

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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FILED

JUL 22 9 27 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV Massage Therapy Licensure Board TITLE NUMBER: 194

CITE AUTHORITY 30-37-6

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING PROPOSED: Massage Therapy Licensure Rule

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Anna P. Hill

Authorized Signature

\$3.20

FILED

Title 194
Legislative Rules
Massage Therapy Licensure Board

JUL 22 9 27 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Series 1
GENERAL PROVISIONS

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. **Definitions; Massage Therapy Board fund; expenses; disposition of funds.**

- 2.1 "Resort spa" means a facility that has been operating on a continuing basis since the first day of January, one thousand nine hundred seventy five, which has a mineral spring located on its premises that persons utilize for bathing or other therapeutic use, and which provides therapeutic massage.
- 2.2 Employees of a resort spa who conduct therapeutic massages on the resort spa's premises are exempt from the licensing requirements of this rule.
- 2.3 All fees shall be made payable to the West Virginia Massage Therapy Licensure Board and deposited by the Board in their account established in the state treasurer's office.
- 2.3 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 reimbursements for all expenses incurred in conducting the business of the Board, and meeting the requirements for such travel as set down in the provisions of section eleven, article one, chapter thirty.

194-1-3 **Requirements for licensure.**

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

- (a) personal information, **and**
- (b) payment of fees required by Board **and one (1) of the following:**
 - (1) 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 hours of supervised academic training, **or**
 - (2) 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) photocopy of current certificate of the National Certification Board for Therapeutic Massage and Bodywork (NCTMB) exam.

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

- (a) personal information,
- (b) payment of fees required by the Board,
- (c) photocopy of current certificate of the National Certification Board for Therapeutic Massage and Bodywork, **and**
- (d) documentation of completion of twenty five (25) continuing education units (CEU'S) within the two year licensing period that adhere to the NCTMB guidelines.

3.3 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,
- (b) photocopy of their current or most recent license,

- (c) 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,
- (d) documentation of applicant's continuing education units (CEU'S) completed in the last two (2) years, **and**
- (e) applicants who are Nationally Certified, shall submit a photocopy of their current National Certification Board for Therapeutic Massage and Bodywork certificate.

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

3.5 Applicants who apply for a two year provisional license must complete the application form provided by the Board with the following information:

- (a) personal information,
- (b) verification of current practice by submitting signed and notarized affidavits from five (5) different clients *unrelated* to the applicant and who received massage therapy from the applicant in 1998,
- (c) official letter(s) proving completion of at least 250 hours of massage therapy training,
- (d) signed and notarized statement that applicant is working towards taking the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork within the next two (2) years, **or** a photocopy of their application to take an upcoming National Certification Exam, **and**
- (e) payment of fees required by the Board

3.6 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.

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

3.8 Applicants who apply for a license in WV and who are not licensed in any other state, the District of Columbia or a United States territory or any other country or province must meet the requirements as set forth in subsection one.

3.9 All licensed massage therapist and those applicants who apply for a license in WV are required to keep or have a record of continuing education units (CEU'S) including the title of the class, (workshop, etc.), the date, place, number of hours of instruction, instructor's name, sponsor, and the person to call to verify attendance (sponsoring group or instructor). A certain number of licensed massage therapists may be audited every two (2) years, and applicants may be asked to provide the information listed above.

- 3.10 All applicants are subject to an audit to verify credentials or other information requested by the Board, at its discretion.
- 3.11 Each licensed massage therapist shall publicly display their current valid license at their work site (or copy thereof).

194-1-4 Duties of board; authorization to propose rules and fees.

- 4.1 The Board shall grant a license to any applicant who meets all the requirements as set forth in these rules.
- a. The Board may suspend, revoke or impose probationary conditions on a licensee who fails to comply with the requirements of this rule.
 - b. 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.
- 4.2 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 revocation or suspension under the provisions of this rule.
- 4.3 The holder of a massage therapy license shall comply with the following requirements:
- 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. Restroom 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

drrape or drapes for the purpose of covering the body in accordance with generally-accepted standards of practice.

- 4.4 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.
- 4.5 Each applicant for licensure is responsible for paying the appropriate fees as obtained in this rule.
- 4.6 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. \$100 Two 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 renewal year. This fee is non refundable after issuance of license.
 - c. \$200 Two year license fee- a fee to be paid at the time of application for initial OR reciprocal license. This fee does not include the \$25 application fee. 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. \$100 Prorated license fee- a fee that is to be paid by the applicant when license is issued for a year or less for initial or reciprocal license. This fee is nonrefundable after issuance of license.

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

4.7 All licenses will expire on July 1st every two years.



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

July 14, 1998

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Anna Pekar
WV Massage Therapy Licensure Board
P.O. Box 8038
South Charleston, WV 25303

FROM: Legislative Rule-Making Review Committee

Proposed Rule: Massage Therapy Licensure, 194CSR1

FILED
JUL 15 10 13 AM '98
OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____

July 14, 1998

Page 2

If the first page of this form indicates that your agency has agreed to modify the proposed rule in accordance with a motion adopted by the Committee, your agency should consult with the Committee's counsel on the preparation of the modifications. By **Thursday, July 23, 1998**, your agency must file **1 copy** of your modified rule with the Secretary of State's office and **10 copies** with the LRMRC.

Please disregard this notice if you have already filed your final, modified rule. Committee rules state that a copy of this letter must be on file for each agency filing a rule.

Very truly yours,

A handwritten signature in cursive script that reads "Teri Anderson".

Teri Anderson
Administrative Assistant

LRMRC:tla

ANALYSIS OF PROPOSED LEGISLATIVE RULE

FILED

JUL 8 9 02 AM '98

Agency: WV Massage Therapy Licensure Board

Subject: Massage Therapy Licensure Board

CSR Cite: 194CSR1

Counsel: JAA

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

PERTINENT DATES

Filed for public comment: December 29, 1997
Public comment period ended: January 28, 1998
Filed following public comment period: May 7, 1998
Filed LRMRC: May 7, 1998
Filed as emergency: n/a

Fiscal Impact: \$14,105 the first year, \$25,450 the second year and \$26,500 per each subsequent year. The moneys to fund the Board and issuing licenses will come from semi-annual year license fee and other fees authorized by the rule.

ABSTRACT

Brief Summary

This new rule implements the provisions of WVC §30-37, passed by the Legislature in 1997 which establishes license requirements for massage therapists and creates the Massage Therapy Licensure Board.

Section Summary

Section 1 provides the scope of rule which is to establish

procedures for the Licensure Board and licensing requirements for massage therapists.

Section 2 provides that all fees received from licensees be deposited in a special Massage Therapy Licensure Board account administered by the State Treasurer. Board members are to be paid \$100.00 per each meeting attended and reimbursed expenses for Board activities.

Section 3 provides requirements for licensed massage therapists. Section 3.3 provides practice requirements for therapists. All rooms used for messages must be adequately lighted and clean and restroom facilities must be available. Therapists must maintain sanitary conditions and follow generally accepted standards of practices for massage therapists. Section 3.4 provides that the licensee must sign and agreement to uphold National Certification Board for Therapeutic Massage and Bodywork ethical standards. Section 3.6 establishes fees for licensees. These include: a \$25.00 application fee, \$200.00 for a first time semi annual license fee with a \$100.00 semi-annual license fee thereafter; \$225 provisional semi-annual license fee; and \$10 change of address, lost license and name changing fees. Section 3.8 provides that licenses expire on July 1st every two years.

Section 4 establishes qualifications needed to be licensed as a massage therapist. All applicants must complete an application for license. The applicant must show that he or she has graduated from an accredited massage therapy school and completed 500 hours of supervised training, or completed all requirements of the American Massage Therapy Association prior to December 1, 1994. All applicants must provide the necessary documentation to verify license requirements. Section 4.3 allows the board discretion in allowing reciprocity with other state massage therapists licensees. Section 4.5 allows a two year provisional license for persons currently practicing as massage therapists but who have not completed all education or training requirements. The provisional licensee must show that he or she is working towards completion of training and education requirements within the two year provisional license period. Licensees are also required to keep records of continuing education credits earned.

Section 5 provides the guidelines for hearings for revocation, suspension or nonrenewal of licensees. The WV Administrative

Procedures Act provides that hearing procedures are defined as "procedural rules" and are not "legislative rules." The section should be deleted from this rule and refiled as a procedural rule with the Secretary of State.

AUTHORITY

Statutory authority: W.Va. Code, §30-37-6.

(a) The board shall be responsible for licensure and continuing education requirements, standards of practice and professional ethics, disciplinary actions, and other issues of concern.

(b) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as are necessary to implement the provisions of this article.

(c) The board shall adopt reasonable rules regarding personal cleanliness of massage therapists and the sanitary conditions of towels, linens, creams, lotions and other materials, facilities, and equipment used in the practice of massage therapy.

(d) All fees for licensure, renewal of licensure, and all other related matters shall be set by the board.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has several modifications to suggest.

6 rule-making review committee and refiled in the state
7 register on the second day of October, one thousand nine
8 hundred ninety-eight, relating to the contractor licensing
9 board (West Virginia contractor licensing act, 28 CSR 2),
10 is authorized.

§64-9-7. Board of dietitians.

1 The legislative rule filed in the state register on the
2 twenty-ninth day of July, one thousand nine hundred
3 ninety-eight, under the authority of section four, article
4 thirty-five, chapter thirty, of this code, modified by the
5 board of dietitians to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the second day of October, one thousand nine
8 hundred ninety-eight, relating to the board of dietitians
9 (code of professional ethics; continuing education; and
10 examination, licensure and renewal requirements, 31 CSR
11 1), is authorized.

§64-9-8. Massage therapy licensure board.

1 The legislative rule filed in the state register on the
2 seventh day of May, one thousand nine hundred ninety-
3 eight, under the authority of section six, article thirty-
4 seven, chapter thirty, of this code, modified by the massage
5 therapy licensure board to meet the objections of the
6 legislative rule-making review committee and refiled in
7 the state register on the twenty-second day of July, one
8 thousand nine hundred ninety-eight, relating to the
9 massage therapy licensure board (massage therapy
10 licensure, 194 CSR 1), is authorized, with the following
11 amendment:

12 'On page two, subdivision 3.2(b), after the word "Board,"
13 by inserting the word "and",

14 And,

15 By striking out subdivision 3.2(c) in its entirety and
16 relettering the remaining subdivision.'

§64-9-9. Board of medicine.

1 The legislative rule filed in the state register on the
2 fifteenth day of April, one thousand nine hundred ninety-