

Oregon Board of Massage Therapists

PROPOSED RULE CHANGES

Proposed effective date 01/01/2013

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NOTE: Only adopted, amended or repealed rules are indicated. Some rules have no changes and as such are not listed in this document. New text is accented in **bold** font. Text to be removed is stricken (~~stricken~~) through.

If you have questions, concerns or comments about these proposed rules, please contact the Oregon Board of Massage Therapist by November 26, 2012, prior to the end of hearing.

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334-001-0060

Definitions

- (1) "Advantageous" means in the Board's best interests, as assessed according to the judgment of the Board.
- (2) "Award" means either the act or occurrence of the Board's identification of the Person with whom the Board will enter into a Contract.
- (3) "Barter" means partial or complete trade or exchange of massage or bodywork services for any other type of goods or service other than money.
- (4) "Board" means the State Board of Massage Therapists or its authorized representatives as provided by ORS 687.115.
- (5) "Bodywork" means the use on the human body, for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition of:
 - (a) Pressure, friction, stroking, tapping, kneading, vibration or stretching by manual or mechanical means or gymnastics;
 - (b) Appliances, tools or devices;
 - (c) Topical preparations; or
 - (d) Hot and cold applications.
- (6) "Boundary" means the limits in a professional relationship which create safety based on the needs of the client.
- (7) "Boundary violation" means an alteration or shift in the limits of a professional relationship so that what is allowed in the relationship becomes ambiguous and/or may not be based on the needs of the client.
- (8) "Caring" means acting in a manner in which things, events, people or relationships matter.
- (9) "Certified Class or program" means a class or program that is approved by the Board and is offered:
 - (a) By a person or institution licensed as a career school under ORS 345.010 to 345.450; or
 - (b) By a community college or university approved by the Department of Education; or
 - (c) In another state and licensed or approved by the appropriate agency in that state.
- (10) "Client" means any individual, group of individuals, or organization to whom an LMT provides massage
- (11) "Client vulnerability" means factors which diminish a client's ability to be self-determining.
- (12) "Compensation" means something given or received as payment including but not limited to bartering, tips, monies, donations, or services.
- (13) "Conflict of interest" means any action or decision or recommendation by an LMT at the detriment of a client.
- (14) "Contact hours" means actual hours in class under the instruction of and in the presence of an instructor.
- (15) "Contract" means an agreement for purchase, lease, rental or other acquisition or sale or other disposal by the Board of Goods or Services.
- (16) "Contract Price" means, as the context requires;
 - (a) The maximum payments that the Board will make under a Contract if the Contractor fully performs under the Contract;
 - (b) The maximum not-to-exceed amount of payments specified in the Contract; or
 - (c) The unit prices for Goods and Services set forth in the Contract.
- (17) "Contractor" means the Person with whom the Board enters into a Contract.

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- (18) "Critical Reflection" means a process whereby knowledge and action are connected to each other through the application of careful, conscious, deliberate reflection on:
- (a) Personal practice (perceptions, assumptions, motivations, values, behaviors).
 - (b) Assessment and understanding of a situation.
 - (c) Likely or actual consequences or impact of one's actions.
- (19) "Dual Relationship" means any relationship of a personal or business nature with a client that is in addition to or concurrent with a professional relationship in which the LMT is providing or has provided massage or bodywork services to that same client.
- (20) "Ethics" means a system of valued societal beliefs and behaviors that may be used to guide and evaluate conduct to ensure the protection of an individual's person and rights.
- (21) "Emergency" means circumstances that:
- (a) Could not have been reasonably foreseen;
 - (b) Require prompt execution of a Contract to remedy the condition; and
 - (c) The circumstances create a substantial risk of loss or revenue, damage or interruption of services or substantial threat to property, public health, welfare or safety when the circumstances could not have been reasonably foreseen;
- (22) Equivalent Credit Hours: are those credit hours as determined by the respective educational institution or its certified classes or programs
- (23) "Goods and Services" or "Goods or Services" means supplies, equipment, materials and services including Personal Services and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the Board is authorized by law to procure.
- (24) "Indorsement" means:
- (a) the process of evaluating and recognizing the credentials of a person licensed in Oregon in another health care specialty that includes in its scope of practice, acts defined as massage: or
 - (b) the process of evaluating and recognizing the credentials of a massage or bodywork practitioner authorized to practice massage or bodywork in another jurisdiction.
- (25) "Informed consent" means a process wherein clients have knowledge of what will occur, that participation is voluntary, and that the client is competent to give consent.
- (26) "Licensee" means any person holding a license, permit, or certificate issued by this Board; an LMT
- (27) "LMT" means a Licensed Massage Therapist.
- (28) "Massage" or "massage therapy" is defined in ORS 687.011.
- (29) "Offer" means a response to a request for price quote or response to a Solicitation Document.
- (30) "Offeror" means a Person who submits an Offer.
- (31) "Personal power" means recognizing and taking personal responsibility for the inherent power differential between the LMT and the client and recognizing and taking personal responsibility for the impact of professional decisions, actions and behavior on the client.
- (32) "Power differential" means the basic inequality inherent in the professional relationship between an LMT and a client in terms of who has the advantage in the relationship. The LMT is presumed to have the advantage by virtue of the authority which emerges from the role of professional and the vulnerability which is automatically part of the role of client.
- (33) "Practical Work Experience" means experience gained while employed or self-employed providing legal massage/bodywork to the public within the last five (5) years, in another state or jurisdiction.
- (34) "Practice of massage" is defined in ORS 687.011.
- (35) "Professional authority" means the power inherent in the professional role and which is derived from a combination of an LMT's specialized or expert knowledge, societal expectations, stated and unstated client expectations, and an LMT's personal power.
- (36) "Professional relationship" means the relationship established when a LMT contracts with a client, verbally or in writing, to provide any service associated with the practice of massage or bodywork.
- (37) "Professional role" means assuming the demands and responsibilities of professional authority by taking charge of the conditions which create and maintain client safety and trust in the professional-client relationship.
- (38) "Scope" means the range and attributes of the Goods or Services described in the applicable Solicitation Document, or if no Solicitation Document, in the Contract.
- (39) "Solicitation Document" means an Invitation to Bid, Request for Proposal or other document issued to invite Offers from prospective Contractors.
- (40) "Specification" means any description of the physical or functional characteristics or of the nature of Goods or Services, including any requirement for inspecting, testing or preparing Goods or Services for delivery and the quantities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained.

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(41) "Successful Completion" means the written receipt of credit from classes taken at a community college or university or the written receipt of a certificate from a program or private career school.

(42) ~~(41)~~ "Written" or "Writing" means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

334-010-0027

Exempt Practices

(1) Practitioners exempt from the Oregon Board of Massage Therapists licensing authority are defined as practitioners who:

(a) Do not claim expressly or implicitly to be massage therapists and who limit their work to the practice of:

(A) Using touch, words and directed movement to deepen awareness of existing patterns of movement and suggest new possibilities of movement, as defined per 687.031(1)(j)(i). Examples include the Feldenkrais Method of Somatic Education as defined on May 16, 2011, by the Feldenkrais Guild® of North America and The Trager® Approach as defined on May 16, 2011, by the United States Trager® Association Association; or

(B) Using minimal touch over specific points on the body to facilitate balance in the nervous system, as defined per 687.031(1)(j)(ii). An example includes Bowenwork® and/ or the Bowen Technique as defined on May 16, 2011 by the Bowenwork Academy USA; or

(C) Using touch to affect the energy systems or channels of energy of the body, as defined per 687.031(1)(j)(iii). An example includes Polarity Therapy as defined on May 16, 2011 by the American Polarity Therapy Association; and

(b) Hold an active certification from a National or International professional organization or credentialing agency that:

(A) Requires a minimum level of training specific to their discipline, demonstration of competence and adherence to an approved scope of practice and ethical standards;

(B) Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and

(c) Provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

(2) It is the exempt practitioner's responsibility to insure they meet the criteria for being exempt and only practice within their exempt scope of practice. Practitioners may be subject to discipline by the Board if they:

(a) Refer to themselves or imply they are a massage therapist;

(b) Practice outside of the exempt scope of practice;

(c) Practice without an active certification from a National or International professional organization or credentialing agency; or

(d) Fail to provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

(3) The State Board of Massage Therapists has the authority to verify a practitioners claimed exemption from licensure of ORS 687 under subsection (1)(j) of section 687.031. Verification may include, but is not limited to, consultation with the practitioners certifying organization or agency.

(4) Practitioners, Disciplines and/or Organizations seeking to be named in the exemption shall contact the Board of Massage Therapists to request a review.

334-010-0029

Internal Cavity

(1) An internal cavity massage must be performed using gloves and utilizing universal precautions for communicable disease control.

(2) **Internal Cavities consist of nasal cavities, oral cavities, auricular cavities, anal cavities, and vaginal cavities.**

(3) ~~(2)~~ Prior to performing these special procedures, an LMT must:

(a) be able to present evidence of the completion of specialized contact hours as training beyond the minimum competencies, which includes but is not limited to, indications, contraindications, therapeutic treatment techniques, expected outcomes, client safety, client consent, client communication, draping techniques, sanitation, and ethical responsibilities related to internal cavity massage;

(b) be able to articulate a therapeutic rationale which is acknowledged by the client; rationale may include a medical prescription and/or permission to consult with the clients health care provider(s);

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(c) acquire prior written and verbal consent before proceeding; ~~written consent must include clients' option to accept or decline to provide a witness, in addition to the client and LMT.~~

(d) intra-anal and intra-vaginal written consent must include clients' option to accept or decline to provide a witness, in addition to the client and LMT.

(4) (3) While performing these procedures a LMT must use appropriate draping techniques at all times. Any temporary exposure of the genital area for the purposes of treatment is acceptable only in respect to appropriate procedures for that treatment. Immediately following treatment of the area, the genital area must be covered again.

(5) (4) Under no circumstances will intravaginal or intra-anal techniques be performed on individuals under 18 years of age.

334-010-0046

Class Certification

(1) A class or program certified under ORS 687.051 must be offered by:

(a) In State Schools:

(A) (a) A person or institution licensed as a private vocational school under ORS 345.010 to 345.074 or the equivalent licensing authority of another jurisdiction; or

(B) (b) By a community college or university and approved by the Division of Vocational Education or the Department of Education, or the appropriate agency of another jurisdiction; or

(C) (c) By a college accredited either by the Northwest Association of Secondary and Higher Schools or a like regional association or by a college in Oregon approved by the Oregon Office of Educational Policy and Planning for the purpose of granting degrees; ~~and~~ or

(D) (d) Approved by the Board.

(b) Out of State Schools:

(A) Must be accredited by the governing body where the school is located; or

(B) By a college accredited either by the Northwest Association of Secondary and Higher Schools or a like regional association for the purpose of granting degrees.

(2) In order for a class or program to be approved, the person or institute offering the class or program must apply to the Board. The application packet must contain, but not be limited to:

(a) A completed Board application;

(b) Verification of content meeting the Model Curriculum;

(c) Course descriptions and syllabi;

(d) The institution's Code of Ethics and fraternization policy;

(e) The method of evaluation to determine the student's successful completion of a class;

(f) The attendance requirements for students to successfully complete each class;

(g) Minimum qualifications for selecting instructors.

(3) The authorized representative of the certified class or program must notify the Board at least 60 days prior to any significant changes to information provided in the application process.

(4) A certified class or program must renew their certification on a regular basis as determined by the Board.

(5) Certification of the class or program may be revoked by the Board if it is determined that the requirements have not been or are no longer being met.

(6) Denial or revocation of a class or program certification by the Board, if otherwise not resolved, must be heard by the Board pursuant to ORS 183.411 to 183.497.

334-040-0010

Discipline

The Board may deny, conditionally grant, restrict, suspend or revoke a license, impose probation, reprimand, censure, impose remedial education or corrective actions, and/or impose a civil penalty for any of the following reasons:

(1) Practicing massage or representing one's self as a massage therapist without a current active license issued by the Board;

(2) Knowingly or recklessly making any false statement to the Board;

(3) Suspension or revocation of a license to practice massage in another jurisdiction based upon acts by the licensee similar to acts described in this section;

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- (4) Conviction of a crime in this state, or jurisdiction;
- (5) The use of false, deceptive, or misleading advertising, which includes but is not limited to, advertising massage using the term "massage" or any other term that implies a massage technique or method in any private or public communication or publication by a person licensed or not licensed by the Board as a massage therapist;
- (6) Allowing the use of a license by an unlicensed person;
- (7) Presenting as one's own license, the license of another;
- (8) Practicing massage under a false or assumed name without notification to the Board;
- (9) Impersonating another massage therapist;
- (10) Assisting, employing, or permitting an unlicensed person to practice massage;
- (11) Practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive;
- (12) Practicing or offering to practice massage beyond the scope permitted by law;
- (13) The use of intoxicants, drugs, controlled substances, or mind altering substances to such an extent as to impair or potentially impair the licensee's abilities to perform professional duties in a safe manner;
- (14) Practicing massage with a physical or mental impairment that renders the therapist unable or potentially unable to safely conduct the practice of massage;
- (15) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition as required by rules of the Board;
- (16) Refusing to permit the Board or its representatives to inspect the business premises of the licensee during regular business hours;
- (17) Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to:
 - (a) Failure to furnish any requested papers or documents,
 - (b) Failure to provide in writing a full and complete explanation covering the matter contained in the complaint filed with the Board,
 - (c) Failure to respond to subpoenas issued by the Board whether or not the recipient is accused in the proceeding;
- (18) Failing to comply with an order issued by the Board;
- (19) Unprofessional or dishonorable conduct which includes but is not limited to:
 - (a) Any conduct involving inappropriate physical contact or sexual misconduct which includes:
 - (A) Sexual abuse which is conduct which constitutes a violation of any provision of ORS 163.305 through 163.465;
 - (B) Sexual violation which is sex between the LMT and the client, whether initiated by the client or not, engaging in any conduct with a client that is sexual, or may be reasonably interpreted as sexual, including, but not limited to:
 - (i) Sexual intercourse;
 - (ii) Genital to genital contact;
 - (iii) Oral to genital contact; oral to anal contact;
 - (iv) Oral to oral contact except cardiopulmonary resuscitation; touching breasts or genitals or any sexualized body part for any purpose other than appropriate examination or treatment or where the client has refused or withdrawn consent; or
 - (v) Encouraging the client to masturbate in the presence of the LMT or masturbation by the LMT while the client is present.
 - (C) Sexual impropriety which is any behavior, gestures, or expressions that are seductive or sexually demeaning to a client; inappropriate procedures, including, but not limited to,
 - (i) Disrobing or draping practices that reflect a lack of respect for the client's privacy, deliberately watching a client dress or undress for self gratification instead of providing privacy for disrobing;
 - (ii) Subjecting a client to an examination in the presence of students, assistants, or other parties without the explicit consent of the client or when consent has been withdrawn;
 - (iii) An examination or touching of genitals;
 - (iv) Inappropriate comments about or to the client, including but not limited to, making sexual comments about a client's body or clothing, making sexualized or sexually-demeaning comments to a client, comments on the client's or LMT's sexual orientation and making a request to date;
 - (v) Initiation by the LMT of conversation regarding the sexual problems, preferences or fantasies of the LMT; or
 - (vi) Kissing of a sexual nature.
 - (b) Violating the client's rights of privacy, and confidentiality.
 - (c) Failure to disclose or release information about a client if required by law or on written consent of client.
 - (d) Intentionally harassing, abusing, or intimidating a client either physically or verbally.

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- (e) Any conduct or practice which could endanger the health or safety of a client or the public.
- (f) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage.
- (g) Exercising undue influence on a client, including promotion or sale of services, goods, or appliances in such a manner as to exploit the client for the financial gain or self-gratification of the massage therapist.
- (h) Routinely practicing in an incompetent manner.
- (i) Conduct which would also constitute a violation of the Oregon Unlawful Trade Practices Act.
- (j) Practicing a modality or technique without adequate training or licensure.

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