

Oregon Board of Massage Therapists OAR 334
Proposed Changes
Effective January 1, 2017

334-040-0010

Discipline

The Board may deny, conditionally grant, restrict, suspend or revoke a license or permit, 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) Has been the subject of disciplinary action as a licensed healthcare professional by this or any other state or territory of the United States or by a foreign country and the Board determines that the cause of the disciplinary action would be a violation under ORS 687.011 to 687.250, 687.895 and 687.991 or OAR Chapter 334;
- (4) 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;
- (5) Knowingly or recklessly falsifying an application or continuing education statement or documentation;
- (6) Conviction of a crime in any state or jurisdiction;
- (7) 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;
- (8) Allowing the use of a license by an unlicensed person;
- (9) Presenting as one's own license, the license of another;
- (10) Practicing massage under a false or assumed name without notification to the Board;
- (11) Impersonating another massage therapist;
- (12) Assisting, employing, or permitting an unlicensed person to practice massage;
- (13) Practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive;
- (14) Practicing or offering to practice massage beyond the scope permitted by law;
- (15) 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;
- (16) Practicing massage with a physical or mental impairment that renders the therapist unable or potentially unable to safely conduct the practice of massage;
- (17) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition as required by rules of the Board;
- (18) Refusing to permit the Board or its representatives to inspect the business premises of the licensee during regular business hours;
- (19) 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;
- (20) Failing to comply with an order issued by the Board;
- (21) Failure to obtain the required permits for facilities or in violation of OAR 334-010-0010.
- (22) Failure to report to the Board information that a licensee has engaged in prohibited or unprofessional conduct as required in ORS 676.150.
- (23) Misrepresentation or fraud in any aspect of the profession, including but not limited to charging for unnecessary services, charging for services not provided, failing to provide services that are paid in full, or failure to comply with Oregon insurance billing laws and rules.**
- (24) Splitting fees or giving or receiving a commission in the referral of patients for services.**
- (235) Unprofessional or dishonorable conduct which includes but is not limited to:
 - (a) Any conduct involving inappropriate physical contact or sexual misconduct which includes:

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- (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 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.
- (b) Violating the client's rights of privacy, and confidentiality.
- (c) photographing or filming the body or any body part or pose of a client without consent.
- (d) Failure to disclose or release information about a client if required by law or on written consent of client
- (e) Intentionally harassing, abusing, or intimidating a client either physically or verbally.
- (f) Any conduct or practice which could endanger the health or safety of a client or the public.
- (g) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage.
- (h) 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.
- (i) Routinely practicing in an incompetent manner.
- (j) Conduct which would also constitute a violation of the Oregon Unlawful Trade Practices Act.
- (k) Practicing a modality or technique without adequate training or licensure.

Stat. Auth.: ORS 687.081 & 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; Sections (6) - (20)(h) Renumbered from 334-030-0020; BMT 2-1998, f. & cert. ef. 7-22-98; Renumbered from 334-030-0025 by BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 2-2012, f. 12-4-12, cert. ef. 1-1-13; BMT 1-2013, f. 5-31-13, cert. ef. 7-1-13; BMT 2-2013, f. 11-26-13, cert. ef. 1-1-14; BMT 1-2015, f. 3-12-15, cert. ef. 7-1-15