

**RULES
OF
TENNESSEE MASSAGE LICENSURE BOARD**

**CHAPTER 0870-01
GENERAL RULES GOVERNING LICENSED MASSAGE THERAPISTS AND ESTABLISHMENTS**

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0870-01-.01 DEFINITIONS. As used in these rules, the following terms and acronyms shall have the following meaning ascribed to them:

- (1) Applicant - Any individual seeking licensure who has submitted an official application and paid the application fee.
- (2) Application - The application form approved by the Board and the required attachments.
- (3) Board - The Tennessee Massage Licensure Board.
- (4) Board Administrative Office - The office of the administrator assigned to the Board.
- (5) Board's Consultant - Any person who has received a delegation of authority from the Board to perform Board functions subject to review and ratification by the Board where provided by these rules.
- (6) Client - Any person with whom the massage therapist has an agreement to provide massage therapy.
- (7) Continuing Education – Those pre-planned/formalized activities with written learning objectives that are directed at developing and enhancing an individual's massage therapy knowledge base or relevant skills.
- (8) Department - Tennessee Department of Health.
- (9) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the Board receives administrative support.
- (10) Establishment – A business or institution that is a fixed and permanent location or a mobile vehicle facility that is open and accessible to the general public for compensated massage services.
- (11) FSMTB – The Federation of State Massage Therapy Boards.

(Rule 0870-01-.01, continued)

- (12) Licensee - Any person holding a license to practice massage therapy or to operate a massage establishment in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
- (13) Massage/bodywork/somatic – The manipulation of the soft tissues of the body with the intention of positively affecting the health and well-being of the client.
- (14) MBLEx – The Massage and Bodyworks Licensing Examination established by the FSMTB
- (15) NCBTMB - The National Certification Board for Therapeutic Massage and Bodywork.
- (16) National Certification Examination - The examination required for national certification from the NCBTMB
- (17) Person - Any individual, firm, corporation, partnership, organization, or body politic.
- (18) Physician - Any physician licensed pursuant to T.C.A. Title 63, Chapter 6 or 9.
- (19) Sexual Activity – “Sexual activity” means any direct or indirect physical contact or communication by any person or between persons which is intended to erotically stimulate either person or both or which is likely to cause such stimulation and includes but is not limited to, sexual intercourse, fellatio, cunnilingus, masturbation or anal intercourse. “Sexual activity” can involve the use of any device or object or conversation and is not dependent on whether penetration, orgasm or ejaculation occurred. As used in these rules, “masturbation” means the manipulation of any body tissue with the intent to cause sexual arousal.

Authority: T.C.A. §§ 63-18-102, 63-18-104, 63-18-105, 63-18-108, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed November 26, 1996; effective February 9, 1997. Amendment filed November 12, 1999; effective January 26, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Repeal and new rule filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.02 PRACTICE STANDARDS AND INSPECTION OF ESTABLISHMENTS.

- (1) It is the responsibility of establishment owners to ensure compliance with all provisions of this rule and any violation of any portion of this rule may result in disciplinary action or denial of licensure pursuant to T.C.A. § 63-18-108.
- (2) Standards for Massage Establishments, Personnel, and Equipment
 - (a) Massage Establishments Standards
 1. Establishment owners shall ensure and maintain an adequate waiting area for clients.
 2. Establishment owners shall maintain properly installed smoke detectors and fire extinguishers in compliance with local fire codes. If there are no local fire codes, there shall be a minimum of one smoke detector and one fire extinguisher per one thousand (1000) square feet of treatment area. If local fire codes require fire inspections, establishment owners shall maintain written documentation of all fire inspections for a period of four (4) years.

(Rule 0870-01-.02, continued)

3. Massage therapy may be conducted only in rooms which are adequately lighted and ventilated, and so constructed that they can be kept clean. Establishment owners shall ensure that floors, walls, ceilings and windows are kept clean, in good repair and free of pests.
 4. Rest Rooms. Every establishment shall contain rest room facilities for use by clients and employees. Establishments located in buildings housing multiple businesses under one roof such as arcades, shopping malls, terminals, hotels, etc., may substitute centralized toilet facilities. Such centralized facilities shall be within three hundred (300) feet of the massage establishment.
 - (i) Rest room facilities shall include at least one water-flushed toilet, equipped with toilet tissue, from which the waste water shall be discharged into a sewage system acceptable to the Department of Environment and Conservation.
 - (ii) Rest room facilities shall include at least one sink with hot and cold running water and shall be equipped with a soap dispenser with soap or other hand cleaning materials, clean towels or other hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle. Hand cleansing capabilities for the therapists must be located within twenty (20) feet of the treatment area.
 - (iii) Rest room facilities and all of the foregoing fixtures and components shall be kept clean, in good repair and free of pests.
 5. Reasonable effort for sanitation shall be maintained for temporary locations such as athletic events or public service fund raisers in temporary venues.
 6. Establishment owners shall provide for safe and unobstructed human passage in the public areas of the premises, provide for removal of garbage and refuse, and provide for safe storage or removal of flammable and hazardous materials.
- (b) Personnel
1. Establishment owners are responsible for ensuring that all persons who perform massage therapy in a massage establishment maintain current licensure by the Board pursuant to rule 0870-01-.04.
 2. Establishment owners shall maintain in a centralized location a current copy of the certificate of renewal for each licensed massage therapist providing services at the establishment. A copy of any such certificate shall be made available upon request of any client or any representative of the Board.
 3. Establishment licenses are not transferable and are subject to revocation or other disciplinary actions upon failure of any inspection or for refusal to allow inspection by the Board's authorized representatives.
 4. Notwithstanding the above, a licensed massage establishment may change locations, pursuant to rule 0870-01-.15 (3).
 5. Establishment owners shall be responsible for maintaining all parts thereof in a sanitary condition at all times, and for otherwise ensuring that such establishment is operated in compliance with this Chapter. However, this rule

(Rule 0870-01-.02, continued)

shall not relieve any individual therapist of responsibility for the sanitary conditions of the space or equipment used in their practice.

- (c) Equipment
 - 1. Establishment owners shall ensure that all equipment and supplies used to perform massage services on the premises are maintained in a safe and sanitary condition.
 - 2. If the establishment is equipped with a whirlpool bath, sauna, steam cabinet and/or steam room, establishment owners shall maintain adequate and clean shower facilities on the premises.
- (3) Inspection of Establishments - Licensed massage therapy establishments are subject to initial inspections and periodic subsequent inspections by the Board or its authorized representative(s) during normal and customary business hours. Inspections may be announced or unannounced.
 - (a) The purpose of inspection of establishments is to verify compliance with the establishment standards of this rule and to verify that the establishment and all licensed massage therapists providing services have their licenses conspicuously displayed on the premises as required by 0870-01-.14.
 - (b) The establishment license may be subject to disciplinary action, pursuant to Rule 0870-01-.13, if the inspection reveals that the establishment does not meet the standards and requirements set by this rule or if the inspection reveals that the license of any massage therapist providing services at the establishment is not current or has been suspended or revoked.
 - (c) A massage establishment which receives an inspection score of eighty-five (85) or higher achieves a passing score on the inspection. A massage establishment which receives an inspection score of eighty-four (84) or below does not pass the inspection.
 - (d) Reinspection - When an establishment does not pass inspection, the establishment shall submit an application for reinspection.
 - 1. The inspector shall provide the establishment with an application for reinspection.
 - 2. The application shall be submitted to the Board's administrative office within thirty (30) days after the failed inspection.
 - 3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-01-.06.
 - 4. Upon timely submission of the application and fee, the Board's Director, Manager or designee shall schedule the reinspection.
 - 5. Failure to pass a reinspection shall result in a formal complaint with the Division's investigations unit.
 - (e) Failure to Allow or Appear for Inspection - An establishment whose owner or operator fails to allow an inspection shall be deemed to have failed the inspection. An establishment whose owner or operator does not appear for his/her scheduled inspection shall be deemed to have failed the inspection unless the Board's administrative office or the Board's authorized representative is notified at least twenty-

(Rule 0870-01-.02, continued)

four (24) hours prior to the scheduled appointment time for inspection. In the event of either a failure to appear without notice or a failure to allow inspection, a subsequent scheduled inspection shall be considered a reinspection. When a reinspection is necessitated as a result of either circumstance, the following shall occur:

1. The Board's administrative office shall provide the establishment with an application for reinspection.
2. The establishment's owner or operator shall submit the reinspection application to the Board's administrative office within ten (10) days after the establishment received the application.
3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-01-.06.
4. Upon timely submission of the application and fee, the Board's Director, Manager or designee shall schedule the reinspection.
5. Failure to pass a reinspection or failure to allow or appear at reinspection shall result in a formal complaint with the Division's investigations unit.

Authority: T.C.A. §§ 63-18-104, 63-18-105, 63-18-106, 63-18-108, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed November 26, 1996; effective February 9, 1997. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed November 27, 2000; effective February 10, 2001. Amendment filed October 4, 2004; effective December 18, 2004. Amendment filed December 29, 2004; effective March 14, 2005. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Repeal and new rule filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.03 NECESSITY OF LICENSURE.

- (1) Massage therapy is one of the healing arts and, as such, the practice is restricted to those persons issued a credential by this Board. Persons engaging in the practice of massage therapy without being licensed or expressly exempted by the laws are in violation of T.C.A. §§ 63-1-123 and 63-18-104. It is unlawful for any person who is not licensed in the manner prescribed in Title 63, Chapter 18 of the Tennessee Code Annotated to present himself or his establishment as a licensed massage therapist or a licensed massage establishment or to hold himself or his establishment out to the public as being licensed by using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification. Students may not hold themselves out as licensed massage therapists until such time as they are licensed.
- (2) Use of Titles - Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the titles "Massage Therapist (M.T.)" or "Licensed Massage Therapist (L.M.T.)" and to practice as a massage therapist, as defined in T.C.A. § 63-18-102. Any person licensed by the Board to whom this rule applies must use one of the titles authorized by this rule in every advertisement he or she publishes. Failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the massage therapist to disciplinary action pursuant to T.C.A. §§ 63-18-104(b) and 63-18-108(5), and rule 0870-01-.19(1)(p).

(Rule 0870-01-.03, continued)

Authority: T.C.A. §§ 63-1-123, 63-1-145, 63-1-146, 63-18-102, 63-18-104, 63-18-105, 63-18-108, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed April 30, 2008; effective July 14, 2008. Repeal and new rule filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.04 LICENSURE PROCESS.

- (1) To practice massage therapy in Tennessee a person must possess a lawfully issued license from the Board. The process for obtaining a license is as follows:
 - (a) An application packet shall be requested from the Board's Administrative Office.
 - (b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The applicant shall submit the application along with all required documentation and fees to the Board Administrative Office. It is the intent of this rule that activities necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed as close to simultaneously as possible.
 - (c) Applications will be accepted throughout the year. Supporting documentation required by these rules must be timely received in the Board Administrative Office as provided in rule 0870-01-.07(3) or the file will be closed.
 - (d) An applicant shall submit a copy of his/her birth certificate or its equivalent which indicates that the applicant is, at the time of application, at least eighteen (18) years of age. Applicants who are not citizens of the United States or whose birth certificates reflect that they were not born in the United States shall submit proof of their immigration status demonstrating their right to live and work in the United States.
 - (e) Applicants shall request that a transcript from one (1) or more post secondary academic institution(s) approved by the Tennessee Higher Education Commission or its equivalent in another state(s), or approved by the Tennessee Board of Regents and approved by the Tennessee Massage Licensure Board, be submitted directly from the institution(s) to the Board Administrative Office. The transcript must carry the official seal of the institution(s) and must show that the applicant has successfully completed a massage, bodywork, and/or somatic therapy curriculum(s) consisting of no less than five hundred (500) classroom hours, specifically delineated as follows:
 1. Two hundred (200) classroom hours of the five hundred (500) classroom hour requirement shall consist of sciences including, but not limited to, anatomy, physiology-Western and/or/Eastern, kinesiology, pathology, HIV/AIDS and blood-borne pathogens, and hygiene (including standard precautions). Other sciences related to the human body may be included with Board approval.
 2. Two hundred (200) classroom hours of the five hundred classroom (500) hour requirement shall consist of basic massage theory and practice including, but not limited to, history, benefits, indications, contraindications, demonstration and supervised practice, client assessment/evaluation, soft tissue manipulations including: gliding, kneading, friction, compression, vibration, percussion, stretching, joint movements, draping, positioning, turning, feedback, charting/documentation, proper body mechanics, and self-care.

(Rule 0870-01-.04, continued)

3. Eighty-five (85) classroom hours of the five hundred (500) classroom hour requirement shall consist of related subjects including, but not limited to, business standards of practice, communication skills, CPR/First Aid, the Americans with Disabilities Act, referral methods, specialized populations, and specialized and adjunct therapies/modalities (including hydrotherapy).
 4. Ten (10) classroom hours of the five hundred (500) classroom hour requirement shall consist of ethics instruction.
 5. Five (5) classroom hours of the five hundred (500) classroom hour requirement shall consist of instruction regarding Tennessee massage statutes and regulations.
- (f) Applicants shall request that verification of having successfully completed an examination, as provided in Rule 0870-01-.08, be submitted directly from the examining agency or its successor organization to the Board Administrative Office.
- (g) Applicants shall submit evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original signed and dated letters from health care professionals that include the professional's licensing credentials and attest to the applicant's personal character and professional ethics.
- (h) Applicants shall disclose the circumstances surrounding any of the following:
1. Conviction of any criminal offense (except minor traffic offenses) of any country, state or municipality, including without limitation, conviction for prostitution or any sexual misconduct offense. A conviction for prostitution or sexual misconduct offenses shall disqualify an applicant from receiving a license. A conviction for a felony under the laws of Tennessee may disqualify an applicant from receiving a license.
 2. The denial of professional licensure/certification by any other state or the discipline of licensure/certification in any state.
 3. Loss or restriction of licensure/certification.
 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant in any actions involving malpractice, negligence and/or fraud.
 5. Failure of any professional licensure or certification examination.
- (i) Applicants shall cause to be submitted to the Board Administrative Office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
- (j) If an applicant holds or has ever held a license/certificate to practice any profession in any other state, the applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure/certification) from each such licensing board which indicates the applicant holds or held an active license/certificate and whether it is presently in good standing or was in good standing at the time it became inactive.
- (k) An applicant shall submit the application fee and state regulatory fee as provided in rule 0870-01-.06.

(Rule 0870-01-.04, continued)

- (l) When necessary, all required documents shall be translated into English and such translation and original documents certified as to authenticity by the issuing source. Both versions must be submitted.
- (m) Reciprocity Licensure
 1. Applicants who are licensed or have been licensed in another state and are seeking reciprocity licensure in Tennessee must request that a transcript from one (1) or more post-secondary academic institution(s) approved by the equivalent educational accrediting agency in the other state be submitted directly from the institution(s) to the Board Administrative Office. The transcript(s) must show that the applicant has successfully completed a massage, bodywork, and/or somatic therapy curriculum consisting of no less than five hundred (500) classroom hours and must carry the official seal of the institution(s). Applicants must also request that verification of having successfully completed the examination provided in 0870-01-.08 or the exam offered by the NCBTMB or its successor organization be submitted directly to the Board Administrative Office.
 2. Applicants for reciprocity licensure can avoid the educational requirements of rule 0870-01-.04(1)(e)1-3 if they qualify under the terms of Tennessee Code Annotated § 63-18-116. Such qualifying applicants must request that proof from the NCBTMB of their certification for the five (5) year period immediately preceding application for licensure be submitted directly to the Board Administrative Office and must submit documentation satisfactory to the Board that they have engaged in the practice of massage therapy in another state for the five (5) year period immediately preceding application for licensure.
 3. All applicants for reciprocity licensure must submit proof of having successfully completed five (5) classroom hours of instruction regarding Tennessee massage statutes and regulations and ten (10) classroom hours of ethics instruction, as required in rule 0870-01-.04(1)(e)4. and 5. These hours shall not be self directed.
- (2) All applications shall be sworn to and signed by the applicant and notarized. All applications and documents submitted for licensure purposes become the property of the State of Tennessee and will not be returned. Neither the application form nor any required document will be accepted if any portion has been executed and dated prior to one (1) year before receipt by the Board Administrative Office.
- (3) Application review and all licensure decisions shall be governed by Rule 0870-01-.07.

Authority: T.C.A. §§ 63-1-104, 63-18-104, 63-18-105, 63-18-108, 63-18-111, 63-18-112, and 63-18-116.

Administrative History: Original rule filed March 25, 1996; effective June 8, 1996. Repeal and new rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 21, 1998; effective November 4, 1998. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed November 12, 1999; effective January 26, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed September 17, 2002; effective December 1, 2002. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed June 15, 2004; effective August 29, 2004. Amendment filed October 4, 2004; effective December 18, 2004. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed May 10, 2007; effective July 24, 2007. Repeal and new rule filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.05 ESTABLISHMENT LICENSURE PROCESS. Any massage therapy establishment, unless exempted by any provision of T.C.A. § 63-18-110, must be licensed by the Board. The process for obtaining a license is as follows:

- (1) An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The applicant shall submit the application along with all required documentation and fees to the Board Administrative Office. It is the intent of this rule that activities necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed as close to simultaneously as possible.
- (2) "Applicant," for purposes of this rule shall mean the person under whose name the massage establishment shall be licensed. The applicant need not be licensed as a massage therapist. However, all persons who provide massage therapy on the premises must be licensed pursuant to rule 0870-01-.04. Failure to comply with this provision may result in the denial or revocation of the establishment license.
- (3) Except for applicants who are corporations doing business in Tennessee, every applicant shall submit a copy of his/her birth certificate or its equivalent which indicates that the applicant is at least eighteen (18) years of age at the time of application. Applicants who are not citizens of the United States or whose birth certificates reflect that they were not born in the United States shall submit proof of their immigration status demonstrating their right to live and work in the United States.
- (4) Except for applicants who are corporations doing business in Tennessee, every applicant shall submit to the Board Administrative Office, evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original signed and dated letters, attesting to the applicant's personal character and professional ethics.
- (5) Applicants who are not licensed as massage therapists in Tennessee shall submit proof that they have completed at least two (2) hours of education in Tennessee Law relating to massage therapy. These courses must be approved by the Board.
- (6) Applicants who are corporations doing business in Tennessee shall submit a copy of their corporate charter and shall submit a statement identifying the corporation's registered agent for service of process.
- (7) An applicant shall disclose the circumstances surrounding any of the following concerning himself:
 - (a) Conviction of any criminal offense (except minor traffic offenses) of any country, state or municipality, including without limitation conviction for prostitution or any sexual misconduct offense. A conviction for prostitution or sexual misconduct offenses shall disqualify an applicant from receiving a license. A conviction for a felony under the laws of Tennessee may disqualify an applicant from receiving a license.
 - (b) The denial of professional licensure/certification by any other state or the discipline of licensure/ certification in any state.
 - (c) Loss or restriction of licensure/certification.
 - (d) Any civil suit judgment or civil suit settlement in which the applicant was a party defendant for any actions involving malpractice, negligence, and/or fraud.

(Rule 0870-01-.05, continued)

- (8) An applicant shall cause to be submitted to the Board Administrative Office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
- (9) An applicant shall submit the establishment application fee and state regulatory fee as provided in rule 0870-01-.06.
- (10) When necessary, all required documents shall be translated into English and such translation and original documents certified as to authenticity by the issuing source. Both versions must be submitted to the Board's administrator.
- (11) All applications shall be sworn to and signed by the applicant and notarized.
- (12) All documents submitted for licensure purposes become the property of the State of Tennessee and will not be returned.
- (13) The application form and all required documents must be dated no more than one (1) year before receipt by the Board Administrative Office.
- (14) An establishment license may be denied, conditioned, restricted and/or disciplined for the same causes and pursuant to the same procedures as a massage therapist's license.
- (15) Application review and licensure decisions shall be governed by rule 0870-01-.07.

Authority: T.C.A. §§ 63-1-104, 63-18-104, 63-18-105, 63-18-108, and 63-18-111. **Administrative History:** Original rule filed November 26, 1996; effective February 9, 1997. Amendment filed November 12, 1999; effective January 26, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed June 15, 2004; effective August 29, 2004. Amendment filed December 29, 2004; effective March 14, 2005. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed February 2, 2007; effective April 18, 2007. Repeal and new rule filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.06 FEES.

- (1) The fees authorized to be established by the Board and necessary to the operation of the Board are established as follows:
 - (a) Individual Application Fee - A non-refundable fee to be paid by all applicants for a massage therapist's license including those seeking licensure by reciprocity. This fee includes an initial licensure fee and the state regulatory fee. In cases where an applicant is denied licensure or the application file closes due to abandonment, only the initial licensure fee will be refundable upon request. The state regulatory fee is not refundable.
 - (b) Establishment Application Fee - A non-refundable fee to be paid by all applicants who wish to license a massage establishment. This fee includes an initial licensure fee and the state regulatory fee. In cases where an applicant is denied licensure or the application file closes due to abandonment, only the initial licensure fee will be refundable upon request. The state regulatory fee is not refundable.
 - (c) Biennial Licensure Renewal Fee - A non-refundable fee to be paid prior to the issuance of the renewal certificate. This fee must be received on or before the expiration date of the license.

(Rule 0870-01-.06, continued)

- (d) Initial License Fee - A fee to be paid at the time of application for initial licensure.
- (e) Late Renewal Fee - A non-refundable fee to be paid when a licensee fails to renew on or before the license's expiration date. This is an additional fee which must be submitted with the biennial licensure renewal fee and state regulatory fee.
- (f) Replacement License Fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed "artistically designed" wall license or renewal certificate, or when a licensed massage establishment requests a change of name and/or address, pursuant to rule 0870-01-.15 (3).
- (g) State Regulatory Fee - A non-refundable fee to be paid by all individuals at the time of application and with all renewal applications.
- (h) A reinspection fee is a nonrefundable fee to be paid by an establishment when an establishment does not pass inspection, fails to schedule an inspection, does not appear for a scheduled inspection, or moves to a new location requiring an inspection of the new establishment.
- (i) A continuing education course approval fee is a nonrefundable fee to be paid by a continuing education course provider upon the submission of a continuing education curriculum to be approved by the Board each continuing education cycle.

(2) Fee Schedule:	Amount
(a) Individual application fees shall include the following:	
1. Application fee	\$85.00
2. Initial licensure fee	\$185.00
3. State regulatory fee	\$10.00
Total application fees due upon submission of an application.....	\$280.00
(b) Establishment application fees shall include the following:	
1. Application fee	\$95.00
2. Initial licensure fee	\$120.00
3. State regulatory fee	\$10.00
Total application fees due upon submission of an application	\$225.00
(c) Individual biennial licensure renewal fee	\$185.00
(d) Establishment biennial licensure renewal fee	\$135.00
(e) Late Renewal Fee.....	\$100.00
(f) Replacement License Fee	\$25.00
(g) State Regulatory (biennial)	\$10.00

(Rule 0870-01-.06, continued)

- (h) Reinspection fee
 - 1. due to a failed inspection or for a failure to allow or to appear for inspection..... \$110.00
 - 2. due to a change of address because of moving to a new location \$135.00
 - (i) Continuing education course approval fee \$100.00
(per course)
- (3) Fees may be paid in the following manner:
- (a) All fees paid by money order, certified, personal, or corporate check must be submitted to the Board's Administrative Office and made payable to the Tennessee Massage Licensure Board.
 - (b) Fees may be paid by Division-approved credit cards or other Division-approved electronic methods.

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-1-103, 63-1-107, 63-1-108, 63-1-112, 63-18-104, 63-18-105, 63-18-106, and 63-18-111. **Administrative History:** Original rule filed March 25, 1996; effective June 8, 1996. Repeal and new rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed November 14, 2000; effective January 29, 2001. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed September 17, 2002; effective December 1, 2002. Amendment filed December 29, 2004; effective March 14, 2005. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed April 9, 2009, effective June 23, 2009. Amendments filed April 9, 2009; effective June 23, 2009.

0870-01-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

- (1) Completed applications received in the Board Administrative Office may be reviewed by any member of the Board, the Board's consultant, or designee for initial determination. An initial determination as to acceptance or denial of the application shall be made prior to the end of the month in which the application is received. Each member of the Board and the Board's consultant or designee is vested with the authority to make these initial determinations.
- (2) A temporary authorization may be issued pursuant to the initial approval determination made by the Board member or the Board's consultant or designee reviewing the application. However, such determination shall not become fully effective until such time as the full Board ratifies it.
- (3) If an application is incomplete when received by the Board Administrative Office, or the reviewing Board member or the Board's consultant or designee determines additional information is required from an applicant before an initial determination can be made, the Board Administrative Office shall notify the applicant of the information required. The applicant shall cause the requested information to be received by the Board Administrative office on or before the sixty-fifth (65th) day after the date of notification.
 - (a) If the information is not received in a timely manner, then no further action shall take place until a new application is received pursuant to the rules governing the licensure process.

(Rule 0870-01-.07, continued)

- (4) In order for an application to be scheduled for review by the Board at a board meeting, all required documentation must be completed and submitted to the Board's Administrative Office at least fifteen (15) days prior to the board meeting.
- (5) If a completed application is denied by the Board, the applicant shall be informed of that decision and the following shall occur:
 - (a) A notification of the denial shall be sent to the applicant by the Board Administrative Office by certified mail return receipt requested which shall contain the reasons for the denial and the specific statutory or rule authorities for the denial.
 - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-101, et seq.) to contest the denial and the procedures necessary to accomplish that action.
 1. An applicant has a right to a contested case hearing only if the licensure denial was based on subjective or discretionary criteria and only if the request for a contested case hearing is made in writing within thirty (30) days of the receipt of the denial notification.
 2. An applicant may be granted a contested case hearing if licensure denial is based on an objective, clearly defined criteria only if after review and attempted resolution by the Board's Administrative staff, the licensure application cannot be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal.
- (6) Any applicant who has successfully complied with all requirements of the rules governing the licensure process shall be entitled to its issuance with the following exceptions:
 - (a) Applicants who by virtue of any criteria in the area of mental, physical, moral or educational capabilities, as contained in the application and review process, which indicates a potential risk to the public health, safety and welfare may be required to present themselves to the Board or selected member(s) of the Board for an interview before final approval may be granted.
 - (b) The issuance of the license applied for may be withheld, restricted or conditioned for violation of the provisions of T.C.A. § 63-18-108 and any rules promulgated pursuant thereto or failure to fully comply with all application requirements.
- (7) If the Board finds it has erred in the issuance of any type of license, the Board will give written notice by certified mail of its intent to revoke the license. The notice will allow the applicant the opportunity to meet the requirements for licensure within thirty (30) days from the date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke the license, the applicant shall have the right to proceed according to rule 0870-01-.07(5)(b).

Authority: T.C.A. §§ 4-5-102, 63-1-142, 63-18-104, 63-18-105, 63-18-108, 63-18-109, 63-18-111, and 63-18-112. **Administrative History:** Original rule filed November 13, 1996, effective January 27, 1997. Amendment filed June 15, 2004; effective August 29, 2004. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed May 10, 2007; effective July 24, 2007. Repeal and new rule filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.08 EXAMINATION.

- (1) With the exception of applicants qualifying pursuant to Rule 0870-01-.04 (1) (m) 2. (ii) or Rule 0870-01-.05, all persons intending to apply for licensure must successfully complete one (1) of the competency examinations adopted by the Board pursuant to this Rule as a prerequisite to licensure. Such examinations must be completed prior to application for licensure. Evidence of successful completion must be submitted by the examining agency directly to the Board Administrative Office as part of the application process contained in Rule 0870-01-.04.
- (2) Competency Examination - The Board accepts successful completion, as determined by the examining agency, of any one (1) of the following examinations:
 - (a) The N.C.B.T.M.B.'s and/or its successor organization's National Certification Examination. - Application for, proof of having successfully completed a massage, bodywork, and/or somatic therapy curriculum(s) as provided in subparagraph 0870-01-.04 (1) (f), and fees necessary to take the National Certification Examination must be sent to the N.C.B.T.M.B. and not to the Board.
 - (b) Any other Board-approved examination - Application for, proof of having successfully completed a massage, bodywork, and/or somatic therapy curriculum(s) as provided in subparagraph 0870-01-.04 (1) (f), and fees necessary to take a Board-approved examination must be sent to such exam's testing agency and not to the Board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-111, 63-18-112, and 63-18-116.
Administrative History: Original rule filed April 17, 2003; effective July 1, 2003. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed May 10, 2007; effective July 24, 2007. Repeal and new rule filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay on July 2, 2012; new effective date September 6, 2012. On August 20, 2012, the Massage Licensure Board withdrew its amendment to 0870-01-.08.

0870-01-.09 LICENSURE RENEWAL. All licensed massage therapists and massage establishments must biennially renew their licenses to be able to legally continue in practice. Licensure renewal is governed by the following:

- (1) Renewal application
 - (a) The due date for license renewal is set by the Division's biennial alternative interval renewal system. The due date is contained on the renewal document as the expiration date.
 - (b) Methods of Renewal
 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The internet renewal method is not available to establishments.
 2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.

(Rule 0870-01-.09, continued)

- (c) To be eligible for renewal a licensee must submit to the Division, on or before the expiration date, all of the following:
 - 1. A completed and signed renewal application form; and
 - 2. The renewal and state regulatory fees as provided in rule 0870-01-.06.
 - (d) Licenses which are not renewed within sixty (60) days of the expiration of the license shall be administratively revoked, without further notice or opportunity for hearing as provided in T.C.A. § 63-1-107(c). Reinstatement may be sought pursuant to paragraph (2) of this rule.
 - (e) Anyone submitting a signed renewal form or letter which is found to be untrue is subject to disciplinary action pursuant to T.C.A. § 63-18-108.
- (2) Reinstatement of an Expired License - Reinstatement of a license that has expired may be allowed, at the discretion of the Board, upon meeting the following conditions:
- (a) Submission of a statement setting forth the cause for failure to renew; and
 - (b) Payment of the late renewal fee and all past due renewal fees that accrued while the license was in an expired/ administratively revoked status; and
 - (c) Submission of proof of compliance with the continuing education requirements of rule 0870-01-.12.
- (3) Renewal issuance decisions pursuant to this rule may be made administratively, or upon review by the Board or the Board's consultant.
- (4) No application for renewal of an establishment license or reinstatement of an expired establishment license shall be considered unless the establishment has passed its most recent inspection.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-18-104, 63-18-106, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.10 REPEALED.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-104, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed March 24, 2006; effective June 7, 2006. Repeal filed June 16, 2006; effective August 30, 2006.

0870-01-.11 RETIREMENT, REINSTATEMENT, INACTIVATION, AND REACTIVATION OF LICENSURE.

- (1) Licensees who wish to retain their licenses but not actively practice may avoid compliance with the licensure renewal process and continuing education requirements by doing the following:

(Rule 0870-01-.11, continued)

- (a) Obtain from, complete and submit to the Board Administrative Office an affidavit of retirement form.
- (b) Submit any documentation which may be required by the form to the Board Administrative Office.
- (2) Any licensee whose individual license has been retired may reenter active practice by doing the following:
 - (a) Submit a reinstatement application to the Board Administrative Office; and
 - (b) Pay the licensure renewal fee and state regulatory fee as provided in rule 0870-01-.06.
 - (c) In the event of licensure retirement or inactivation in excess of two (2) years, appear before the Board for an interview regarding continued competence if requested.
 - (d) Comply with the continuing education provisions of rule 0870-01-.12 applicable to reactivation of retired licenses.
- (3) Establishments that wish to retain their licenses but not operate as an establishment may avoid compliance with the licensure renewal process requirements by doing the following:
 - (a) Obtain from, complete and submit to the Board Administrative Office a request for establishment inactivation form.
 - (b) Submit any documentation which may be required by the form to the Board Administrative Office.
- (4) Any establishment whose license has been placed in inactive status may activate such license by doing the following:
 - (a) Submit a reactivation application to the Board Administrative Office; and
 - (b) Pay the establishment biennial licensure renewal fee and state regulatory fee as provided in rule 0870-01-.06, and
 - (c) No application for reactivation of an establishment license shall be considered unless the establishment has passed its most recent inspection.
- (5) Application review and decisions required by this rule shall be governed by rule 0870-01-.07.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-111, 63-18-104, 63-18-106, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed October 4, 2004; effective December 18, 2004. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.12 CONTINUING EDUCATION.

- (1) All licensees must complete twenty five (25) hours of continuing education every two (2) calendar years, as a prerequisite to licensure renewal. The first two year cycle for continuing

(Rule 0870-01-.12, continued)

education ran from January 1, 2003 to December 31, 2004 and shall continue on two year cycles thereafter.

- (a) Continuing education credit shall only be awarded for those courses which are approved by the Board pursuant to paragraph (4) of this Rule. The Board approves courses for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once toward the twenty-five (25) hour requirement of any two-year cycle, regardless of the number of times the course is attended or completed by any licensee.
 - (b) Two (2) of the twenty-five (25) hours requirement shall pertain to Tennessee statutes and rules concerning massage therapists and establishments. The two (2) hour courses must be approved by the Board.
 - (c) Two (2) of the twenty-five (25) hours requirement shall pertain to the management of practicing massage therapy, professional ethics or substance abuse.
 - (d) Eight (8) of the twenty-five (25) hours requirement may be completed in any of the following multi-media formats:
 - 1. The internet;
 - 2. Closed circuit television;
 - 3. Satellite broadcasts;
 - 4. Correspondence courses;
 - 5. Videotapes;
 - 6. CD-ROM;
 - 7. DVD;
 - 8. Teleconferencing;
 - 9. Videoconferencing; or
 - 10. Distance Learning.
- (2) Initial licensees shall have their required continuing education hours pro-rated over the remaining months of the two (2) year cycle in which they become licensed according to the following chart.

First Year of the Cycle		Second Year of the Cycle	
Month Licensed	Hours Required	Month Licensed	Hours Required
January	25	January	13
February	24	February	12
March	23	March	11
April	22	April	10
May	21	May	9
June	20	June	8
July	19	July	7

(Rule 0870-01-.12, continued)

August	18	August	6
September	17	September	5
October	16	October	4
November	15	November	4
December	14	December	4

(3) Continuing Education - Proof of Compliance

- (a) Each massage therapist must, on the biennial licensure renewal form, attest to timely attendance and completion of the required continuing education hours during the preceding cycle.
- (b) Each Massage therapist must retain independent documentation of attendance and completion of all continuing education courses. This documentation must be retained for a period of four (4) years from the end of the cycle in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process. Acceptable documentation verifying the licensee's completion of the continuing education program(s) may consist of either a certificate or an original letter on official stationery from the program's sponsor, indicating the program title, date and length in hours, along with the licensee's name and license number.

(4) Continuing Education - Course Approval

- (a) Providers of courses to be offered for credit toward the required continuing education hours must, unless otherwise provided, receive approval from the Board. Approval once granted, regardless of whether approval is pursuant to subparagraph (b) or (c) of this paragraph, is effective only during the continuing education cycle (as identified in paragraph (2)) during which approval was granted. Grant of approval of any course prior to January 31, 2012 will expire December 31, 2012. After that all courses/hours provided for credit toward meeting the requirements of this rule must be approved either pursuant to part (b)1. or subparagraph (c) of this paragraph in every continuing education cycle they are offered.
- (b) The following sponsors or courses need not receive prior approval and shall constitute Board approved continuing education courses:
 - 1. Associations, corporations, or organizations authorized as a provider by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or the National Commission for Certifying Agencies (N.C.C.A.). Provided however, any provider approved by any organization identified in this part who intends to include in their course the hours necessary to meet the requirements of subparagraph 0870-01-.12(1)(b) of this rule must nevertheless comply with all of the following before those hours can be presented:
 - (i) The provider must submit the course materials for those hours for review and approval pursuant to subparagraph (4) (c) of this rule; and
 - (ii) The course may be presented in a live lecture format or a multi-media format with successful completion of a post-examination; and
 - (iii) The provider must submit documentation sufficient to show that the information to be disseminated in those hours is accurate and current.
 - 2. American Heart Association course in CPR.

(Rule 0870-01-.12, continued)

3. American Massage Therapy Association.
 4. American Red Cross courses in HIV, CPR, or Standard First Aid.
 5. Colleges, universities or massage schools accredited by the United States Department of Education, the Tennessee Higher Education Commission or the Tennessee Board of Regents.
 6. Formal educational courses relating directly to the theory or clinical application of massage therapy sponsored by an accredited college/university or institution approved by the Tennessee Higher Education Commission, Board of Regents or its equivalent in another state(s). If such course is taken for or assigned quarter or semester credit hours, three (3) semester hours or equivalent quarter hours shall be equivalent to fifteen (15) continuing education hours. No credits will be counted for courses failed.
 7. Tennessee Massage Therapy Association.
 8. FSMTB
- (c) If a sponsor is unable to obtain or chooses not to obtain approval pursuant to subparagraph (4) (b) of this rule, the sponsor may request Board approval by submitting the following information to the Board Administrative Office at least forty-five (45) days prior to the proposed or scheduled date of the course:
1. Copies of any and all materials to be utilized in the course. Sponsors may submit the ISBN number and title of materials with ISBN numbers in lieu of sending the actual materials.
 2. Resume or Vita for all instructors that details their experience or training in the subject matter they will teach. Instructors must be licensed massage therapists or demonstrate experience and training that qualifies them to provide continuing education.
 3. Written learning objectives as well as a detailed outline of the course.
 4. A copy of any student course evaluations, class roster forms, check in sheets and certificates of completion that will be provided at the course.
 5. Number of hours of educational credit requested. An hour equals fifty (50) clock minutes of instruction.
 6. The Board may deny a request to sponsor continuing education if it is determined the sponsor will utilize copyrighted materials without appropriate permission.
 7. The Board reserves the right to request additional information if the information provided by the sponsor is deemed inadequate or incomplete.
 8. The Board may deny a request to sponsor continuing education if any of the above information is not provided.
- (d) Individual licensees may receive continuing education credit for courses presented out of state with the Board's subsequent approval, if the course is presented during the

(Rule 0870-01-.12, continued)

continuing education cycle in which the licensee is requesting credit be applied, upon submitting the following to the Board Administrative Office:

1. The written learning objectives of the course.
2. A course description or outline.
3. Names of all lecturers.
4. Number of hours of educational credit requested.
5. Date of course.
6. Copies of materials to be utilized in the course, upon a Board request.
7. The course provider's contact information.
8. The course provider's pre-printed brochure, agenda or other materials which describe and/or advertise the course.

(e) Continuing Education courses may be presented in any of the following formats:

1. Lecture.
2. Multi-media courses - with successful completion of a written post experience examination to evaluate material retention.
3. Correspondence - with successful completion of a written post experience examination to evaluate material retention.
4. Any combination of the above.

(f) The sponsor of each continuing education program shall keep detailed records of the materials required in subparagraph (c) of this rule and a copy of the attendance record for not less than four (4) years from the date the course was approved.

(g) Approval of any continuing education program may be withdrawn or denied by the Board if the sponsor of such program fails to comply with the provisions of this rule.

(5) Waiver of Continuing Education

(a) The Board may grant a waiver of the need to attend and complete the required hours of continuing education where illness, disability or other undue hardship beyond the control of the licensee prevents a licensee from complying.

(b) Waivers will be considered only on an individual basis and may be requested by submitting the following items to the Board Administrative Office prior to the end of the licensure cycle in which the continuing education is due:

1. A written request for a waiver which specifies what requirement is sought to be waived and the reasons for the request.
2. Any documentation which supports the reason for the waiver requested or which is subsequently requested by the Board.

(Rule 0870-01-.12, continued)

- (c) A waiver approved by the Board is effective for only the renewal period for which the waiver is sought unless otherwise specified in writing by the Board.
 - (d) The Board Consultant and the designee are authorized to grant or deny requests for waivers subject to subsequent Board ratification.
- (6) Continuing Education for Reactivation or Reinstatement of Retired, Expired, or Revoked License.
- (a) Any massage therapist who applies for reactivation or reinstatement of a license which has been retired or has expired for over two (2) years, or any individual who applies for a new license after his or her prior license was revoked for failure to complete continuing education requirements, must submit along with the reactivation, reinstatement request, or new license application, proof which indicates the attendance and completion of twenty (20) hours of Board approved massage therapy related continuing education. The continuing education must have been earned in the twelve (12) months preceding application for reactivation or reinstatement. Eight (8) hours of the twenty (20) hour continuing education requirement for reinstatement may be completed in a multi-media format.
 - (b) The continuing education hours required by the provisions of subparagraph (6)(a) of this rule may not be counted toward the continuing education hours required to be obtained before the end of the renewal period of reactivation or reinstatement.
 - (c) The Board may grant a waiver of the continuing education requirements set out in subparagraph (6)(a) of this rule, as provided in paragraph (5) of this rule.
- (7) Violations
- (a) Any massage therapist who fails to obtain the required continuing education hours or who falsely attests to attendance and/or completion of the required hours of continuing education may be subject to disciplinary action pursuant to T.C.A. § 63-18-108.
 - (b) Education hours obtained as a result of compliance with the terms of any disciplinary action shall not be counted toward the continuing education hours required to be obtained in any renewal period.

Authority: T.C.A. §§ 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 21, 1998; effective November 4, 1998. Amendment filed November 12, 1999; effective January 26, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed May 20, 2003; effective August 3, 2003. Amendment filed December 16, 2005; effective March 1, 2006. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Withdrawal of rule 0870-01-.12(4)(b)1 filed and effective August 15, 2006. Amendment filed February 2, 2007; effective April 18, 2007. Amendment filed May 10, 2007; effective July 24, 2007. Amendment filed April 30, 2008; effective July 14, 2008. Amendment filed April 9, 2009; effective June 23, 2009. Repeal and new rule filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.13 DISCIPLINARY ACTIONS AND CIVIL PENALTIES.

- (1) Actions - Upon a finding by the Board that any provision of the Tennessee Massage Therapist Practice Act or the rules promulgated pursuant thereto has been violated, the

(Rule 0870-01-.13, continued)

Board may impose any of the following actions separately or in any combination deemed appropriate to the offense.

- (a) Denial of an application for licensure.
 - (b) "Letter of warning." This is a written action. It is informal and advisory in nature and does not constitute a formal disciplinary action.
 - (c) "Formal reprimand." This is a written action. It is a formal disciplinary action.
 - (d) "Probation." This is a formal disciplinary action for a fixed period of time.
 - (e) "Licensure suspension." This is a formal disciplinary action which suspends a licensee's right to practice for a fixed period of time. It contemplates the re-entry of the licensee into the practice under the license previously issued.
 - (f) "Licensure revocation." This is a formal disciplinary action which removes a licensee from the practice of the profession and terminates the license previously issued. No new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Board's revocation order.
 - (g) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee in any of the following circumstances:
 - 1. During any period of probation, suspension;
 - 2. As a prerequisite to the lifting of probation or suspension; or
 - 3. As a stand-alone requirement or requirements in any disciplinary action.
 - (h) Civil penalty - A monetary disciplinary action assessed by the Board pursuant to paragraph three (3) of this rule.
 - (i) Once ordered, probation, suspension, assessment of a civil penalty, or any other condition(s) of any type of disciplinary action may not be lifted unless and until the licensee appears before the Board after the period of initial probation, suspension, or other conditioning has run and all conditions placed on the probation, suspension, have been met, and after any civil penalties assessed have been paid.
- (2) Order Modifications – A licensee can petition the Board to modify a previously issued disciplinary order if the licensee cannot fulfill the conditions of the imposed discipline. This procedure is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. This procedure cannot be used to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order.
- (a) The Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.
 - (b) Procedures

(Rule 0870-01-.13, continued)

1. The petitioner shall submit a written and signed Petition for Order Modification to the Board's Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and
 - (iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
 2. The Board authorizes administrative staff to make an initial determination on the petition and take one of the following actions:
 - (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Board as an uncontested matter; or
 - (ii) Deny the petition, after consultation with the Office of General Counsel, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.
 3. If the petition is granted, a new order shall be issued reflecting the modifications authorized by the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.
 4. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven, the petitioner may request, in writing, to appear before the Board not less than thirty (30) days before the next regularly scheduled meeting of the Board.
- (3) Civil Penalties - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.
- (a) Schedule and Amount of Civil Penalties
 1. A Type A civil penalty may be imposed whenever the Board finds the person who is required to be licensed by the Board is guilty of a violation of T.C.A. § 63-18-101, et seq. or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be a substantial threat to the health, safety and welfare of an individual client or the public. For purposes of this section, a type A penalty shall include, but not be limited to, a person who is or was practicing massage therapy without a license from the Board. Type A civil penalties shall be assessed in the amount of not less than \$500 and not more than \$1,000.
 2. A Type B civil penalty may be imposed whenever the Board finds the person required to be licensed by the Board is guilty of a violation of T.C.A. § 63-18-101,

(Rule 0870-01-.13, continued)

et seq. or regulations promulgated pursuant thereto in such manner as to impact directly on the care of clients or the public. Type B civil penalties may be assessed in the amount of not less than \$100 and not more than \$500.

3. A Type C civil penalty may be imposed whenever the Board finds the person required to be licensed, permitted, or authorized by the Board is guilty of a violation of T.C.A. § 63-18-101, et seq. or regulations promulgated pursuant thereto, which is neither directly detrimental to the clients or public, nor directly impacts their care, but has only an indirect relationship to client care or the public. Type C civil penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(b) Procedures for Assessing Civil Penalties

1. During a contested case proceeding the Board may assess civil penalties in a type and amount which was not recommended by the Office of General Counsel.
2. In assessing civil penalties pursuant to these rules the Board may consider the following factors:
 - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (ii) The circumstances leading to the violation;
 - (iii) The severity of the violation and the risk of harm to the public;
 - (iv) The economic benefits gained by the violator as a result of non-compliance; and
 - (v) The interest of the public.
3. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.

Authority: T.C.A. §§ 4-5-217, 4-5-223, 63-18-106, 63-18-108, 63-18-109, and 63-18-111.
Administrative History: Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed August 2, 2004; effective October 16, 2004. Amendment filed March 24, 2006; effective June 7, 2006. Repeal and new rule filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.14 LICENSE.

- (1) Display of License - Every person who has received a license from the Board in this state shall display that license in a conspicuous place in his/her office/establishment and produce the license when required by the Board or its authorized representatives.
- (2) Replacement License - A licensee whose initial or renewal license has been lost or destroyed may be issued a replacement license upon receipt of a signed, written request in the Board Administrative Office. The licensee shall include in such request the facts concerning the loss or destruction of the original license and include the required fee pursuant to Rule 0870-01-.06.

(Rule 0870-01-.14, continued)

- (3) Requests for Certificates of Fitness for licensees or registrants desiring to practice in another state must be made in writing to the Board Administrative Office.
- (4) Requests for verification of license must be made in writing to the Board Administrative Office.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-106, 63-1-108, 63-1-109, 63-1-118, 63-6-106, 63-18-104, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.15 LICENSE ADDRESS AND NAME.

The contact information required in this Rule is necessary for and shall be used for, among other things, obtaining service of process in the event of a disciplinary action.

- (1) Change of Name - Each licensee whose name has changed shall notify the Board in writing of the name change and will provide both the old and new names. A notification of name change must also include a copy of the official document demonstrating the name change and must reference the licensee's license number. Such notification must be received in the Board's Administrative Office no more than thirty (30) days after such name change became effective.
- (2) Change of Address - Each licensee who has had a change of practice address and/or mailing address shall notify the Board in writing of his/her current practice and mailing addresses, giving both old and new addresses. Such notification shall be received in the Board's Administrative Office no more than 30 days after such change is effective and must reference the individual's or the establishment's name and license number. If the licensee has no current practice address, he/ she shall so inform the Board.
- (3) Change of Establishment Name and/or Address - A licensed massage establishment shall notify the Board in writing each time the establishment's name and/or physical address changes no more than thirty (30) days after such change is effective. Such notification shall include the establishment's license number, old and new names, and old and new addresses. If the establishment has changed its name, it must pay the replacement license fee, pursuant to rules 0870-01-.06(1)(f) and 0870-01-.06(2)(f). A re-inspection fee is required when an establishment changes its physical address.

Authority: T.C.A. §§ 63-1-106, 63-1-108, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed March 24, 2006; effective June 7, 2006. Repeal and new rule filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.16 OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (1) The Board shall annually elect from its members the following officers:
 - (a) Chairperson - who shall, unless absent, preside at the Board meetings.

(Rule 0870-01-.16, continued)

- (b) Secretary-Treasurer - who along with the Board Administrator shall be responsible for correspondence from the Board. The secretary shall preside at all meetings at which the chairperson is absent.
- (2) Minutes of the Board meetings and all records, documents, applications, and correspondence will be maintained in the Board Administrative Office.
 - (a) All requests, applications, notices, complaints, other communications and correspondence shall be directed to the Board Administrative Office. Any requests or inquiries requiring a Board decision or official Board action except documents relating to disciplinary actions, declaratory orders or hearing requests must be received fourteen (14) days prior to a scheduled Board meeting and will be retained in the Administrative Office and presented to the Board at the Board meeting. Such documents not timely received shall be set over to the next Board meeting.
 - (b) All records of the Board, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Board Administrative Office during normal business hours.
 - (c) All complaints against licensees or establishments should be directed to the Division's Investigations Section and not to the Board or any of its members.
- (3) The Board shall appoint a Board Consultant, who may be a Board member or a Board designated licensed massage therapist either serving voluntarily or employed pursuant to contract with the Division, and authorizes said Consultant to act with the authority of the Board to do the following on behalf of the Board:
 - (a) Review and make initial determinations on licensure, renewal, and reactivation of licensure applications subject to the rules governing those respective applications and subject to subsequent ratification by the Board.
 - (b) Serve as Consultant to the Division to review complaints and request patient records under T.C.A. § 63-1-117.
- (4) Declaratory Orders - Petitions for Declaratory Order shall be resolved in accordance with the Tennessee Uniform Administrative Procedures Act.
- (5) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 of the Rules of the Department of State regarding petitions for reconsiderations and stays in that case.
- (6) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-01-.13, of the Rules of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-223, 4-5-224, 63-1-138, 63-18-103, 63-18-108, 63-18-109, and 63-18-111.
Administrative History: Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Repeal and new rule filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.17 ADVERTISING.

- (1) Policy Statement. Lack of sophistication on the part of many members of the public concerning professional massage services, the importance of the interests affected by the choice of a massage therapist or a massage establishment and the foreseeable consequences of unrestricted advertising by massage therapists or on behalf of massage establishments, which is recognized to pose special possibilities for deception, require that special care be taken to avoid misleading the public. Massage therapists and massage establishments must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions - As used in this rule, the following terms shall have the meanings ascribed to them:
 - (a) Advertisement - Informational communication to the public in any manner designed to attract public attention to the practice of a Tennessee licensed massage therapist or massage establishment.
 - (b) Material Fact - Any fact which a reasonable and prudent person would need to know or rely upon in making an informed decision concerning the choice of practitioners or establishments to serve his or her particular needs.
 - (c) Bait and Switch Advertising - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell or provide. Its purpose is to switch consumers from buying or receiving the advertised merchandise or services, in order to sell or provide something else, usually at a higher fee or on a basis more advantageous to the advertiser.
 - (d) Discounted Fee - A fee offered or charged by a person, organization or establishment for any massage therapy product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee."
- (3) Advertising Fees and Services
 - (a) Fixed Fees. Fixed fees may be advertised for any service. It is presumed, unless otherwise stated in the advertisement, that a fixed fee for a service shall include the cost of all professionally recognized components within generally accepted standards that are required to complete the service.
 - (b) Ranges of Fees. A range of fees may be advertised for services. However, the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
 - (c) Discount Fees. Discount fees may be advertised if:
 1. The discount fee is in fact lower than the licensee's customary or usual fee charged for the service; and
 2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular nondiscounted fee for that service.

(Rule 0870-01-.17, continued)

- (d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised service for which additional fees will be charged must be identified as such in any advertisement.
 - (e) Time Period of Advertised Fees. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication, whichever is later, whether or not the services are actually rendered or completed within that time.
- (4) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unethical and unprofessional conduct, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-18-108.
- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned or non-health degree in any advertisement.
 - (c) Promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform.
 - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
 - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
 - (f) The use of any personal testimonial attesting to a quality or competence of a service or treatment offered by a licensee that is not reasonably verifiable.
 - (g) Utilization of any statistical data or other information based on past performances for predication of future services, which creates an unjustified expectation about results that the licensee can achieve.
 - (h) The communication of personal identifiable facts, data, or information about a client without first obtaining client consent.
 - (i) Any misrepresentation of a material fact.
 - (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
 - (k) Statements concerning the benefits or other attributes of procedures or products that involve significant risks without including:
 - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
 - 2. The availability of alternatives; and

(Rule 0870-01-.17, continued)

3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
 - (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
 - (m) Failure to comply with the rules governing advertisement of fees and services, and advertising records.
 - (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the board may require the licensee to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.
 - (o) Misrepresentation of a licensee's credentials, training, experience or ability.
 - (p) Failure to include the corporation, partnership or individual licensee's name in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall:
 1. Upon request provide a list of all licensees at that location; and
 2. Maintain and conspicuously display at the licensee's office, a directory listing all licensees practicing at that location.
 - (q) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
 - (r) The use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings after thirty (30) days from the departure of that licensee. (This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign).
 - (s) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
 - (t) Directly or indirectly offering, giving, receiving or agreeing to receive any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services.
- (5) Advertising Records and Responsibility
 - (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such entity.
 - (b) Any and all advertisement are presumed to have been approved by the licensee names therein.

(Rule 0870-01-.17, continued)

- (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its authorized representative.
- (d) At the time any type of advertisement is placed, the licensee must possess and reply upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public communication.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-18-108, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendments filed March 24, 2006; effective June 7, 2006. Amendments filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.18 CONSUMER RIGHT-TO-KNOW REQUIREMENTS.

- (1) Malpractice reporting requirements. Pursuant to the "Health Care Consumer Right-to-Know Act of 1998" codified at T.C.A. § 63-51-105, licensees shall report any and all professional malpractice judgments, awards or settlements in which payments to complaining parties exceed ten thousand dollars (\$10,000).
- (2) Criminal conviction reporting requirements. For purposes of the "Health Care Consumer Right-To-Know Act of 1998", the following criminal convictions must be reported:
 - (a) Conviction of any felony.
 - (b) Conviction or adjudication of guilt of any misdemeanor, regardless of its classification, in which any element of the misdemeanor involves any one or more of the following:
 - 1. Sex.
 - 2. Alcohol or drugs.
 - 3. Physical injury or threat of injury to any person.
 - 4. Abuse or neglect of any minor, spouse or the elderly.
 - 5. Fraud or theft.
 - (c) If any misdemeanor conviction reported under this rule is ordered expunged, a copy of the order of expungement signed by the judge must be submitted to the Department before the conviction will be expunged from any profile.
- (3) Licensees shall notify the Board Administrative Office within thirty (30) days of a reportable event under this Rule (malpractice payment or conviction).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, 63-18-111, and 63-51-101, et seq. **Administrative History:** Original rule 0870-01-.18 filed March 14, 2000; effective May 28, 2000. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The

(Rule 0870-01-.18, continued)

Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.19 PROFESSIONAL AND ETHICAL STANDARDS FOR THERAPISTS AND ESTABLISHMENTS.

- (1) The Board requires licensed therapists and licensed establishments to uphold professional and ethical standards that allow for the proper discharge of their responsibilities to those served, that protect the integrity of the profession, and that safeguard the interests of individual clients. To ensure compliance with these professional ethical standards, licensed therapists, and, when applicable, licensed establishments, must:
 - (a) Accurately inform clients, other health care practitioners, and the public of the scope and limitations of their discipline; and
 - (b) Acknowledge the limitations of and contraindications for massage and bodywork and, when appropriate, refer clients to appropriate health professionals; and
 - (c) Avoid any interest, activity or influence which might be in conflict with the licensee's obligation to act in the best interests of the client or the profession; and
 - (d) Comply with all applicable Tennessee statutes and regulations as well as Orders issued by the Board pursuant to its disciplinary and/or declaratory order authority; and
 - (e) Conduct their business and professional activities with honesty and integrity, and respect the inherent worth of all persons; and
 - (f) Consistently maintain and improve professional knowledge and competence, striving for professional excellence through regular assessment of personal and professional strengths and weaknesses and through continued education training; and
 - (g) Exercise the right to refuse to treat any person or part of the body for just and reasonable cause; and
 - (h) Have a sincere commitment to provide the highest quality of care to those that seek their professional services; and
 - (i) Provide draping and treatment in a way that ensures the safety, comfort and privacy of the client; and
 - (j) Provide treatment only where there is reasonable expectation that it will be advantageous to the client; and
 - (k) Refrain, under all circumstances, from initiating, arranging for, or engaging in any sexual conduct, sexual activity, or sexualizing behavior involving a client, even if the client attempts to sexualize the relationship; and
 - (l) Refrain, under all circumstances, from providing the following treatments, which are prohibited and not within the scope of practice for massage therapists:
 1. Treatments to the anus or anal canal, including, but not limited to, colonic irrigations and enemas;
 2. Cross-gender breast massage;

(Rule 0870-01-.19, continued)

3. Treatments to the genitals.
 - (m) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-02-.02, from dating or having a sexual relationship with any student of such program while the student is enrolled, including the period of time between semesters of attendance; and
 - (n) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-02-.02, from soliciting any student of such program to be a client or customer for massage therapy services while the student is enrolled, including the period of time between semesters of attendance; and
 - (o) Refrain from providing services when the licensee is either physically or mentally incapable of safely doing so. The term "safely" as used in this rule means safety of the massage therapists and anyone they come in contact with during the course of professional practice; and
 - (p) Represent their qualifications honestly, including their educational achievements and professional affiliations, and provide only those services which they are qualified and licensed to perform; and
 - (q) Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, and autonomy, as well as the client's reasonable expectations of professional behavior; and
 - (r) Before proceeding with a massage, explain to the client expected draping techniques and provide the client a clean drape large enough for the purpose of draping the buttocks and genitalia and, in the case of female clients, the breasts. Such body parts must remain covered except during therapeutic treatment of those specific areas, with the exception of the genitalia, which shall always remain covered; and
 - (s) Respect the client's right to refuse, modify, or terminate treatment regardless of prior consent given; and
 - (t) Respect the client's right to treatment with informed and voluntary consent by obtaining and recording informed voluntary written consent of the client, or client's advocate, before performing:
 1. Therapeutic treatments beyond the normal narrowing of the ear canal and normal narrowing of the nasal passages; and
 2. Therapeutic treatments in the oropharynx; and
 3. Therapeutic same-gender breast massage.
 - (u) Respect the client's right to treatment with informed and voluntary consent by obtaining and recording informed voluntary written or verbal consent of the client, or client's advocate, before providing treatment other than the treatments identified in subparagraph (1) (p) of this rule; and
 - (v) Safeguard the confidentiality of all client information, unless the client provides written permission to release such information; or

(Rule 0870-01-.19, continued)

1. Unless such information is requested during a formal investigation by representatives of the State of Tennessee or other law enforcement agencies; or
 2. Unless required to do so pursuant to any action in a court of law; or
 3. Where required by law to report to state or federal agencies.
- (w) Refrain from practicing in an unlicensed establishment.
- (x) Launder or sanitize, before reuse, all materials, equipment and supplies utilized for each client.
- (2) Violation of any provision listed in paragraph (1) is grounds for disciplinary action, as provided in Rule 0870-01-.13.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-108, and 63-18-111. **Administrative History:** Original rule filed May 30, 2003; effective August 13, 2003. Amendment filed October 4, 2004; effective December 18, 2004. Amendment filed March 24, 2006; effective June 7, 2006. Amendments filed June 16, 2006; effective August 30, 2006. Amendment filed February 2, 2007; effective April 18, 2007. Amendment filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.