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Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Fax: 615-741-5133
 Email: register.information@tn.gov

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Agency/Board/Commission:	Tennessee Massage Licensure Board
Division:	
Contact Person:	Marc Guilford Assistant General Counsel
Address:	220 Athens Way, Suite 210 Nashville, TN
Zip:	37243
Phone:	(615) 741-1611
Email:	Marc.Guilford@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

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(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.in.us/sos/rules/1360/1360.htm>)

Chapter 0870-01

General Rules Governing Licensed Massage Therapists And Establishments

Amendments

Rule 0870-01-.01 Definitions is amended by deleting it in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

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.
- (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.

Rule 0870-01-.02 Practice Standards and Inspection of Establishments is amended by deleting it in its entirety and substituting instead the following language, so as amended, the new rule shall read:

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.
 - 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 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-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.

Rule 0870-01-.03 Necessity of Licensure is amended by deleting it in its entirety and substituting instead the following language so that, as amended, the new rule shall read:

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).

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.

Rule 0870-01-.04 Licensure Process is amended by deleting it in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

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.
 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.
- (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.

Rule 0870-01-.05 Establishment Licensure Process is amended by deleting it in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

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.
- (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.

Rule 0870-01-.07 Application Review, Approval, and Denial is amended by deleting it in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

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.
- (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.

Rule 0870-01-.08 Examination is amended by deleting it in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

0870-01-.08 Examination.

- (1) With the exception of applicants qualifying for reciprocity licensure pursuant to Rule 0870-01-.04(1)(m), 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 directly by the examining agency to the Board Administrative Office as part of the application process contained in Rule 0870-01-.04.
- (2) Competency Examination – Through January 1, 2012, the Board will accept successful completion, as determined by the examining agency, of any one (1) of the following examinations:
 - (a) The NCBTMB's and/or its successor organization's National Certification Examination for Therapeutic Massage (NCETM); or
 - (b) The NCBTMB's and/or its successor organization's National Certification for Therapeutic Massage and Bodywork (NCETMB); or
 - (c) The NCBTMB's and/or its successor organization's National Examination for State Licensing (NESL); or
 - (d) The FSMTB's Massage and Bodywork Licensing Examination (MBLEx); or
 - (e) Any other Board-approved examination.
- (3) Effective January 2, 2012, the exclusive competency examination accepted by the Board shall be the FSMTB's and/or its successor organization's Massage and Bodywork Licensing Examination (MBLEx).

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

0870-01-.09 Licensure Renewal is amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language as new paragraphs (1) and (2) so that the new paragraphs shall read:

- (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.
 - (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.

Authority: T.C.A. §§ 63-1-107, 63-18-104, 63-18-106, and 63-18-111.

Rule 0870-01-.11 Retirement, Reinstatement, Inactivation, and Reactivation of Licensure is amended by deleting subparagraph (2)(c) in its entirety and substituting instead the following language as new subparagraph (2)(c), so that as amended, the new subparagraph shall read:

- (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.

Authority: T.C.A. §§ 63-1-111, 63-18-104, 63-18-106, and 63-18-111.

Rule 0870-01-.12 Continuing Education is amended by deleting it in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

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 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
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.
 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 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.
 - (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, 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 the application for reactivation, reinstatement, or new license. Eight (8) hours of the twenty (20) hour continuing education requirement 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 the reactivated, reinstated or new license.
- (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.

Rule 0870-01-.13 Disciplinary Grounds, Actions, and Civil Penalties is amended by deleting it in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

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 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
 - 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, 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.

Rule 0870-01-.14 License is amended by deleting paragraph (2) and substituting instead the following language as new paragraph (2), so that as amended, the new paragraph (2) shall read:

- (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.

Authority: T.C.A. §§ 63-1-106, 63-1-108, 63-1-109, 63-1-118, 63-18-104, and 63-18-111.

Rule 0870-01-.15 Change of Name and/or Address is amended by deleting it in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

Rule 0870-01-.15 Licensee 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.

Rule 0870-01-.16 Officers, Consultants, Records, Declaratory Orders, and Screening Panels is amended by deleting it in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

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.

- (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.

Rule 0870-01-.17 Advertising is amended by deleting paragraphs (1), (2), and (3) and substituting instead the following language, so that as amended, the new paragraphs (1), (2), and (3) shall read:

- (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.
 - (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.

Paragraph (4) of Rule 0870-01-.17 Advertising is amended by deleting subparagraphs (d) and (r) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (d) and (r) shall read:

- (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
- (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).

Paragraph (6) of Rule 0870-01-.17 Advertising is deleted in its entirety.

Authority: T.C.A. §§ 63-1-145, 63-1-146, 63-18-108, and 63-18-111.

Rule 0870-01-.18 Consumer Right-To-Know Requirements is amended by deleting paragraph (1) in its entirety and substituting instead the following language for paragraph (1) and adding a new paragraph (3), so that as amended, the new paragraphs shall read:

- (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).
- (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. §§ 63-18-111 and 63-51-101, *et seq.*

Rule 0870-01-.19 Professional Ethical Standards is amended by changing the title to read "Professional and Ethical Standards for Therapists and Establishments" and by deleting paragraph (1) in its entirety and substituting instead the following language, so that the new paragraph shall read:

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;
 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
 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.

Authority: T.C.A. §§ 63-18-108 and 63-18-111.

Chapter 0870-02

General Rules Governing Massage Therapy Educational Programs

Rule 0870-02-.01 Definitions is amended by adding new paragraphs (6), (7), and (8) to this rule, so that as amended, the new paragraphs shall read:

- (6) NCBTMB – The National Certification Board for Therapeutic Massage and Bodywork
- (7) FSMTB – The Federation of State Massage Therapy Boards
- (8) MBLEx – The Massage and Bodyworks Licensing Examination established by the FSMTB

Authority: T.C.A. §§ 63-18-111 and 63-18-115.

Rule 0870-02-.02 Program Approval and Curriculum Requirements is amended by deleting it in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Massage therapy programs must receive written approval from the Tennessee Massage Licensure Board through the application process described in paragraph (2) below. Such approval is not transferable.
- (2) Application Process
 - (a) Massage therapy programs seeking approval must submit an application to the Board a minimum of thirty (30) days prior to the next regularly scheduled Board meeting in order for the Board to review the application. The application must provide the following information:
 1. Name of parent institution and authority for operations;
 2. Location of principal clinical facilities;
 3. Locations of all satellite facilities;
 4. Names and license numbers of all licensed teaching staff and the program director;
 5. Curriculum vitae, including professional license numbers and description and explanation of any prior disciplinary action taken against a license, for all teaching staff, including the program director;
 6. Maximum class size;
 7. A complete copy of the program catalog, submitted on plain copy paper, front-side only; and
 8. Submission of other such information that the Board may deem necessary.
 - (b) The program director shall appear before the Board as part of the initial approval process. The curriculum shall be presented at the meeting.
- (3) The Board-approved program shall adhere to the following minimum standards:
 - (a) Instructor/student ratio shall be at least one (1) instructor to every fourteen (14) students for any hands-on class;
 - (b) The program curriculum shall include, but not be limited to, the topics contained in the current National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination, its successor and/or other approved examination, content outline at the time of admission of the student. The program shall, at a minimum, consist of five hundred (500) classroom hours and must contain:
 1. Two hundred (200) classroom hours 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 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.
 3. Eighty-five (85) classroom hours 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 ethics instruction.
 5. Five (5) classroom hours regarding Tennessee massage statutes and regulations.
- (c) The program catalog, program syllabus, policies, procedures and the handbook or brochure regarding the approved examination, current content outline and eligibility criteria, are to be distributed on or before the first (1st) class session.
 - (d) The program shall ensure that each graduating class shall have received a minimum of two (2) hours classroom presentation prior to graduation by the impaired professional assistance program contracted by the Board. Both the program and the impaired professional assistance program shall each maintain documentation of each presentation reflecting the date, time and attendance of the presentation and shall make such documentation available upon request by the Board. Failure to comply with this provision may subject the program to withdrawal of program approval.
 - (e) The program must document that each student has signed and dated an acknowledgement that they understand the requirements for licensure, specifically the provisions regarding criminal convictions, upon application to the program.
 - (f) The program must have a written policy on the accepted pass-fail rates or grading system used by the program.
 - (g) The program must have a written protocol or policy on the mechanism to evaluate a student's performance. At least one (1) evaluation is required within the first half of the program.
 - (h) The program shall create and maintain records on each student, including official transcripts, in compliance with the rules of the Tennessee Higher Education Commission or the Tennessee Board of Regents.
 - (i) Upon request, the program shall provide a copy of the transcript to the student upon completion of or withdrawal from the program. The student must comply with the enrollment agreement to receive a copy.
 - (j) The transcript shall include the following, at a minimum:
 1. The program name;
 2. Name of the student;
 3. Subjects covered in the program;
 4. Grades and contact hours for each subject pursuant to Rule 0870-01-.04(1)(e);
 5. Signature of an authorized program/school official;
 6. Date issued;
 7. Date of graduation; and,
 8. Total number of contact hours completed.
 - (k) The program shall notify the Board of any change in directorship and/or instructors within ten (10) days of hire or discharge. Documentation of the training and experience of any new hires must be received within ten (10) days of hire.

- (l) The program shall notify the Board within ten (10) days of any changes made in the operation of the school such as a change of ownership, director of education, institutional director, location, and/or approval status with THEC or TBR;
- (m) At any time, designees of the Department of Health or other state agencies shall be provided full access to program materials, examinations, and the classroom during instruction. Failure to provide access pursuant to this provision may subject the provider to withdrawal of program approval.
- (n) A member of the Board or a Board designee may issue preliminary program approval subject to subsequent Board ratification.
- (o) The program must have a written policy on the dismissal of students.

Authority: T.C.A. §§ 63-1-136, 63-18-111, and 63-18-115.

Rule 0870-02-.03 Withdrawal Of Program Approval is amended by deleting it in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

0870-02-.03 Withdrawal Of Program Approval. Program approval may be withdrawn if the Board finds the program in violation of any of the Board's statutes or regulations or if the Board finds the program inadequate for certification purposes based upon random auditing of the program and/or its effectiveness in producing qualified graduates. The minimum standard for continued program approval based on effectiveness in producing qualified graduates shall be at least seventy percent (70%) of the students passing the licensure examination on first (1st) attempt over at least a twelve (12) month period.

Authority: T.C.A. §§ 63-18-111 and 63-18-115.

Rule 0870-02-.05 Minimum Standards for Directors, Instructors and Classrooms is amended by deleting subparagraph (1)(d) in its entirety and substituting instead the following language as new subparagraph (1)(d) and deleting subparagraph (1)(h), so that as amended, the new subparagraph (1)(d) shall read:

- (d) Instructors – Any persons who instruct must be currently Tennessee licensed professionals in their appropriate profession if such profession requires licensure. Instructors must have at least three (3) years of practical experience within the past seven (7) years in the subject area to be taught.

Authority: T.C.A. §§ 63-18-111 and 63-18-115.

Rule 0870-02-.06 Program Policies and Procedures is amended by deleting it in its entirety and substituting instead the following language so that the new rule shall read:

- (1) All programs shall create written policies for all of the following and shall distribute them to all students:
 - (a) Infection control;
 - (b) Emergency management;
 - (c) Fire and safety; and
 - (d) Sexual harassment and misconduct.
- (2) All programs shall have at least one (1) person qualified in Basic Life Support (BLS) available during all clinical and classroom hours.

Authority: T.C.A. §§ 63-18-111 and 63-18-115.

Rule 0870-02-.07 Annual Report is amended by deleting the language in the catch-line and substituting the following language, so that, as amended the catch-line shall read:

0870-02-.07 Annual Report. Every Board-approved program shall file an annual report with the Board on or before December 31 of each calendar year.

Authority: T.C.A. §§ 63-18-111 and 63-18-115.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Phyllis B. Salyers	X				
Faith Mayton	X				
Chris Sluss	X				
Marcela Collins	X				
Cynthia Jagers	X				
Pamela Edmond	X				
Marilyn Field				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Massage Licensure Board on 10/26/2009 & 02/23/2010, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/03/09

Rulemaking Hearing(s) Conducted on: (add more dates). 10/26/09 & 02/23/10

RECEIVED
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 PUBLIC AFFAIRS

Date: 9/13/11

Signature: *Marc Guilford*

Name of Officer: Marc Guilford

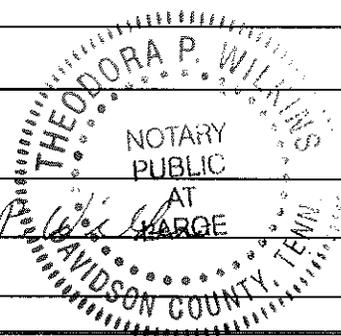
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 7/13/11

Notary Public Signature: *Theodora P. Williams*

My commission expires on: 11/7/2011



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
 Attorney General and Reporter

10-4-11

Date

Department of State Use Only

Filed with the Department of State on: 07/09/2012

Effective on: 07/08/2012

Tre Hargett

Tre Hargett
 Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

PUBLIC HEARING COMMENTS

TENNESSEE MASSAGE LICENSURE BOARD

OCTOBER 26, 2009 AND FEBRUARY 23, 2010

The rulemaking hearing for the Tennessee Massage Licensure Board was held on October 26, 2009 in the Department of Health Conference Center's Poplar Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. The rulemaking hearing was not concluded at the end of the meeting and was carried over to February 23, 2010, when it was concluded.

Several members of the public attended and had verbal questions and statements. Written comments as well as verbal comments were received from Karen Craig, representing the Massage Institute of Memphis.

1. Maj-Lis Nash had several requests for revisions as listed below:

- a. That the requirement for a passport photo in the licensure application be added back in. The Office of General Counsel responded that within six (6) months of receipt, the applications are imaged, and the photos are virtually unrecognizable in the imaged documents, therefore, this requirement was deleted;
- b. That the words "as delineated in 0870-01-.04(1)(f) be deleted in Rule 0870-01-.04(m)(1);
- c. That Rule 0870-01-.12(4)(c)6 be deleted as it is confusing;
- d. That the words "in writing" be added to Rule 0870-02-.02(3)(e);
- e. To delete the word "business" and change to "clinic and classroom" in Rule 0870-02-.06(2);
- f. To change "on or before June 30" to "by December 31" in Rule 0870-02-.07.

2. Karen Craig represented the Massage Institute of Memphis and submitted written comments and stated that she found several typographical and numbering errors. The Office of General Counsel responded that the typographical and numbering errors would be corrected per her written comments. Her verbal questions and comments were as follows:

- a. That the last word in Rule 0870-01-.02(3)(d)4 should be "reinspection" instead of "inspection";
- b. That the word "for" be inserted in Rule 0870-01-.02(e)5 in reference to appearing "for" a reinspection;
- c. That the word "Bodyworks" be inserted in Rule 0870-01-.01(14);
- d. That in Rule 0870-01-.08(3), the NCBTMB should be left in as a competency examination. there was much discussion among the Board members regarding this suggestion and it was stated that many states were only going to accept the MBLEx after 2011. The Board did not approve this suggestion;
- e. That in Rule 0870-01-.04 a subparagraph be added requiring a student to sign an acknowledgement of provisions regarding criminal convictions and becoming licensed;
- f. That Rule 0870-01-.12(2) is confusing and questioned which date is used. The director replied that date of issue of the license is the date used for required continued education;
- g. Must providers of continuing education be approved by the Board or just courses as stated in Rule 0870-01-.12(4)? Yes, providers must be approved as well as courses.
- h. Whether in Rule 0870-01-.12(4)(b)6, continuing education courses taken as formal educational courses can be given more than fifteen (15) hours of CEU credit for a three (3) hour course. The board responded this could not be changed.
- i. That the minutes of instruction in Rule 0870-01-.12(4)(c)5 to equal an hour of CEU credit be changed to fifty (50) minutes rather than sixty (60);

- j. Whether a licensee needs approval for all out of state CEU classes or only those which did not have prior board approval. The Board answered only those not previously approved would need approval.
- k. That in Rule 0870-01-.16(3)(b) the word "patient" be changed to "client". OGC responded that T.C.A. 63-1-117 uses the term "patient" and that language must be used in the rule.
- l. That in Rule 0870-01-.19(1) two (2) of the original responsibilities were deleted and could they be put back in. The Board replied these requirements were covered in the new subparagraph (c) and were no longer needed.

3. Dianne Smithson appeared and requested that in Rule 0870-01-.12(1)(b) a sentence should be added stating "This two (2) hour course must be approved by the Board." She further requested clarification of the words "and attendance" in Rule 0870-01-.02(3)(d) questioning what must be documented by the program.

4. Sarah Lahti appeared and stated she was opposed to the new rule only accepting the EMBLEx as the licensing examination after June, 2011.

5. Mindy Oldham appeared and questioned the following:

- a. The 100 cubic feet designation in Rule 0870-01-.02(2)2;
- b. Whether unannounced inspections in Rule 0870-01-.02(3) would interrupt client hours. The Board stated that unannounced inspections were not common and were used in problem cases.
- c. Whether the implementation date for the EMBLEx could be changed from 2011 to 2013 in Rule 0870-01-.08(3). The Board responded this was discussed earlier, and it was decided to keep the date as 2011.
- d. What is the "biennial alternative interval" in Rule 0870-01-.09(1)(a)?
- e. Whether the words "from the preceding cycle" could be added to Rule 0870-01-.02(3)(a).

6. Steve Summers appeared and questioned whether establishment owners should be required to take the law class as required for therapists.

7. Lori Schrader questioned how long is a person considered a "client" in terms of Rule 0870-01-.19(1); whether a husband-wife would be considered clients; whether a person who received a massage when a therapist was performing volunteer work would be considered a client. OGC responded if questions of this nature were raised in a disciplinary matter, each matter would be treated on an individual basis.

8. Debbie Hicks, President of MTA, appeared and requested the Board revisit Rule 0870-01-.02(2)(a)2 and the 100 cubic feet measurement. OGC suggested 1000 square feet be used in the rule. She further questioned whether the term "reciprocity" be changed to "portability" in Rule 0870-01-.04(1)(m). OGC stated the statute uses the term "reciprocity," thus this is the term which should be used in the rule.

9. Written comments were received from Chattanooga State Technical Community College requesting the ratio of 14 students to 1 instructor in Rule 0870-02-.02(3)(a) be changed to 20 student to 1 instructor. The Board did not approve this change in the rule amendment.

With the exceptions noted above, at the conclusion of the public comments the Board voted unanimously to approve the suggestions and incorporate these into the permanent rules.

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Regulatory Flexibility Analysis

- (1) The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.
- (2) The proposed rules exhibit clarity, conciseness, and lack of ambiguity.
- (3) The proposed rules are not written with special consideration for the flexible compliance and/or reporting requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations.
- (4) The compliance requirements throughout the proposed rules are as “user-friendly” as possible while still allowing the Division to achieve its mandated mission the protection of the health, safety and welfare of the citizens of Tennessee. There is sufficient notice between the rulemaking hearing and the final promulgation of rules to allow services and providers to come into compliance with the proposed rules.
- (5) Compliance requirements are not consolidated or simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.
- (6) The standards required in the proposed rules are very basic and do not necessitate the establishment of performance standards for small businesses. When the health-related licensing boards' rules contain standards, there are always statements included which specify what constitutes compliance with such standards.
- (7) There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation. All of the health-related licensing boards' rules contain initial licensure requirements and requirements to maintain licensure, but these are necessary for the protection of the health, safety and welfare of Tennesseans.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. **Name of Board, Committee or Council:** Tennessee Massage Licensure Board
2. **Rulemaking hearing date:** October 26, 2009 and February 23, 2010
3. **Types of small businesses that will be directly affected by the proposed rules:** The types of small businesses directly affected by the proposed rules are massage establishments, licensed massage therapists and massage schools.
4. **Types of small businesses that will bear the cost of the proposed rules:** Should there be any cost of the proposed rules, massage establishments, massage therapists and massage schools will bear the cost..
5. **Types of small businesses that will directly benefit from the proposed rules:** Massage establishments, massage therapists, and massage schools will benefit from the proposed rules.
6. **Description of how small business will be adversely impacted by the proposed rules:** There should be no adverse impact to small business due to the proposed rules.
7. **Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:** There are no less burdensome alternatives to the proposed rules.

Comparison of the proposed rule with federal or state counterparts:

Federal - None

State – None

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These amendments to the rules are not expected to have any impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Unless otherwise indicated, rule numbers below refer to the numbering in the *new* rules approved by the Board.

Rule 0870-01.01: Provides definitions for terms used throughout rules.

Description of Amendments: Definitions of "Application," "Board Administrative Office," "Client," "Establishment," revised to by removing extraneous words or information. Definitions of "Closed Files," "He/she Him/her," "HRB," and "Outcall" deleted as no longer necessary. Definitions for "MBLEx" and "FSMTB" added. Definition of "Sexual Activity" moved here from its prior location in Rule 0870-01-.02(4)(a).

Rule 0870-01-.02: Rules concerning massage establishment practice standards and inspections.

Description of amendments:

.02(1): Revised to clarify that establishment owners may be disciplined for violations of the subsections that follow.

.02(2)(a)1.: Reworded for clarity.

.02(2)(a)2.: Smoke detector requirements expanded and made more specific to clarify what is considered adequate.

.02(2)(a)3.: Reworded slightly for clarity

.02(2)(a)4.: Reworded slightly for clarity

.02(2)(a)4.(i): Flush toilet requirement moved from its prior location at .02(2)(a)4.

.02(2)(a)4.(ii): Sink requirements reworded by combining prior rules .02(2)(a)4.(ii) and (iii) relating to cleaning materials and drying devices required.

.02(2)(a)4.(iii): Reworded slightly for clarity.

.02(2)(a)4.(iv): Deleted as unnecessary.

.02(2)(a)6.: Reworded slightly for clarity.

.02(2)(b)1.: Reworded slightly for clarity.

.02(2)(b)2.: Added requirement that establishments maintain massage licensure certificates for licensees practicing at that location.

.02(2)(b)3.: Previously designated as .02(2)(b)2.; reworded slightly for clarity.

.02(2)(b)4.: Previously designated as .02(2)(b)3..

.02(2)(b)5.: Previously designated as .02(2)(b)4.; reworded slightly for clarity.

.02(2)(c)1.: Reworded for clarity and to remove extraneous requirements.

.02(2)(c)2.: Reworded slightly for clarity.

.02(2)(d): Deleted as unnecessary; necessary portions of these rules now appear elsewhere.

.02(3): Rules pertaining to inspection of establishments; previously numbered as .02(5). Also reworded slightly for clarity and modified to explicitly permit unannounced inspections.

.02(3)(a): Reworded slightly for clarity.

.02(3)(b): Reworded slightly for clarity.

.02(3)(c): Added a new rule stating that an inspection score of 84 or below results in a "failure" of the inspection.

.02(3)(d): Previously numbered as .02(3)(c), otherwise unchanged.

.02(3)(d)4.: Reworded slightly for clarity.

.02(3)(d)5.: New rule stating that failure to pass reinspection will result in a complaint being opened.

.02(3)(e): Reworded slightly for clarity.

.02(3)(e)4.: Reworded slightly for clarity.

.02(3)(e)5.: New rule stating that failure to pass reinspection for failure to allow or appear at reinspection will result in a complaint being opened.

Rule 0870-01-.03: States basic standards concerning the necessity of licensure and use of abbreviations indicating licensure.

Description of amendments:

.03(1): Reworded by combining the prior sections .03(1), (2) and (4).

.03(2): Previously numbered as .03(3); corrected to reflect the renumbering of Rule 0870-01-.19; otherwise unchanged.

Rule 0870-01-.04: Rules governing the licensure process for individuals.

Description of amendments:

- .04(1): Reworded for clarity.
- .04(1)(d): Revised to require that non-citizen applicants to submit proof of their right to live and work in the United States.
- .04(1)(e): Old rule .04(1)(e), which required applicants to submit a passport photograph, deleted as unnecessary. New rule .04(1)(e) and its subsections is substantively the same as old rule .04(1)(f)1. and its subsections with minor rewording for clarity.
- .04(1)(f): Clarified/simplified version of old rule .04(1)(f)2. and 3.
- .04(1)(g): Revised to add requirement that references list their licensing credentials.
- .04(1)(h): Reworded slightly for clarity.
- .04(1)(h)1.: Reworded slightly for clarity.
- .04(1)(h)4.: Revised to limit disclosure requirement to actions involving only malpractice, negligence, or fraud.
- .04(1)(m)1.: Revised to require applicants for reciprocity only to submit a transcript that shows the applicant has taken the statutorily mandated number of hours and passed the examination indicated by the Board. Other requirements in the old rule eliminated as unnecessary.
- .04(1)(m)2.: Revised and simplified to refer to the relevant Tennessee Code section that was previously largely repeated in the old rule.
- .04(1)(m)3.: New rule added to require that reciprocity applicants must show proof of instruction in ethics and Tennessee massage statutes and regulations, and that such hours may not be self-directed.
- .04(2): Combines prior rules .04(1)(n), (o) and (p). Reworded slightly for clarity.
- .04(3): Renumbered old rule .04(2).

Rule 0870-01-.05: Rules governing the licensure process for establishments.

Description of amendments:

- .05(1): The rule previously numbered as .05(1) was deleted, and the rule previously numbered .05(2) was renumbered as .05(1).
- .05(2): Previously numbered as .05(3); reworded slightly for clarity.
- .05(3): Previously numbered as .05(4); revised to add that applicants who are not citizens must submit proof of their right to live and work in the United States.
- .05(4): Previously numbered as .05(6).
- .05(5): Adds a new requirement that applicants who are not licensed massage therapists must submit proof of having completed at least two hours of education in Tennessee Law relating to massage therapy.
- .05(6): Previously numbered as .05(7).
- .05(7): Revised to pertain only to the applicant.
- .05(7)(a): Reworded slightly to clarify.
- .05(7)(d): Revised to limit disclosure requirement to actions involving only malpractice or fraud.
- .05(8): Previously numbered as .05(9).
- .05(9): Previously numbered as .05(10).
- .05(10): Previously numbered as .05(11), reworded slightly to clarify.
- .05(11): Previously numbered as .05(12).
- .05(12): Previously numbered as .05(13).
- .05(13): Substantively identical to the rule previously numbered as .05(14), reworded to clarify.
- .05(14): Previously numbered as .05(15).
- .05(15): Previously numbered as .05(16).

Rule 0870-01-.07: Rules governing the process by which applicants are reviewed, approved, and denied.

Description of amendments:

- .07(1): Revised for clarity and to remove previously specified timeframe for application initial determination to take place.
- .07(2): Revised to refer to the authorization granted pursuant to an initial determination as a "temporary authorization" instead of a "license."
- .07(3): Previous .07(3)(a) requiring notifications to be sent by certified mail deleted. .07(3) amended to conform with the fact that the Board will not be able to determine when notice is "received" because certified mail will not be used, changed time-to-reply to 65 days instead of 60 as a result. New .07(3)(a) is substantively identical to section previously numbered .07(3)(b), but reworded for clarity.
- .07(4): New section added to state that applications must be complete at least fifteen days prior to a board meeting in order for the Board to be reviewed at that meeting.
- .07(5): Previously numbered as .07(4); revised to reflect that applicants will only be notified if the Board denies an application. The section previously numbered as .07(5) has been deleted as unnecessary.

.07(5)(a): Previously numbered as .07(4)(a). Revised for clarity.
.07(5)(b): Previously numbered as .07(4)(b), renumbered but unchanged.
.07(5)(b)1.: Previously numbered as .07(4)(b)1., and edited to require that a request for contest case hearing must be made within 30 days of an applicant receiving notification of the denial.
.07(5)(b)2.: Previously numbered as .07(4)(b)2..
.07(6)(a): Revised to eliminate typographical errors.
.07(8): This section and its subsections have been deleted as duplicative and unnecessary.

Rule 0870-01-.08: This states the examination requirements for licensure.

Description of amendments:

.08(1): Revised to eliminate unnecessary reference to establishment licensure process and to reflect revision to section .04(1)(m).
.08(2): This section and its subsections have been revised to state that until January 1, 2012 the Board will accept four specific exams, but leaves the Board leeway to approve another examination in the future.
.08(3): This newly-added section states that as of January 2, 2012, the Board will accept only one particular examination given by the Federation of State Massage Therapy Boards.

Rule 0870-01-.09(1) and (2): These portions of the rules pertaining to licensure renewal govern how renewal applications are to be submitted and how an expired license can be reinstated.

Description of amendments:

.09(1)(a): Revised for clarity.
.09(1)(b)(1): Revised to specify that establishments may not renew their licenses by the internet, and to remove the web address given in the prior rules as unnecessary.
.09(1)(d): Revised to state that licenses that are not renewed within 60 days of expiration are administratively revoked, and to direct licensees to reinstatement procedures. The prior rule referenced a section of the rules that has been repealed.
.09(2): Revised to correct a typographical error and to clarify that reinstatement of an expired license is at the discretion of the Board.
.09(2)(a): Revised to reflect that a statement stating why the licensee failed to renew is required and that appearing before the Board is no longer an option.
.09(2)(b): Revised for clarity.

Rule 0870-01-.11: Pertains to retirement, reinstatement, inactivation and reactivation of licensure.

Description of amendments:

All portions of this rule other than (2)(c) are unchanged.
.11(2)(c): Revised for clarity.

Rule 0870-01-.12: Pertains to continuing education requirements for licensees.

Description of amendments:

.12(1): Rewritten entirely. The new version of this paragraph clearly states that all licensees must complete 25 hours of continuing education every two years, and states that the two-year cycles run from January 1 of each odd-numbered year through December 31 of the following even-numbered year.
.12(1)(a): Specifies that all courses must be approved by the Board and that one course cannot be taken twice in the same two-year cycle. The course approval requirement was present elsewhere in the old rules.
.12(1)(b): Requires at least 2 of the 25 hours to pertain to Tennessee statutes and rules concerning massage therapists and establishments. This requirement was in the old rules at .12(2)(e). The subparagraphs of the prior rule .12(2)(e) were deleted as unnecessary.
.12(1)(c): Requires at least 2 of the 25 hours to pertain to practice management, ethics, or substance abuse. This requirement was in the old rules at .12(2)(f).
.12(1)(d): States that at most 8 of the 25 hours may be taken by a variety of multi-media (i.e., not in-person) formats. This is a new limitation.
.12(2): Reworded version of previous rule .12(1)(d); changed and renumbered for clarity, substantively unchanged.
.12(3)(a): The rule previously numbered as .12(3)(a) was deleted as unnecessary. The new .12(3)(a) was present in the rules previously as .12(3)(b).
.12(3)(b): Revised for clarity and to specify what constitutes "acceptable documentation" verifying continuing education courses have been completed.
.12(4)(a): Revised to state that approval for all courses will expire December 31, 2012, and that subsequent to that date all courses must be approved pursuant to other portions of the rules in each continuing education

cycle. Course approval was previously perennial.

.12(4)(b)1.: Revised to reflect renumbering of rule it refers to.

.12(4)(b)1.(ii): Revised for clarity.

.12(4)(b)1.(iii): Revised for clarity.

.12(4)(b)1.(iv): Deleted as unnecessary.

.12(4)(b)5.: Revised to allow courses by institutions accredited by the Tennessee Higher Education Commission or the Tennessee Board of Regents, in addition to those accredited by the US Department of Education.

.12(4)(b)8.: Added the Federation of State Massage Therapy Boards to the list of pre-approved continuing education providers.

.12(4)(c)1.: Revised version of the rule previously numbered as .12(4)(c)7. Revision allows providers to submit the ISBN number and title of materials in lieu of sending in actual materials.

.12(4)(c)2.: Revised/expanded version of the rule previously numbered as .12(4)(c)3. and 4. Revised to make explicit the requirement that instructors be licensed massage therapists or demonstrate training and experience that qualifies them to teach the subject matter indicated.

.12(4)(c)3.: Revised version of the rules previously numbered as .12(4)(c)1. and 2., reworded for clarity.

.12(4)(c)4.: Expanded version of the rule previously numbered as .12(4)(c)8., requiring certain materials to demonstrate how attendance will be verified.

.12(4)(c)5.: Revised version of rule previously numbered as .12(4)(c)5., adds statement that 50 clock minutes of instruction constitutes an hour.

.12(4)(c)6.: New rule stating that the Board may deny a request if it believes a sponsor is using copyrighted materials without appropriate permission. Note that the rule previously numbered as 12(4)(c)6. has been deleted as unnecessary.

.12(4)(c)7.: New rule specifying that the Board may request additional information from the sponsor.

.12(4)(c)8.: New rule specifying that the Board may deny a request if the information specified in the rules is not provided.

.12(4)(d)7.: Revised to require "contact information" instead of merely a telephone number.

.12(4)(e)2.: Revised to remove list of types of "multi-media courses" to simplify. Acceptable multi-media courses are spelled out elsewhere in rules.

.12(4)(f): Revised to specify that sponsors must maintain records of the materials in subparagraph (c); the old rule required only a subset of those materials, and to require record retention for 4 years instead of 5. Combines old rule subsections (f), (g) and (h).

.12(4)(g): Previously numbered as .12(i).

.12(5)(a): Revised for clarity.

.12(5)(b): Revised to specify that a continuing education waiver request must be submitted prior to the end of the licensure cycle in which the continuing education is due.

.12(5)(d): Revised to allow both the consultant and designee to provisionally grant or deny waiver requests, as opposed to only the consultant.

.12(6)(a): Adds requirement that only 8 of the 20 hours may be completed in a multi-media format.

.12(6)(d): Deleted as unnecessary.

.12(7)(a): Revised to combine the rules previously numbered as .12(7)(a) and (b).

.12(7)(b): Renumbered; previously numbered as .12(7)(c).

Rule 0870-01-.13: Pertains to disciplinary actions and civil penalties.

Description of amendments:

.13(1): Revised for clarity.

.13(1)(a): New rule.

.13(1)(b): Revised version of the rule previously numbered as .13(1)(a).

.13(1)(c): Revised version of the rule previously numbered as .13(1)(b), removes reference to this as appropriate for "less severe violations."

.13(1)(d): Revised version of the rule previously numbered as .13(1)(c); unnecessary portions removed.

.13(1)(e): Revised version of the rule previously numbered as .13(1)(d).

.13(1)(f): Revised version of the rule previously numbered as .13(1)(e), reworded for clarity.

.13(1)(g): Revised version of the rule previously numbered as .13(1)(f). Adds subsections (1), (2), and (3), which were in the old rule .13(1)(f), but reworded for clarity.

.13(1)(h): Revised version of the rule previously numbered as .13(1)(g).

.13(1)(i): Revised version of the rule previously numbered as .13(1)(h), eliminates "petition" requirement in prior rule.

.13(2): This rule and its subsections was previously numbered as .13(3) and its subsections. The Rule previously numbered as .13(2) has been deleted in its entirety.

.13(2)(b)1.: Reworded to reflect elimination of mandatory form previously in subsection .13(2)(c).
.13(2)(b)2.: Revised such that only the administrative staff, not the consultant, are authorized to make the "initial determination."
.13(2)(b)3.: Previously numbered as .13(2)(b)(4). The section previously numbered as .13(2)(b)3. has been deleted as unnecessary.
.13(2)(b)4.: New rule giving a petitioner the right to appear before the Board if his or her petition has been denied.
.13(3): This rule and its subsections was previously numbered as .13(4) and its subsections. The wording of .13(3) was previously contained in .13(4)(a).;
.13(3)(a): This subsection combines the subsections previously numbered as .13(4)(b) and .13(4)(c).
.13(3)(a)1.: In addition to the combination noted above, reworded for clarity and revised to remove requirement of a "willful and knowing" violation, and to remove requirement that the threat to health, safety and welfare be "imminent." Also revised to exclude operating a massage establishment without a license from the examples of activities qualifying for Type A penalties.
.13(3)(a)2.: In addition to the combination noted above, reworded for clarity.
.13(3)(a)3.: In addition to the combination noted above, reworded for clarity.
.13(3)(b): This subsection was previously numbered as .13(4)(d).
.13(3)(b)1.: The section previously numbered as .13(4)(d)(1) is deleted as unnecessary. This section was previously numbered .13(4)(d)(2), but has been reworded for clarity.
.13(3)(b)2.: This section was previously numbered as .13(4)(d)3.
.13(3)(b)4.: This section was previously numbered as .13(4)(d)4.
The rule previously numbered as .13(5) has been deleted as unnecessary.

0870-01-.14: Rule pertaining to display of licenses, obtaining a replacement license, and obtaining verification of licenses.

Description of amendments:

Subparagraph (2) of this rule has been revised to clarify what license may be replaced, to remove the requirement to submit a passport-style photograph, and for clarity.

The remainder of rule .14 has not been changed.

0870-01-.15: Rules pertaining to how a licensee must notify the board of a change in his or her name or practice address.

Description of amendments:

.15(1): Revised for clarity; also eliminates requirement to include the licensee's social security number. Adds requirement that the notification be received no more than 30 days after it took effect.

.15(2): Revised for clarity; also eliminates requirement to include licensee's social security number. Adds requirement that a licensee must inform the board if he or she has no current practice address.

.15(3): Revised for clarity. Also clarified that replacement license fee is due if the establishment changes its name, and a reinspection fee will be due if an establishment changes its address.

0870-01-.16: Rule pertaining to certain internal operations of the Board.

Description of amendments:

.16(2)(c): The rule previously numbered as .16(2)(c) has been deleted as unnecessary. The text of the new rule .16(2)(c) was previously numbered as .16(2)(d).

.16(3): Revised for clarity.

.16(3)(a): Revised to clarify that initial determinations made by a consultant/designee are subject to Board ratification.

.16(3)(b): Revised to simplify the description of what tasks a consultant or designee may take as "Consultant to the Division."

.16(4): Revised to simplify; new rule simply refers to the Declaratory Order statute.

0870-01-.17: Contains rules governing advertising of massage therapy services.

Description of amendments:

.17(1): Revised for clarity.

.17(2): Revised by deleting the definition of "Licensee" previously numbered as .17(2)(b) as unnecessary, renumbering remaining rules, and deleting the word "ordinary" from the newly numbered .17(2)(b).

.17(3)(a): Revised by moving the text of previously numbered subparagraph .17(3)(a)(1) into (3)(a).

.17(3)(b): Revised slightly for clarity.

.17(3)(c): Revised by moving the text of previously numbered subparagraph .17(3)(c)(1) into (3)(c).
.17(4)(d): Revised by substituting the word "client" for "clientele."
.17(4)(r): Revised for clarity.
.17(6): Rule has been deleted as unnecessary.

0870-01-.18: Rule setting forth statutory requirements stemming from the Health Care Consumer Right-to-Know Act of 1998.

Description of amendments:

.18(1): Revised to clarify.
.18(3): New paragraph added to specify that any actions falling under subsections .18(1) or (2) must be reported to the Board within 30 days of when they occur.

0870-01-.19: Sets forth certain Professional Ethical Standards that licensees may be disciplined for violating.

Description of amendments:

.19(1): Revised to clarify that both individuals and establishments will be held to these standards.
.19(1)(k): Revised to extend prohibition to "arranging for" sexual conduct/activity/behavior.
.19(1)(l): Rule prohibiting certain treatments was previously numbered as .02(4)(e). Subsections edited to remove the words "therapeutic" as unnecessary, and broaden prohibition from "vaginal massage" to include any treatments to genitals.
.19(1)(m): Rule previously numbered as .19(1)(l).
.19(1)(n): Rule previously numbered as .19(1)(m).
.19(1)(o): Rule previously numbered as .19(1)(n). Rule previously numbered as .19(1)(o) has been deleted.
.19(1)(p): Rule previously numbered as .19(1)(q). Rule previously numbered as .19(1)(p) has been deleted.
.19(1)(q): Rule previously numbered as .19(1)(r).
.19(1)(r): New rule; previously present numbered as rule .02(3)(b); revised to add specificity concerning draping requirements.
.19(1)(v): Subsections reworded slightly for clarity.
.19(1)(w): Revised to remove exception that applied if the licensee had obtained a signed notarized statement indicating the establishment had a license when in fact it did not.
.19(1)(x): New rule added making it a violation of the rules to fail to launder or sanitize materials, equipment and supplies.

Rule 0870-02-.01: Provides definitions of terms used in chapter 2 of the Board rules.

Description of amendments:

.01(6): Definition for NCBTMB added.
.01(7): Definition for FSMTB added.
.01(8): Definition for MBLEx added.

Rule 0870-02-.02: Sets forth massage therapy educational program curriculum requirements and the procedure for program approval.

Description of amendments:

.02(1): Revised for clarity and to specify that massage therapy educational program approval is not transferable.
.02(2)(a): Revised for clarity.
.02(2)(a)7.: Adds specificity to requirement to submit program catalog.
.02(3)(a): Instructor to student ratio revised from 1:10 to 1:14.
.02(3)(c): Revised by changing reference from "NCBTMB" examination to the "approved examination."
.02(3)(d): Revised version of the rule previously numbered as .02(3)(p); now specifies that programs must ensure at least a 2-hour presentation from the Board's impaired professional assistance program. The rule previously numbered as .02(3)(d) has been deleted.
.02(3)(e): Revised for clarity and to specify that programs must retain written proof of compliance with this requirement.
.02(3)(h): Previously numbered as .02(3)(i). The old rule numbered as .02(3)(h) has been renumbered as .02(3)(o).
.02(3)(i): Previously numbered as .02(3)(j) and revised for clarity.
.02(3)(j): This rule and its subparagraphs were previously numbered as .02(3)(k) and its subparagraphs.
.02(3)(j)4.: Revised to state that transcripts shall include contact hours for each subject.
.02(3)(j)8.: Revised for clarity.
.02(3)(k): Previously numbered as .02(3)(l) and revised slightly for clarity.

.02(3)(l): Previously numbered as .02(3)(m) and revised slightly for clarity.
.02(3)(m): Previously numbered as .02(3)(o).
.02(3)(n): Previously numbered as .02(3)(q). The section previously numbered as .02(3)(n) has been deleted.
.02(3)(o): Previously numbered as .02(3)(h).
Rule .02(4) has been deleted as unnecessary.

Rule 0870-02-.03: Rule concerning withdrawal of program approval.
Description of amendments:
Revised to specify that the required graduation rate is measured over 12-month periods.

Rule 0870-02-.05: Rule setting forth minimum standards for directors, instructors and classrooms.
Description of amendments:
.05(1)(d): Second sentence, stating that an instructor may only teach principles and concepts from the profession that he or she is licensed in.

Rule 0870-02-.06: Rule setting forth program policies and procedures.
Description of amendments:
.06(1): The entire rule has been restructured for clarity and to remove unnecessary requirements that are largely duplicative of THEC requirements. The policies are now required to be in written form and distributed to all students.
.06(2): New rule requiring that programs are required to have at least 1 person qualified in basic life support present during all classroom and clinical hours. Previously, all instructors were required to be certified in basic life support.
.06(5): The rule previously numbered as .06(5) has been deleted as unnecessary.

Rule 0870-02-.07: Rule stating that board-approved massage therapy education programs are required to submit an annual report, and setting forth the requirements of that report.
Description of amendments: The catch-line (text appearing before numbered subparagraphs) has been revised to specify that the annual report is due by December 31 of each calendar year. The requirements for the annual report have not changed.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 63-18-111: Authorizes the Board to promulgate rules and regulations as necessary to implement T.C.A. § 63-18-101 *et. seq.*

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Licensed massage therapists in Tennessee – the Department is unaware of whether licensed massage therapists have taken a position in favor of or against the rules listed above.

Licensed massage therapy establishments in Tennessee – the Department is unaware of whether licensed massage therapy establishments have taken a position in favor of or against the rules listed above.

Massage therapy education providers in Tennessee - the Department is unaware of whether licensed massage therapy schools have taken a position in favor of or against the rules listed above.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two

percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

We estimate minimal to no effect on state and local government revenues or expenditures as a result of these changes.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Marc Guilford, Assistant General Counsel, Department of Health possesses substantial knowledge and understanding of the rule.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Marc Guilford, Assistant General Counsel, Department of Health will explain the rule at a scheduled meeting of the committees.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Marc Guilford, Assistant General Counsel, Department of Health, 220 Athens Way, Suite 210, Nashville, TN 37243, (615) 741-1611, Marc.Guilford@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None

**RULES
OF
TENNESSEE MESSAGE LICENSURE BOARD**

**CHAPTER 0870-01
GENERAL RULES GOVERNING LICENSED MESSAGE 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 – As used in this rule, "application" means the application form approved by the Board and shall also include, when applicable, the following: Current signed, passport type photograph, official transcript from educational institution(s), verification of successful completion of the N.C.B.T.M.B.'s National Certification Examination or any other Board-approved examination, two (2) original letters of professional recommendation, and certification/licensure from other state boards.~~
- ~~(3) Board – The Tennessee Massage Licensure Board.~~
- ~~(4) Board Administrative Office – The office of the administrator assigned to the Board located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.~~
- ~~(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 – Means any person with whom the massage therapist has an agreement to provide massage therapy.~~
- ~~(7) Closed Files – An administrative action which renders an incomplete or denied file inactive.~~
- ~~(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 – Any location, or portion thereof, which advertises and/or provides to the public massage therapy services on the premises for compensation. Any licensed health care facility or any health care professional's office wherein massage therapy services are~~

(Rule 0870-01-.01, continued)

~~not advertised or provided except on an occasional outcall basis is not an establishment for purposes of this rule. Any location within a licensed health care facility or any health care professional's office which is dedicated to and maintained for the use of a massage therapist who performs occasional massage therapy services to the patients of the facility is a massage establishment for purposes of licensure under these rules and the portions of the facility or office wherein massage therapy services are provided must be in compliance with the standards established in rule 0870-01-.02. The term "occasional" as used in this rule means not more than twice in a one (1) week period.~~

- ~~(11) He/she Him/her - When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.~~
- ~~(12) HRB - When the acronym HRB appears in the text of these rules, HRB represents the Division of Health Related Boards.~~
- ~~(13) Licensee - Any person holding a license to practice massage therapy or as a massage establishment in the State of Tennessee. Where applicable this shall include partnerships and/or corporation.~~
- ~~(14) 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.~~
- ~~(15) N.C.B.T.M.B. - The National Certification Board for Therapeutic Massage and Bodywork.~~
- ~~(16) National Certification Examination - The examination required for national certification from the N.C.B.T.M.B.~~
- ~~(17) Outcall - The provision of massage services outside of an "establishment" as defined by this rule and in a location at which there is neither the regular provision of nor the advertising of such services. For purposes of this definition, the term "regular" means more than twice in a one (1) week period.~~
- ~~(18) Person - Any individual, firm, corporation, partnership, organization, or body politic.~~
- ~~(19) Physician - Any physician licensed pursuant to T.C.A. Title 63, Chapters 6 or 9.~~

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.

(Rule 0870-01-.01, continued)

- (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.
- (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. §§ 4-5-202, 4-5-204, 63-18-102, 63-18-104, 63-18-105 and 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.

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

- ~~(1) Policy Statement – The scope of the practice of massage therapy in Tennessee is broadly defined and includes many aspects which if not particularly regulated could lead to serious~~

(Rule 0870-01-.02, continued)

~~ramifications for the consuming public. This rule is to designate specific areas in the practice for regulation, the violation of which may result in disciplinary action or denial of licensure pursuant to T.C.A. § 63-18-108.~~

~~(2) Standards for Massage Establishments, Personnel, Equipment, Linens, and Supplies~~

~~(a) Massage Establishments Standards — The holder of a massage establishment license must comply with all of the following:~~

- ~~1. Contain adequate waiting area for clients.~~
- ~~2. Maintain properly installed smoke detector and fire extinguisher.~~
- ~~3. Massage therapy may be conducted only in rooms which are adequately lighted and ventilated, and so constructed that they can be kept clean. Floors, walls, ceilings and windows must remain free of dust, and other unclean substances.~~
- ~~4. Rest Rooms. Every establishment shall contain rest room facilities; including 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. Establishments located in buildings housing multiple businesses under one roof such as arcades, shopping malls, terminals, hotels, etc., may substitute centralized toilet facilities. Such central facilities shall be within three hundred (300) feet of the massage establishment.~~
 - ~~(i) Hand cleansing capabilities for the therapists must be located within 20 feet of the treatment area, each establishment shall have at least one sink with hot and cold running water within 300 feet of the treatment area; and~~
 - ~~(ii) Shall be equipped with 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.~~
 - ~~(iii) Such facilities and all of the foregoing fixtures and components shall be kept clean, in good repair, well-lighted, adequately ventilated, and free of pests.~~
 - ~~(iv) Maintain toilet facilities in a common area of the establishment.~~
- ~~5. Reasonable effort for sanitation shall be maintained for temporary locations such as athletic events or public service fund raisers in temporary venues.~~
- ~~6. 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. All persons who perform massage therapy in a massage establishment must be licensed by the Board pursuant to rule 0870-01-.04.~~
- ~~2. A license issued to an individual who owns a massage establishment is not transferable and is subject to revocation or other disciplinary actions upon failure of any inspection or for refusal to allow inspection by the Board's authorized representatives.~~

(Rule 0870-01-.02, continued)

- ~~3. Notwithstanding the above, a licensed massage establishment may change locations, pursuant to rule 0870-01-.15 (3).~~
- ~~4. The person to whom the establishment license is issued shall be responsible for maintaining all parts thereof in a sanitary condition at all times, and for otherwise insuring that such establishment is operated in compliance with this Chapter. However, this rule shall not relieve any individual therapist of responsibility for the sanitary conditions of the space or equipment used in their practice.~~

~~(c) Equipment~~

- ~~1. Maintain all equipment and supplies used to perform massage services on the premises in a safe and sanitary condition, including the regular application of cleansers and bactericidal agents to the massage table. "Regular application," where used herein, means a thorough cleansing of the massage table at least one time a day or whenever oils or other substances visibly accumulate on the massage table surface.~~
- ~~2. If equipped with a whirlpool bath, sauna, steam cabinet and/or steam room, maintain adequate and clean shower facilities on the premises.~~

~~(d) Linens and Supplies~~

- ~~1. Each client shall receive a separate, clean covering for use on the message table, i.e. sheets or towels.~~
- ~~2. Launder or sanitize, before reuse, all materials, equipment and supplies utilized for each client.~~

~~(3) Draping~~

- ~~(a) Each massage establishment shall maintain a sufficient supply of clean drapes, for the purpose of draping each client while the client is being massaged. As used herein "drapes" means towels, gowns, or sheets.~~
- ~~(b) Before proceeding with a massage to the client, each massage therapist shall have explained 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 a female client the breasts.~~

~~(4) Sexual Activity and Other Therapeutic Treatments Prohibited~~

- ~~(a) As used in this rule, "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 include sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse. For purposes of this rule part, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. As used, herein, sexual activity can involve the use of any device or object or conversation and is not dependent on whether penetration, orgasm, or ejaculation has occurred.~~
- ~~(b) Sexual activity by any person or persons in any massage establishment is absolutely prohibited.~~

(Rule 0870-01-.02, continued)

- ~~(c) No massage establishment owner shall engage in or permit any person or persons to engage in sexual activity in such owner's massage establishment or use such establishment to make arrangements to engage in sexual activity in any other place.~~
- ~~(d) No licensed massage therapist shall use the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.~~
- ~~(e) Prohibited therapeutic treatments not within the scope of practice of massage therapists include:
 - ~~1. therapeutic treatments to the anus and anal canal, including, but not limited to colonic irrigations and enemas; and~~
 - ~~2. therapeutic cross-gender breast massage; and~~
 - ~~3. therapeutic vaginal massage.~~~~
- ~~(f) Engaging in any of the activities or treatments described in this paragraph shall subject the licensee to disciplinary action, as provided in rule 0870-01-.13.~~
- ~~(5) Inspection of Establishments Licensed massage therapy establishments and applicants are subject to periodic inspections by the Board or its authorized representative(s) during business hours. When scheduling inspections, the inspector shall attempt to accommodate the client appointment schedule of the establishment.~~
 - ~~(a) The purpose of inspection of establishments is to verify compliance with the practice standards of this rule as provided in paragraphs (2), (3), and (4), and the display of license requirements as provided in paragraph (1) of Rule 0870-01-.14.~~
 - ~~(b) The establishment license may be subject to disciplinary action, pursuant to Rule 0870-01-.13, when the inspection reveals that the establishment does not meet the standards and requirements set by this rule or when the inspection reveals that the license of any employee has been suspended or revoked.~~
 - ~~(c) 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. The Board's Unit Director shall cause to have the reinspection scheduled.~~~~
 - ~~(d) Failure to Allow or Appear for Inspection An establishment whose owner or operator fails to allow an inspection to be scheduled 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-four (24) hours prior to the scheduled appointment time for inspection. In either circumstance, a subsequent scheduled inspection shall be considered as a~~

(Rule 0870-01-.02, continued)

~~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. The Board's Unit Director shall cause to have the reinspection scheduled.~~

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.
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

(Rule 0870-01-.02, continued)

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 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.

(Rule 0870-01-.02, continued)

(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-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.

(Rule 0870-01-.02, continued)

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. §§4-5-202, 4-5-204, 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.

~~0870-01-.03 NECESSITY OF LICENSURE.~~

- ~~(1) 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 therapy 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.~~
- ~~(2) 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.~~
- ~~(3) 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(c) and 63-18-108(5), and rule 0870-01-.19 (1) (q).~~
- ~~(4) Students may not hold themselves out as licensed massage therapists until such time as they are licensed.~~

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

(Rule 0870-01-.03, continued)

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).

Authority: T.C.A. §§4-5-202, 4-5-204, 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.

0870-01-.04 — LICENSURE PROCESS.

- ~~(1) — Massage Therapist. 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 the application or 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 certified copy of his birth certificate or its equivalent which indicates that the applicant is, at the time of application, at least eighteen (18) years of age.~~
 - ~~(e) — An applicant shall attach to his application a "passport" type photograph taken within the preceding twelve (12) months. The photo must be affixed to the proper page of the application.~~
 - ~~(f) — It is the applicant's responsibility to do the following in a timely manner:
 - ~~1. — 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, be submitted directly from the institution(s) to the Board Administrative Office.~~~~

(Rule 0870-01-.04, continued)

~~The transcript 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 and carry the official seal of the institution(s).~~

~~(i) 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.~~

~~(ii) 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.~~

~~(iii) 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).~~

~~(iv) Ten (10) classroom hours of the five hundred (500) classroom hour requirement shall consist of ethics instruction.~~

~~(v) Five (5) classroom hours of the five hundred (500) classroom hour requirement shall consist of instruction regarding Tennessee massage statutes and regulations; and~~

~~2. Request that verification of having successfully completed the National Certification Examination, as provided in Rule 0870-01-.08, be submitted directly from the N.C.B.T.M.B. or its successor organization to the Board Administrative Office; or~~

~~3. Request that verification of having successfully completed a Board-approved examination, as provided in Rule 0870-01-.08, be submitted directly from such exam's testing agency to the Board Administrative Office.~~

~~(g) An applicant shall have submitted evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original letters from health care professionals, attesting to the applicant's personal character and professional ethics.~~

~~(h) An applicant shall disclose the circumstances surrounding any of the following:~~

~~1. Conviction of any criminal offense of any country, state or municipality except minor traffic offenses, conviction for any sexual related offense, and conviction for prostitution or sexual misconduct offenses. A conviction for prostitution or sexual misconduct offenses shall disqualify an applicant from receiving a license.~~

(Rule 0870-01-.04, continued)

- ~~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 application 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 including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common or case law.~~
 - ~~5. Failure of any professional licensure or certification examination.~~
- ~~(i) An applicant shall cause to be submitted to the Board's 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.~~
- ~~(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 as a massage therapist must submit along with their applications copies of the statutes and rules governing the licensure/certification qualifications and process from all states in which they currently or previously have held licensure/certification. The Board will determine in its sole discretion whether the licensure/certification standards of any other state are as stringent as those of Tennessee for purposes of granting licensure under this rule. Unless an applicant makes use of the provisions in part 2. of this subparagraph, no applicant shall be approved for licensure without successfully completing the five (5) classroom hours of instruction regarding Tennessee massage statutes and regulations as required in subpart (1) (f) 1. (v).~~
 - ~~2. Applicants can avoid the requirements of part (1) (f) 1. by having N.C.B.T.M.B. submit directly to the Board Administrative Office proof of their certification for the five (5) year period immediately preceding application for licensure and by submitting 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, and who either:~~

(Rule 0870-01-.04, continued)

- ~~(i) — have successfully completed the examination requirements of rule 0870-01-.08 and have met the education requirements set forth in part (1) (f) 1. but are unable, because the educational institution either was not state-approved or is no longer in existence, to have a transcript be submitted directly from the institution(s) to the Board Administrative Office; or~~
- ~~(ii) — have graduated from a qualified massage school or course prior to October 1, 1995 and have caused a transcript documenting the graduation to be submitted directly from the institution(s) to the Board Administrative Office.~~
- ~~(n) — All applications shall be sworn to and signed by the applicant and notarized.~~
- ~~(o) — All documents submitted for licensure purposes become the property of the State of Tennessee and will not be returned.~~
- ~~(p) — The application form is not acceptable if any portion has been executed and dated prior to one (1) year before receipt by the Board Administrative Office. As used in this rule, "application" means the application form approved by the Board and all required documents.~~
- ~~(2) — Application review and all licensure decisions shall be governed by rule 0870-01-.07.~~

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

(Rule 0870-01-.04, continued)

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.
 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.

(Rule 0870-01-.04, continued)

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.
 - (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

(Rule 0870-01-.04, continued)

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. §§4-5-202, 4-5-204, 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.

~~**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 application packet shall be requested from the Board's Administrative Office.~~
- ~~(2) 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.~~
- ~~(3) "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 employed to or who are providing massage therapy on the premises must be licensed by complying with the provisions of rule 0870-01-.04, or no establishment license can be issued or a previously issued license shall be processed for revocation.~~
- ~~(4) Except for applicants who are corporations doing business in Tennessee, every applicant shall submit a certified copy or a notarized photocopy 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.~~
- ~~(5) The applicant shall disclose the names, addresses and telephone numbers of all persons who have any ownership interest in or who receive any disbursement of the income, other than employment salary, from the massage establishment.
 - ~~(a) The applicant shall attach to the application copies of the current licenses of all massage therapists performing massage therapy at that establishment.~~~~

(Rule 0870-01-.05, continued)

- ~~(b) — The requirements of paragraph (5) and subparagraph (a) are continuing ones and must be updated within thirty (30) days of any change.~~
- ~~(6) — Except for applicants who are corporations doing business in Tennessee, every applicant shall have submitted, to the Board Administrative Office, evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original letters, attesting to the applicant's personal character and professional ethics.~~
- ~~(7) — Applicants who are corporations doing business in Tennessee shall submit a certified copy or a notarized photocopy of their corporate charter and shall submit a statement identifying the corporation's registered agent for service of process.~~
- ~~(8) — An applicant shall disclose the circumstances surrounding any of the following concerning himself and all individuals identified by the information provided pursuant to paragraph (5) of this rule:~~
- ~~(a) — Conviction of any criminal offense of any country, state or municipality except minor traffic offenses, conviction for any sexual related offense, and conviction for prostitution or sexual misconduct offenses. 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 application 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 including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common or case law.~~
- ~~(9) — An applicant shall cause to be submitted to the Board's Administrative Office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.~~
- ~~(10) — An applicant shall submit the establishment application fee and state regulatory fee as provided in rule 0870-01-.06.~~
- ~~(11) — 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.~~
- ~~(12) — All applications shall be sworn to and signed by the applicant and notarized.~~
- ~~(13) — All documents submitted for licensure purposes become the property of the State of Tennessee and will not be returned.~~
- ~~(14) — The application form is not acceptable if any portion has been executed and dated prior to one (1) year before receipt by the Board Administrative Office.~~
- ~~(15) — 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.~~
- ~~(16) — Application review and licensure decisions shall be governed by rule 0870-01-.07.~~

(Rule 0870-01-.05, continued)

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.

(Rule 0870-01-.05, continued)

- (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.
- (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. §§4-5-202, 4-5-204, 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.

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.

(Rule 0870-01-.06, continued)

- (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.
- (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

(Rule 0870-01-.06, continued)

- (f) Replacement License Fee.....\$25.00
- (g) State Regulatory (biennial).....\$10.00
- (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, 63-1-104, 63-1-107, 63-1-108, 63-1-112, 63-18-104, 63-18-105, 63-18-106, 63-18-105, 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 by the fifth (5th) day of any month shall be submitted to a member of the Board, the Board's consultant or designee for review. 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 license may be issued pursuant to the initial 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 sixtieth (60th) day after receipt of the notification.~~

(Rule 0870-01-.07, continued)

- ~~(a) — Such notifications shall be sent certified mail return receipt requested from the Board Administrative Office.~~
 - ~~(b) — If the requested information is not timely received, the application shall be closed and the applicant notified. No further Board action shall take place until a new application is received pursuant to the rules governing the licensure process, including another payment of all fees.~~
 - ~~(4) — If a completed application is initially denied by the reviewing Board member or the Board's Consultant or designee, the applicant shall be informed of that initial decision and that final determination shall be made by the Board at its next meeting. If the Board ratifies the initial denial, the action shall become final and the following shall occur:
 - ~~(a) — A notification of the denial shall be sent by the Board Administrative Office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or matters judged insufficient for certification, and such notification shall contain all 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 Procedure Act (T.C.A. §§ 4-5-101, et seq.) to contest the denial and the procedure 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.~~
 - ~~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.~~~~~~
- ~~(5) — The initial determination procedures of this rule will not apply if the full Board reviews and makes final determination on the application during its meetings.~~
- ~~(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 to 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(4)(b).~~

(Rule 0870-01-.07, continued)

~~(8) — Abandonment of Application~~

- ~~(a) — The Board's Administrator is authorized to deem an application closed by abandonment, or require updated documentation, if the application has not been completed by the applicant within the times required by rules of the Board.~~
- ~~(b) — An application submitted subsequent to the determination of abandonment of a prior application shall be treated as a new application.~~
- ~~(c) — Applications that are deemed abandoned will require the applicant to submit a new application, new application fee, and all new supporting documents.~~

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.
- (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.

(Rule 0870-01-.07, continued)

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(3), 4-5-202, 4-5-204, 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.

~~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.~~

(Rule 0870-01-.07, continued)

- ~~(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.~~

0870-01-.08 Examination.

- (1) With the exception of applicants qualifying for reciprocity licensure pursuant to Rule 0870-01-.04(1)(m), 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 directly by the examining agency to the Board Administrative Office as part of the application process contained in Rule 0870-01-.04.
- (2) Competency Examination – Through January 1, 2012, the Board will accept successful completion, as determined by the examining agency, of any one (1) of the following examinations:
- (a) The NCBTMB's and/or its successor organization's National Certification Examination for Therapeutic Massage (NCETM); or
- (b) The NCBTMB's and/or its successor organization's National Certification for Therapeutic Massage and Bodywork (NCETMB); or
- (c) The NCBTMB's and/or its successor organization's National Examination for State Licensing (NESL); or
- (d) The FSMTB's Massage and Bodywork Licensing Examination (MBLEx); or
- (e) Any other Board-approved examination.
- (3) Effective January 2, 2012, the exclusive competency examination accepted by the Board shall be the FSMTB's and/or its successor organization's Massage and Bodywork Licensing Examination (MBLEx).

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.

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 certification renewal is the last day of the month in which a licensee's birthday falls pursuant to the Division's "biennial renewal system" as contained on the expiration date on the renewal certificate.~~

~~(b) Methods of Renewal~~

- ~~1. Internet Renewals – Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:~~

www.tennesseeanytime.org

- ~~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.~~
- ~~(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) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.~~
- ~~(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 accomplished upon meeting the following conditions:~~
- ~~(a) At the discretion of the Board, either appear before it or submit a notarized statement setting forth the cause for failure to renew; and~~
 - ~~(b) Payment of all past due renewal and the late renewal fees; and~~
 - ~~(c) Submission of proof of compliance with 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.

(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.

- (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.

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.

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:
 - (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:

(Rule 0870-01-.11, continued)

- (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) If requested, after review by the Board a designated Board member or the Board consultant, appear before the Board, a Board member or the Board consultant for an interview regarding continued competence in the event of licensure retirement in excess of two (2) years.~~
 - (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.

~~0870-01-.12 CONTINUING EDUCATION.~~

- ~~(1) Massage Therapy Continuing Education is considered to be those preplanned/formalized activities with written learning objectives that are directed at developing and enhancing an individual's massage therapy knowledge base, or relevant skills. Except for courses offered to meet the requirements of subparagraph (2) (e), these activities may be presented in any format authorized by subparagraph (4) (d) and part (4) (b) 5. oriented toward enhancement of massage therapy and for the purpose of accomplishing specific written objectives.~~
- ~~(2) Continuing Education – Hours Required~~

(Rule 0870-01-.12, continued)

~~(a) Courses to be offered for credit toward the required continuing education hours must, unless otherwise provided, receive approval from the Board.~~

~~(b) Two (2) year cycles:~~

- ~~1. January 1, 2003 to December 31, 2004~~
- ~~2. January 1, 2005 to December 31, 2006~~
- ~~3. January 1, 2007 to December 31, 2008~~
- ~~4. January 1, 2009 to December 31, 2010~~
- ~~5. January 1, 2011 to December 31, 2012~~
- ~~6. January 1, 2013 to December 31, 2014~~
- ~~7. January 1, 2015 to December 31, 2016~~

~~(c) Every person who receives a license as a massage therapist after January 1, 2003 will have his or her required continuing education hours pro-rated, pursuant to the chart in subparagraph (2) (d), over the remaining months of the continuing education cycle in which the person became licensed. Every fraction of an hour resulting from any such pro-rating shall be rounded up to the next whole hour and to a minimum of four (4) hours. Any such person shall have to obtain one (1) and one/twenty fourth (1/24) hours for every month remaining in the continuing education cycle in which he or she became licensed but those hours won't be due until the final December 31st of the cycle. [For example a person who becomes licensed in June of the first year of a continuing education cycle (January 1st of one year through December 31st of the following year) will be prorated over the 18 months left on the continuing education cycle from July through December of the following year requiring the person to obtain 18 and 3/4 hours of continuing education (rounded up to 19 hours) which are due on December 31st of the following year.] Every person who is required, pursuant to the pro-rated system, to obtain only four (4) hours of continuing education must obtain those hours in the subject areas required by subparagraphs (2) (e) and (2) (f).~~

~~(d) New Licensee Pro-Ration Chart — Persons who become licensed will 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
August	18	August	6
September	17	September	5
October	16	October	4

(Rule 0870-01-.12, continued)

November	15	November	4
December	14	December	4

~~(e) Two (2) hours of the twenty-five (25) hour requirement shall pertain to federal and Tennessee statutes and rules concerning massage therapists and establishments. Providers must comply with all the following before the course can be presented:~~

- ~~1. The provider must submit the course materials for review and approval pursuant to subparagraph (4) (c) of this rule; and~~
- ~~2. The course, including multi-media courses, must be presented in a lecture format with successful completion of a written post-experience examination to evaluate material retention; and~~
- ~~3. The provider must submit documentation sufficient to show that the information to be disseminated in the course is accurate and current and is in compliance with paragraph (1) and subparagraph (4) (c) of this rule.~~

~~(f) Two (2) hours of the twenty-five (25) hour requirement shall pertain to the management of practicing massage therapy, or to professional ethics, or to substance abuse.~~

~~(g) 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 required two (2) year hourly total regardless of the number of times the course is attended or completed by any individual licensee.~~

~~(3) Continuing Education – Proof of Compliance~~

~~(a) The due date for attendance and completion of the required continuing education hours is December 31st.~~

~~(b) Each massage therapist must, on the biennial licensure renewal form, attest to timely attendance and completion of the required continuing education hours.~~

~~(c) 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. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.~~

~~(4) Continuing Education – Course Approval~~

~~(a) Courses to be offered for credit toward the required continuing education hours must, unless otherwise provided, receive approval from the Board.~~

~~(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 (N.C.B.T.M.B.) 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 (2) (e) of this rule must also comply with all of the following before those hours can be presented:~~

(Rule 0870-01-.12, continued)

- ~~(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) Those hours, including multi-media courses, must be presented in a lecture format with successful completion of a written post-experience examination to evaluate material retention; and~~
 - ~~(iii) The provider must submit documentation sufficient to show that the information to be disseminated in those hours is accurate and current and is in compliance with paragraphs (1) and subparagraph (4) (c) of this rule.~~
 - ~~(iv) The provider shall submit the continuing education course approval fee established in rule 0870-01-.06(2)(i).~~
- ~~2. American Heart Association course in CPR.~~
 - ~~3. American Massage Therapy Association.~~
 - ~~4. American Red Cross courses in HIV, CPR, or Standard First Aid.~~
 - ~~5. Colleges or universities accredited by the United States Department of Education as described in paragraph (1).~~
 - ~~6. Formal educational courses relating directly to the theory or clinical application of massage therapy sponsored by an accredited college/university or institutions 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.~~
- ~~(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 Administration Office at least forty-five (45) days prior to the proposed or scheduled date of the course:~~
- ~~1. The written learning objectives of the course.~~
 - ~~2. A course description or outline.~~
 - ~~3. Names of all lecturers.~~
 - ~~4. Brief resume of all lecturers including experience or training in the subject matter being taught.~~
 - ~~5. Number of hours of educational credit requested.~~
 - ~~6. Proposed or scheduled date of course.~~
 - ~~7. Copies of materials to be utilized in the course.~~
 - ~~8. How verification of attendance is to be documented.~~

(Rule 0870-01-.12, continued)

~~(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 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 telephone number.~~
- ~~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. Multi-media courses include, but are not limited to, audio, audiovisual, closed circuit television, and the Internet.~~
- ~~3. Correspondence with successful completion of a written post experience examination to evaluate material retention.~~
- ~~4. Any combination of the above.~~

~~(f) Record keeping. The sponsor of each continuing education program shall keep detailed records of the following:~~

- ~~1. The date and location of the program presentation;~~
- ~~2. The names of each instructor or discussion leader;~~
- ~~3. A list of the certificate, license and permit holders attending each program presentation; and~~
- ~~4. A written outline of the program presentation.~~

~~(g) Each sponsor of a continuing education course must provide a certificate to each participant. Records maintained by the program sponsor for the purpose of verifying attendance and compliance of the continuing education obligation must have at least the following information: Licensee's name, license number, total number of continuing education clock hours awarded, name of sponsor, program title, and date(s).~~

~~(h) The records required by subparagraph (f) of this rule shall be retained for a period of five (5) years following the date of each program presentation.~~

(Rule 0870-01-.12, continued)

- ~~(i) — Approval of any continuing education program may be withdrawn by the board if the sponsor of such program fails to comply with the provisions of this chapter.~~

~~(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 if it can be shown to the Board that the failure to comply was not attributable to or was beyond the physical capabilities of the person seeking the waiver.~~

- ~~(b) — Waivers will be considered only on an individual basis and may be requested by submitting the following items to the Board Administrative Office:~~

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

- ~~(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 is 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, or has been revoked for failure to complete continuing education requirements for over two (2) years must submit along with the reactivation or reinstatement request, 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.~~

- ~~(b) — The continuing education hours obtained as a prerequisite for licensure reactivation or reinstatement 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 for reactivation or reinstatement of a retired, expired, or revoked license as provided in paragraph (5) of this rule.~~

- ~~(d) — The Board is authorized to grant or deny requests for waivers.~~

~~(7) — Violations~~

- ~~(a) — Any massage therapist who falsely attests to attendance and completion of the required hours of continuing education may be subject to disciplinary action pursuant to T.C.A. § 63-18-108.~~

- ~~(b) — Any massage therapist who fails to obtain the required continuing education hours may be subject to disciplinary action pursuant to T.C.A. § 63-18-108.~~

(Rule 0870-01-.12, continued)

~~(c) 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.~~

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 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

(Rule 0870-01-.12, continued)

<u>Month Licensed</u>	<u>Hours Required</u>	<u>Month Licensed</u>	<u>Hours Required</u>
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
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-

(Rule 0870-01-.12, continued)

.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.

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.

(Rule 0870-01-.12, continued)

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 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

(Rule 0870-01-.12, continued)

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.

- (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, 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 the application for reactivation, reinstatement, or new license. Eight (8) hours of the twenty (20) hour continuing education requirement 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 the reactivated, reinstated or new license.

- (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

(Rule 0870-01-.12, continued)

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. §§ 4-5-202, 4-5-204, and 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. Withdraw 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.

~~0870-01-.13 DISCIPLINARY GROUNDS, ACTIONS, AND CIVIL PENALTIES.~~

- (1) ~~Upon a finding by the Board that a licensee or registrant has violated any provision of the Tennessee Massage Therapist Practice (T.C.A. §§ 63-18-101, et seq.) or the rules promulgated pursuant thereto, the Board may impose any of the following actions separately or in any combination which is deemed appropriate to the offense:~~
- (a) ~~Private Censure — This is a written action issued for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.~~
 - (b) ~~Public Censure or Reprimand — This is a written action issued for one time and less severe violations. It is a formal disciplinary action.~~
 - (c) ~~Probation — This is a formal disciplinary action which places a licensee or registrant on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict activities during the probationary period.~~
 - (d) ~~Suspension — This is a formal disciplinary action which suspends a licensee's right to practice for a fixed period of time. It contemplates the reentry into practice under the license or registration previously issued.~~
 - (e) ~~Revocation for Cause. This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the license previously issued. The Board, in its discretion, may allow reinstatement of a revoked license upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one year unless otherwise stated in the Board's revocation order.~~
 - (f) ~~Conditions — Any action deemed appropriate by the Board to be required of a disciplined licensee during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension or the reinstatement of a revoked license.~~
 - (g) ~~Civil penalty — A monetary disciplinary action assessed by the Board pursuant to paragraph (4) of this rule.~~

Form

(Rule 0870-01-.13, continued)

~~(h) — Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee petitions, pursuant to paragraph (2) of this rule, and appears before the Board after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.~~

~~(2) — Order of Compliance — This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unlicensed practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.~~

~~(a) — The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:~~

- ~~1. — When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or~~
- ~~2. — When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or~~
- ~~3. — When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.~~

~~(b) — Procedures~~

~~1. — The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Board's Administrative Office that shall contain all of the following:~~

~~(i) — A copy of the previously issued order; and~~

~~(ii) — A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and~~

~~(iii) — A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. 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 its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:~~

~~(i) — Certify compliance and have the matter scheduled for presentation to the Board as an uncontested matter; or~~

(Rule 0870-01-.13, continued)

~~(ii) — Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.~~

~~3. — If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.~~

~~4. — If the Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.~~

~~5. — If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.~~

~~(e) — Form Petition~~

~~Petition for Order of Compliance
Tennessee Massage Licensure Board~~

~~Petitioner's Name: _____~~

~~Petitioner's Mailing Address: _____~~

~~_____~~

~~_____~~

~~Petitioner's E-Mail Address: _____~~

~~Telephone Number: _____~~

~~Attorney for Petitioner: _____~~

~~Attorney's Mailing Address: _____~~

~~_____~~

~~_____~~

~~Attorney's E-Mail Address: _____~~

~~Telephone Number: _____~~

~~The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)~~

~~1. — An order issued reflecting that compliance; or~~

~~2. — An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or~~

~~3. — An order issued reflecting that compliance and reinstating a license previously revoked.~~

~~Note — You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other~~

(Rule 0870-01-.13, continued)

~~than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.~~

Respectfully submitted this the ___ day of _____, 20___.

Petitioner's Signature

~~(3) Order Modifications — This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.~~

~~(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~~

~~1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Board's Administrative 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 its consultant and 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 legal staff, if impossibility of compliance with the provisions of the previous order is not proven and~~

(Rule 0870-01-.13, continued)

~~notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.~~

- ~~3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.~~
- ~~4. 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.~~
- ~~5. 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, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. §4-5-223 and rule 1200-10-1-.11.~~

~~(c) Form Petition~~

~~Petition for Order Modification
Tennessee Massage Licensure Board~~

~~Petitioner's Name: _____~~

~~Petitioner's Mailing Address: _____~~

~~_____~~

~~_____~~

~~Petitioner's E-Mail Address: _____~~

~~Telephone Number: _____~~

~~Attorney for Petitioner: _____~~

~~Attorney's Mailing Address: _____~~

~~_____~~

~~_____~~

~~Attorney's E-Mail Address: _____~~

~~Telephone Number: _____~~

~~The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:~~

~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~

~~Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend 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, this petition.~~

(Rule 0870-01-.13, continued)

Respectfully submitted this the ___ day of _____, 20___.

Petitioner's Signature

~~(4) Civil Penalties~~

~~(a) Purpose—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.~~

~~(b) Schedule of Civil Penalties~~

~~1. A Type A Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted, or registered by the Board, guilty of a willfully and knowing violation of the Massage Therapy Practice Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be, an imminent, substantial threat to the health, safety and welfare of an individual clientele or the public. For purposes of this section, willfully and knowingly practicing massage therapy or operating a massage establishment without a license, from the Board is one of the violations of the Massage Therapy Practice Act for which a Type A Civil Penalty is assessable.~~

~~2. A Type B Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or registered by the Board is guilty of a violation of the Massage Therapy Practice Act or regulations promulgated pursuant thereto in such manner as to impact directly on the care of clients or the public.~~

~~3. A Type C Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or registered by the Board is guilty of a violation of the Massage Therapy Practice Act or regulations promulgated pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only an indirect relationship to clientele care or the public.~~

~~(c) Amount of Civil Penalties.~~

~~1. Type A Civil Penalties shall be assessed in the amount of not less than \$500 and not more than \$1000.~~

~~2. Type B Civil Penalties may be assessed in the amount of not less than \$100 and not more than \$500.~~

~~3. Type C Civil Penalties may be assessed in the amount of not less than \$50 and not more than \$100.~~

~~(d) Procedures for Assessing Civil Penalties~~

~~1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.~~

(Rule 0870-01-.13, continued)

- ~~2. Civil Penalties may also be initiated and assessed by the Board during consideration of any Notice of Charges. In addition, the Board may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.~~
- ~~3. In assessing the 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.~~~~
- ~~4. All proceedings for the assessment of civil penalties shall be governed by the contested case provision of Title 4, Chapter 5, T.C.A.~~
- ~~(5) All contested case hearings before the Board shall be conducted pursuant to the Uniform Rules of Procedures for Contested Case Hearings Before State Administrative Agencies, Rules Chapter 1360-4 of The Official Compilation of Rules and Regulations of the State of Tennessee.~~

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 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.

(Rule 0870-01-.13, continued)

- (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
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:

(Rule 0870-01-.13, continued)

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. §§4-5-202, 4-5-204, 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.

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 "artistically designed" license has been lost or destroyed may be issued a replacement license upon receipt of a written request in the Board Administrative Office. Such request shall be accompanied by a notarized passport type photograph and an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original license and the required fee pursuant to rule 0870-01-.06.~~
- (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.
- (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.

(Rule 0870-01-.14, continued)

Authority: T.C.A. §§4-5-202, 4-5-204, ~~63-1-106, 63-1-108, 63-1-109, 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.

~~0870-01-.15 CHANGE OF NAME AND/OR ADDRESS.~~

- ~~(1) Change of Name — A licensee shall notify the Board in writing within 30 days of a name change and will provide both the old and new names. A request for name change must also include a copy of the official document involved and reference the individual's or establishment's, profession, social security, and license numbers.~~
- ~~(2) Change of Address — Each licensee who has had a change of address or place of employment, shall file in writing with the board his/her current address, giving both old and new addresses. Such requests shall be received in the Board Administrative Office no later than 30 days after such change is effective and must reference the individual's or the establishment's name, social security number, and certification number.~~
- ~~(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 address changes no later than thirty (30) days after such change is effective. Such notification shall include the establishment's license number, old and new names, old and new addresses, and the replacement license fee, pursuant to rule 0870-01-.06 (1) (f) and 0870-01-.06 (2) (f).~~

Rule 0870-01-.15 Licensee 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. §§4-5-202, 4-5-204, 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.

(Rule 0870-01-.15, continued)

~~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.~~
 - ~~(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) Copies of public records shall be provided to any person upon payment of a copying fee.~~
 - ~~(d) 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 authorizes its 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, to act, and who is vested with the authority of the Board to do the following acts 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. A Board designee may also perform these services.~~
 - ~~(b) Serve as Consultant to the Division to decide the following:
 - ~~1. Whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.~~
 - ~~2. Whether and under what terms a complaint, case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently ratified by the full Board before it will become effective.~~
 - ~~3. Any other matter authorized by these rules or a majority vote of the Board.~~~~~~
- ~~(4) Declaratory Orders The Board adopts, as if fully set out herein, rule 1200-10-1-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule~~

(Rule 0870-01-.16, continued)

~~governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Board's administrative office.~~

~~(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 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 Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.~~

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.

(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. §§4-5-202, 4-5-204, 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.

0870-01-.17 ADVERTISING.

- ~~(1) Policy Statement. The 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. The massage therapist 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) Licensee. Any person holding a license to practice massage therapy or as a massage establishment in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.~~
 - ~~(c) Material Fact. Any fact which an ordinary 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.~~
 - ~~(d) 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.~~
 - ~~(e) Discounted fee. Shall mean 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~~~~

(Rule 0870-01-.17, continued)

~~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.~~

~~1. 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 and 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.~~

~~(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.~~

~~1. 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.~~

(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:

(Rule 0870-01-.17, continued)

- (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.
- (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.

(Rule 0870-01-.17, continued)

- (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 clientele.~~
- (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
 - 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.

(Rule 0870-01-.17, continued)

- (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) After thirty (30) days, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. (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).~~
 - (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.
 - (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.

(Rule 0870-01-.17, continued)

- (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.

~~(6) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be excinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.~~

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.

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

~~(1) Malpractice reporting requirements. The threshold amount below which medical malpractice judgments, awards or settlements in which payments are awarded to complaining parties need not be reported pursuant to the "Health Care Consumer Right-To-Know Act of 1998" shall be ten thousand dollars (\$10,000).~~

(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.

(Rule 0870-01-.19, continued)

- (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.

~~0870-01-.19 PROFESSIONAL ETHICAL STANDARDS.~~ Professional and Ethical Standards for Therapists And Establishments.

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- ~~(1) The Board requires licensees to uphold professional 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 interest of individual clients. To adhere to these professional ethical standards, licensees will:~~
- ~~(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 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 or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a client, even if the client attempts to sexualize the relationship; and~~
 - ~~(l) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-2-.02, from dating or having a sexual relationship with any student while the student is enrolled, including the period of time between semesters of attendance; and~~

(Rule 0870-01-.19, continued)

- ~~(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 soliciting any student 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~~
- ~~(n) Refrain from providing services when they are 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~~
- ~~(o) Refuse any gifts or benefits which are intended to influence a referral, decision or treatment that are purely for personal gain and not for the good of the client; and~~
- ~~(p) Refuse to unjustly discriminate against clients or other health professionals; and~~
- ~~(q) 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~~
- ~~(r) Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, the client's autonomy, and the client's reasonable expectations of professional behavior; 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; and~~~~
- ~~(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) (q) of this rule; and~~
- ~~(v) Safeguard the confidentiality of all client information, unless the client provides written permission to release such information; or
 - ~~1. when such information is requested during a formal investigation by representatives of the State of Tennessee or other law enforcement agencies; or~~
 - ~~2. when 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; and~~~~
- ~~(w) Not practice in an unlicensed massage establishment. A massage therapist may not be prosecuted under this rule if he/she has a written statement, signed by the~~

(Rule 0870-01-.19, continued)

~~establishment owner and notarized prior to the date of the therapist's employment, stating that the establishment is licensed as a massage establishment.~~

- (2) Violation of any provision listed in paragraph (1) is grounds for disciplinary action, as provided in Rule 0870-01-.13.

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:

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(Rule 0870-01-.19, continued)

1. Treatments to the anus or anal canal, including, but not limited to, colonic irrigations and enemas;
 2. Cross-gender breast massage;
 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,

(Rule 0870-01-.19, continued)

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

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.

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.

**RULES
OF
TENNESSEE MESSAGE LICENSURE BOARD**

**CHAPTER 0870-02
GENERAL RULES GOVERNING MESSAGE THERAPY EDUCATIONAL PROGRAMS**

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0870-02-.01 DEFINITIONS. As used in this chapter, the following terms and acronyms shall have the following meanings ascribed to them:

- (1) Board – Tennessee Massage Licensure Board
- (2) Program – any massage therapy program or school
- (3) TBR – Tennessee Board of Regents
- (4) THEC – Tennessee Higher Education Commission
- (5) NCETMB – National Certification Examination for Therapeutic Massage and Bodywork
- (6) [NCBTMB – The National Certification Board for Therapeutic Massage and Bodywork](#)
- (7) [FSMTB – The Federation of State Massage Therapy Boards](#)
- (8) [MBLEx – The Massage and Bodyworks Licensing Examination established by the FSMTB](#)

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, and 63-18-115. **Administrative History:** Original rule filed March 24, 2006; effective June 7, 2006.

0870-02-.02 PROGRAM APPROVAL AND CURRICULUM REQUIREMENTS.

- ~~(1) — Massage therapy programs must receive written approval from the Tennessee Massage Licensure Board.~~
- ~~(2) — Application Process~~
 - ~~(a) — Massage therapy programs seeking approval must submit an application which provides the following information a minimum of thirty (30) days prior to the next regularly scheduled Board meeting in order for the Board to review the application:~~
 - ~~1. — Name of parent institution and authority for operations;~~
 - ~~2. — Location of principal clinical facilities;~~
 - ~~3. — Locations of all satellite facilities;~~

(Rule 0870-02-.02, continued)

- ~~4. Names and license number of all licensed teaching staff and the program director;~~
 - ~~5. Curriculum vitae, including professional license numbers and description and explanation of any prior disciplinary action taken against a license, for all teaching staff, including the program director;~~
 - ~~6. Maximum class size;~~
 - ~~7. Submission of the program catalog; and~~
 - ~~8. Submission of other such information that the Board may deem necessary.~~
- ~~(b) The program director shall appear before the Board as part of the initial approval process. The curriculum shall be presented at the meeting.~~
- ~~(3) The Board approved program shall adhere to the following minimum standards:~~
- ~~(a) Instructor/student ratio shall be at least one (1) instructor to every ten (10) working students for any hands-on class;~~
 - ~~(b) The program curriculum shall include, but not be limited to, the topics contained in the current National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination, its successor and/or other approved examination, content outline at the time of admission of the student. The program shall, at a minimum, consist of five hundred (500) classroom hours and must contain:~~
 - ~~1. Two hundred (200) classroom hours 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 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.~~
 - ~~3. Eighty-five (85) classroom hours 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 ethics courses.~~
 - ~~5. Five (5) classroom hours of courses regarding Tennessee massage statutes and regulations.~~
 - ~~(c) The program catalog, program syllabus, policies, procedures and the NCBTMB handbook or brochure regarding the examination, its successor and/or other approved examination, current content outline and eligibility criteria, are to be distributed on or before the first (1st) class session.~~

(Rule 0870-02-.02, continued)

- ~~(d) If books are provided by the program, the books on a particular subject shall be distributed prior to the class on that subject;~~
- ~~(e) The program must inform each student of the requirements for licensure and must specifically include the provisions regarding criminal convictions.~~
- ~~(f) The program must have a written policy on the accepted pass-fail rates or grading system used by the program.~~
- ~~(g) The program must have a written protocol or policy on the mechanism to evaluate a student's performance. At least one (1) evaluation is required within the first half of the program.~~
- ~~(h) The program must have a written policy on the dismissal of students.~~
- ~~(i) The program shall create and maintain records on each student, including official transcripts, in compliance with the rules of the Tennessee Higher Education Commission or the Tennessee Board of Regents.~~
- ~~(j) Upon request, a copy of the transcript shall be provided to the student upon completion of or withdrawal from the program. The student must comply with the enrollment agreement to receive a copy.~~
- ~~(k) The transcript shall include the following at a minimum:
 - ~~1. The program name;~~
 - ~~2. Name of the student;~~
 - ~~3. Subjects covered in the program;~~
 - ~~4. Grades for each subject;~~
 - ~~5. Signature of an authorized program/school official;~~
 - ~~6. Date issued;~~
 - ~~7. Date of graduation; and,~~
 - ~~8. Number of contact hours completed.~~~~
- ~~(l) The Board shall be notified of any change in directorship and/or instructors within ten (10) days of hire or discharge. Documentation of the training and experience of any new hires must be received within ten (10) days of hire.~~
- ~~(m) The Board shall be notified immediately of any changes made in the operation of the school such as a change of ownership, director of education, institutional director, location, and/or approval status with THEC or TBR;~~
- ~~(n) Board approval and subsequent re-approvals shall be issued annually. Application for re-approvals shall meet all requirements of this rule;~~
- ~~(o) At any time, designees of the Department of Health or other state agencies shall be provided full access to program materials, examinations, and the classroom during~~

(Rule 0870-02-.02, continued)

~~instruction. Failure to provide access pursuant to this provision may subject the provider to withdrawal of program approval.~~

~~(p) As a prerequisite to approval or continued approval, the Board's professional peer assistance program must be allowed to make a presentation upon request.~~

~~(q) A member of the Board or a Board designee may issue preliminary program approval subject to subsequent Board ratification.~~

~~(4) The program providers shall pay all applicable fees established in rule 0870-02-.08 for the application and renewal of the program approval by the Board as well as fees to process a replacement certificate and a remedial plan.~~

(1) Massage therapy programs must receive written approval from the Tennessee Massage Licensure Board through the application process described in paragraph (2) below. Such approval is not transferable.

(2) Application Process

(a) Massage therapy programs seeking approval must submit an application to the Board a minimum of thirty (30) days prior to the next regularly scheduled Board meeting in order for the Board to review the application. The application must provide the following information:

1. Name of parent institution and authority for operations;

2. Location of principal clinical facilities;

3. Locations of all satellite facilities;

4. Names and license numbers of all licensed teaching staff and the program director;

5. Curriculum vitae, including professional license numbers and description and explanation of any prior disciplinary action taken against a license, for all teaching staff, including the program director;

6. Maximum class size;

7. A complete copy of the program catalog, submitted on plain copy paper, front-side only; and

8. Submission of other such information that the Board may deem necessary.

(b) The program director shall appear before the Board as part of the initial approval process. The curriculum shall be presented at the meeting.

(3) The Board-approved program shall adhere to the following minimum standards:

(a) Instructor/student ratio shall be at least one (1) instructor to every fourteen (14) students for any hands-on class;

(Rule 0870-02-.02, continued)

- (b) The program curriculum shall include, but not be limited to, the topics contained in the current National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination, its successor and/or other approved examination, content outline at the time of admission of the student. The program shall, at a minimum, consist of five hundred (500) classroom hours and must contain:
1. Two hundred (200) classroom hours 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 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.
 3. Eighty-five (85) classroom hours 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 ethics instruction.
 5. Five (5) classroom hours regarding Tennessee massage statutes and regulations.
- (c) The program catalog, program syllabus, policies, procedures and the handbook or brochure regarding the approved examination, current content outline and eligibility criteria, are to be distributed on or before the first (1st) class session.
- (d) The program shall ensure that each graduating class shall have received a minimum of two (2) hours classroom presentation prior to graduation by the impaired professional assistance program contracted by the Board. Both the program and the impaired professional assistance program shall each maintain documentation of each presentation reflecting the date, time and attendance of the presentation and shall make such documentation available upon request by the Board. Failure to comply with this provision may subject the program to withdrawal of program approval.
- (e) The program must document that each student has signed and dated an acknowledgement that they understand the requirements for licensure, specifically the provisions regarding criminal convictions, upon application to the program.
- (f) The program must have a written policy on the accepted pass-fail rates or grading system used by the program.

(Rule 0870-02-.02, continued)

- (g) The program must have a written protocol or policy on the mechanism to evaluate a student's performance. At least one (1) evaluation is required within the first half of the program.
- (h) The program shall create and maintain records on each student, including official transcripts, in compliance with the rules of the Tennessee Higher Education Commission or the Tennessee Board of Regents.
- (i) Upon request, the program shall provide a copy of the transcript to the student upon completion of or withdrawal from the program. The student must comply with the enrollment agreement to receive a copy.
- (j) The transcript shall include the following, at a minimum:

 - 1. The program name;
 - 2. Name of the student;
 - 3. Subjects covered in the program;
 - 4. Grades and contact hours for each subject pursuant to Rule 0870-01-.04(1)(e);
 - 5. Signature of an authorized program/school official;
 - 6. Date issued;
 - 7. Date of graduation; and,
 - 8. Total number of contact hours completed.
- (k) The program shall notify the Board of any change in directorship and/or instructors within ten (10) days of hire or discharge. Documentation of the training and experience of any new hires must be received within ten (10) days of hire.
- (l) The program shall notify the Board within ten (10) days of any changes made in the operation of the school such as a change of ownership, director of education, institutional director, location, and/or approval status with THEC or TBR;
- (m) At any time, designees of the Department of Health or other state agencies shall be provided full access to program materials, examinations, and the classroom during instruction. Failure to provide access pursuant to this provision may subject the provider to withdrawal of program approval.
- (n) A member of the Board or a Board designee may issue preliminary program approval subject to subsequent Board ratification.
- (o) The program must have a written policy on the dismissal of students.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-136, 63-18-111, and 63-18-115. **Administrative History:** Original rule filed March 24, 2006; effective June 7, 2006. Amendment filed April 30, 2008; effective July 14, 2008. Amendment filed April 9, 2009; effective June 23, 2009.

(Rule 0870-02-.03, continued)

~~0870-02-.03 WITHDRAWAL OF PROGRAM APPROVAL. Program approval may be withdrawn if the Board finds the program in violation of any of its statutes or regulations or if the Board finds the program inadequate for certification purposes based upon random auditing of the program and/or its effectiveness in producing qualified graduates. The minimum standard for continued program approval shall be at least seventy percent (70%) of the students over at least a six (6) month period passing the licensure examinations on the first (1st) attempt.~~

0870-02-.03 Withdrawal Of Program Approval. Program approval may be withdrawn if the Board finds the program in violation of any of the Board's statutes or regulations or if the Board finds the program inadequate for certification purposes based upon random auditing of the program and/or its effectiveness in producing qualified graduates. The minimum standard for continued program approval based on effectiveness in producing qualified graduates shall be at least seventy percent (70%) of the students passing the licensure examination on first (1st) attempt over at least a twelve (12) month period.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, and 63-18-115. *Administrative History:* Original rule filed March 24, 2006; effective June 7, 2006.

0870-02-.04 PROGRAM ADMISSION REQUIREMENTS.

- (1) Students must be at least eighteen (18) years old;
- (2) Students must have either a high school diploma or GED certificate;
- (3) Students must be legally entitled to live and work in the United States; and
- (4) Students may not have been convicted of the offense of prostitution or sexual misconduct.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, and 63-18-115. *Administrative History:* Original rule filed March 24, 2006; effective June 7, 2006.

0870-02-.05 MINIMUM STANDARDS FOR DIRECTORS, INSTRUCTORS AND CLASSROOMS.

- (1) Directors and Instructors
 - (a) Program Director – The program director of the massage therapy program must be currently licensed in Tennessee as a massage therapist with at least five (5) years experience. The program director must meet all other conditions required by THEC or TBR to be a program director. For purposes of this chapter of rules, the program director is the individual who has direct responsibility for the supervision and daily operations of the massage therapy program or school.
 - (b) Director of Education – The director of education must meet all conditions required by THEC or TBR to be a director of education. If the director of education also functions as the massage therapy program director, he/she must be currently licensed in Tennessee as a massage therapist with at least five (5) years experience.
 - (c) Institution Director – The institution director must meet all conditions required by THEC or TBR to be an institution director. If the institution director also functions as the massage therapy program director, he/she must be currently licensed in Tennessee as a massage therapist with at least five (5) years experience.

~~(d) Instructors – Any persons who instruct must be currently Tennessee licensed professionals in their appropriate profession if such profession requires licensure. If the instructor is required to be licensed in order to practice his/her profession, the~~

(Rule 0870-02-.05, continued)

~~instructor may teach only principles and concepts from that profession. They must have at least three (3) years of practical experience within the past seven (7) years in the subject area to be taught.~~

(d) Instructors – Any persons who instruct must be currently Tennessee licensed professionals in their appropriate profession if such profession requires licensure. Instructors must have at least three (3) years of practical experience within the past seven (7) years in the subject area to be taught.

- (e) Instructors who are professionally licensed/authorized by any state or certified by any national organization must disclose to the program any prior disciplinary action by such states or national organizations, and the program shall so notify the Board. The Board may deny approval of a program based upon an instructor's past disciplinary history.
- (f) The program director shall establish an evaluation system to evaluate the performance of each instructor.
- (g) The program director shall ensure that staff meetings are held to discuss progress of students, policies and procedures for the school, and changes to the statutes and rules of the Tennessee Massage Licensure Board which will affect the program's students.
- (h) The program director is responsible for the conduct of the instructors and students and any violation of the rules or statutes may result in the discipline of the program director's license, the withdrawal of program approval and/or the assessment of civil penalties.

(2) Classrooms

- (a) The classroom size must accommodate the number of students enrolled in the program, and;
- (b) The classroom must be appropriately equipped to promote effective instruction.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, and 63-18-115. **Administrative History:** Original rule filed March 24, 2006; effective June 7, 2006.

0870-02-.06 PROGRAM POLICIES AND PROCEDURES.

~~(1) Infectious Disease Management~~

- ~~(a) The program must have a written policy on infectious disease management and infection control; and~~
- ~~(b) The policy must be in compliance with all applicable state and federal regulations and guidelines.~~

~~(2) Emergency Management~~

- ~~(a) Protocols shall be established to ensure the safety of instructors, students, clients, and the public in the event of an emergency;~~
- ~~(b) First aid/emergency kits must be available at all times, and~~
- ~~(c) All instructors must be continuously certified in basic life support.~~

(Rule 0870-02-.06, continued)

~~(3) Fire and Safety~~

~~(a) All programs must comply with local and state fire codes.~~

~~(b) Written fire and safety procedures shall be made available to each student. Pertinent fire safety procedures shall be displayed in conspicuous places.~~

~~(4) Sexual Harassment~~

~~(a) All programs must have a written policy on sexual harassment to address situations between instructors, clients, and students.~~

~~(b) The policy must be in compliance with all applicable state and federal regulations and guidelines, and;~~

~~(c) The policy must be reviewed with and distributed to all instructors, staff, and students.~~

~~(5) Equal Employment Opportunity Commission (EEOC) All programs must abide by the requirements imposed by the EEOC.~~

(1) All programs shall create written policies for all of the following and shall distribute them to all students:

(a) Infection control;

(b) Emergency management;

(c) Fire and safety; and

(d) Sexual harassment and misconduct.

(2) All programs shall have at least one (1) person qualified in Basic Life Support (BLS) available during all clinical and classroom hours.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, and 63-18-115. **Administrative History:** Original rule filed March 24, 2006; effective June 7, 2006.

~~**0870-02-.07 ANNUAL REPORT.** The program shall file an annual report with the Board.~~

0870-02-.07 Annual Report. Every Board-approved program shall file an annual report with the Board on or before December 31 of each calendar year.

(1) The report shall contain:

(a) the number of students enrolled;

(b) the number of students graduated;

(c) the number of students dismissed or withdrawn;

(d) the number of students sitting for the licensure test; and

(Rule 0870-02-.06, continued)

- (e) the percentage of students taking the test for the first (1st) time and passing the licensure test.

(2) A copy of the report filed with THEC or TBR is deemed to meet the requirements of this rule.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, and 63-18-115. **Administrative History:** Original rule filed March 24, 2006; effective June 7, 2006.

0870-02-.08 FEES.

(1) Types of Fees.

- (a) Program application fee is a non-refundable fee to be paid by all applicants for approval of a new massage therapy program. This fee includes an initial approval fee and the state regulatory fee.
- (b) Annual program renewal fee is a non-refundable fee to be paid prior to the issuance of the renewal certificate. This fee includes an annual renewal fee and the state regulatory fee. This fee must be received annually on or before June 30th.
- (c) Existing program registration fee is a non-refundable fee to be paid by all massage programs that (within ninety (90) days of the effective date of this rule) are currently approved by the Board.
- (d) Late renewal fee is a non-refundable fee to be paid when the program fails to submit the required annual report. This is an additional fee which must be submitted with the annual program renewal fee and state regulatory fee.
- (e) State regulatory fee is a non-refundable fee to be paid by all programs upon initial application and renewal.
- (f) Replacement certificate fee is a non-refundable fee to be paid when an approved massage program requests replacement approval for the massage therapy educational program due to name and/or address changes.
- (g) Remedial application fee is a non-refundable fee to be paid when an approved massage program is required to submit a remedial plan.

(2) Fee Schedule:

(a) Program application fee shall include the following:

- 1. Initial approval fee \$500.00
- 2. State regulatory fee \$5.00

(b) Existing program registration fee \$100.00

(c) Annual program renewal fee shall include the following:

- 1. Annual renewal fee \$250.00
- 2. State regulatory fee \$5.00

(Rule 0870-02-.08, continued)

(d)	Late renewal fee	\$500.00
(e)	Replacement certificate fee	\$25.00
(f)	Remedial application fee	\$750.00

Authority: T.C.A. § 63-18-111, and 63-18-115. **Administrative History:** Original rule filed April 9, 2009; effective June 23, 2009.