



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: Massage Therapy Licensure Board TITLE-SERIES: 194-06
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 194-06 Consideration of Prior Criminal Convictions in Initial Licensure Determinations

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §30-1-24 and §30-37-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

Passage of HB 118 during special session

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 8/19/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 9/19/2019

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING:

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Posted on website.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

To consider prior criminal penalty convictions in initial license determinations.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Passage of HB 118 during special session.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes
 Linda Lyter -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

194CSR6

TITLE 194

LEGISLATIVE RULE
MESSAGE THERAPY LICENSURE BOARD

SERIES 6

**CONSIDERATION OF PRIOR CRIMINAL CONVICTIONS
IN INITIAL LICENSURE DETERMINATIONS**

§194-6-1. General.

1.1. Scope. -- This rule establishes procedures for consideration of prior criminal convictions in initial licensure determinations.

1.2. Authority. -- W. Va. Code §30-1-24, and W. Va. Code §30-37-6.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

§194-6-2. Definitions.

2.1. "Board" means the Massage Therapy Licensure Board established pursuant to W. Va. Code §30-37-1 et seq.

2.2. "Initial license" means obtaining a license in West Virginia for the practice of massage therapy for the first time.

2.3. "License" or "licensure" means the official authorization by the board to engage in the practice of massage therapy.

2.4. "Unreversed", as that term refers to a criminal conviction, means that a conviction has not been set aside, vacated, pardoned, or expunged.

§194-6-3. Rational nexus to the practice of massage therapy.

3.1. The board may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the practice of massage therapy. In determining whether a criminal conviction bears a rational nexus to a massage therapist, the board shall consider at a minimum:

3.1.a. The nature and seriousness of the crime for which the individual was convicted;

3.1.b. The passage of time since the commission of the crime;

3.1.c. The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of a licensed massage therapist; and

3.1.d. Any evidence of rehabilitation or treatment undertaken by the individual.

§194-6-4. Application after denial.

4.1. Notwithstanding any other provision of the W. Va. Code to the contrary, if an applicant has been denied licensure because of a prior criminal conviction, the board shall permit the applicant to apply for initial licensure if:

4.1.a. A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

4.1.b. The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

4.1.c. The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the board on a case by case basis.

§194-6-5. Petition for licensure eligibility determination.

5.1. An individual with a criminal record who has not previously applied for licensure may petition the board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license.

5.2. The petition shall be submitted on an application form prescribed by the board and shall include sufficient details about the individual's criminal record to enable the board to identify the jurisdiction where the conviction occurred, the date of the conviction, the date of the release from incarceration if applicable, and the specific nature of the conviction. Where the records are sealed, the applicant shall sign a waiver authorizing the board to access the criminal records of the applicant in order for the board to make the eligibility determination.

5.3. The applicant may submit with the petition for licensure eligibility evidence of rehabilitation, letters of reference, and any other information the applicant deems relevant to show fitness and the ability to practice massage therapy.

5.4. The board shall provide the determination within 60 days of receiving the petition from the applicant.