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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 334
BOARD OF MASSAGE THERAPISTS

FILED
08/22/2018 10:35 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Increase budget for 2017-2019 Biennium and clarify existing board rules.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/26/2018 9:00 AM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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Rules Coordinator

NEED FOR THE RULE(S):

NOTE: These rules were previously filed on 8/14/2018. Refiling to make minor corrections and remove continuing education from the rule filing.

Budget: Increase budget for 2017-2019 Biennium; Application: clarifies the Facility License requirements and requires all applicants notify the board within 10 days if something changes on their original application for licensure. Facility Permits: Add clarification for Facilities; Licensure: Specifies the type of CPR required. Lapsed License: Specifies the type of CPR required and require licenses who are lapsed for more than 3 years to meet minimum education requirement to apply for a new license. Practice of Massage: requires a LMT to post their current license. Fees: adds clarification for Facility Permit fees. Discipline: adds clarity for Fitness to Practice and the Discipline associated with the failure to practice safely.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR 334, 2018 Board meeting minutes. These documents are available at www.oregon.gov/obmt.

FISCAL AND ECONOMIC IMPACT:

The requirement for Basic Life Support (BLS) CPR may have a minimal fiscal impact on Licensees or small business as there may be an increase in the cost of obtaining the required BLS CPR.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

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

334-001-0012 Budget, the Oregon Board of Massage Therapists Budget for 2017-2019 Biennium is \$2,280,000.

334-001-0060 Definition, No projected fiscal impact

334-010-0005 Application, No projected fiscal impact

334-010-0006 Facility Permits, No projected fiscal Impact

334-010-0015 Licensure, No projected fiscal Impact

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

334-010-0025 Practice of Massage, No projected fiscal Impact

334-010-0033 Fees, No projected fiscal Impact

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

334-040-0010 Discipline, No projected fiscal impact

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

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

334-001-0012 Budget, No projected fiscal impact

334-001-0060 Definition, No projected fiscal impact

334-010-0005 Application, No projected fiscal impact

334-010-0006 Facility Permits, No projected fiscal Impact

334-010-0015 Licensure, Minimal fiscal Impact

334-010-0017 Lapsed License, Minimal fiscal Impact

334-010-0025 Practice of Massage, No projected fiscal Impact

334-010-0033 Fees, No projected fiscal Impact

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

334-040-0010 Discipline, No projected fiscal impact

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

334-001-0012 Budget, No projected fiscal impact

334-001-0060 Definition, No projected fiscal impact

334-010-0006 Facility Permits, No projected fiscal Impact

334-010-0015 Licensure, No projected fiscal Impact

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

334-010-0025 Practice of Massage, No projected fiscal Impact

334-010-0033 Fees, No projected fiscal Impact

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

334-040-0010 Discipline, No projected fiscal impact

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

334-001-0012 Budget, No projected fiscal impact

334-001-0060 Definition, No projected fiscal impact

334-010-0005 Application, No projected fiscal impact

334-010-0006 Facility Permits, No projected fiscal Impact

334-010-0015 Licensure, No projected fiscal Impact

334-010-0017 Lapsed License, No projected fiscal Impact
334-010-0025 Practice of Massage, No projected fiscal Impact
334-010-0033 Fees, No projected fiscal Impact
334-020-0005 Facilities and Sanitation, No projected fiscal impact
334-040-0010 Discipline, No projected fiscal impact

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Each licensee may be considered a small business. Licensees and stakeholders were notified through meeting minutes and invitations to attend the meetings.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The proposed rules were discussed at board meetings and stakeholders attended the board meetings and provided input.

RULES PROPOSED:

334-001-0012, 334-001-0060, 334-010-0005, 334-010-0006, 334-010-0015, 334-010-0017, 334-010-0025, 334-010-0033, 334-020-0005, 334-040-0010

AMEND: 334-001-0012

RULE SUMMARY: Amend Board budget for the 2017-2019 biennium.

CHANGES TO RULE:

334-001-0012

Budget ¶

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists' 2017-2019 Biennium budget of ~~1,912,280,000~~.

Statutory/Other Authority: SB 1127, ORS 183, 687.121

Statutes/Other Implemented: Section 6, (1), (2)

AMEND: 334-001-0060

RULE SUMMARY: Clarify Verbiage the definition for Certified class or program

CHANGES TO RULE:

334-001-0060

Definitions ¶¶

The following Rule language is effective as of January 1, 2017¶¶

- (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 Higher Education Coordinating Commission; ¶¶
 - (c) By an accredited College or University; or ¶¶
 - (ed) 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 ever 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 ever 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 ever 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 ever 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. ¶

(25) "Indorsement" means 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 ¶

(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. ¶

(31) "Offer" means a response to a request for price quote or response to a Solicitation Document. ¶

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

(33) Professional fitness means ¶

(a) An applicant has not ever 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 ever 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 ever 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 ever before the date of the application, had a massage therapy license revoked or suspended by any state ¶ or national massage certifying agency. ¶

(34) "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. ¶

(35) "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. ¶

(36) "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. ¶

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

(38) "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. ¶

(39) "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. ¶

(40) "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. ¶

(41) "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. ¶

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

(43) "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. ¶

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

(45) "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. ¶

(46) "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.

Statutory/Other Authority: 687.121, ORS 687.011, ~~687.121~~

Statutes/Other Implemented: ORS 687.011

AMEND: 334-010-0005

RULE SUMMARY: This clarifies the Facility License requirements and makes all applicants notify the board within 10 days if something changes on their original application for licensure.

CHANGES TO RULE:

334-010-0005

Applications ¶

(1) All applications for licensure, inactive status, renewal, temporary permit, or a facility permit must be made on forms provided by the Board. Only applications that are completed and on Board approved forms, without alterations, must be accepted for filing and review by the Board. ¶

(2) All applications made to the Board must be accompanied by the required fee. ¶

(3) Applicants for Licensure must submit the following with their application: ¶

(a) A copy of a valid government issued photo identification. This identification could be a valid driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card; ¶

(b) An official certificate or transcript from the administering institutions, instructors, or programs showing successful completion of study and practice in the required subject matter and hours required by the Board. ¶

~~(A) Official copies of transcripts or certificates presented to the Board in an envelope sealed by the program or institution and verified as sealed may be accepted directly from the applicant. ¶~~

~~(B) If a program or institution granting credit is no longer in business, the Board must accept for review a copy of a certificate of completion, transcript or diploma in the required subject matter and hours. The Board may require additional information to verify the authenticity of such documents. ¶~~

~~(i) Transcripts or certificates directly received from other states massage licensing boards will be accepted. ¶~~

~~(C) The Board will not accept transcript(s) or certificate(s) from schools that are not approved or not in good standing with the national massage associations. ¶~~

(c) A current photograph of the applicant. ¶

(4) Transcripts must include a minimum of 625 hours of certified classes. The 625 hours must include the knowledge and skills identified in OAR 334-010-0047 competencies and must be comprised of: ¶

(a) A minimum of 200 hours of Anatomy & Physiology, Pathology, and Kinesiology; and ¶

(b) A minimum of 300 hours of Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, and Sanitation. Hydrotherapy may be included as part of the 300 hours. ¶

(c) The additional 125 hours can be in Anatomy & Physiology, Pathology, Kinesiology, Massage or Bodywork Theory and Practical Application, Clinical Practice, Business Development, Communication, Ethics, Sanitation or Hydrotherapy. ¶

(d) Hours can be calculated in clock hours or equivalent credit hours from an institution that substantially complies with the definition of credit hours in 34 CFR 600.2. ¶

(5) If for any reason an applicant does not appear to be qualified for Licensure, the applicant must be so notified and invited to submit additional evidence that he/she is entitled to have his/her case considered for licensure. ¶

(a) Applicants who are or have legally practiced massage and/or bodywork outside of the State of Oregon may be eligible to apply for the Credentialing Review Process. ¶

(6) Applicants who apply for licensure on or before December 31, 2015 with a minimum of 500 hours of certified classes and do not take and pass the Oregon practical exam within 60 days of the date of their application must apply as a new applicant. ¶

(7) All application documents for examination and licensure submitted in a language other than English must be accompanied by: ¶

(a) An accurate translation of those documents into English; ¶

(b) A notarized affidavit certifying that the translator is competent in both the language of the document and the English language; and ¶

- (c) A notarized affidavit certifying that the translation is a true and complete translation of the foreign language original. ¶
- (8) Any costs of translation of all documents required by the Board must be at the expense of the applicant. ¶
- (9) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, then the application is considered incomplete. ¶
- (10) All information required for an initial license must be received within 12 months of the initial date of application. Thereafter, one must apply as a new applicant. ¶
- (11) Applicants for Facility Permit must submit the following with their Facility Permit application: ¶
- (a) If a natural person a ¶
- (A) A copy of a valid government issued photo identification. This identification could be a valid identification includes: a state issued driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card. ¶
- (B) Verification of Oregon Secretary of State Business Registration confirming registration of the assumed business name with the State of Oregon. The Verification must be in a format acceptable to the Board and include: the business registry number, owner and entity name as each appears on the Facility Permit Application, Facility Address as it appears in the Facility Permit Application, the current status of the registration, and start date of the registration. ¶
- (b) If not a natural person: ¶
- (A) Verification of Oregon Secretary of State Business Registration, confirming registration of the corporation, partnership, limited liability company, or assumed business name with the State of Oregon. The Verification must be in a format acceptable to the Board and include the business registry number, entity name as it appears on the Facility Permit Application, Registered Agent, owner/member/partner information, Facility Address as it appears in the Facility Permit Application, the current status of the registration, and start date of the registration. ¶
- (B) For corporations, partnerships, and limited liability companies, copies of Articles of Incorporation, Articles of Organization, or shareholder agreements showing all percentages of ownership with appropriate owner(s) identification including name and address. ¶
- (12) Applicants for Facility Permit Transfer must submit the following with the Facility Permit application: ¶
- (a) If a natural person, a copy of a valid government issued photo identification. Valid identification includes: a state issued driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card; ¶
- (b) If not a natural person: ¶
- (A) ~~Copy of the~~ Verification of Oregon Secretary of State Business registration, listing all owners and/or shareholders and ¶
- (B) ~~Articles of Incorporation~~ Registration confirming registration of the corporation, partnership, limited liability company, or assumed business name with the State of Oregon. The Verification must be in a format acceptable to the Board and include the business registry number, entity name as it appears on the Facility Permit Application, Registered Agent, owner/member/partner information, Facility Address as it appears in the Facility Permit Application, the current status of the registration, and start date of the registration. ¶
- (B) For corporations, partnerships, and limited liability companies, copies of Articles of Incorporation, Articles of Organization, or shareholder agreements showing all percentages of ownership with appropriate owners(s) identification, including name and address. ¶
- (C) A Buy-Sell Agreement, Purchase Agreement, Transfer Agreement, Lease Agreement or other documentation approved by the Board verifying transfer of legal ownership of the Facility. ¶
- (13) Applicants for licensure, inactive status, renewal, or a facility permit must notify the Board in writing immediately, but no later than 10 days after the change occurs, if any information submitted on the application changes, including, but not limited to: name; contact information, including address, email address, and telephone number; Board or other governmental agency investigation or disciplinary actions; civil, criminal, or ethical investigations, arrests, charges or convictions; employment investigations which lead to termination or resignation; in-patient mental health care for a psychological or behavioral health condition, addiction, or chemical

dependency issue. Failure to do so may be grounds for denial of the application or revocation of the license, once issued.

Statutory/Other Authority: ORS 183, 687.121, 182.456 - 182.472

Statutes/Other Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086, 687.121

AMEND: 334-010-0006

RULE SUMMARY: Add Clarification for facilities.

CHANGES TO RULE:

334-010-0006

Facility Permits ¶

~~Applicants for Facility Permit Applications may be denied for reasons listed in ORS 687.081. Facility Permit Applications may also be denied for a permit due to prior discipline by the Board of the unlicensed practice Facility, or its affiliated owner(s), registered agent, or member(s)/partner(s). The Board should consider the circumstances of the violations, the duration of the conduct, if the applicant is the egregiousness of the violations, if the facility, its owner, registered agent, or member(s)/partner(s) are currently in compliance with the Oregon laws and rules, and previous orders of the Board, and whether the conduct demonstrably related to the Facility Permit Applicant's holding a facility license permit. ¶~~

(2) A Facility Permit is valid only for the location and business name printed on the Facility Permit. An issued Facility Permit cannot be used at a different location, at multiple locations, or for a facility at the same location under a different name. ¶

(3) Facility Permits issued by the Board are transferable to a new owner(s), or to a new business name or assumed business name, only as approved by the Board. ¶

(4) A permitted Facility may provide massage therapy services only through the use of LMTs licensed under ORS 687.051. ¶

(5) A permitted Facility is responsible for the conduct and behavior of its employees and contracted agents in their performance of services on behalf of or in association with the Facility.

Statutory/Other Authority: ORS 687.121

Statutes/Other Implemented: SB 387 2013

AMEND: 334-010-0015

RULE SUMMARY: Specifies the type of CPR required.

CHANGES TO RULE:

334-010-0015

Licensure ¶

- (1) An applicant for an ~~initial~~ licensure 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 electronic fingerprints for a criminal background check. ¶
- (3) All applications for licensure must be accompanied by proof of current certification ~~in cardiopulmonary resuscitation~~ from the American Heart Association's Basic Life Support (BLS) Healthcare Providers Course or its equivalent. A CPR certification card must include an expiration (CPR) date. ¶
- (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~~ have passed a written examination approved by the board unless the applicant is applying through Health Indorsement in which the applicant must have passed a practical examination . ¶
- (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);~~ Basic Life Support (BLS) Healthcare Provider cardiopulmonary resuscitation (CPR). The CPR certification card must include an expiration date; ¶
 - (d) Proof of 25 hours of continuing education as required in OAR 334-010-0050(1)(b); 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) ~~M~~ must be accompanied by: ¶

(Aa) Current licensing fee; ¶

(Bb) Verification of current cardiopulmonary resuscitation (CPR); The CPR certification card must include an expiration date; ¶

(Cc) Verification of 25 hours of continuing education for each biennium the license was inactive. 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 of 25 hours may be contact or noncontact hours. ¶

(Dd) Verification of 50 hours of continuing education for the reactivation of inactive license more than 1 biennium must be submitted to the Board. Of the 50 hours, at least 30 must be contact hours of continuing education training or Board approved activities. At least 8 contact hours must be in Professional Ethics, Boundaries and/or Communication. The remaining 20 of 50 hours may be contact or noncontact hours; and ¶

(Ee) Completed electronic fingerprints for criminal background check.

Statutory/Other Authority: ORS 687.121, 687.051

Statutes/Other Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086, 687.121

AMEND: 334-010-0017

RULE SUMMARY: Specifies the type of CPR required and required Licenses who are lapsed at 3 years to met minimum required.

CHANGES TO RULE:

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 less than 24 months 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; Late fee payment;~~ ¶
 - (c) Proof of 25 hours of continuing education ¶
 - (d) Verification of 4 contact hours in Professional Ethics, Boundaries and/or Communication. ¶
 - (e) Proof of current certification in in basic life support (BLS) Healthcare Provider cardiopulmonary resuscitation (CPR). The CPR certification card must include the expiration date of the CPR certification; and ¶
 - (f) Complete and submit a completed electronic fingerprint for criminal background check. ¶
- (~~4~~) ~~Late fee payment;~~ ¶
 - (d) Proof of 25 hours of continuing education for each biennium the license was lapsed and for the current licensing period; An applicant whose license is lapsed for more than 24 months and less than 36 months 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 for the previous period of the lapsed license; ¶
 - (c) Late fee payment; ¶
 - (d) Proof of 50 hours of continuing education; ¶
 - (e) Verification of 48 contact hours in ~~Ethics~~ Professional Ethics, Boundaries and/or Communication. ¶
 - (f) Proof of current certification in (BLS) Healthcare Provider cardiopulmonary resuscitation (CPR); ¶
 - (~~g~~) ~~A statement indicat.~~ The CPR certification card must include the expiration date of the CPR certification; and ¶
 - (g) Complete and submit a completed electronic fingerprint for criminal background check. ¶
- (5) An applicant whose license is lapsed for 36 months or more, must meet all of the current initial license requirements listed in OAR 334-010-0005 (4) (a-d) to reactivate to active status; and include the following w hether the applicant has engaged in the practice of massage and bodywork in another jurisdiction during the period of lapsed status with the completed application. ¶
 - (a) Payment of the current fee for activation of the license; ¶
 - (b) Payment of the licensing fee applicable for the periods of the lapsed license; ¶
 - (c) Late fee payment; ¶
 - (d) Proof of 50 hours of continuing education; ¶
 - (e) Verification of 8 contact hours in Professional Ethics, Boundaries and/or Communication. ¶
 - (f) Proof of current certification in (BLS) Healthcare Provider cardiopulmonary resuscitation (CPR). The CPR certification card must include the expiration date of the CPR certification; and ¶
 - (~~hg~~) ~~Applicants must~~ Complete and submit a completed electronic fingerprint for criminal background check. ¶
- (4~~6~~) An applicant whose license is lapsed for 12 months or less may renew as an inactive status. ¶
- (5) ~~An applicant whose; a license that is lapsed for greater than 12 months must~~ 12 months or more is prohibited from renewing as an inactive status. ¶
- (6~~7~~) All information required for restoring a lapsed license to an active status must be received within 3 years of the date of lapsing along with the requirements listed in OAR 334-010-0017(3)(a-h). ~~Thereafter, one must apply~~

as a new applicant.¶

(78) Continuing Education is not required if this is your first subsequent renewal after receipt of your initial license.

Statutory/Other Authority: ORS 183, 687.121, 182.456 - 182.472

Statutes/Other Implemented: 687.121, ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086, ~~687.121~~

AMEND: 334-010-0025

RULE SUMMARY: Requires a LMT to post their current license.

CHANGES TO RULE:

334-010-0025

Practice of Massage ¶

(1) Massage treatment may include, but is not limited to: ¶

(a) Client intake and assessment; ¶

(b) Practice of massage or bodywork; ¶

(c) Post massage assessment and recommendation; and ¶

(d) Documentation. ¶

(2) Massage treatment does not include: ¶

(a) The application of high velocity/low amplitude force further defined as thrust techniques directed toward joint surfaces; ¶

(b) The use of equipment or devices that require a prescription; or ¶

(c) Making a medical diagnosis. ¶

(3) A massage therapist must use safe and functional coverage/draping practices during the practice of massage when the client is disrobed. ¶

(a) Safe and functional coverage/draping means: ¶

(A) LMT explains, maintains and respects coverage/draping boundaries; ¶

(B) Client gives informed consent; ¶

(C) Genitals and gluteal cleft of male and female clients and the breast area of female clients are not exposed; ¶

(i) With voluntary and informed consent of the client, the gluteal and breast drapes may be temporarily moved in order to perform therapeutic treatment of the area. ¶

(D) Massage or movement of the body does not expose genitals, gluteal cleft or breast area. ¶

(b) Exceptions to the rule may be made for LMTs who can document training in specific modalities that require variations in coverage/draping. ¶

(4) A Licensed massage therapist must not perform or offer to perform any services for clients other than those connected with giving massage therapy treatments as defined in ORS 687, unless the LMT has additional training and/or licensure. ¶

(5) A person represents himself or herself as a massage therapist when the person adopts or uses any word(s) that implies a skill or application as defined by statute 687.011. ¶

(6) Any person who holds a license as a massage therapist in this state may use the abbreviation "LMT." No other person(s) may assume such title or such abbreviation or any other word[s], letters, signs, or figures to indicate that the person using the title is a licensed massage therapist. ¶

(7) All licensed massage therapists must notify the Board office in writing of any change of residence, business, email or mailing address within 30 days of change of address. ¶

(8) Active licensed massage therapists must display their current license in a location clearly visible to their clients. ¶

(9) Active licensed massage therapists are required to include their license number in all advertisements, including but not limited to: written, electronic, televised and audio.

Statutory/Other Authority: ORS 183, 687.121, 182.456 - 182.472

Statutes/Other Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086, 687.121

AMEND: 334-010-0033

RULE SUMMARY: Adds clarification for Facility Permit fees

CHANGES TO RULE:

334-010-0033

Fees ¶¶

~~The following Rule language is effective as of January 1, 2017.¶¶~~

(1) The fees are: ¶¶

- (a) ~~\$100 per biennial renewal~~ for initial license; ¶¶
- (b) \$50 for initial license under 12 months; ¶¶
- (c) \$155 per biennial renewal for active license; ¶¶
- (d) \$75 per biennial renewal for inactive license; ¶¶
- (e) \$100 mid-cycle inactive to active renewal. ¶¶
- (f) \$25 per week, up to a maximum of \$100, for any late renewal; ¶¶
- (g) \$100 ~~for~~ application processing; ¶¶
- (h) \$150 for each practical examination; ¶¶
- (i) \$100 for mailing list; ¶¶
- (j) \$10 for license reprint; ¶¶
- (k) \$10 for license verification; ¶¶
- (l) \$250 Credentialing Review; ¶¶
- (m) Current Oregon State Police Criminal Background Check Fee; ¶¶
- (n) \$50 initial facility permit; ¶¶
- (o) \$250 facility permit ownership transfer; ¶¶
- (p) ~~\$10 facility permit reprint~~ 250 permitted facility name change; ¶¶
- (q) \$10 facility permit reprint ¶¶
- (r) \$10 permitted facility address change and ¶¶
- (~~qs~~) other administrative fees as allowed by law. ¶¶

(2) Application and licensure fees are not refundable

Statutory/Other Authority: 687.121, ORS 183, 182.456 - 182.472

Statutes/Other Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086, 687.121

AMEND: 334-020-0005

RULE SUMMARY: Adds clarification for Facility Permits.

CHANGES TO RULE:

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 relocation of any change of the permitted Facility's name, business location, operation status, ownership, email or mailing address within 30 days of change. ¶~~

~~(ii) A Facility Permit Transfer Application must be submitted and approved by the Board prior to the Facility providing of massage therapy services under new ownership, under a new business or assumed business name. ¶~~

~~(iii) A permitted Facility must display its permit in a location clearly visible to anyone entering the facility; ¶~~

~~(iiv) Keep posted and visible to the public, the facility permit with the correct location address; A permitted Facility must display original licenses of its LMT employee(s) in a location inside the premises, clearly visible to the general public. ¶~~

~~(v) A permitted Facility is required to include its permit number in all advertisements, including but not limited to: written, electronic, televised and audio advertisements, service menus, business cards, flyers, websites, and other means of promotion of the permitted Facility. ¶~~

(C) Facilities exempted from the permit process: ¶

(i) ~~C~~linic 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) C~~linics 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; ¶~~

(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: 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.

Statutory/Other Authority: ORS 687.121

Statutes/Other Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086, 687.121

AMEND: 334-040-0010

RULE SUMMARY: Adds clarity for Fitness to Practice and the Discipline associated with the failure to practice safely.

CHANGES TO RULE:

334-040-0010

Discipline ¶¶

~~The following Rule language is effective as of January 1, 2017.¶¶~~

The Board may deny, conditionally grant, restrict, suspend or revoke a license or permit, impose probation, reprimand, and 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.¶
- (25) 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. ¶
- (d) ~~Failure~~Failure to disclose or ~~releasing~~releasing 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 that falls below the standard of minimal competence within the profession that results in unacceptable risk of harm to the client; regardless of whether injury occurs.¶
- (h) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage. ¶
- (hi) Exercising undue influence on a client, including employing illegal or unethical business practices including but not limited to:¶
- (A) Fraud, deceit or misrepresentation in obtaining or attempting to obtain any fee or third party reimbursement for services.¶
- (B) Taking advantage of a relationship with a client for the licensee's personal advantage, including obtaining a benefit that is a personal, sexual, romantic or financial. This includes the 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.¶¶

~~(iC) 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~~A Licensee shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement. A Licensee must either honor a gift certificate or pre-paid package or provide a full refund of unused services. A Licensee must comply with ORS 646A.276.

Statutory/Other Authority: ORS 687.081, 687.121

Statutes/Other Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086, 687.121