



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

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RULES COMMITTEE MEETING

August 11, 2014

OBMT Office

Attendance

Committee Members:

Michael Jordan, LMT, Chair

Tina West, LMT

Eric Polgar, LMT

Todd Pennington, LMT

Steve Davis, LMT

Barb Pickle, LMT (Absent)

Carol Gray, LMT

Board Members & Staff:

Craig McMillin, Board Liaison (Absent)

Kate Coffey, Executive Director

Ekaette Udosenata, Policy Analyst

Absent: Barb Pickle, LMT, and Craig McMillin, Board Liaison

Public: None present

Call to Order - Jordan called the meeting to order at 9:07 am.

Introductions – Present today are Michael Jordan, Tina West, Eric Polgar, Carol Gray, Todd Pennington and Steve Davis; Board staff Kate Coffey and Ekaette Udosenata-Harruna.

Rule Assignments: Review Continuing Education Rules, Rules Modifications for Electronic Fingerprint, Definition of Contact Hours, Definition for Non-Contact hours, Cap for Late Fee, and New Ethics Continuing Education requirement for Lapsed and Inactive License. Modify Rules for Insurance Billing, Fee Splitting, address the Rules on Photographing or Filming and remove Hand Washing Signage requirement.

The Rules Committee discussed the matter of Good Moral Character and Professional Fitness as defined in the proposed Rules and concluded that the committee needs the Board to clarify intent. It was determined that Jordan will attend the September 22, 2014 Board meeting to discuss with the Board.

The committee decided that the matter of Good Moral Character and Professional Fitness will be discussed in depth at the next Rules Committee meeting which is scheduled for October 6, 2014 at 9am, after Jordan receives feedback from the Board.

The Committee reviewed and discussed Insurance Billing proposed Rules. The Committee recommended that the Board establish an Insurance Billing Task Force to conduct research on the subject matter of Insurance Billing and Fee Splitting and make a proposal to the Board.

The following version of the Rules will be sent to the September 22, 2014 Board meeting for further review and approval. (~~strike through~~ represents deletions, **bold** represent new additions):

PROCEDURAL RULES

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 **forms, methods, and styles including massage, that positively influence the body through various methods that may or may not include soft-tissue deformation, energy manipulation, movement reeducation, and postural reeducation.** ~~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.~~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; 8
 - (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 **physical** presence of an instructor; **or an interactive distance learning course.**
- (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.
- (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) Good moral character means**
- (a) *an applicant has not within the five years before the date of application, been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, required to be a registered sex offender and other similar offense which has a reasonable relationship to the practice of massage;***
 - (b) *has not within five years before the date of application, been convicted of an act involving dishonest, fraud misrepresentation, gross negligence or incompetence or is not currently incarcerated or on community supervision after a period of incarceration in a local, state or federal penal institution for such an act;***
 - (c) *has not within five years before the date of application, had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in the United States, or voluntarily surrendered a professional license in lieu of disciplinary action;***
 - (d) *has not within five years before the date of the application, had a massage therapy license revoked or suspended by any state or national massage certifying agency.***
- ~~(24)~~ "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.
- (254) "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.
- ~~(26)~~ "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.
- ~~(27)~~ "Licensee" means any person holding a license, permit, or certificate issued by this Board; an LMT
- ~~(28)~~ "LMT" means a Licensed Massage Therapist.
- ~~(29)~~ "Massage" or "massage therapy" is defined in ORS 687.011.
- ~~(30)~~ **"Non-Contact hours" means education hours independently acquired outside the presence of an instructor.**
- (310) "Offer" means a response to a request for price quote or response to a Solicitation Document.

(324) "Offeror" means a Person who submits an Offer.

(33) *Professional fitness means*

- (a) *an applicant has not within the five years before the date of application, been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, required to be a registered sex offender and other similar offense which has a reasonable relationship to the practice of massage;*
- (b) *has not within five years before the date of application, been convicted of an act involving dishonest, fraud misrepresentation, gross negligence or incompetence or is not currently incarcerated or on community supervision after a period of incarceration in a local, state or federal penal institution for such an act;*
- (c) *has not within five years before the date of application, had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in the United States, or voluntarily surrendered a professional license in lieu of disciplinary action;*
- (d) *has not within five years before the date of the application, had a massage therapy license revoked or suspended by any state or national massage certifying agency.*

(344) "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.

(352) "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.

(363) "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.

(374) "Practice of massage" is defined in ORS 687.011.

(385) "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.

(396) "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.

(4037) "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.

(4138) "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.

(4139) "Solicitation Document" means an Invitation to Bid, Request for Proposal or other document issued to invite Offers from prospective Contractors.

(4240) "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.

(43) "Split Fee" means giving or receiving a commission or payment, either monetary or otherwise, for the referral of patients.

(444) "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.

(452) "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.

Stat. Auth.: ORS 687.011 & 687.121

Stats. Implemented: ORS 687.011

Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 2-2011, f. 6-29-11, cert. ef. 7-1-11; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

MASSAGE LICENSING

334-010-0015

Licensure

- (1) An applicant for an initial license or renewal of a license must complete, in its entirety, an original application furnished by the Board.
- (2) An applicant for an initial license and all lapsed and inactive licensees applying for reactivation must submit a completed fingerprint cards **or electronic fingerprints** for a criminal background check.
- (3) All applications for licensure must be accompanied by proof of current certification in cardiopulmonary resuscitation (CPR).
- (4) An applicant must provide written explanation and copies of all related documentation as requested by the board if:
 - (a) Applicant has ever been investigated, disciplined or denied licensure by this agency or any other governmental agency in any state or jurisdiction of the United States or foreign country;
 - (b) Applicant has surrendered a massage license or other professional license in any state or jurisdiction of the United States or foreign country;
 - (c) Applicant has been arrested, charged or convicted of any type of violation of the law, including both misdemeanors or felonies, other than minor traffic infractions in any state or jurisdiction of the United States or foreign country;
 - (d) Applicant has abused or been treated for the abuse of alcohol, controlled or mind altering substances; or
 - (e) Applicant has suffered from and/or received treatment for a mental, physical or emotional condition, which could impede applicant's ability to safely practice massage.
- (5) Applicants for initial licensure must apply within one year of the successful completion of the practical examination.
 - (a) If an applicant does not apply within one year, the applicant must retake the practical examination.
 - (b) At the time of re-examination, the applicant must meet all current licensing requirements and submit original documents as required by the Board.
- (6) Licenses issued expire on the last day of the licensees' birth month of even numbered years for licensees with even numbered birth years and odd numbered years for licensees with odd numbered birth years. Thereafter, licenses may be renewed every other year upon completion of the application requirements. The application must be returned to the Board postmarked no later than the 1st day of the month of expiration. A delinquent fee must be paid if the completed application and all requirements are not received by the due date.
- (7) Applicants for the renewal of an active license must sign a statement verifying completion of a minimum of 25 hours of continuing education. The Board may require proof of the continuing education hours.
- (8) Applications for renewal of an active license must be accompanied by:
 - (a) Current licensing fee;
 - (b) Any applicable late fees;
 - (c) Proof of current certification in cardiopulmonary resuscitation (CPR);
 - (d) Proof of 25 hours of continuing education; and
 - (e) Any additional documentation required by the Board.
- (9) All applicants for initial, renewal, or reinstated license must sign a statement verifying that they have read, understand, and must comply with all current Oregon Revised Statutes (ORS 687), Oregon Administrative Rules (OAR 334), and policy statements of the Board.
- (10) Licenses issued by the Board must not be transferable.
- (11) A person licensed by the Board may move to an inactive status by completing the form provided by the Board. Upon payment of the appropriate fee, the applicant will be issued an inactive license. During the period of inactive status, the licensee may not practice massage for compensation in the State of Oregon.
- (12) An application to reactivate an inactive license:
 - (a) must be accompanied by:

- (A) Current licensing fee;
 - (B) Verification of current cardiopulmonary resuscitation (CPR);
 - (C) Verification of 25 hours of continuing education for each biennium or fraction of the biennium the license was inactive, up to 50 hours; ~~and~~
 - (D) Verification of 4 contact hours in Professional Ethics, Boundaries and/or Communication; and**
 - (E) ~~(D)~~ Completed fingerprint card or electronic fingerprints for criminal background check.**
- (b) An individual who has been inactive or a combination of lapsed/inactive for 6 consecutive years or greater must, in addition, successfully pass the practical examination.

Stat. Auth.: ORS 687.121 & 687.051

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

Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0006; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 2-2006(Temp), f. & cert. ef. 2-16-06 thru 8-7-06; Administrative correction 8-22-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0017

Lapsed License

- (1) The massage therapist license is considered lapsed if an individual fails to complete the renewal process prior to the expiration of license.
- (2) During the lapsed status, no such person shall practice massage in the State of Oregon.
- (3) An applicant whose license is lapsed may return to active status by including the following with the completed application.
 - (a) Payment of the current fee for activation of the license;
 - (b) Payment of the licensing fee applicable for the period of the lapsed license;
 - (c) Late fee payment;
 - (d) Proof of 25 hours of continuing education for each biennium the license was lapsed and for the current licensing period;
 - (e) Proof of 4 contact hours in Professional Ethics, Boundaries and/or Communication.**
 - (f) ~~(e)~~ Proof of current certification in cardiopulmonary resuscitation (CPR);**
 - (g) ~~(f)~~ A statement indicating whether the applicant has engaged in the practice of massage and bodywork in another jurisdiction during the period of lapsed status; and**
 - (h) ~~(g)~~ Applicants must submit a completed fingerprint card or electronic fingerprints for criminal background check.**
- (4) All information required for restoring a lapsed license must be received within 3 years of the date of lapsing. Thereafter, one must apply as a new applicant.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

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

Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0018

Criminal Background Checks, Fitness Determinations

- (1) The Board requires a criminal background check of all applicants for a massage therapist license to determine the professional fitness of an applicant. These must be provided on prescribed forms provided by the Board. Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board. The Board must submit fingerprints to the Oregon Department of State Police for checks against state law enforcement data systems and national data sources. Any original fingerprint cards ~~and/or~~ any electronic fingerprint records must subsequently be destroyed by the Oregon Department of State Police.
 - (a) The Board requires completed fingerprint cards **or any submitted electronic fingerprint** of all applicants for an initial license; licensees applying to reinstate a lapsed license or licensees applying to reactivate an inactive license; and licensees under investigation to determine the professional fitness of an applicant or licensee.

- (2) These rules are to be applied when evaluating the criminal background of all licensees and applicants for a massage therapist license and conducting professional fitness determinations based upon such history. The fact that the applicant has cleared the criminal background check does not guarantee the granting of a license.
- (3) The Board may require fingerprints of any Oregon licensed massage therapist who is the subject of a complaint or investigation for the purpose of requesting a state or nationwide criminal background check.
- (4) All criminal background checks must include, but not be limited to, all available state law enforcement data systems and national data sources, unless obtaining one or the other is an acceptable alternative.
- (5) Additional information required. In order to conduct the Oregon and National Criminal Background Check and professional fitness determination, the Board may require additional information from the licensee/applicant as necessary, including but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.
- (6) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175(1).
- (7) The Board must determine whether an individual is professionally fit to be granted a license. If an individual is determined to be unfit, then the individual may not be granted a license. The Board may make professional fitness determinations conditional upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure. Except as otherwise provided in section (1), in making the professional fitness determination the Board must consider:
 - (a) Criminal background check;
 - (b) The nature of the crime;
 - (c) The facts that support the conviction or pending indictment or that indicates the making of any false statement;
 - (d) The relevancy, if any, of the crime or the false statement to the specific requirements of applicant's or licensee's present or proposed license, services, employment, position, or permit;
 - (e) Any refusal to submit or consent to a criminal background check including, but not limited to, fingerprint identification;
 - (f) Any other pertinent information requested or obtained as a part of an investigation;
 - (g) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, or permit. Intervening circumstances include but are not limited to:
 - (A) The passage of time since the commission of the crime;
 - (B) The age of the subject individual at the time of the crime;
 - (C) The likelihood of a repetition of offenses or of the commission of another crime;
 - (D) The subsequent commission of another relevant crime;
 - (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
 - (F) A recommendation of an employer.
- (8) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests, court records, Department of Motor Vehicle records, or other information that may be indicative of a person's inability to perform as a licensee with care and safety to the public.
- (9) If an applicant or licensee is determined not to be professionally fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413-470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.
 - (a) If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board must conduct a new criminal background check upon submission of a new request.

(10) If the applicant discontinues the application process or fails to cooperate with the criminal background check process, the application is considered incomplete.

Stat. Auth.: ORS 687, 676
Stats. Implemented: ORS 181, 183, 687.041, 687.051, 687.081, 670.280
Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0033

Fees

- (1) The fees are:
- (a) \$100 per biennial renewal for initial license;
 - (b) \$50 per biennial renewal for initial license under 12 months;
 - (c) \$150 per biennial renewal for active license;
 - (d) \$50 per biennial renewal for inactive license;
 - (e) \$25 per week, up to a maximum of ~~\$250~~ **\$100**, for any late renewal;
 - (f) \$50 for exam/endorsement application processing;
 - (g) \$150 for each practical examination;
 - (h) \$100 for mailing list;
 - (i) \$10 for license reprint;
 - (j) \$10 for license verification;
 - (k) \$250 Credentialing Review;
 - (l) Current Oregon State Police Criminal Background Check Fee;
 - (m) \$50 initial facility permit;
 - (n) \$250 facility permit transfer;
 - (o) \$10 facility permit reprint and
 - (p) other administrative fees as allowed by law.
- (2) Application and licensure fees are not refundable
- (3) Examination fees are refunded only when requested in writing and either:
- (a) the applicant is unqualified by Oregon statutes, or
 - (b) applicant requests refund postmarked at least 7 days prior to the exam.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1989(Temp), f. & cert. ef. 7-27-89; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92);
BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 4-2004, f. 10-22-04, cert. ef. 1-1-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11; BMT 1-2011, f. & cert. ef. 4-21-11; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0050

Continuing Education

- (1) The intent of Continuing Education is to protect the public by maintaining **knowledge and skills of massage and/or bodywork, and enhancing competencies as defined in OAR 334-010-0047.** Each licensee must complete 25 hours of continuing education ~~in the competencies~~ each renewal period. **The continuing education hours must be from the following topics:**
- (A) **Massage and bodywork techniques;**
 - (B) **Use of thermal modalities, topical preparations, mechanical assistive; devices/appliances;**
 - (C) **Stretching and gymnastics that lengthen and shorten soft tissues;**
 - (D) **Posture and movement assessment;**
 - (E) **Massage and bodywork business practices;**
 - (F) **Anatomy and physiology of the human body;**
 - (G) **Kinesiology of the human body;**
 - (H) **Pathology of the human body;**

- (I) Professional Ethics, Boundaries and/or Communication;
- (J) Cultural competency
- (K) Body mechanics;
- (L) Somatic education;
- (M) CPR/First Aid;

(a) At renewal time, each licensee must sign and submit a Board supplied CE form indicating they have completed 25 hours of continuing education. The Board may require proof of CE hours.

~~(a) At least 12 contact hours of continuing education training or Board approved activities (Board or Committee meeting/Peer Supervisor/Examiner of Practical Exam/Board Investigator).~~

~~(b) The remaining 13 hours may be contact hours or in areas as defined on the Board supplied CE form.~~

~~(2) The continuing education requirement does not apply to a licensee's first license renewal.~~

~~(3) Continuing education must be completed within the renewal period. Contact hours taken and submitted during renewal in excess of the total number required may only be carried over to the next subsequent renewal period.~~

~~(a) First renewal CE are not required to be submitted at the time of renewal, CE may be submitted with second renewal.~~

~~(4) Continuing education records must be maintained by each licensee for a minimum of five years.~~

~~(5) If the Board finds indications of fraud or falsification of records, investigative action must be instituted. Findings may result in disciplinary action up to and including revocation of the licensee's license.~~

~~(6) Failure to complete continuing education hours by the time of renewal may result in revocation, suspension and/or denial of a license. Licensee has 30 days from date of notification of non-compliance to come into compliance. Failure to be in compliance may result in discipline of the license to practice massage.~~

~~(7) Continuing education must be in areas related to the practice of massage or bodywork including theory, research, technique or business development.~~

(b) Of the 25 hours, at least 15 must be contact hours of continuing education training or Board approved activities. At least 4 contact hours must be in Professional Ethics, Boundaries and/or Communication. The remaining 10 hours maybe contact or noncontact hours.

(2) The methods of obtaining continuing education contact hours *shall* include:

- (a) Attendance of courses, seminars, and workshops sponsored, certified by an established and recognized massage and bodywork training program;
- (b) Attendance of courses or activities for continuing education offered by a provider recognized by a massage and bodywork professional organization;
- (c) Attendance of courses provided by an accredited institution of higher education if *topics is listed in OAR 334-010-0050(1)(a)(A-M)*.
- (d) Attendance of courses, seminars, and workshops provided by OBMT registered CE provider.
- (e) Individual interactive distance learning study courses with subject matter that is listed in OAR 334-010-0050(1)(a)(E-J).
- (f) Courses in cardiopulmonary resuscitation/first aid if taken in the presence of an instructor;
- (g) Providing Board requested peer supervision or Board exam proctoring; One hour of CE contact credit will be given for each meeting/*day*.
- (h) Attendance at an Oregon Board of Massage Therapists board meeting, board committee meeting, board task force or serving on these committees/task forces. One hour of CE contact credit will be given for each meeting.

(3) The methods of obtaining continuing education non-contact hours shall include:

- (a) Publishing an article relating to massage and bodywork;
- (b) Self-study based on media (i.e. book/video, periodical, *web based*, DVD);
- (c) Courses or lectures on massage and bodywork which a licensee presents. A licensee may receive credit for presenting a course or lecture only one time per renewal period regardless of how many times the licensee presents the course or lecture.

- (4) If the Continuing Education subject matter is not listed under OAR 334-010-0050(1)(A-M) it will not be accepted for continuing education.
- (5) The Oregon Board of Massage Therapists randomly selects a minimum of 10 percent of received monthly renewals for an audit.
 - (a) If selected for an audit you will have 30 days to complete the audit form and submit copies (not originals) of your Continuing Education certificates.
 - (b) If you fail to provide the requested information to the Board, within the 30 days, the Board may issue discipline per ORS 687.081 and 687.250.
- (6) The continuing education requirement does not apply to a licensee's first license renewal.
- (7) Continuing education must be completed within the renewal period. Contact hours taken and submitted during renewal in excess of the total number required may only be carried over to the next subsequent renewal period.
 - (a) First renewal CE are not required to be submitted at the time of renewal, CE taken during the first renewal period may be submitted with second renewal.
- (8) Continuing education records must be maintained by each licensee for a minimum of five years.
- (9) If the Board finds indications of fraud or falsification of records, investigative action must be instituted. Findings may result in disciplinary action up to and including revocation of the licensee's license.
- (10) Failure to complete continuing education hours by the time of renewal may result in revocation, suspension and/or denial of a license. Licensee has 30 days from date of notification of non-compliance to come into compliance. Failure to be in compliance may result in discipline of the license to practice massage.

Stat. Auth.: ORS 687.081, 687.121 & 687.122

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

Hist.: BMT 1-1998(Temp), f. & cert. ef. 2-3-98 thru 7-31-98; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 2-2004(Temp), f. & cert. ef. 3-16-04 thru 9-7-04; Administrative correction, 9-28-04; BMT 3-2004(Temp), f. & cert. ef. 10-22-04 thru 4-19-05; BMT 1-2005, f. & cert. ef. 2-23-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

SANITATION, FACILITY AND BUILDING REQUIREMENTS

334-020-0005

Facilities and Sanitation

- (1) Permanent and Mobile structures:
 - (a) All permanent structures and mobile facilities where a LMT routinely conducts massage and bodywork must:
 - (A) Be established and maintained in accordance with all local, state and federal laws, rules & regulations;
 - (B) Obtain a facility permit to operate;
 - (i) notify the Board office in writing, within 30 days of relocating the facility;
 - (ii) keep posted and visible to the public, the facility permit with the correct location address;
 - (C) Facilities exempted from the permit process:
 - (i) clinic or facility owned or operated by a person authorized to practice a profession by a health professional regulatory board, as defined in ORS 676.160;
 - (ii) a career school licensed under ORS 345.010 to 345.450; and
 - (iii) clinics of a board approved massage therapy program.
 - (D) Provide a finished lavatory that
 - (i) Is well maintained,
 - (ii) Provides a system for sanitary disposal of waste products,
 - (iii) Is capable of being fully closed and locked from the inside,
 - (iv) Supplies hot and cold running water,
 - (v) Is supplied with liquid soap and single use towels,
 - (vi) Is supplied with toilet paper at each toilet, and
 - ~~(vii) Has a sign prominently displayed encouraging hand washing;~~
 - (E) Dispose of refuse sewage in a manner described by local and state law; and
 - (F) Follow applicable laws pertaining to public spas, pools, baths and showers.
 - (b) All treatment spaces must:
 - (A) Provide for client privacy, both in-house and on-site;

- (B) Be designated as used only for massage at the time of services;
- (C) Provide for sufficient heating, cooling and ventilation for client comfort; and
- (D) Provide illumination during cleaning.
- (c) The facility and treatment space must be:
 - (A) Cleaned regularly and kept free of clutter, garbage or rubbish;
 - (B) Maintained in a sanitary manner; and
 - (C) Maintained free from flies, insects, rodents and all other types of pests.
- (2) Outcall/On-site
 - (a) Any temporary location where the LMT conducts massage and bodywork, the LMT must provide and utilize:
 - (A) Safe, sanitized and well-maintained equipment, tools and preparations;
 - (B) Sanitary linen practices; and
 - (C) Client privacy practices.

Stat. Auth.: ORS 687.121 Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121 Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0012; MTB 2-1985, f. & ef. 1-23-85; MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0030; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

ETHICAL STANDARDS

334-030-0005

Standards and Objectives of Professional Conduct

- (1) Standard I: Responsibility -- the relationship between the LMT and the profession. The LMT must:
 - (a) Acquire, maintain and improve professional knowledge and competence using scientific, clinical, technical, psychosocial and governmental sources of information;
 - (b) Act within the context of professional practice standards, codes of ethics, and relevant statutes and regulations;
 - (c) Consider factors related to safety, effectiveness, and cost in planning and providing care and services;
 - (d) Represent all aspects of his or her professional capabilities and services honestly and accurately;
 - (e) Have an understanding of the process of billing clients' insurance when appropriate,**
 - (i) It is neither fraud nor misrepresentation to offer cash discounts that are not disclosed to third party payors.**
 - (fe) Be accountable to his or her profession for establishing the quality and effectiveness of care and services, using their experience, professional education, and available resources;
 - (gf) Establish relationships with other massage, bodywork or healthcare professionals to collaborate with, and to offer or receive consultation in the provision of services; and
 - (hg) Be accountable for his or her actions and commitments and assume personal and professional responsibility to do his or her best.
- (2) Standard II: Therapeutic Relationship -- the relationship between the LMT and the client. The LMT must:
 - (a) Be accountable to his or her clients for the quality and effectiveness of care and services and for creating the basic conditions and boundaries necessary to foster safety and trust in the client-professional relationship;
 - (b) Plan and provide care and services to the best of his or her abilities, in partnership with the client, based on client needs;
 - (c) Ensure that their actions with a client are based on understanding and implementing the core values of caring, respect, compassion, appropriate boundaries, and appropriate use of personal power;
 - (d) Develop alliances with the client, colleagues, other health care providers and the community to provide care and services that are safe, effective and appropriate to the client's needs; Oregon Board of Massage Therapists Oregon Administrative Rules (OAR) Chapter 334 January 2014 Edition Page 24 of 27
 - (e) Develop and incorporate respect for diverse client backgrounds in regard to a client's clinical diagnosis, lifestyle, sexual orientation, race, gender, ethnicity, religion, age, and socioeconomic background when planning and providing services;

- (f) Act as an advocate for client and client's needs;
 - (g) Support and respect the client's right and responsibility for self-determination in making health care choices; and
 - (h) Base decisions and actions on behalf of a client on sound ethical reasoning and current principles of practice.
- (3) Standard III: Critical Reflection — the relationship of LMT to self. The LMT must:
- (a) Use critical reflection in the assessment of professional and clinical situations for the development and provision of care and services;
 - (b) Evaluate the quality and effectiveness of his or her professional practice activities;
 - (c) Modify and adapt professional practice activities, consistent with current professional standards and practices, in response to client needs, advancing knowledge and research, and social expectations; and
 - (d) Be an autonomous agent in planning and providing care and services to individuals, groups and the community.

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.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-030-0015 [Renumbered to 334-030-0002]

334-030-0025 [Renumbered to 334-040-0010]

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) Accepting or offering split fees to any person other than a partner, employee, or employer for services rendered to a client.**
- ~~(9)~~ Allowing the use of a license by an unlicensed person;
- ~~(10)~~ Presenting as one's own license, the license of another;
- ~~(11)~~ Practicing massage under a false or assumed name without notification to the Board;
- ~~(12)~~ Impersonating another massage therapist;
- ~~(13)~~ Assisting, employing, or permitting an unlicensed person to practice massage;
- ~~(14)~~ Practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive;
- ~~(15)~~ Practicing or offering to practice massage beyond the scope permitted by law;
- ~~(16)~~ 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;
- ~~(17)~~ Practicing massage with a physical or mental impairment that renders the therapist unable or potentially unable to safely conduct the practice of massage;
- ~~(18)~~ Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition as required by rules of the Board;

- (1918) Refusing to permit the Board or its representatives to inspect the business premises of the licensee during regular business hours;
- (2019) 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;
- (2120) Failing to comply with an order issued by the Board;
- (2221) Failure to obtain the required permits for facilities or in violation of OAR 334-010-0010.
- (2322) Failure to report to the Board information that a licensee has engaged in prohibited or unprofessional conduct as required in ORS 676.150.
- (2423) 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 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.**
 - (de) Failure to disclose or release information about a client if required by law or on written consent of client.
 - (ed) Intentionally harassing, abusing, or intimidating a client either physically or verbally.
 - (fe) Any conduct or practice which could endanger the health or safety of a client or the public.
 - (gf) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage.
 - (hg) 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.
 - (ih) Routinely practicing in an incompetent manner.
 - (ji) Conduct which would also constitute a violation of the Oregon Unlawful Trade Practices Act.
 - (kj) 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

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Board of Massage Therapists

334

Agency and Division
Number

Administrative Rules Chapter

Clarify verbiage in existing rule; clarify continuing education rules and definitions, and modify late fees.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendment of rules in OAR Chapter 334, Divisions 1, 10 and 20

Statutory Authority: ORS 687.001, 687.041, 687.051, 687.121, 687.071

Other Authority: ORS 183, ORS 182.456-182.472

Stats. Implemented: ORS 687.011, 687.121, 687.031, 687.041, 687.051, 687.071

Need for the Rule(s):

To clarify existing rule verbiage, move late fee maximum from \$250 to \$100, clarify continuing education contact and non-contact definition, clarify the verbiage for facilities and sanitation and clarify the verbiage for criminal background checks, fitness determinations.

Documents Relied Upon, and where they are available:

OAR 334, 2014 Board meeting minutes and Rules committee meeting minutes. These documents are available at www.oregon.gov/obmt

Fiscal and Economic Impact:

There is no material fiscal impact to licensees or small business; licensees or small businesses will see a reduction of \$150 in fees. The Board of Massage Therapists will see a reduction in revenue of about \$18,000 a year.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

334-010-0018 Criminal Background Check, Fitness Determination, No projected fiscal impact

334-001-0060 Definitions, No projected fiscal impact

334-010-0015 Licensure, No projected fiscal impact

334-010-0017 Lapsed License, No projected fiscal impact

334-010-0033 Fees, There will be a reduction in maximum for late fee from \$250 to \$100 for licensees or small businesses

who are late to renew licensure. The Board of Massage Therapists will see a reduction in revenue of about \$18,000 per biennium.

334-010-0050 Continuing Education - No projected fiscal impact

334-020-0005 Facilities and Sanitation, No projected fiscal impact

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

334-010-0018 Criminal Background Check, Fitness Determination, small businesses getting fingerprinted in Oregon will see a reduction in fingerprinting fee of about \$7.50
334-001-0060 Definitions, No projected fiscal impact
334-010-0015 Licensure, No projected fiscal impact
334-010-0017 Lapsed License, there may be a minimal cost to small business due to the requirement for three (3) additional contact hours of continuing education.
334-010-0033 Fees, There will be a reduction in maximum for late fee from \$250 to \$100 for licensees or small businesses who are late to renew licensure. Small businesses will see a savings of about \$18,000 per biennium.
334-010-0050 Continuing Education - there may be a minimal cost to small business due to the requirement for three (3) additional contact hours of continuing education.
334-020-0005 Facilities and Sanitation, No projected fiscal impact

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

334-010-0018 Criminal Background Check, Fitness Determination, No projected fiscal impact.
334-001-0060 Definitions, No projected fiscal impact.
334-010-0015 Licensure, No projected fiscal impact.
334-010-0017 Lapsed License, No projected fiscal impact.
334-010-0033 Fees, No projected fiscal impact.
334-010-0050 Continuing Education - No projected fiscal impact
334-020-0005 Facilities and Sanitation, No projected fiscal impact

c. Equipment, supplies, labor and increased administration required for compliance:

334-010-0018 Criminal Background Check, Fitness Determination, No projected fiscal impact.
334-001-0060 Definitions, No projected fiscal impact.
334-010-0015 Licensure, No projected fiscal impact.
334-010-0017 Lapsed License, No projected fiscal impact.
334-010-0033 Fees, No projected fiscal impact.
334-010-0050 Continuing Education - No projected fiscal impact
334-020-0005 Facilities and Sanitation, No projected fiscal impact

How were small businesses involved in the development of this rule?

Each licensee may be considered a small business. Licensees and stakeholders are Rules committee members and licensees and Stakeholders were notified through Rules committee meetings minutes and invitations to attend the rules committee meetings.

Administrative Rule Advisory Committee consulted?: yes

If not, why?:

Signature

Date

Printed name

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Next meeting – October 6, 2014

Adjournment - The meeting adjourned at 11:13 a.m.

Rules Hearing - TBD