

Administrative Rules Committee:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

The rules are not the result of statutory changes, but they comply with the changes made by an agency bill during the 2009 legislative session.

2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.

No, these rules do to relate to any federal statutes or regulations.

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

The Board followed the procedures for adopting rules found in the Administrative Agencies Practice Act, N.D.C.C. ch. 28-32. Additionally, the Board consulted with massage therapy practitioners, the North Dakota chapter of the American Massage Therapy Association, and administrators and staff from several massage therapy schools located in North Dakota when developing these rules.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offer comments at the public hearings on these rules.

No written comments were received during the promulgation process. Oral comments were received at the hearing, attached please find a memorandum dated March 19, 2010 summarizing the comments and the Board's responses.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

The cost of the publishing the newspaper notice was \$1730.54.
The cost of the legal fees and AG's review was \$1856.00.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

The reasons are for education requirements, code of ethics, and updating cost for inspections.

7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.

A regulatory analysis was not required under N.D.C.C. 28-3-08 because these rules do not affect the regulated community in excess of \$50,000 and the Board did not receive a request for such analysis from the Governor or a member of the Legislature.

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide a copy.

The Board is a professional licensing board, therefore the Board is exempt from the small entity regulatory analysis and economic impact statement under N.D.C.C. 28-32-08.1 (5), and did not prepare this statement.

9. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.

A constitutional takings assessment regarding real property was not required to be prepared under N.D.C.C. section 28-32-09 because these rules do not limit the use of private real property.

10. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.

These rules were not emergency rules.

MEMORANDUM

To: State Board of Massage

From: Edward Erickson, Assistant Attorney General

Re: Consideration of Comments to Administrative Rules

Date: March 19, 2010

On March 18, 2010, the State Board of Massage met and considered comments received concerning its administrative rulemaking. The Board did not receive any written comments concerning these rules. The Board did receive several comments at its January 29, 2010, public hearing, as noted below. The Board considered these comments and responded as indicated below. The Board then instructed me to memorialize its response for completion of the rulemaking procedures.

Two commentators complained about the fee increase. The annual licensing fee is increasing from \$50 to \$100 per year. The Board notes that it has not changed this fee in many years, the fees have not kept up with inflation, and the Board was encouraged by the Legislature¹ to begin an inspection program which will entail significant additional expenses. The Board did not change the proposed amendments based on these comments.

One commentator asked a question about Reiki therapy, which is not germane to the proposed rule amendments. The Board did not change the proposed amendments based on these comments.

Three commentators asked about how the Board members are appointed, for how many terms, what is their required background, and whether they must be endorsed by a non-governmental entity in order to be appointed, all of which are not germane to the proposed rule amendments. The Board did not change the proposed amendments based on these comments. I did, however, read the pertinent statute regarding Board appointments to the commentators at the hearing in response to these questions.

There were no other comments.

¹ This occurred as part of a committee discussion of 2009 S.B. 2099, which was an agency bill.