

Wendy Anderson  
Director  
Department of Massage Therapy  
Colorado Department of Regulatory Agencies  
Colorado Division of Professions and Occupations  
1560 Broadway, Suite 1350  
Denver, CO 80202

Ms. Anderson,

The Colorado Coalition of Massage Therapists represents a coalition of massage therapists and massage schools across Colorado. Nearly 5000 ABMP members and over 2100 AMTA members are included in the over 12,000 massage therapists across Colorado.

We are of the opinion that problems in the endorsement provisions of current Colorado massage license regulation need to be corrected in the existing statute before they can be effectively addressed by rule.

The statute is faulty because there are more requirements to apply by endorsement than there are to apply as a regular applicant. C.R.S. §12-35.5-107(1)-(2) provides that to apply for a license as a regular applicant, the applicant must have:

- (1) 500 hours
- (2) Exam, and
- (3) Background check

C.R.S. §12-35.5-107 (5) provides that to apply for a license by endorsement, the applicant must have :

- (1) 500 hours
- (2) Exam
- (3) Background check
- (4) Proof of license in good standing from another state. The other state's qualifications for licensure must be substantially similar to Colorado's, and
- (5) Proof of experience and competency, as determined by the director

As we've discussed before in stakeholder meetings, there are more requirements that must be met to apply by endorsement than to apply as a regular application. There is therefore no reason why someone would apply by endorsement. The statute does not require that someone who holds an out-of-state license must apply by endorsement. And, if it did require application by endorsement, that provision might violate the Privileges and Immunities clause of the U.S. Constitution, which prohibits discrimination against nonresidents in a state licensing statute unless there is a substantial reason for the difference in treatment and the discrimination practiced bears a substantial relationship to the State's objective.

CCMT believes that the endorsement provision in the statute is misleading to the extent that, by its mere existence, it implies an out-of-state applicant **has** to apply by endorsement. We would like to work with DORA to open the statute and correct this issue. Good endorsement language would allow someone who holds an out of state license to get a Colorado license based on **fewer** requirements than regular applicants. The rationale of endorsement is that out-of-state license holders have already

satisfied another state government that they are fit to practice, so they shouldn't have to jump through all of the hoops that a regular, first-time applicant does.

Proposed language could follow the New Jersey language regarding endorsement:

C. 45:11-64 licensure by endorsement provides "Upon payment to the board of a fee and the submission of a written application on forms provided by it, the board shall issue without examination a license to a massage and bodywork therapist who holds a valid license or certification issued by another state or possession of the United States or the District of Columbia which has education and experience requirements substantially equivalent to the requirements of P.L.1999, c.19 (C.45:11 -53 et seq.) and P.L.2007, c.337 (C.45:11-68 et al.)."

As with the statute, the rules also require more of out-of-state applicants than those who are applying regularly.

For example, Proposed rule 4(B)(4) requires: "An attestation that the applicant has obtained, and will maintain, professional liability insurance as required by § 12-35.5-116, C.R.S." The statute states that one must have liability insurance to practice in Colorado. It does not state that one needs insurance to apply for licensure. To require insurance before being licensed by endorsement does not comply with statutory requirements.

Proposed rule 4 (B)(6) would require "Additional information as may be requested by the Director to fully and fairly evaluate the applicant's qualifications for licensure and to protect the public health, safety, and welfare." This provision is not required by statute, nor is required of applications through the regular process.

Another issue we found is with 4(C)(1)(a). We appreciate your attempting to remedy the reciprocity situation by looking at hours the person has worked. We acknowledge that we discussed this in the stakeholder meetings. That said, we believe the proposed language does not work for a few reasons.

1) The statute requires that "The director determines that the qualifications for massage therapy licensure or registration in the other state, territory, or foreign country are substantially equivalent to those required by this section."

This language simply means that the qualifications required by the other state must be equivalent to the qualifications required by the state of Colorado. However, the language in the proposed rule provides that the other state's qualifications are substantially equivalent to those required in Colorado if:

1. The applicant has completed 500 hours of massage education at an approved school, or the Director may grant 50 hours of education and training for each year of 400 hours of documented practice as a licensed or registered massage therapist. An applicant who has completed a massage therapy program at an NCBTMB assigned school is deemed to have satisfied this rule; or

2. The applicant has taken and passed an NCBTMB exam, the MBLEx exam, or an exam approved by the Director.

The statute requires that the other state's requirements – i.e., the license requirements in the other state's massage statute – must be substantially similar to Colorado's license requirements. One cannot determine whether another state's statute is similar to Colorado's statute by examining whether a **particular person** obtained 500 hours of education or worked a certain number of hours. **The required comparison is statute to statute, not statute to a specific person.** This problem is not new in this proposed rule; it exists in the current rule as well. This is meaningful because many states just began licensing massage therapists in the last few years, and therefore vast numbers of licensed massage therapists across the country obtained their licenses via grandfathering. They may not have obtained 500 hours of education or taken an exam. They have, however, satisfied their state's licensing authority that they are qualified to practice massage therapy. This is enough.

2) Another issue with this section is that the statute requires 500 hours of education. The statute provides no authorization for a rule allowing an equivalent to the required 500 hours of education.

Finally, concerning Proposed Rule 4 (E), the requirement that the applicant disclose "any disciplinary actions taken against them in any other jurisdiction," is also not provided for in the statute.

We believe the attempt to allow hours to substitute for education does not fall under the statutory purview of "Proof of experience or competency, as determined by the Director." It is arguable that disciplinary actions may fall under this language.

The Coalition is ok with the proposed language in Rule 5 as presented. We do however, have an issue with the currently existing Rule 5(C)(1). This current provision requires someone whose license is expired for more than five years to pass an examination within the two years immediately preceding the application for reinstatement. In our opinion, taking an exam does not prove competency. Once an applicant takes the exam, they shouldn't have to take it again. What's to prevent someone from applying regularly, by submitting an application that states they took an exam (even if it was 5 years ago), received 500 hours of education and passed a criminal background check?

C.R.S. §12-35.5-108 allows you to modify this language and does not require retaking the examination for reinstatement. We encourage you to consider revising this language.

We do appreciate the effort of the Department to find ways for smoother licensing by endorsement. Unfortunately, we do not think this round of proposed rules can do the job, specifically as the statute appears not to allow the proposed changes. The initial problem is with the statute. As stated earlier, we believe someone who has a valid license in another state and passes a criminal background check should be able to move to another state and continue to practice. We would like to work with DORA to amend the statute to either accomplish what you were trying to do in the rules or to get to our recommended endorsement policy. Thank you for your consideration.

Sincerely,



Laura B. Embleton

A handwritten signature in black ink, which appears to read "Laura B. Embleton". The signature is written in a cursive, flowing style.

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