



Associated Bodywork & Massage Professionals

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South Dakota Board of Massage Therapy  
ATT: Jennifer Stalley, Executive Secretary  
P.O. Box 340  
1351 N. Harrison Avenue  
Pierre, SD 57501

Via Email: [www.doh.sd.gov/boards/Massage](http://www.doh.sd.gov/boards/Massage)

Dear Board Members,

Thank you for the opportunity to comment on the draft proposed changes to South Dakota's Massage Therapy Practice Act (Act). Associated Bodywork & Massage Professionals (ABMP) has several comments, as follows:

**Section 1 (definition of massage)**

We were asked to provide feedback specifically with respect to section 1 (definition of massage). The proposed definition of massage makes only minor changes to the current definition by adding "vibration" as an activity falling under the definition of massage and clarifying that manual methods and electronic devices are included in the definition of massage. We support these proposed changes.

**Section 6 (meetings of board)**

ABMP supports increasing the number of required annual board meetings from one to two per year. Most state boards meet at least quarterly.

**Section 9 (board authority)**

It is our understanding that there has been some confusion as to whether the board actually has the authority to enforce the Act's provisions under the current language. The board does in fact have that authority under the current language of the Act, but, to the extent that the addition of proposed section 9 lends further clarification, then it is helpful. We presume that the board has conferred with its legal counsel to obtain counsel's agreement that the proposed language removes any perceived doubt as to the board's enforcement authority.

We question whether you should add or change the language to be more specific since there have been questions regarding the board's authority. For example, language under the Board of Medical & Osteopathic Examiners seems more specific than what the massage board is proposing. Example below:

**Rules and regulations of board--Scope.** The Board of Examiners may adopt rules pursuant to chapter 1-26 pertaining to licensure, fees, discipline, and supervision which promote the health and safety of persons utilizing the services of physical therapists licensed and physical therapist assistants certified under this chapter.  
36-10-37.

**Procedure for adoption of rules and regulations.** All rules and regulations made by the Board of Examiners pursuant to this chapter shall be adopted and amended in accordance with the provisions of chapter 1-26 and acts amendatory thereto known as the Administrative Procedures Act.

### **Section 13 (penalties)**

We were asked to provide feedback specifically with respect to section 13 (penalties). The proposed changes add that it is a Class 1 misdemeanor to "Own, operate, or manage a business which employs, contracts with, or allows one or more unlicensed persons to offer or provide massage therapy[.]" We question whether the board has jurisdiction over owners, operators, and managers who are not licensees and are not practicing massage therapy. For the same reason, the inclusion of separate, unrelated entities (such as, for example, utilities, insurance companies, and maintenance companies) which have merely entered into contracts with massage businesses employing unlicensed persons is jurisdictionally problematic and unworkable as a practical matter. This provision should be deleted or clarified. Adding somewhere in the statute that it is unlawful to employ an unlicensed massage therapist may help.

Additionally, we suggest clarification regarding the statement that "Each continued violation after an order constitutes a separate offense." Is this intended to mean that each continued violation after an order constitutes a separate, new misdemeanor, or simply that misdemeanor penalties will continue to accrue, or something else?

### **Section 21 (licensure by endorsement)**

We were asked to provide feedback specifically with respect to section 21 (licensure by endorsement). Proposed subsection (2) states that an endorsement applicant must demonstrate an "Absence of unprofessional conduct." This requirement is quite vague, and it is doubtful that the board could actually obtain such information in a useful form. The purpose of the proposed requirement is already served by subsection (4), requiring proof that there are no unresolved complaints against the applicant in his or her originating state. We respectfully suggest deletion of subsection (2).

We further suggest that the term "primary source verification" in subsection (4) be expanded upon since it may not be a commonly-understood term. We suggest that subsection (4) read, "Primary source verification from another state's massage board or other state license-issuing entity that the applicant is currently licensed..."

Requiring 500 hours of education or two years of active practice immediately preceding the endorsement application unfairly penalizes qualified therapists who obtained their licenses under the grandfathering provisions of their state. There are myriad circumstances under which a qualified and experienced massage therapist could be prevented from working in South Dakota under such a provision. As but one example, a therapist who obtained his or her license by grandfathering but has recently taken time away from his or her practice due to medical issues or the birth of child would be unable to obtain a South Dakota license unless he or she actually re-enrolled in massage school. Massage therapists who have already satisfied another state that they are qualified for licensure should be able to move to South Dakota and obtain a license with minimal additional hoop-jumping. We respectfully suggest that the language of subsection (5) read:

Proof of experience and competency in massage therapy. For purposes of this section, an applicant may demonstrate proof of experience and competency either through:

1. Verification of active massage therapy practice in that state during the two years immediately preceding the date of application for licensure. The work experience shall be attested to in a manner prescribed by the Board/Director, **or**
2. Completion of twenty-four hours of continuing education related to the practice of massage therapy during the two years immediately preceding the date of application. The state must have a compelling reason to disapprove of continuing education already approved by another state.

**Section 27 (Investigation of complaints—Inspections)**

Again, using the language under the Board of Medical & Osteopathic Examiners as an example, the language being proposed by the massage board seems less impactful than it could be. Example below:

**Investigation of violations.** Employment of counsel to assist in prosecution. The Board of Examiners and/or the physical therapy committee shall investigate every supposed violation of this chapter, and shall report the same to the proper law enforcement officials wherein the act is committed. The board is authorized to employ special counsel subject to the supervision, control and direction of the attorney general, to assist in the prosecution of violations of this chapter and to expend the necessary funds for such purpose.

We suggest that you use similar language to the Board of Medical & Osteopathic Examiners and add this addition that has proved to be helpful in Colorado:

(2) **Local government law enforcement agencies** may inspect massage therapy licenses and the business premises where massage therapy is practiced for compliance with applicable laws. Nothing in this section precludes criminal prosecution for a violation of any criminal law. If an inspection reveals the practice of massage therapy by a person without a valid license, the local government law enforcement agency shall charge the person with a misdemeanor pursuant to section 36-35-10 (Section 13 in this proposal).

**Section 31 (authority to adopt a code of ethics)**

We were asked to provide feedback specifically with respect to section 31 (authority to adopt a code of ethics). We support this proposed provision.

We have no specific comments with respect to the remaining proposed changes.

Thank you for your consideration of ABMP’s comments. If you have any questions please do not hesitate to contact me at 800-458-2267 extension 645 or [jean@abmp.com](mailto:jean@abmp.com). We are happy to help in any way.

Sincerely,



Jean Robinson  
Government Relations Director