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**TELECONFERENCE/VIRTUAL MEETING  
MASSAGE THERAPY AND BODYWORK THERAPY  
AFFILIATED CREDENTIALING BOARD  
Room 121A, 1400 East Washington Avenue, Madison  
Contact: Tom Ryan (608) 266-2112  
June 2, 2015**

*The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions of the Board.*

**AGENDA**

**9:00 A.M.**

**OPEN SESSION – CALL TO ORDER – ROLL CALL**

- A) Adoption of Agenda**
- B) Welcome New Members**
- C) Approval of Minutes of February 10, 2015 (4-8)**
- D) Administrative Updates**
  - 1) Appointments/Reappointments/Confirmations
    - a. Mark Richardson – Appointment **(9)**
  - 2) Department and Staff Updates
  - 3) Wis. Stat. s 15.085 (3)(b) – Biannual Meeting with the Medical Examining Board
  - 4) Informational Items
- E) Legislative/Administrative Rule Matters**
  - 1) Current and Future Rule Making and Legislative Initiatives
  - 2) Administrative Rules Report
  - 3) CR 14-041 Update Relating to Unprofessional Conduct **(10-20)**
- F) Federation of State Massage Therapy Boards 2014 Annual Meeting Report**
  - 1) Darlene Campo to Report on FSMTB Examination Development Meeting **(21)**
- G) Supreme Court Decision - FTC v. NC Dentistry Board (22-23)**
- H) Statutory Qualifications for Public Members of MTBWT Board- Discussion (24)**
- I) Educations and Examinations Matters**
  - 1) **Continuing Education Audit- Discussion (25)**
    - a. **APPEARANCE – AARON KNAUTZ , Office of Education and Examinations**
- J) Informational Items**

- K) Items Added After Preparation of Agenda:
- 1) Introductions, Announcements and Recognition
  - 2) Administrative Updates
  - 3) Education and Examination Matters
  - 4) Credentialing Matters
  - 5) Practice Matters
  - 6) Legislation/Administrative Rule Matters
  - 7) Liaison Report(s)
  - 8) Informational Item(s)
  - 9) Disciplinary Matters
  - 10) Presentations of Petition(s) for Summary Suspension
  - 11) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
  - 12) Presentation of Proposed Decisions
  - 13) Presentation of Interim Order(s)
  - 14) Petitions for Re-Hearing
  - 15) Petitions for Assessments
  - 16) Petitions to Vacate Order(s)
  - 17) Petitions for Designation of Hearing Examiner
  - 18) Requests for Disciplinary Proceeding Presentations
  - 19) Motions
  - 20) Petitions
  - 21) Appearances from Requests Received or Renewed
  - 22) Speaking Engagement(s), Travel, or Public Relation Request(s), and Reports

K) Public Comments

**CONVENE TO CLOSED SESSION to deliberate on cases following hearing (§ 19.85 (1) (a), Stats.); to consider licensure or certification of individuals (§ 19.85 (1) (b), Stats.); to consider closing disciplinary investigations with administrative warnings (§ 19.85 (1) (b), Stats. and § 440.205, Stats.); to consider individual histories or disciplinary data (§ 19.85 (1) (f), Stats.); and to confer with legal counsel (§ 19.85 (1) (g), Stats.).**

**L) Deliberation on Proposed Stipulations, Final Decisions and Orders**

- 1) 12 MAB 008 (M.A.S.) **(26-30)**
- 2) 14 MAB 002 (G.L.) **(31-36)**
- 3) 14 MAB 007 (L.C.) **(37-42)**
- 4) 14 MAB 009 (J.L.G.) **(43-50)**

**M) Case Closing(s)**

- 1) 14 MAB 010 (T.C.) **(51-55)**

**N) Case Status Report (56)**

**O) Deliberation of Items Added After Preparation of the Agenda**

- 1) Education and Examination Matters
- 2) Credentialing Matters
- 3) Disciplinary Matters
- 4) Monitoring Matters
- 5) Professional Assistance Procedure (PAP) Matters
- 6) Petition(s) for Summary Suspensions
- 7) Proposed Stipulations, Final Decisions and Orders
- 8) Administrative Warnings
- 9) Proposed Decisions

- 10) Matters Relating to Costs
- 11) Complaints
- 12) Case Closings
- 13) Case Status Report
- 14) Petition(s) for Extension of Time
- 15) Proposed Interim Orders
- 16) Petitions for Assessments and Evaluations
- 17) Petitions to Vacate Orders
- 18) Remedial Education Cases
- 19) Motions
- 20) Petitions for Re-Hearing
- 21) Appearances from Requests Received or Renewed

P) Consulting with Legal Counsel

**RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION**

Q) Open Session Items Noticed Above not Completed in the Initial Open Session

R) Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

S) Delegation of Ratification of Examination Results and Ratification of Licenses and Certificates

**ADJOURNMENT**

**MASSAGE THERAPY AND BODYWORK THERAPY  
AFFILIATED CREDENTIALING BOARD  
WEB/VIRTUAL MEETING MINUTES  
February 10, 2015**

**PRESENT:** John Anderson, Darlene Campo (*in person*), Elizabeth Krizenesky (*in person*); Barbara Yetter (*in person*)

**STAFF:** Tom Ryan, Executive Director; Taylor Thompson, Bureau Assistant; and other Department Staff

**CALL TO ORDER**

Elizabeth Krizenesky, Chair, called the meeting to order at 9:00 A.M. A quorum of four (4) members was confirmed.

**ADOPTION OF AGENDA**

**MOTION:** Barbara Yetter moved, seconded by John Anderson, to adopt the agenda as published. Motion carried unanimously.

**APPROVAL OF MINUTES**

**Corrections:**

- Correct adjournment motion to read “Barbara Yetter”.

**MOTION:** Barbara Yetter moved, seconded by John Anderson, to approve the minutes of October 24, 2014 as corrected. Motion carried unanimously.

**ELECTION OF OFFICERS**

**BOARD CHAIR**

**NOMINATION:** Barbara Yetter nominated Elizabeth Krizenesky for the Office of Board Chair.

Tom Ryan called for other nominations three (3) times.

Elizabeth Krizenesky was elected as Chair by unanimous consent.

**VICE CHAIR**

**NOMINATION:** Barbara Yetter nominated Darlene Campo for the Office of Vice Chair.

Tom Ryan called for other nominations three (3) times.

Darlene Campo was elected as Vice Chair by unanimous consent.

## SECRETARY

**NOMINATION:** Elizabeth Krizenesky nominated Barbara Yetter for the Office of Secretary.

Tom Ryan called for other nominations three (3) times.

Barbara Yetter was elected as Secretary by unanimous consent.

<b>2015 ELECTION OF OFFICERS</b>	
<b>Board Chair</b>	<b>Elizabeth Krizenesky</b>
<b>Vice Chair</b>	<b>Darlene Campo</b>
<b>Secretary</b>	<b>Barbara Yetter</b>

## APPOINTMENT OF LIAISONS

<b>2015 LIAISON APPOINTMENTS</b>	
<b>Credentialing Liaison</b>	<b>John Anderson</b> <i>Alternate: Darlene Campo</i>
<b>DLSC Liaison</b>	<b>John Anderson</b> <i>Alternate: Barbara Yetter</i>
<b>Monitoring Liaison</b>	<b>Barbara Yetter</b> <i>Alternate: Darlene Campo</i>
<b>Education and Exams Liaison</b>	<b>Darlene Campo</b> <i>Alternate: John Anderson</i>
<b>Legislative Liaison</b>	<b>Barbara Yetter</b> <i>Alternate: Elizabeth Krizenesky</i>
<b>Travel Liaison</b>	<b>Elizabeth Krizenesky</b> <i>Alternate: John Anderson</i>
<b>Website Liaison</b>	<b>Elizabeth Krizenesky</b> <i>Alternate: Darlene Campo</i>
<b>Rules Liaison</b>	<b>Elizabeth Krizenesky</b> <i>Alternate: Darlene Campo</i>
<b>Professional Assistance Procedure Liaison</b>	<b>Barbara Yetter</b> <i>Alternate: Darlene Campo</i>
<b>Screening Panel</b>	<b>John Anderson, Darlene Campo, Barbara Yetter</b>

**MOTION:** Barbara Yetter moved, seconded by Darlene Campo, to affirm the Chair's appointment of liaisons for 2015. Motion carried unanimously.

## DELEGATED AUTHORITY MOTIONS

**MOTION:** Darlene Campo moved, seconded by Barbara Yetter, that, in order to facilitate the completion of assignments between meetings, the Board delegates its authority by order of succession to the Chair, highest ranking officer, or longest serving member of the Board, to appoint liaisons to the Department to act in urgent matters, to fill vacant appointment positions, and to act where knowledge or experience in the profession is required to carry out the duties of the Board in accordance with the law. Motion carried unanimously.

**MOTION:** Barbara Yetter moved, seconded by Darlene Campo, that the Board delegates authority to the Chair, highest ranking officer, or longest serving member of the Board, to sign documents on behalf of the Board. In order to carry out duties of the Board, the Chair has the ability to delegate this signature authority to the Board's Executive Director for purposes of facilitating the completion of assignments during or between meetings. Motion carried unanimously.

**MOTION:** Barbara Yetter moved, seconded by John Anderson, that Board Counsel or another Department attorney is formally authorized to serve as the Board's designee for purposes of Wis. Admin. Code § SPS 1.08(1). Motion carried unanimously.

*The Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor document was amended by removing the second part of number 7, "This addition was initiated and approved by the Medical Examining Board in October 2014. The Liaison may choose to defer a particular request to the full Board/Section for review if needed".*

**MOTION:** Darlene Campo moved, seconded by Barbara Yetter, to adopt the 'Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor' document as amended. Motion carried unanimously.

## LEGISLATIVE/ADMINISTRATIVE RULE MATTERS

**MOTION:** Barbara Yetter moved, seconded by Darlene Campo, to authorize the Chair to adopt CR 14.04 once Committee Review is completed. Motion carried unanimously.

## FEDERATION OF STATE MASSAGE THERAPY BOARDS MATTERS

### FSMTB EXAMINATION DEVELOPMENT MEETING – MARCH 27-29, 2015 – CHICAGO, IL

**MOTION:** Barbara Yetter moved, seconded by Elizabeth Krizenesky, to designate Darlene Campo to attend the FSMTB Examination Development Meeting on March 27-29, 2015, in Chicago, Illinois, and to authorize travel. Motion carried unanimously.

**FSMTB 2015 ANNUAL MEETING – OCTOBER 8-10, 2015 – ALBUQUERQUE, NM**

**MOTION:** Elizabeth Krizenesky moved, seconded by Barbara Yetter, to designate John Anderson, or Darlene Campo as the alternate, to attend the FSMTB 2015 Annual Meeting on October 8-10, 2015, in Albuquerque, New Mexico, and to authorize travel. Motion carried unanimously.

**CLOSED SESSION**

**MOTION:** Darlene Campo moved, seconded by Barbara Yetter, to convene to Closed Session to deliberate on cases following hearing (§ 19.85(1) (a), Stats.); to consider licensure or certification of individuals (§ 19.85 (1) (b), Stats.); to consider closing disciplinary investigations with administrative warnings (§ 19.85 (1) (b), Stats. and § 440.205, Stats.); to consider individual histories or disciplinary data (§ 19.85 (1) (f), Stats.); and to confer with legal counsel (§ 19.85 (1) (g), Stats.). The Chair read the language of the motion aloud for the record. The vote of each member was ascertained by voice vote. Roll Call Vote: John Anderson - yes; Darlene Campo - yes; Elizabeth Krizenesky - yes; Barbara Yetter - yes. Motion carried unanimously.

The Board convened into Closed Session at 9:45 A.M.

**RECONVENE TO OPEN SESSION**

**MOTION:** Barbara Yetter moved, seconded by John Anderson, to reconvene in Open Session at 9:52 A.M. Motion carried unanimously.

**VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION,  
IF VOTING IS APPROPRIATE**

**MOTION:** Barbara Yetter moved, seconded by Darlene Campo, to affirm all Motions made and Votes taken in Closed Session. Motion carried unanimously.

**PRESENTATION AND DELIBERATION ON PROPOSED STIPULATIONS,  
FINAL DECISIONS AND ORDERS BY THE  
DIVISION OF LEGAL SERVICES AND COMPLIANCE**

**14 MAB 006  
CHUN CHEN**

**MOTION:** Barbara Yetter moved, seconded by Darlene Campo, to adopt the Findings of Fact, Conclusions of Law, Stipulation, and Order, in the matter of 14 MAB 006 – Chun Chen. Motion carried unanimously.

**CASE CLOSINGS**

**13 MAB 014**

**MOTION:** Barbara Yetter moved, seconded by Darlene Campo, to close DLSC case number 13 MAB 014, against A.F.C., for prosecutorial discretion (P7). Motion carried unanimously.

## **RATIFICATION OF LICENSES AND CERTIFICATES**

**MOTION:** John Anderson moved, seconded by Elizabeth Krizenesky, to delegate ratification of examination results to DSPS staff and to delegate and ratify all licenses and certificates as issued. Motion carried unanimously.

## **ADJOURNMENT**

**MOTION:** Barbara Yetter moved, seconded by Darlene Campo, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 9:53 A.M.

DRAFT



**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. Box 7863  
MADISON, WI 53707

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**GOVERNOR'S APPOINTMENT**

**NAME:** Mr. Mark Richardson

**MAILING ADDRESS:** [REDACTED]

**E-MAIL ADDRESS:** [REDACTED]

**RESIDES IN:** Cross Plains, WI

**TELEPHONE:** [REDACTED]

**OCCUPATION:** Massage Therapist  
Heartland Hospice of Madison

**APPOINTED TO:** Massage Therapy and Bodywork Therapy  
Affiliated Credentialing Board  
Massage/Bodywork Therapist 2

**TERM:** A term to expire July 1, 2018

**SUCCEEDS:** Ms. Cindy C. Spitz

**SENATE CONFIRMATION:** Required

**DATE OF APPOINTMENT:** April 22, 2015

**DATE OF NOMINATION:** April 22, 2015

**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:  Katie Paff Administrative Rules Coordinator		2) Date When Request Submitted:  5/14/2015  Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting									
3) Name of Board, Committee, Council, Sections:  Massage Therapy and Bodywork Therapy Affiliated Credentialing Board											
4) Meeting Date:  May 2, 2015	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page?  Update on MTBT 5, 6 (CR 14-041) relating to unprofessional conduct									
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled?  <input type="checkbox"/> Yes ( <a href="#">Fill out Board Appearance Request</a> ) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:  N/A									
10) Describe the issue and action that should be addressed:  CR14-041 was signed for adoption on May 7, 2015 and filed with the Legislative Reference Bureau on May 13, 2015. The anticipated effective date of the rule is July 1, 2015.											
11) <span style="float: right;">Authorization</span>  <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; border-top: 1px solid black; border-bottom: 1px solid black;"><b>Katie Paff</b></td> <td style="width: 30%; border-top: 1px solid black; border-bottom: 1px solid black; text-align: right;"><b>5/14/20215</b></td> </tr> <tr> <td style="border-bottom: 1px solid black;">Signature of person making this request</td> <td style="border-bottom: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Supervisor (if required)</td> <td style="border-bottom: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td colspan="2" style="border-bottom: 1px solid black;">Executive Director signature (indicates approval to add post agenda deadline item to agenda)    Date</td> </tr> </table>				<b>Katie Paff</b>	<b>5/14/20215</b>	Signature of person making this request	Date	Supervisor (if required)	Date	Executive Director signature (indicates approval to add post agenda deadline item to agenda)    Date	
<b>Katie Paff</b>	<b>5/14/20215</b>										
Signature of person making this request	Date										
Supervisor (if required)	Date										
Executive Director signature (indicates approval to add post agenda deadline item to agenda)    Date											
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.											

**CERTIFICATE**

**STATE OF WISCONSIN**

**DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

*I, Tom Ryan, Executive Director, Division of Policy Development in the Wisconsin Department of Safety and Professional Services and custodian of the official records of the Massage Therapy and Bodywork Therapy Examining Board, do hereby certify that the annexed rules were duly approved and adopted by the Massage Therapy and Bodywork Therapy Examining Board on the 8 day of May, 2015.*

*I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.*

*IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the board at 1400 East Washington Avenue, Madison, Wisconsin this 8 day of May, 2015.*



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**Tom Ryan, Executive Director  
Division of Policy Development  
Department of Safety & Professional Services**

STATE OF WISCONSIN  
MESSAGE THERAPY AND BODYWORK THERAPY  
AFFILIATED CREDENTIALING BOARD

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IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	MESSAGE THERAPY AND
MESSAGE THERAPY AND	:	BODYWORK THERAPY
BODYWORK THERAPY AFFILIATED	:	AFFILIATED CREDENTIALING
CREDENTIALING BOARD	:	BOARD
	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 14-041)

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ORDER

An order of the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, to renumber MTBT 5.02; to amend MTBT 6.02 (2) (am); to repeal and recreate MTBT 5.01 and to create MTBT 5.02 and 5.04 relating to unprofessional conduct.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:**

Sections 460.04 (2) (a), 460.14 (2) (a) to (j), Stats.

**Statutory authority:**

Sections 15.085 (5) (b), 227.11 (2) (a), and 460.04 (2) (a), Stats.

**Explanation of agency authority:**

Pursuant to ss. 15.085 (5) (b), and 227.11 (2) (a), Stats., the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board (Board) is generally empowered by the legislature to promulgate rules that will provide guidance within the profession and rules that interpret the statutes it enforces or administers. Section 460.04 (2) (a), Stats., specifically empowers the Board to draft rules regarding the professional conduct of licensees practicing massage therapy or bodywork therapy. This proposed rule seeks to carry out this mandate by revising the rules related to unprofessional conduct.

**Related statute or rule:**

None.

**Plain language analysis:**

The passage of 2009 Wisconsin Act 355 transformed the Massage Therapy and Bodywork Council into the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board (Board). The Act granted the newly formed Board rule-making authority. Pursuant to that authority, the Board reviewed its unprofessional conduct rules and decided the rules were outdated and needed updating. The modernization of the rules will not result in a significant policy change but rather a further clarification of the ethical goals of the profession.

SECTION 1. creates a section identifying the authority to promulgate the proposed rules.

SECTION 2. renumbers MTBT 5.02.

SECTION 3. modernizes the definition of unprofessional conduct for massage therapist and bodywork therapists.

SECTION 4. creates a provision regarding auditing continuing education requirements.

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

None.

**Comparison with rules in adjacent states:**

**Illinois:** The grounds for unprofessional conduct for Illinois licensed massage therapists and bodywork therapists are governed by statute, ILL. COMP. STAT. 225/57. The rules are similar to current Wisconsin unprofessional conduct rules in that they are comprehensive ranging from prohibitions against false advertising to inability to practice with reasonable judgment and skill.

**Iowa:** The Iowa Administrative Code sets forth the grounds for discipline of massage therapists in 645 IAC 134.2. The rules are similar to Wisconsin in that they cover a variety of topics; however the Iowa rules focus primarily on fraudulent behavior such as fraud in procuring a license, untruthful or improbable statements in advertising, and acceptance of any fee by fraud.

**Michigan:** Prohibited conduct of massage therapists as set forth in Michigan Administrative Code R 338.723, is limited to eight prohibitions. The prohibitions focus primarily on exceeding the boundaries of a professional relationship with clients such as taking on a professional role when a personal, scientific, legal, financial, or other relationship impairs the exercise of professional discretion or being involved in a dual relationship with a current or former client.

**Minnesota:** In Minnesota massage therapy and bodywork therapy are identified as complementary and alternative health care practices, Minn. Stat. §146A.01. Those who conduct alternative health care practices are regulated by statute, Minn. Stat. §146A.08. The statute identifies prohibited conduct covering a variety of topics including:

prohibition against sexual contact with clients, adjudication as mentally incompetent and fraudulent billing practices.

**Summary of factual data and analytical methodologies:**

The Board reviewed its current unprofessional conduct rules and decided that the rules needed to be updated to conform to current practice within the profession. No other factual data or analytical methodologies were used. The Board ensures the accuracy, integrity, objectivity and consistency of data were used in preparing the proposed rule and related analysis.

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

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 [Tom.Engels@wisconsin.gov](mailto:Tom.Engels@wisconsin.gov), or by calling (608) - 266-8608.

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis are 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 [Tom.Engels@wisconsin.gov](mailto:Tom.Engels@wisconsin.gov), or by calling (608) 266-8608.

**Agency contact person:**

Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone (608) 261-4438; email at [Shancethea.L Leatherwood@wisconsin.gov](mailto:Shancethea.L Leatherwood@wisconsin.gov).

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TEXT OF RULE  
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SECTION 1. MTBT 5.01 is repealed and recreated to read:

**MTBT 5.01 Authority.** The definitions of this chapter are adopted by the board pursuant to the authority delegated by ss. 15.085 (5) (b) and 460.04 (2) (a), Stats., to establish the standards of ethical conduct for massage therapists and bodywork therapists.

SECTION 2. MTBT 5.02 is renumbered MTBT 5.03.

SECTION 3. MTBT 5.02 is created to read:

**MTBT 5.02 Unprofessional conduct.** “Unprofessional conduct” includes the following, or aiding, abetting, or conspiring the same:

- (1) Violating s. 460.14 (2) (a) to (j), Stats., or any provision of a board order.
- (2) Being convicted of any of the following: ss. 940.22, 940.225, 944.15, 944.17, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.085, 948.09, 948.095, and 948.10, Stats.
- (3) Engaging in fraud, misrepresentation or deceit in applying for or procuring a license to practice massage therapy or bodywork therapy, in connection with applying for or procuring periodic renewal of a license, or in otherwise maintaining a license.
- (4) Engaging in any act of fraud, deceit, or misrepresentation, including acts of omission to the board or any person acting on the board’s behalf, including department of safety and professional services personnel.
- (5) Employing illegal or unethical business practices, including either of the following:
  - (a) Fraud, deceit, or misrepresentation in obtaining or attempting to obtain any fee or third-party reimbursement.
  - (b) Engaging in uninvited, in-person solicitation of actual or potential clients, who because of their particular circumstances are vulnerable to undue influence.
- (6) Knowingly, negligently, or recklessly making any statement, written or oral, in the course of practicing massage therapy, which is likely to deceive, defraud, mislead or create an unacceptable risk of harm to a client, the public, or both.
- (7) Engaging in false, misleading, or deceptive advertising.
- (8) Failing to maintain accurate and timely records necessary for the continuity of a client’s massage therapy or bodywork therapy treatment. Records are to be maintained for a period of at least 5 years.
- (9) Performing any act constituting the practice of massage therapy or bodywork therapy on any client without the client’s informed consent or after the client has withdrawn informed consent, whether verbally or in writing, or either of the following:
  - (a) Failure to document informed consent.
  - (b) Failure to inform the client that any act of massage therapy may or will be performed by unlicensed personnel.

(10) Any practice or conduct that falls below the standard of minimal competence within the profession that results in unacceptable risk of harm to the client, regardless of whether injury results.

(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.

(12) Practicing as a massage therapist or bodywork therapist with a mental or physical condition that impairs the ability of the licensee to practice within the standard of minimal competence or without exposing a client to an unacceptable risk of harm.

(13) Practicing beyond the scope of massage therapy or bodywork therapy.

(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.

(15) 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:

(a) Sexual nature of contact shall be determined from the totality of the circumstances and is presumed when the massage therapist or bodywork therapist has contact with a client's intimate parts without legitimate professional justification for doing so.

(b) An adult client shall continue to be considered a client for 6 months after the termination of professional services.

(c) If a client 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.

(16) Engaging in any sexual contact or conduct with or in the presence of a client or former client who lacks the ability to consent for any reason, including age, medication, or psychological or cognitive disability.

(17) Falsifying client records.

(18) Failing to provide access to client records when requested by the board or the board's representative.

(19) After a request by the board, failing to cooperate in a timely manner with the board's investigation of complaints filed against the licensee. There is a rebuttable presumption that a licensee who takes longer than 30 calendar days to respond to a request of the board has not acted in a timely manner under this subsection.

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

(21) Failing to provide draping and treatment that ensures the safety and privacy of a client.

(22) Permitting or assisting any person to perform acts constituting massage therapy or bodywork therapy without sufficient qualifications, necessary credentials, adequate informed consent, or adequate supervision. The licensed massage therapist or bodywork therapist is responsible for determining whether general, one-to-one, or on-premises supervision is necessary to protect the client from an unacceptable risk of harm. The licensed massage therapist or bodywork therapist retains responsibility for delegated or supervised acts unless the board determines that the delegate knowingly and willfully violated the supervisor's direction or instruction.

(23) Failing to inform a client about contraindications of massage therapy or bodywork therapy as it related to the information provided on the informed consent or intake form completed by the client.

(24) Failing to complete continuing education requirements within the time period established by 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 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) Conviction of any federal or state law or rule, including criminal law, which is substantially related to the practice of massage therapy or bodywork therapy. For the purposes of this subsection the following shall apply:

(a) Except as otherwise provided by law, a certified copy of a relevant decision 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.

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

(27) Failing to report to the board any incident in which the licensee has direct knowledge of reasonable cause to suspect that a massage therapist or bodywork therapist has committed any unprofessional, incompetent, or illegal act in violation of state or federal statute, administrative rule, or orders of the board. Reports shall be made within the time necessary to protect clients from further unacceptable risk of harm.

(28) Failing to display his or her license in his or her place of business or practice so that it can easily be seen and read by the public. In the case of a mobile practice, a licensee is required to be able to present his or her license for public display.

(29) Failing to maintain liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year, pursuant to s. 460.05 (1) (g), Stats.

SECTION 4. MTBT 5.04 is created to read:

**MTBT 5.04 Audits.** The board may conduct a random audit of any licensee on a biennial basis for compliance with continuing education requirements set forth in MTBT 7.02.

SECTION 5. MTBT 6.02 (2) (am) is amended to read:

**MTBT 6.02 (2) (am)** A person holding a temporary license shall meet face-to-face with the supervising massage therapist or bodywork therapist as necessary to ensure that the temporary licensee performs competently, including creation and maintenance of records as required in ~~s. MTBT 5.01 (8)~~ s. MTBT 5.02 (8).

SECTION 6. **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.

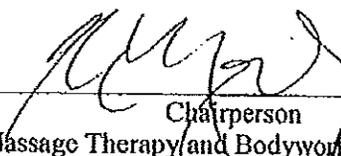
(END OF TEXT OF RULE)

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Dated

May 7, 2015

Agency

  
Chairperson  
Massage Therapy and Bodywork Therapy  
Affiliated Credentialing Board

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original    Updated    Corrected

2. Administrative Rule Chapter, Title and Number

MTBT 5

3. Subject

Unprofessional Conduct

4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect       Increase Existing Revenues       Increase Costs  
 Indeterminate       Decrease Existing Revenues       Could Absorb Within Agency's Budget  
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy       Specific Businesses/Sectors  
 Local Government Units       Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes       No

9. Policy Problem Addressed by the Rule

The Massage Therapy and Bodywork Therapy Board (Board) recently reviewed its unprofessional conduct rules and determined that the rules were outdated. The Board decided to modernize the rules by making the language consistent with current practice within the profession. The promulgation of the proposed rules will not result in a significant policy change but rather a further clarification of the ethical goals of the profession.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The rule was posted on the Department of Safety and Professional Service's website for 14 days in order to solicit comments from businesses, associations representing businesses, local governmental units and individuals that may be affected by the rule. No comments were received.

11. Identify the local governmental units that participated in the development of this EIA.

No local governmental units participated in the development of this EIA.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Updating the unprofessional conduct rules will provide greater guidance on ethical issues facing licensed massage therapists and bodywork therapists.

14. Long Range Implications of Implementing the Rule

Consistent application of the proposed rule will act as a deterrent to unethical conduct amongst licensed massage therapists and bodywork therapists.

15. Compare With Approaches Being Used by Federal Government

None.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

**Illinois:** The grounds for unprofessional conduct for Illinois licensed massage therapists and bodywork therapists are governed by statute, ILL. COMP. STAT. 225/57, and not rule as in Wisconsin. The rules are similar to current Wisconsin unprofessional conduct rules in that they are comprehensive ranging from prohibitions against false advertising to inability to practice with reasonable judgment and skill.

**Iowa:** The Iowa Administrative Code sets forth the grounds for discipline of massage therapists in 645 IAC 134.2. The rules are similar to Wisconsin in that they cover a variety of topics; however the Iowa rules focus primarily on fraudulent behavior such as fraud in procuring a license, untruthful or improbable statements in advertising, and acceptance of any fee by fraud.

**Michigan:** Prohibited conduct of massage therapists as set forth in Michigan Administrative Code R 338.723, is limited to eight prohibitions. The prohibitions focus primarily on exceeding the boundaries of a professional relationship with clients such as taking on a professional role when a personal, scientific, legal, financial, or other relationship impairs the exercise of professional discretion or being involved in a dual relationship with a current or former client.

**Minnesota:** In Minnesota massage therapy and bodywork therapy are identified as complementary and alternative health care practices, Minn. Stat. §146A.01. Those who conduct alternative health care practices are regulated by statute, Minn. Stat. §146A.08. The statute identifies prohibited conduct covering a variety of topics including: prohibition against sexual contact with clients, adjudication as mentally incompetent and fraudulent billing practices

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17. Contact Name  
Shawn Leatherwood

18. Contact Phone Number  
608-261-4438

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This document can be made available in alternate formats to individuals with disabilities upon request.

**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:  Kelly Williams via Tom Ryan		2) Date When Request Submitted:  05/21/2015  <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>									
3) Name of Board, Committee, Council, Sections:  Massage Therapy and Bodywork Therapy Affiliated Credentialing Board											
4) Meeting Date:  06/02/2015	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page?  <p style="text-align: center;"><b>Federation of State Massage Therapy Boards 2014 Annual Meeting Report</b></p>									
7) Place Item in: <input type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled?  <input type="checkbox"/> Yes ( <a href="#">Fill out Board Appearance Request</a> ) <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:									
10) Describe the issue and action that should be addressed:  <p style="text-align: center;">1) Darlene Campo to Report on FSMTB Examination Development Meeting</p>											
11) <span style="float: right;">Authorization</span>  <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; border-top: 1px solid black; border-bottom: 1px solid black;"><b>Kelly Williams</b></td> <td style="width: 30%; border-top: 1px solid black; border-bottom: 1px solid black; text-align: right;"><b>05/21/2015</b></td> </tr> <tr> <td style="border-bottom: 1px solid black;">Signature of person making this request</td> <td style="border-bottom: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Supervisor (if required)</td> <td style="border-bottom: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td colspan="2" style="border-bottom: 1px solid black;">Executive Director signature (indicates approval to add post agenda deadline item to agenda)    Date</td> </tr> </table>				<b>Kelly Williams</b>	<b>05/21/2015</b>	Signature of person making this request	Date	Supervisor (if required)	Date	Executive Director signature (indicates approval to add post agenda deadline item to agenda)    Date	
<b>Kelly Williams</b>	<b>05/21/2015</b>										
Signature of person making this request	Date										
Supervisor (if required)	Date										
Executive Director signature (indicates approval to add post agenda deadline item to agenda)    Date											
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.											

**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:  Taylor Thompson, Bureau Assistant on behalf of Tom Ryan, Executive Director		2) Date When Request Submitted:  3/30/15 Items will be considered late if submitted after 12:00 p.m. on the deadline date: ▪ 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections:  Massage Therapy and Bodywork Therapy Affiliated Credentialing Board			
4) Meeting Date:  6/2/15	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page?  Supreme Court Decision Involving NC Dentistry Board	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled?  <input type="checkbox"/> Yes ( <a href="#">Fill out Board Appearance Request</a> ) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:			
11) Authorization			
<b>Taylor Thompson</b>		<b>3/30/15</b>	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)    Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

1. The Department is aware that on February 25, 2015, the U.S. Supreme Court issued a decision in North Carolina State Board of Dental Examiners v. Federal Trade Commission.
2. The Department, while continuing to analyze this decision, has developed preliminary opinions and guidance to regulatory boards.
  - a. This decision should not affect regulatory boards who are acting within their regulatory authority. For example, when a regulatory board disciplines a credential holder for unprofessional conduct, such board action is within the acceptable parameters of the board's authority and should not trigger anti-trust issues.
  - b. The investigation and discipline of unlicensed practice should be left to the Department. This has been the Department's long-standing position and should not trigger anti-trust issues.
  - c. The Department is, and has been, aware of potential anti-trust issues concerning regulatory boards. As such, this decision is not a surprise.
  - d. The Department has consistently advised regulatory boards to act within their powers set out in the statutes. This advice remains the same following this decision.
  - e. The Department will continue to analyze the decision and to monitor discussions about the decision especially in areas with potential anti-trust implications such as unlicensed practice, scope of practice and advertising. The Department will update the boards on any important developments.

**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:  <b>Betsy Krizenesky</b>		2) Date When Request Submitted:  <b>5/19/2015</b>	
		Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> <li>▪ 10 work days before the meeting for Medical Board</li> <li>▪ 14 work days before the meeting for all others</li> </ul>	
3) Name of Board, Committee, Council, Sections:  <b>Massage Therapy and Bodywork Therapy Affiliated Credentialing Board</b>			
4) Meeting Date:  <b>6/2/2015</b>	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page?  <b>Statutory Qualifications for Public Members of MTBWT Board - Discussion</b>	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing?  No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:  Betsy would like to discuss current statutory language regarding public board member qualifications.			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)		Date	

**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:  <b>Betsy Krizenesky</b>		2) Date When Request Submitted:  <b>5/18/2015</b>	
		Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> <li>▪ 10 work days before the meeting for Medical Board</li> <li>▪ 14 work days before the meeting for all others</li> </ul>	
3) Name of Board, Committee, Council, Sections:  <b>Massage Therapy and Bodywork Therapy Affiliated Credentialing Board</b>			
4) Meeting Date:  <b>6/2/2015</b>	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page?  <b>Continuing Education Audit - Discussion</b>	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing?  Yes, by Aaron Knautz	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:  Betsy Krizenesky would like to discuss a possible CE audit.			
11) <b>Authorization</b>			
Signature of person making this request			Date
Supervisor (if required)			Date
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)			Date