

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

Form #3

Do Not Mark In This Box

2011 JUL 29 11:10:20

OFFICE OF THE  
SECRETARY OF STATE

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

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

CITE AUTHORITY: 30-37-6

AMENDMENT TO AN EXISTING RULE: YES  NO

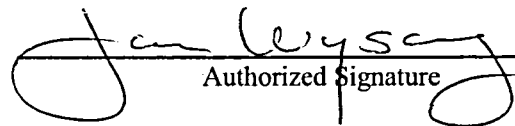
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: SCHEDULE OF FEES

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.

  
Authorized Signature

## **SUMMARY OF THE RULE**

### **TITLE 194**

#### **SERIES 4 SCHEDULE OF FEES**

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. THE BOARD DOES NOT RECEIVE ANY GENERAL REVENUE FUNDS AND IS REQUIRED TO BE SELF-SUFFICIENT.

IF THE REGULATORY BOARD COULD NOT FULLY OPERATE, PROTECTION OF THE PUBLIC WOULD BE GREATLY JEOPARDIZED AND CONSUMERS AND CLIENTS WOULD NOT HAVE AN AVENUE TO REPORT ANY UNLICENSED PRACTICE OR IMPROPER MISCONDUCT. BUSINESSES THAT PROVIDE THESE SERVICES WOULD NOT BE ABLE TO OPERATE LAWFULLY WITHOUT THE BOARD. THROUGHOUT THE HISTORY OF THE BOARD, THERE HAS NOT BEEN ANY LEGAL PROCEEDINGS THAT HAVE BEEN AS LENGTHY AND EXHAUSTED THE AMOUNT OF FUNDS THAT HAS OCCURRED THIS YEAR.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: SCHEDULE OF FEES

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.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	150,578.00	127,006.00	127,006.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>	0.00	180,000.00	130,000.00

Rule Title: \_\_\_\_\_

Rule Title:

SCHEDULE OF FEES

**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 year. It also depends on the total number of new license applications submitted for each fiscal year and those who may currently be 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 licensure 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 recommended by legislative auditors to carryover from one fiscal year to another.

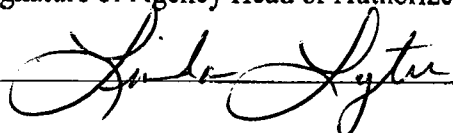
**MEMORANDUM**

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: July 27, 2011

Signature of Agency Head or Authorized Representative



**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: July 27, 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 4 Schedule of Fees

1. Authorizing statute(s) citation ~~§30-36-7~~ 30-37-6

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   X   No comments received

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

July 29, 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)

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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

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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?

July 29, 2011

d. Attach findings and determinations and reasons:

Attached Comments and Agency Response Letter

**TITLE 194  
LEGISLATIVE RULES  
MASSAGE THERAPY LICENSURE BOARD**

**SERIES 4  
SCHEDULE OF FEES**

**§194-4-1. General.**

1.1. Scope. -- This rule establishes the schedule of fees for the Massage Therapy Licensure Board.

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

1.3. Filing Date. --

1.4. Effective Date. --

**§194-4-2. Licensure and Administrative Fees.**

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

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

2.3. Application fee -- Fifty dollars (\$50.00) -- a non-refundable fee to be paid by all applicants for a massage therapy license including those seeking to re-apply for a license.

2.4. Two (2) year license fee -- Three hundred dollars (\$300.00) -- a fee to be paid at the time of application for initial or reciprocal license. This fee does not include the fifty dollars (\$50.00) application fee. This fee is non-refundable after issuance of a license.

2.5. Two (2) year licensure renewal fee -- Two hundred dollars (\$200.00) -- a fee to be paid prior to the issuance of the license. This fee must be received by the end of the month before the license expires. This fee is non-refundable after issuance of license.

2.6. Late fee -- Fifty dollars (\$50.00) -- a non-refundable fee to be paid when a licensee

fails to submit application and fees on or before the date the license expires. This is in addition to the other required fees.

2.7 Duplicate or replacement license fee -- Twenty-five dollars (\$25.00) -- a non-refundable fee to be paid when a licensee requests a replacement or duplicate license or a license request due to a name change.

2.8. Certified statement fee -- Thirty dollars (\$30.00) -- a fee to be paid at the time of request the Board verify that a licensee is licensed in West Virginia.

2.9. Failure to report change of address fee in writing fee -- Twenty-five dollars (\$25.00) -- 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.

2.10. Re-application fee -- Three hundred fifty dollars (\$350.00) -- a fee to be paid when re-applying for licensure after the license lapsed sixty days after the expiration date of the license.

2.11. Failure to report name change in writing fee -- Twenty dollars (\$25.00) -- 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.

2.12. Roster fee -- One hundred dollars (\$100.00) -- a fee that is to be paid by at the time of the request for a copy of the roster of current licensees.

2.13. Photocopy per page fee -- a fifty cent (\$.50) per page photocopying fee shall be paid at the time information is requested.

**Linda Lyter**

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**From:** Peter Juergensen [peterjuergensen@yahoo.com]

**Sent:** Monday, June 27, 2011 6:52 AM

**To:** linda\_lyter@frontier.com

**Subject:** fee increase

good morning-

*we recieved your notice about a fee increase. if its needed to help our profession all of us here at muscular skeletal therapies are for it. if you guys need any help from this end of the state just let us no.*

thanks for your work

pete juergensen

304-671-1484

6/30/2011

June 29, 2011

Mary Beth Korf

609 Ohio Ave.

Fairmont, WV. 26554

RE: Notice of Proposed Board Rule

I have read and re-read the proposed fee increases for massage licensure sent June 15, 2011. It appears to me that an increase of fees to \$350 for an initial application fee and a two year license is high and will only encourage more "new" massage therapists to work under the radar without a license. These MTs, in most cases, will just have finished school and paying tuition or moved from another state, without a client base yet established thus making the proposed fees an added overhead expense in an economy that is already challenging.

I didn't read any mention of prorating the fees. Does this mean that everyone will get a full 2 year of licensure for their fee? There is no provision for those who for whatever reason do not want a 2 year license.

I understand one of the board's responsibilities is to protect the public's interest in receiving good quality massage therapy but what about the people you're licensing? I personally have emailed the board 4 times and followed up with a phone call each time. I had specific questions on either scope of practice, reflexology, mentoring and reporting unlicensed massage therapists. I have never received a response from the board to any of my questions. Similarly a client emailed and called several times, in March 2011, for information and it took over 10 business days before she ever got a response. Is this serving the public? What does the board do for LMTs paying the fees that have questions? For \$200 for a 2 year license I think a timely respond is not asking too much. Nor do I think 4 emails in 12 years of practicing here in West Virginia are excessive. If the fees are going to increase, I understand that for renewal of my license my fees are not scheduled to be increased at this time, I believe service should be better for those of us paying.

Thank you for the opportunity to voice my opinion on this matter.

Sincerely,

*Mary Beth Korf*

Mary Beth Korf, LMT.

License # 1990-0220



Re: Notice of Proposed Board Rule – Massage Therapy Fee Raises

30 June 2011

To Whom It May Concern:

I am writing to dispute the fee schedule increase within the public comment period. As a member of the public that regularly uses massage therapy, I am afraid that the steep increase in fees (nearly 3x higher) will threaten many out of the profession, especially the extremely capable part-time or on-call individuals.

As a massage therapist myself, nationally certified through NCBTMB and licensed in WV & MD, certified in VA, I have many fees and costs I have to incur in this profession – for example, membership in a trade association (AMTA, approx \$260 year), insurances, three state license fees, continuing education (well exceeding \$1,000 per year for myself), table, linens, massage products such as lotions, self care (massages for myself, physical therapy for my hands), and so on.

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As you can see, a steep raise like this is extremely detrimental. I spent over \$6,000 on my schooling and am still in the process of making that back. I work on-call at two places averaging currently less than 10 massages per month. It would be extremely difficult for me to incur any higher cost, even if only paying it every two years.

Please understand, the renewal fee of \$300 (2-year license – section 2.4) EXCEEDS that of Maryland – a RMP in MD pays about \$249, while a LMT pays about \$279 just for the 2-year period. WV does not have as strict standards as MD (in the sense that an LMT in MD must have 60-hours of college/university credit), and it seems odd that we should be paying more than MD. VA renewal fee is presently less than WV.

I certainly can understand the need for a raise, and am OK with that if it is providing something to my profession – however, I ask you to please consider a smaller increase or a step-plan over the next 3-5 years to get up to what is proposed. This will ensure everyone's success and be more attractive to other professions wanting to enter the state.

Please let me know if there is anything I can do to further help.

Sincerely,



Lucas Pierce, LMT/NCTMB, CPT/PFT, BS/BA, MS/MA Candidate  
240-405-9290 mobile  
[fitlucas@gmail.com](mailto:fitlucas@gmail.com)  
PO Box 1457  
Harpers Ferry, WV 25425



RECEIVED

JUL 06 2011


7/8/11

WV Massage Therapy Licensure Board,

I can understand license fee going up, even if this is a big jump! I don't understand the \$50 re-application fee. I think it is uncalled for. The economy is still in a fragile state. It is hard enough to keep my massage practice going without this fee added. A small business is very hard to keep running right now. Less clients & more business expense. We have CEU'S, AMTA, License fees state, city, etc.. I can't afford to pass this expense on to my clients. I think this needs to be reconsidered. Please do what you can to resolve this issue.

Thank you,  
Pam Rockwell LMT

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**RECEIVED**  
JUL 11 2011

WVMTLB,

RECEIVED  
JUL 12 2011

This is irresponsible on your part. We are not asking or expecting you to run after every report that comes into your office. No one could do that. Discernment. The ones you do go after, take away their license and fine them a large fee - increase your support that way. More than our double our fees and the really good responsible therapists will hurt the most - and pay the most - for these people who need to pay the high fees, in fines though. Please do not do this. The state will lose many of the therapists you want to keep - and the ones who are not assets will increase to fill the gap. Increase your money with large fines, but not by more than doubling our fees.

A not responsible therapist,

We shall see if the word remains committed to Bluefield

July 8, 2011

WV Massage Therapy Licensure Board  
179 Summers Street, Suite 711  
Charleston, WV 25301

RE: Proposed Board Rule – Increase of Fees

Dear Board Members:

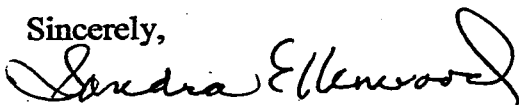
Please accept this as submission for Public Comment Period regarding Increase of Fees. Cost for operation of business has taken a significant increase not only for the Board but also for massage therapist's businesses. The percent of this proposed increase appears excessive. I am expressing my concern of this method of increase.

I am certain the increase is probably needed; however I would suggest moving to this proposed increase in incremental increases over the next two renewal periods.

I would also suggest an addition of reduced rates for Massage Therapists that have reduced client base. Some Massage Therapists choose to continue providing services but have reduced their client base. I would therefore suggest a lesser fee for renewal based on a client base of less than a set number, such as 50.

Thank you for consideration of these additions to the proposed fee increase.

Sincerely,



Sandra Ellenwood, LMT



RECEIVED

JUL 14 2011

**Linda Lyter**

---

**From:** etturnbull@juno.com  
**Sent:** Monday, July 18, 2011 4:32 PM  
**To:** Linda\_Lyter@frontier.com  
**Cc:** etturnbull@juno.com  
**Subject:** Increase of license fees

Greetings to the Board,

Ladies and Gentlemen of the Board, I am writing to you concerning the recent proposal of an increase to our licensing fees. In this day and time of very tight budgets, escalating fees, and the cost of living on the rise it is hard to hear of the need to sustain yet another rise in my cost of doing business.

I feel very strongly however, that at times, this is what is required of those of us who wish to see massage therapy continue to grow in its professionalism. If, we as a group, want to see our Board stand behind us and help to see that there is indeed some sort of regulation we should be prepared to help fund the Board's increasing costs.

To that end I will support the need to increase our licensing fees and have faith that this will allow the Board to function in a manner that will continue to raise our professional standing.

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Respectfully,

Pamela Dick LMT

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 **RECEIVED**  
JUL 18 2011

JULY 15, 2011

 RECEIVED  
JUL 18 2011

TO: WV MASSAGE THERAPY LICENSURE BOARD

RE: (30) day public comment Period for the boards' fee increase

Dear Massage Licensure Board,

My response to your fee increase comment period is "NO". I feel this is not fair to us Massge Therapist to make up for the mistakes of this board for not budgeting the budget correctly. Furthermore, other neighboring states rates are much less. VA is 70.00, Ohio is 50.00, Pennsylvania is 75.00. If you have around [\$150,000] coming in now just on Renewals, and that's not counting on the new therapist added on through out the year. That should be more than plenty to do whatever needs to be done. If other neighboring states can do it with much lower fee's, why can't we. I say NO.

Sincerely,

*Dana Perkins, LMT*



RECEIVED  
JUL 18 2011

JULY 15, 2010

TO: WV MASSAGE THERAPY LICENSURE BOARD

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Sincerely,



RECEIVED

JUL 18 2011

JULY 15, 2010

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RE: (30) day public comment Period for the boards' fee increase

Dear Massage Licensure Board,

---

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Sincerely,

*Donna D. Oster*

**AMTA WEST VIRGINIA CHAPTER**

451 Augusta Drive  
Huntington, WV 25704-9007  
304 634-1110  
derendoe1@aol.com

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Pat Friend, LMT, (Acting) Secretary  
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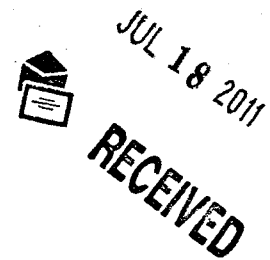
Debbie Tignor, LMT, 3rd Vice President/Membership  
Linda Sodaro, LMT, Government Relations  
Charleston  
South Charleston

June 26, 2011

Re: Proposed West Virginia Licensure Board Emergency Rule

To the Members of the West Virginia Massage Therapy Board  
(WVMTLB),

The West Virginia Chapter of the American Massage Therapy



Association has 204 members, and its Board wishes to respond to the plans to increase the licensing fee schedule. We understand that the WVMTLB is empowered by statute to set reasonable fees; however, we find increases ranging from 50% to 200% to be excessive. Such enormous increases in the current economic climate will cause hardship for people already struggling to make ends meet. For instance, a new massage school graduate in private practice would face \$350 for application and licensing, \$195 to \$225 for the MBLEX or NCBTMB exam, \$30 WV state business registration and possibly a city business license fee before they even open their door. The 60% increase in renewal fees will likely result in fewer renewals, forcing some therapists to stop working altogether, while others may simply continue to work without a license. Since the Board's functional objective is to govern the practice of massage therapy to protect the public, how will an increase in unlicensed practice be addressed?

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Many who do renew will ultimately raise their session fees to cover the cost and may lose clients because of it, resulting in decreased tax revenue. As of March, 2011, the average annualized initial licensing fee nationwide was \$85.95, while average annualized renewal was \$63.62. It is onerous for West Virginia's fees to be so far above national averages. The state's nurses pay \$35 per year for licenses, while counselors pay \$85 for two years and professionals in both of these jobs have much higher average incomes than massage therapists.

Our understanding of state law is that the Board has the authority to fine persons practicing without a license from \$500 to \$1,000 and we are curious to know if fines have ever been collected, as this would generate revenue. The economy has forced many individuals, families businesses and governments to institute austerity measures and we believe the Board should do the same, perhaps holding fewer face to face meetings, instead using teleconferencing and also restricting travel.

The board members of WV-AMTA value the efforts of the WVMTLB to protect the public and recognize that unusual situations led to these increases, but are steadfast in the belief that it is unfair for therapists

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who operate ethically to bear this burden.

Sincerely,

*Derenda Weekley*

Derenda Weekley  
President, AMTA-WV Chapter

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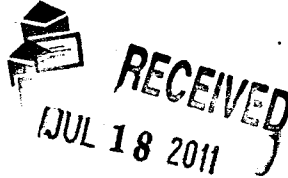
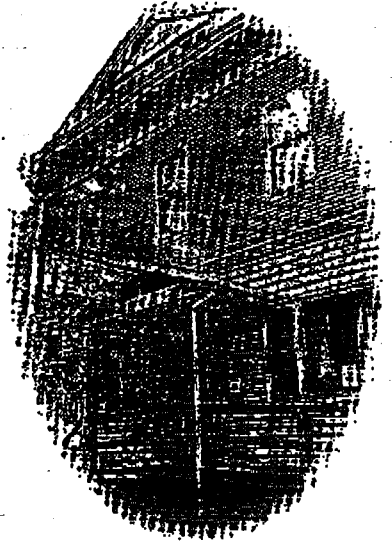
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# ATASIA SPA

*Upon entering  
the journey to serenity  
begins...*

41 Congress Street  
Berkeley Springs, WV 25411



15 July 2011

WV Massage Therapy Licensure Board  
179 Summers Street, Suite 711  
Charleston, WV 25301

Re: Proposed Fee Hike for Massage Therapy License

Dear WV Massage Licensing Board:

Atasia Spa, L.L.C. opposes the fee hike for Massage Therapists. In this current economic situation, it is definitely not the time to increase the fee, in some cases more than doubling the fee from the existing rates.

Business is down across the board, Massage Therapists are already feeling the brunt of hard economic times, and there are no signs of an economic recovery. The proposed fee hike will adversely affect current Massage Therapists including many who are surviving from paycheck to paycheck. The fee for new Massage Therapists will discourage people from entering the profession – a profession key to this small town.

Berkeley Springs is a destination spa town dependent on tourism. Atasia is a significant employer with 20 employees (18 West Virginia residents). 8 of those employees are Massage Therapists including myself. During the economic downturn of the last few years, we have avoided layoffs by making strategic staffing decisions including hiring of part-time, seasonal, and weekend employment.

Here are some of the reasons for our opposition to the fee increases:

- 1: In these economic times, we simply can't raise rates for our massages in order to give raises to employees to offset not only the proposed increased cost of Massage Licenses, but expensive CEUs, Liability Insurance and professional memberships like AMTA.

Toll Free: 1-877-258-7888 • Telephone: 1-304-258-7888 • Web: [www.atasiaspa.com](http://www.atasiaspa.com)

2. At Atasia, we hire some part-time Massage Therapists to fill in for the summer and fall seasons. These employees work other jobs to feed their families. We also have a retired Massage Therapist who came back to work because of the need to make a few extra dollars to pay ever mounting bills. The fee increase from \$125.00 to \$200.00, or up to \$350.00 to reapply for a license, will definitely dissuade such part-time employment which supports the local and state economy.
3. Here in the Eastern Panhandle, we also hire some Massage Therapists from neighboring states of Maryland, Pennsylvania, and Virginia because local Massage Therapists are not always available and the only massage school in the state is in Charleston, approximately five hours away. The proposed \$350.00 fee for new applicants is truly – and unnecessarily – unattractive. It will definitely deter Massage Therapists who live less than 30 miles away in nearby states from working in West Virginia. And it will make it more difficult for WV spas to find new employees. That, in turn, will hurt the massage industry in this part of our state.

The reason you provided for the fee increases is significant expenses incurred to investigate and to resolve complaints. The West Virginia Board of Barbers and Cosmetologists whose license fee is \$35.00, conducts regular inspections and investigations – apparently successfully. Given the similar nature of our services, fees more than five times for renewals and up to ten times the amount for reapplications for barbers and cosmetologists seem particularly excessive – especially in light of the importance of Spas to the economy in Berkeley Springs and the fact that people are already suffering from the economic downturn.

This fee hike is not reasonable, particularly at this time in our nation's economic history. It is grossly unfair to the small Spas in the state when two large corporations continue to enjoy an exemption so that their employees are not required to be licensed to provide massages.

Thank you for your kind consideration.

Sincerely,



Frankie Tan, (LMT)  
President

cc: Delegate Daryl Cowles, Morgan County  
Economic Development Authority, Morgan County  
SBDC  
Travel Berkeley Springs

**WEST VIRGINIA MASSAGE THERAPY LICENSURE BOARD**

179 SUMMERS STREET, SUITE 711

CHARLESTON, WV 25301

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**Joan Wysong, LMT, Chairperson**  
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**John Skelton, LMT**  
Shady Spring

**Roland Meffert, D.C.**  
Nitro

**Marsha Starr, Secretary**  
Hamlin

**Amy Parsons-White, LMT**  
St. Albans

**Linda Lyter**  
Executive Director

July 23, 2011

First, the WV Massage Therapy Licensure Board (“hereinafter Board”) would like to thank those of you who chose to take this opportunity and submit your written comments to the Board during the thirty (30) day comment period relating to the proposed legislative rules in regards to the fee structure.

As a state regulatory professional licensing board, the state law requires all professional licensing boards to be self-sufficient. Professional licensing boards do not receive any form of funding from the State of WV general revenue fund. By law, the total revenue generated is from all fees collected through licensure activities.

In regards to the collection of fines as a revenue source; it is a mandatory requirement of state law that all fines must be transferred to the state general revenue fund. The board cannot retain any of these fines as a revenue funding source.

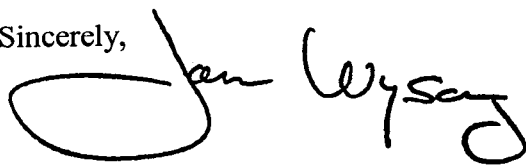
The Board has no control over what other professional licensing fees are in this state or in any other state. In the State of West Virginia, all licensure boards are required to be self-sufficient and set fees accordingly, based on the number of licensees.

The Board does not have any control over the other related costs that students or licensees incur in regards to education requirements, business operations, professional memberships, taxes and insurance, etc., as well as the number of clients a licensee has or the fee a licensee charges for their services.

The Board is committed to maintaining the lowest possible fee structure, as it has since it was established over thirteen years ago. The Board has followed recommendations of the Legislative Auditor by entering into an agreement with the WV Board of Acupuncture to share office and administrative costs to assist both boards. These are the only two boards that have chosen to participate in this type of cooperative relationship.

As a regulated professional, licensed massage therapists are finally recognized in the health care industry, while the nature of some of the complaints are more complex. It is the Board's official duty and legal responsibility to review all complaints submitted and investigate as needed. Legal fees along with any other related costs in the investigation and disposition of these types of complaints have significantly increased. Throughout the history of the board, there has not been any complaints and legal proceedings that have exhausted the amount of funds that have occurred this past year. As a licensing regulatory board, the Board represents professionalism and ethical conduct which is a legal requirement of a massage therapist who practices in the State of West Virginia and will continue to do so. The Board recognizes the concern during this current economy, but the board has the official duty to set the fee structure in order to function. Thank you again for your comments!

Sincerely,

A handwritten signature in black ink that reads "Joan Wysong". The signature is written in a cursive style with a large, looped initial "J" and a stylized "Wysong".

Joan Wysong  
Board Chairperson

FILED

TITLE 194  
LEGISLATIVE RULES  
MASSAGE THERAPY LICENSURE BOARD

2011 JUL 29 AM 10:26

SERIES 1  
GENERAL PROVISIONS

OFFICE OF THE CLERK  
SENATE OF WEST VIRGINIA  
STATE OF WEST VIRGINIA

**§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.~~