

Clearinghouse Rule 19-101

STATE OF WISCONSIN
MESSAGE THERAPY AND BODYWORK THERAPY AFFILIATED CREDENTIALING
BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MASSAGE THERAPY AND BODYWORK
MESSAGE THERAPY AND BODYWORK : THERAPY AFFILIATED CREDENTIALING
THERAPY AFFILIATED : BOARD ADOPTING RULES
CREDENTIALING BOARD : (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board to repeal MTBT 5.03 (2) (intro.); to renumber and amend MTBT 5.03 (1) and (2) (a) to (c); and to amend MTBT 5.02 (2), (6), (11), (14), (15) (intro.) and (c), (20), (24), (25), (26) (intro.), (a), and (b), (28), and (29), 5.03 (3) and (Note), and 5.04, relating to unprofessional conduct.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 440.03 (4m), Stats.

Statutory authority:

Sections 15.085 (5) (b) and 460.10 (1) (a), Stats.

Explanation of agency authority:

Section 15.085 (5) (b), Stats., provides an affiliated credentialing board, such as the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains . . .”

Section 460.10 (1) (a), Stats., provides the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board may promulgate rules establishing “[r]equirements and procedures for a license holder to complete continuing education programs or courses of study to qualify for renewal of his or her license.”

Related statute or rule:

Chapter MTBT 7 provides continuing education requirements for renewal of a license as a massage therapist or bodywork therapist. As provided under s. MTBT 5.02 (24), failing to complete these requirements is considered unprofessional conduct.

Plain language analysis:

Section MTBT 5.04 is revised to comply with s. 440.03 (4m), Stats., as created by 2017 Wisconsin Act 59. Under this provision, the Board may require a credential holder to submit proof of completing continuing education programs or courses only if a complaint is made against the credential holder. Other provisions throughout ch. MTBT 5 have been revised to

ensure consistency with current standards for drafting style and format and applicable Wisconsin statutes.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois:

Illinois' continuing education requirements include provisions for retention and production of evidence of compliance [68 Ill. Admin. Code 1284.90 d) 2)]. The Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation may require additional evidence demonstrating compliance with the continuing education requirements. It is the responsibility of each applicant for renewal to retain or otherwise produce evidence of such compliance. Such additional evidence is required in the context of the Division's random audit.

Iowa:

Iowa's continuing education requirements include provisions for retention and production of evidence of compliance (645 IAC 4.11). The Iowa Board of Massage Therapy may select licensees for audit following license renewal. Upon audit, a licensee is required to provide an individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor. All licensees must retain documentation of compliance with the continuing education requirements for two years following license renewal.

Michigan:

Michigan's continuing education requirements include provisions for certification of compliance and retention of evidence of compliance [Mich Admin Code, R 338.731 (3)]. Submission of an application for renewal constitutes an applicant's certification of compliance with the continuing education requirements, and all licensees are required to retain documentation of meeting the requirements for a period of 4 years from the date of applying for license renewal.

Minnesota:

The Minnesota Department of Health's Office of Unlicensed Complementary and Alternative Health Care Practice (OCAP) investigates complaints and takes enforcement actions against massage therapists for violations of prohibited conduct. However, neither OCAP nor any other statewide agency or board oversees the licensing of massage therapists. Licensing requirements, if any, for massage therapists are established by the county or city in which the massage therapist practices.

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the provisions of ch. MTBT 5 to ensure consistency with current standards for drafting style and format and applicable Wisconsin statutes. No additional factual data or analytical methodologies were used to develop the proposed rules.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 9:00 a.m. on September 3, 2019, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. MTBT 5.02 (2), (6), (11), (14), (15) (intro.) and (c), (20), (24), (25), (26) (intro.), (a), and (b), (28), and (29) are amended to read:

MTBT 5.02 (2) Being convicted of ~~any of the following: ss.~~ an offense under s. 940.22, 940.225, 944.15, 944.17, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.02 5, 948.08, 948.085, 948.09, 948.095, ~~and or~~ 948.10, Stats.

(6) Knowingly, negligently, or recklessly making any written or oral statement, ~~written or oral, in the course of while~~ practicing massage therapy, ~~which that~~ is likely to deceive, defraud, mislead, or create an unacceptable risk of harm to a client, the public, or both.

(11) Practicing as a massage therapist or bodywork therapist when physical or mental abilities are impaired by the use of controlled substances or other drugs, chemicals, or alcohol, or by other causes.

(14) ~~Divulging any information that a client gives in confidence to the licensee or any other information that the licensee obtains about a client in the course of practicing massage therapy or bodywork therapy that a reasonable person in the client's position would want kept confidential unless the information is otherwise required by law to be disclosed or the client specifically authorizes the disclosure of the information~~ is required under s. 460.11 (2), Stats., to be kept confidential.

(15) (intro.) Engaging in sexually explicit conduct, sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a client, a client's immediate family member, or a person responsible for the client's welfare. For the purposes of this subsection, all of the following shall apply:

(c) ~~If a~~ A client who is a minor, ~~he or she~~ shall continue to be considered a client for 2 years after the termination of services or for 2 years after the client reaches the age of majority, whichever is longer.

(20) Failing to provide clean clothing, linens, ~~and~~ or equipment.

(24) Failing to complete the continuing education requirements ~~within the time period established by~~ under s. MTBT 7.02 (3).

(25) Having an adverse action against a credential pertaining to the practice of massage therapy or bodywork therapy by any agency of this or another state, or by an agency or authority within the federal government. This subsection applies whether the adverse action is accompanied by findings of negligence or unprofessional conduct or results in a temporary or permanent limitation, restriction, suspension, or revocation, ~~and whether or not the adverse action is accompanied by findings of negligence or unprofessional conduct.~~

(26) (intro.) ~~Conviction of any federal or state law or rule, including criminal law,~~ Subject to ss. 111.321, 111.322, and 111.335, Stats., being convicted of an offense the circumstances of which is substantially related ~~relate~~ to the practice of massage therapy or bodywork therapy. For the purposes of this subsection, all of the following shall apply:

(a) Except as otherwise provided by law, a certified copy of a ~~relevant~~ decision is conclusive evidence of the finding of facts and conclusions of law by a state or federal court or agency charged with making legal determinations relevant to ~~this paragraph is conclusive evidence of its findings of facts and conclusions of law~~ a conviction.

(b) ~~Under this paragraph, the~~ The board has the burden of ~~proving~~ proof that ~~the act a conviction~~ is substantially related to the practice of massage therapy or bodywork therapy.

(28) Failing to display ~~his or her~~ the license under ch. 460, Stats., in his or her the licensee's place of business or practice as required under s. 460.07 (1), Stats. ~~so that it can easily be seen and read by the public.~~ In the case of a mobile practice, a licensee ~~is required to~~ shall be able to present ~~his or her~~ the license for public display.

(29) Failing to maintain liability insurance coverage ~~in an amount not less than~~ of at least \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year, ~~pursuant to~~ as required under s. 460.05 (1) (g), Stats.

SECTION 2. MTBT 5.03 (1) is renumbered MTBT 5.03 (1) (intro.) and amended to read:

MTBT 5.03 (1) (intro.) A ~~license holder~~ licensee shall submit a report to the board if ~~he or she the licensee~~ has reasonable cause to believe ~~that~~ another ~~license holder~~ licensee has committed a crime relating to prostitution under ss. 944.30 to 944.34, Stats., or has had sexual contact or sexual intercourse with a client. ~~If the report relates to sexual contact or sexual intercourse with a client, the report may not identify the client unless the client has provided~~

~~written consent for disclosure of this information.~~ For purposes of this subsection, a licensee shall be considered to have reasonable cause upon occurrence of any of the following:

SECTION 3. MTBT 5.03 (2) (intro.) is repealed.

SECTION 4. MTBT 5.03 (2) (a) to (c) are renumbered MTBT 5.03 (1) (a) to (c) and amended to read:

MTBT 5.03 (1) (a) ~~Being~~ The licensee is informed by a person that, he or she has while a client of another licensee, that person engaged in an act with another licensee holder prohibited by ss. 944.30 to 944.34, Stats., with that licensee.

(b) ~~Being~~ The licensee is informed by a person that he or she, while a client of another licensee holder licensee, that person engaged in nonmarital sexual contact or sexual intercourse with the other licensee holder that licensee.

(c) ~~Being~~ The licensee is informed by another licensee holder licensee that he or she has they engaged in nonmarital sexual contact, or sexual intercourse, with a client, or has done an act prohibited by ss. 944.30 to 944.34, Stats., with a client.

SECTION 5. MTBT 5.03 (3) and (Note) are amended to read:

MTBT 5.03 (3) The report shall be made on a complaint form provided by the board. If the report relates to sexual contact or sexual intercourse with a client, the report may not identify the client unless the client has provided written consent for disclosure of this information. The board may use the report as the basis for an investigation under s. 460.14 (1), Stats.

(Note) Complaint forms are available from the Department department of Safety safety and Professional Services, Division of Legal Services and Compliance, 1400 East Washington Avenue, P.O. Box 7190, Madison, Wisconsin 53707, professional services at (608) 266-2112 or from the department's website at: <http://dsps.wi.gov>.

SECTION 6. MTBT 5.04 is amended to read:

MTBT 5.04 Audits. ~~The~~ Any licensee who is under investigation by the board may conduct a random audit of any licensee on a biennial basis for alleged misconduct shall be audited by the board for compliance with the continuing education requirements set forth in under s. MTBT 7.02.

SECTION 7. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
