

Nevada State Board of Massage Therapists
Attn: Public Comments
1755 E. Plumb Lane Suite 252
Reno, NV 89502

Nevada Proposed Rule Comment for February 2, 2011

Section 5, Education requirements

Page 1: Is the replacement language intended to be new approval requirements for schools? Will every school need to receive additional approval? Does the Board have statutory authority to approve or license schools?

Page 3: Twenty hours seems high for professional relationships, communication skills, and boundary issues especially considering 15 hours of professional ethics is also required. We would recommend 20 combined, or 10 and 10.

Page 3: When addressing the inclusion of a student clinic, internship, or externship/fieldwork component, the board is requiring that the work be directly supervised and evaluated by an instructional staff member. This is nearly impossible. Student clinics in massage programs are supervised by an instructor already; this would not be an issue. In the case of internship/externship, it would be cost prohibitive for a school to send an instructor out with every student to evaluate their work.

Page 5: Regarding library and resource materials: Most schools provide some level of resources for students, but this regulation seems to be a case of the board overextending its reach. There are public libraries in Nevada that can be used by students. What issue has the Board been presented with that this rule addresses? The Board doesn't mandate which chairs to use in the classroom; they need not micromanage the operations of every school.

Section 26, Professional conduct

Page 7: The language in item (e) implies that a board member may request what could be confidential client documentation. This language should be strengthened to state that a complaint or hearing be required before a licensee need surrender any information.

Managing Massage Therapists

The board has stated on several occasions that it has no authority over establishments. Upon reviewing the existing statutes, we agree.

- "Massage establishment" is not defined in Chapter 640C NRS, known as the Massage Therapy Practice Act.

- The term is defined in the current NAC's (rules and regulations) simply as "*Massage establishment*" means any premises, mobile unit, building or part of a building where massage therapy is practiced.
- The legislative declaration is clear and specifies that the practice of massage therapy is to be regulated. It does not state that the location or premises where massage therapy is provided is to be regulated.
- Under the law, the duties of the board do not include adopting regulations for massage establishments.

In the August 13, 2010 minutes, Mr. Ling compares the *authority* of the Board of Massage Therapists authority to the Board of Pharmacy's authority. Yet, Chapter 639 clearly defines pharmacies and clearly gives the board authority to regulate the practice of pharmacy, pharmacies, and dispensing of drugs. There is no such provision in Chapter 640C, the law regulating the practice of massage therapy.

Pharmacies and massage therapy are not comparable. Pharmacies are a retail business, and as such, employ managers who oversee employees. Most massage therapists are independent contractors or sole proprietors, many of whom office share with other independent contractors who may, or may not be massage therapists. It's uncommon for there to be an office manager or employees.

Throughout the country, the only states that inspect businesses are those that have statutory authority to regulate massage establishments. Nevada is the only state that inspects businesses without having the authority to regulate massage establishments.

We would like an official legal opinion on these points:

1. *Does the Board of Massage Therapists have the authority to inspect massage businesses?*
2. *If so, specifically what section of the law authorizes the Board of Massage Therapists to inspect massage business without having the authority to license the establishments?*
3. *The board is now considering expanding its authority over establishments to include staff. Specifically which section of the law authorizes the Board of Massage Therapists to adopt regulations for massage businesses?*

Page 9: *Responsible for the acts of all massage therapists at the massage establishment.*

Insisting that massage therapists who are independent contractors who happen to share an office, or a "managing therapist", be responsible for the acts of all massage therapists at the massage establishment is flawed. Unlike dispensing medication at a pharmacy, massage is performed behind a closed door. There is absolutely no way for a person outside of that door to know for certain what is happening on the other side. In society, only parents or legal guardians are legally responsible for another person's behavior; why would any professional take on that responsibility?.

This language could also put the managing therapist in danger of being named in a lawsuit if a therapist "they are responsible for," is named in a professional liability claim or lawsuit. There is absolutely no reason for a managing therapist to accept responsibility for another practitioner's behavior. Every person is responsible for their own behavior.

Page 10: *Closing businesses*

Closing down a massage establishment simply because it is without a managing therapist for 10 days is an incredible assault on small business. It is ABMP's opinion that the position of managing therapist is unnecessary and ill-conceived. Putting massage therapists out of business for no reason other than there is no "managing therapist" is not why this board was created.

"The mission of the Nevada State Board of Massage Therapy is to, through licensing and regulating the practice of massage, protect the public health, safety and welfare by ensuring that only qualified competent Massage Therapy Practitioners are licensed in the state of Nevada."

I am challenged to understand how any of the proposed regulations relate to the mission of public safety. Adopting these regulations may further encourage Governor Sandoval's agenda of allowing some regulatory programs to sunset and combining the boards of those professional licensing programs that remain. The governor's state of the state address focused on expanding small business. The regulations being proposed by this board do the opposite.

A fundamental problem is that this board continues to direct policy priorities and decisions based on prostitution and its ill effects instead of the massage professionals actually regulated under this Act. Massage therapists should not be penalized for the actions of prostitutes. Increased regulation leads to increased fees to pay for operating costs. I sincerely hope the board reconsiders this proposal.

FYI on Fees – They can and should be decreased.

The fees that massage therapists are required to pay in Nevada are among the highest in the country. Less than 4,000 licensed massage therapists support an annual budget of \$674,000, two state offices, and six full-time staff. No other state in the country has more than one office, including the largest states with the most licensees (Florida, New York, Ohio, and Texas).

Missouri operates on a \$270,000 budget, has one full-time and three part-time staff and regulates not only 4,600 massage therapists, but schools (26) and establishments (1,049) as well. The licensing fees are \$100 for the application, and the board recently reduced the biennial renewal fee to \$35.

New Mexico operates on a \$260,000 budget, has 3 staff members and regulates 3,340 massage therapists, instructors, and 19 schools. The licensing fee is \$75 for the application and \$175 for biennial renewal.

The board has more than \$300,000 in reserves. Licensees are facing a tough economic environment. Why not consider decreasing fees and provide some relief to the professionals licensed under this Act?

Thank you for the opportunity to comment. Please don't hesitate to contact me with questions at 800-458-2267 extension 645 or jean@abmp.com.

Sincerely,

Jean Robinson, Government Relations Director

cc: Les Sweeney, NCTM, ABMP President