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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Massage Licensure Board
Division:	
Contact Person:	Shiva K. Bozarth Deputy General Counsel
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator at the Division of Health Related Boards
Address:	227 French Landing, Heritage Place, Nashville TN 37243
Phone:	(615) 532-4397
Email:	

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Poplar Board Room, Suite 150, Heritage Place MetroCenter		
Address 2:	227 French Landing Drive		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	10/26/2009		
Hearing Time:	9:00 am	<input checked="" type="checkbox"/> X CST	<input type="checkbox"/> EST

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0870-01	General Rules Governing Licensed Massage Therapists And Establishments
Rule Number	Rule Title
0870-01-.01	Definitions

0870-01-.02	Practice Standards and Inspection of Establishments
0870-01-.03	Necessity of Licensure
0870-01-.04	Licensure Process
0870-01-.05	Establishment Licensure Process
0870-01-.07	Application Review, Approval, and Denial
0870-01-.08	Examination
0870-01-.09	Licensure Renewal
0870-01-.11	Retirement, Reinstatement, Inactivation, and Reactivation of Licensure
0870-01-.12	Continuing Education
0870-01-.13	Disciplinary Actions and Civil Penalties
0870-01-.14	License
0870-01-.15	License Address and Name
0870-01-.16	Officers, Consultants, Records, Declaratory Orders, and Screening Panels
0870-01-.17	Advertising
0870-01-.18	Consumer Right-To-Know Requirements
0870-01-.19	Professional Ethical Standards

Chapter Number	Chapter Title
0870-02	General Rules Governing Massage Therapy Educational Programs
Rule Number	Rule Title
0870-02-.01	Definitions
0870-02-.02	Program Approval and Curriculum Requirements
0870-02-.03	Withdrawal of Program Approval
0870-02-.04	Program Admission Requirements
0870-02-.05	Minimum Standards for Directors, Instructors and Classrooms
0870-02-.06	Program Policies and Procedures
0870-02-.07	Annual Report

(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.tn.us/sos/rules/1360/1360.htm>)

Chapter 0870-01

General Rules Governing Licensed Massage Therapists And Establishments

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 section 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 - As used in these rules, "application" means the application form approved by the Board and shall also include, when applicable, the following: Current signed, 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 .
- (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) F.S.M.T.B. – 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 Licensing Examination established by the F.S.M.T.B.
- (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) Person - Any individual, firm, corporation, partnership, organization, or body politic.
- (18) Physician - Any physician licensed pursuant to T.C.A. Title 63, Chapters 6 or 9.
- (19) Sexual Activity – As used in these rules, “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 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.

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 section 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-hundred (100) cubic feet. 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 facilities shall be within three hundred (300) feet of the massage establishment.
 - (i) Such 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.
 - (ii) Such 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) Such 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 Unit Director, Manager or designee shall schedule the inspection.

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 refusal 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 Unit Director, Manager or designee shall schedule the inspection.
 5. Failure to pass a reinspection or to allow or appear a 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.

Rule 0870-01-.03 Necessity of Licensure is amended by deleting paragraphs (1), (2), and (4), and substituting instead the following language as new paragraph (1), and renumbering paragraph (3) as paragraph (2) so that the new section 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(c) and 63-18-108(5), and rule 0870-1-.19 (1) (q).

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.

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 section 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 0870-1-.07 (3) or the file will be closed.
 - (d) An applicant shall submit a 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. 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 (500) 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; and
- (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 letters from health care professionals, attesting 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 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 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'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 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 as delineated in 0870-01-.04(1)(f) and must carry the official seal of the institution(s). Applicants must also request that verification of having successfully completed the examination provided in 0870-06-.08 or 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 parts 0870-01-.04(1)(f)1-3. if they qualify under the terms of Tennessee Code Annotated 63-18-116. Such qualifying applicants must request proof from the N.C.B.T.M.B. 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 part 0870-01-.04(1)(f)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, 63-18-104, 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 section 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 letters, attesting to the applicant's personal character and professional ethics.
- (5) 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.
- (6) 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 or fraud.
- (7) 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.
- (8) An applicant shall submit the establishment application fee and state regulatory fee as provided in rule 0870-01-.06.
- (9) 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.
- (10) All applications shall be sworn to and signed by the applicant and notarized.
- (11) All documents submitted for licensure purposes become the property of the State of Tennessee and will not be returned.
- (12) The application form and all required documents must be dated no more than one (1) year before receipt by the Board Administrative Office.
- (13) 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.
- (14) 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.

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 section shall read:

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 temporary license 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 sixtieth (60th) day after receipt of the notification.
 - (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) 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 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 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 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 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).

Authority: T.C.A. §§4-5-102(3), 4-5-202, 4-5-204, 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 section shall read:

0870-01-.08 Examination.

- (1) With the exception of applicants qualifying for reciprocity licensure pursuant to Rule 0870-01-.04(1)(n) 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 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 June 30, 2011, the Board will accept 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 for Therapeutic Massage (NCETM); or
 - (b) The N.C.B.T.M.B.'s and/or its successor organization's National Certification for Therapeutic Massage and Bodywork (NCETMB); or
 - (c) The N.C.B.T.M.B.'s and/or its successor organization's National Examination for State Licensing (NESL); or
 - (d) The F.S.M.T.B.'s Massage and Bodywork Licensing Examination (MBLEx); or
 - (e) Any other Board-approved examination.
- (3) Effective July 1, 2011, the exclusive competency examination accepted by the Board shall be the F.S.M.T.B.'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.

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:

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

- (1) Renewal application
 - (a) The due date for license renewal is set by the Division's biennial alternative interval renewal system. The due date is contained on the renewal document as the expiration date.
 - (b) Methods of Renewal
 - 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The internet renewal method is not available to establishments.
 - 2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
 - (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 0870-1-.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 0870-1-.12.

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

0870-01-.11 Retirement, Reinstatement, Inactivation, and Reactivation of Licensure.

- (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.

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 section shall read:

- (1) All licensees must complete twenty five (25) hours of continuing education every two 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 there from.
 - (a) Continuing education credit shall only be awarded for those courses which are approved by the Board pursuant to paragraph (2) 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 federal and Tennessee statutes and rules concerning massage therapists and establishments.
- (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
 - 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.
- (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, 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 subparagraphs (b) or (c) of this paragraphs, is effective only for the continuing education cycle as identified in subparagraphs (2)(a) and (2)(b) in which they are approved. All courses that have been approved under this rule prior to January 1, 2010 rule will expire at the end of the continuing education cycle beginning January 1, 2010. 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 (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 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 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.
 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 Administration 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 sixty clock minutes of instruction.

6. A copy of all printed or web based advertisements and the text of any other advertisements that will be utilized to advertise the course.
 7. The Board may deny a request to sponsor continuing education if it is determined the sponsor will utilize copyrighted materials without appropriate permission.
 8. The Board reserves the right to request additional information if the information provided by the sponsor is deemed inadequate or incomplete.
 9. 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 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) 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 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 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 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, 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. Eight (8) hours of the twenty (20) hour continuing education requirement for reinstatement may be completed in a multi-media format.
 - (b) The continuing education hours 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.
- (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. §§ 4-5-202, 4-5-204, and 63-18-111.

Rule 0870-01-.13 Disciplinary Actions and Civil Penalties is amended by deleting it in its entirety and substituting instead the following language, so that as amended, the new section 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 an individual's right to practice for a fixed period of time. It contemplates the re-entry of the individual into the practice under the licensure previously issued.
 - (f) "Licensure revocation" This is a formal disciplinary action which removes an individual 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 four (4) of this rule.
- (i) Once ordered, probation, suspension, assessment of a civil penalty, or any other condition 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.
- (4) 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 willful and knowing 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 are neither directly detrimental to the clients or public, nor directly impact their care, but have 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 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.
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.

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:

0870-01-.14 License.

- (2) Replacement License - A licensee whose initial or renewal license has been lost or destroyed may be issued a replacement license upon receipt of a signed, written request in the Board Administrative Office. The licensee shall include in such request the facts concerning the loss or destruction of the original license and include the required fee pursuant to Rule 0870-01-.06.

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

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, old and new addresses, and the replacement license fee, pursuant to rule 0870-01-.06 (1) (f) and 0870-01-.06 (2) (f). The replacement fee is due if the establishment changes its name. A reinspection 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.

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 section 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 must be received by the Board Administrator's office not less than fifteen days prior to the meeting date at which the petitioner seeks to have the Board take action on their petition.
 - (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 1360-4-1-.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 1200-10-1-.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.

Rule 0870-01-.17(1) Advertising is amended by deleting the word "The" at the beginning of the second sentence of paragraph (1) so that the new paragraph (1) shall read:

- (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. 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.

Rule 0870-01-.17(2) Advertising Definitions is amended by deleting paragraph (2)(b) in its entirety and renumbering (2)(c) as the new (2)(b), and deleting the word "ordinary" in the first sentence of (2)(b) and renumbering (2)(d) and (2)(e) as the new (2)(c) and (2)(d) respectively, so that as amended, the new section shall read:

- (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- 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 services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".

Rule 0870-01-.17(3) Advertising Fees and Services is amended by deleting paragraph (3) in its entirety and substituting the new paragraph (3), so that as amended, the new section shall read:

- (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 with that time.

Rule 0870-01-.17(4) Advertising Content is amended by deleting the word "clientele" in paragraph (4)(d) and substituting instead the word "client" and deleting subparagraph (r) in its entirety and substituting instead with 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).

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

Authority: T.C.A. §§ 4-5-202, 4-5-204, 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. §§ 4-5-202, 4-5-204, 63-18-111, 63-18-111, and 63-51-101, et seq.

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

- (1) The Board requires licensed therapists and licensed establishments 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 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) Only 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. Therapeutic treatments to the anus or anal canal, including, but not limited to, colonic irrigations and enemas;
 2. Therapeutic cross-gender breast massage;
 3. Therapeutic 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 such 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; 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. 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; and
- (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.

Chapter 0870-02
General Rules Governing Massage Therapy Educational Programs

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

- (6) NCBTMB – The National Certification Board for Therapeutic Massage and Bodywork
- (7) F.S.M.B.T. – The Federation of State Massage Therapy Boards.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 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 section 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 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. 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) 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 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.
- (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 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 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)(f);
 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.

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 section 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 six (6) month period.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 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 (h), so that as amended, the new subparagraph (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. §§ 4-5-202, 4-5-204, 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 section shall read:

0870-02-.06 Program Policies and Procedures

- (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 business hours.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, and 63-18-115

Rule 0870-02-.07 Annual Report is amended by adding the words “Every board-approved” to the first sentence of the rule, so that as amended, the new sentence shall read:

0870-02-.07 Annual Report. Every board-approved program shall file an annual report with the Board on or before June 30 of each calendar year.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 9/3/09

Signature: [Handwritten Signature]

Name of Officer: Shiva K. Bozarth

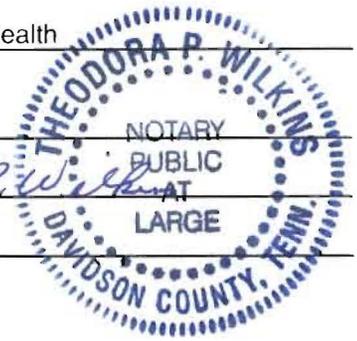
Deputy General Counsel

Title of Officer: Tennessee Department of Health

Subscribed and sworn to before me on: 9/3/09

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/7/2011



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Filed with the Department of State on: 9-3-2009

[Handwritten Signature]

Tre Hargett
Secretary of State

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