



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

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

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

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) HB 4252

Section 64-9-13 Passed On 3/6/2020 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 30, 2020

This rule shall terminate and have no further force or effect from the following date:

April 30, 2030

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.

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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. -- April 16, 2020

1.4. Effective Date. -- April 30, 2020

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of April 30, 2030.

§194-6-2. Definitions.

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

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 the practice of massage therapy, the board shall consider at a minimum:

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

3.1.2. The passage of time since the commission of the crime;

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3.1.3. 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

3.1.4. Any evidence of rehabilitation or treatment undertaken by the individual.

§194-6-4. Application after denial.

4.1. Notwithstanding any other provision of the West Virginia 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:

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

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

4.1.3. 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 and the specific nature of the conviction.

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.