, Series 1 recently endorsed by the Secretary of State's office.

There were a total of three letters we received and a fax sent to Mrs. Sodaro's husband's business.

The board feels that most of the comments received will be addressed in the changes proposed through House Bill 4035 this session. At this writing it has been passed by the House and is referenced to the Government Organization Committee in the Senate. A bill, on the Senate side, has at least seven Senate sponsors.

The changes proposed in this new bill relate to correcting or addressing the following comments received:

- 1) Plea for reduction to 250 hours of training to be recognized for licensure requirement. (Two letters and the fax)
- 2) Placing an "or" clause in the regular licensing requirements so that anyone who is Nationally Certified may be granted a license.
- 3) Removing reference to COMTA and AMTA (fax and a letter)

We were asked to clarify Rule 194-1-3, 3.3g to read:

"Before proceeding with the massage of a client, each massage therapist shall have explained expected draping techniques and shall provide the client a clean drape or drapes for the purpose of covering the body in accordance with generally-accepted standards of practice." (Underlined part is the proposed changed wording.)

We voted to endorse this change accordingly.

Other comments we received with our response are:

- 1) Objection to Rule 3.2 not being "spelled out" exactly as to the Nationally Certified requirements.

The board thoroughly discussed this during the writing of the rules and decided, with the advise of Barry Koerber, our attorney, to put as much information for contacting the National Certification Board in the rule as possible, but NOT to spell the requirement out because they may change and we voted that in order to keep compliant with their requirements we would not or could not spell them out.

2) Objection to fees being too high. (One letter and fax)

The board compared all other states in the nation and our rates are not unreasonable or too high compared to the numbers of therapist that will be practicing and the expenses needed to properly license the therapist.

3) Objection to paying board members \$100 per meeting (fax)

Our board adopted the same reasonable and customary amount that most all boards in the state follow for appointed board members.

4) Though the following comments were received via fax, not the normal requirements in receiving comments, the board wants to duly note the following for the record, with our responses :

- a) Suggests that therapist will pass license cost onto clients and thus will have an impact to overhead cost. (This is a personal choice of each therapist to do so.)
- b) 2.2© -point made that expenses not reflect any "lost business" due to Board member's attendance. (This would not be a Board expense, thus a moot point)
- c) Request for each board members' address and phone # upon receipt of application for license.
- d) Reciprocal license--if not from a licensed state, what are requirements. (They would not be filing for a "reciprocal license" . We will, however, create a rule to clarify applicants coming from unlicensed states.)
- e) Objection to a discretionary clause. (Fear or nepotism or discrimination)
- f) Provisional license requirements--objection to submission of appointment book for confidentiality reasons. (The board will not require this for documentation)
- g) Request for hearings to be held within 50 mile radius of the licensee's practice allowing for clients and general public directly affected by this person's practice to attend the hearing without undue strain. (We were informed by legal counsel that most hearings for boards do not take place in the vicinity of the where a licensee practices, but usually in Charleston. It would also cause a financial drain on the Board's expenses to have a hearing just "anywhere" in the state. The cost of such a proposal would affect all licensed therapist unduly.)

We will file changes for the rules concerning our decisions at the earliest possible time according to your directions.

Sincerely,



Anna Pekar, Chair
WV Massage Therapy Licensure Board

cc: Wendy Higgins, Sharon Steorts, Linda Sodaro, Dr. Ken D'Amato, Jack Thompson, Les Sweeney, Michael Vincent, Anne Martin