

OFFICE OF THE SECRETARY OF STATE

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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

02/08/2022 11:44 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Establish rules to align the board with statutory requirements and clarify existing Board rules.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/15/2022 10:00 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.

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Filed By:
Ekaette Udosenata-Harruna
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 03/15/2022

TIME: 9:00 AM - 10:00 AM

OFFICER: Ekaette Udosenata Harruna

ADDRESS: Ekaette Udosenata
610 Hawthorne Ave SE, STE 220
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NEED FOR THE RULE(S)

With the passage of HB 2992, the rules on Board Member Stipend are amended to align with the Oregon legislative current per diem of \$155 per day and add verbiage to clarify the performance of official duties. Definitions: Proposed amendments will locate and replace all agency rules with the terminology contact and noncontact hours with supervised and unsupervised hours. Amend verbiage to reflect the terminology contact/noncontact to supervised and unsupervised changes Credentialing Review; Licensure; Lapsed License; Breast Massage; and Internal Cavity. Continuing Education: Amend to clarify continuing education rule language and requirement to be in concert with current times by making continuing education requirements more accessible via remote learning. The proposed rules reduce the minimum requirement for in-person continuing education from 15 to 8 hours, end the use of excess/rollover continuing education hours for subsequent renewal, and clarify continuing education requirements for first-time license renewal. Communicable Disease Control: Given the pandemic, the proposed rule was amended to add verbiage defining healthcare providers per OHA. Incorporate OHA rules requiring licensees to comply with OHA rules on masking and vaccination to control communicable diseases into OAR 334-020-0055. Facilities and Sanitation: Amend to modify rule language for clarity. Discipline: Amend rule to add language for clarity and allow the Board to require information during an interview as needed to make disciplinary decisions.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

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

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The adoption of these proposed rule changes will have no effect on racial equity in this state.

OAR 334-001-0055

OAR 334-001-0060

OAR 334-010-0009

OAR 334-010-0015

OAR 334-010-0017

OAR 334-010-0028

OAR 334-010-0029

OAR 334-010-0050

OAR 334-020-0055

OAR 334-020-0005

OAR 334-040-0010

FISCAL AND ECONOMIC IMPACT:

There is no fiscal impact on licensees or small businesses since the proposed language reduces the number of continuing education hours that must be in-person. However, with the passage of HB 2992, the proposed rule increases the amount Board members receive to prepare for a Board meeting from \$100 to \$155. The increases will cost the Board about \$2,695 additional expense per year (Seven (7) Board meetings with seven (7) members).

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)):

OAR 334-001-0055 Board Member Stipend, No projected fiscal impact

OAR 334-001-0060 Definitions, No projected fiscal impact

OAR 334-010-0009 Credentialing Review, No projected fiscal impact
OAR 334-010-0015 Licensure, No projected fiscal impact
OAR 334-010-0017 Lapsed License, No projected fiscal impact
OAR 334-010-0028 Breast Massage, No projected fiscal impact
OAR 334-010-0029 Internal Cavity, No projected fiscal impact
OAR 334-010-0050 Continuing Education, No projected fiscal impact
OAR 334-020-0055 Communicable Disease Control, No projected fiscal impact
OAR 334-020-0005 Facilities and Sanitation, No projected fiscal impact
OAR 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:

OAR 334-001-0055 Board Member Stipend, No projected fiscal impact
OAR 334-001-0060 Definitions, No projected fiscal impact
OAR 334-010-0009 Credentialing Review, No projected fiscal impact
OAR 334-010-0015 Licensure, No projected fiscal impact
OAR 334-010-0017 Lapsed License, No projected fiscal impact
OAR 334-010-0028 Breast Massage, No projected fiscal impact
OAR 334-010-0029 Internal Cavity, No projected fiscal impact
OAR 334-010-0050 Continuing Education, No projected fiscal impact
OAR 334-020-0055 Communicable Disease Control, No projected fiscal impact
OAR 334-020-0005 Facilities and Sanitation, No projected fiscal impact
OAR 334-040-0010 Discipline, No projected fiscal impact

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

OAR 334-001-0055 Board Member Stipend, No projected fiscal impact
OAR 334-001-0060 Definitions, No projected fiscal impact
OAR 334-010-0009 Credentialing Review, No projected fiscal impact
OAR 334-010-0015 Licensure, No projected fiscal impact
OAR 334-010-0017 Lapsed License, No projected fiscal impact
OAR 334-010-0028 Breast Massage, No projected fiscal impact
OAR 334-010-0029 Internal Cavity, No projected fiscal impact
OAR 334-010-0050 Continuing Education, No projected fiscal impact
OAR 334-020-0055 Communicable Disease Control, No projected fiscal impact
OAR 334-020-0005 Facilities and Sanitation, No projected fiscal impact
OAR 334-040-0010 Discipline, No projected fiscal impact

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

OAR 334-001-0055 Board Member Stipend, No projected fiscal impact
OAR 334-001-0060 Definitions, No projected fiscal impact
OAR 334-010-0009 Credentialing Review, No projected fiscal impact
OAR 334-010-0015 Licensure, No projected fiscal impact
OAR 334-010-0017 Lapsed License, No projected fiscal impact
OAR 334-010-0028 Breast Massage, No projected fiscal impact
OAR 334-010-0029 Internal Cavity, No projected fiscal impact
OAR 334-010-0050 Continuing Education, No projected fiscal impact

OAR 334-020-0055 Communicable Disease Control, No projected fiscal impact

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

OAR 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? YES

RULES PROPOSED:

334-001-0055, 334-001-0060, 334-010-0009, 334-010-0015, 334-010-0017, 334-010-0028, 334-010-0029, 334-010-0050, 334-020-0005, 334-020-0055, 334-040-0010

AMEND: 334-001-0055

RULE SUMMARY: Amend maximum amount of Board Member Stipend and add verbiage to clarify the performance of official duties. HB 2992 (2021) requires board members, based on their gross income in the previous tax year, to be compensated for their board service at a rate equal to the daily per diem as state legislators. The Board may adopt a rule setting this as the per diem rate for all members (regardless of income). The Oregon legislative per diem is currently \$155 per day. The board's rule currently compensates all members a maximum of \$100 for each day. The proposed rule increases the preparation day compensation from \$100 to \$155 or the current Oregon legislative per diem.

CHANGES TO RULE:

334-001-0055

Board Member Stipend ¶

(1) The Oregon Board of Massage Therapists hereby adopts a board member stipend of \$100 up to \$155 ¶ or the current Oregon legislative per diem stipend each day or portion thereof during which the board member is actually engaged in the performance of official duties ¶

(2) Performance of official duties is defined as: ¶

(a) Scheduled meetings: ¶

(A) Board meetings, including special Board meetings via conference call, ¶

(B) Board committee meetings. ¶

(b) Appointments with Board staff for Board business: ¶

(c) Legislative testimony; OR ¶

(d) Conferences and activities that the Board has requested that the member attend as its ¶ representative. ¶

(3) Each Board member shall receive a two day stipend of \$155 per day or the current ¶

Oregon legislative per diem for each regularly scheduled Board meeting preparation. This compensation is not paid if the Board member does not attend the meeting for which they have prepared.

Statutory/Other Authority: ORS 182.460, ORS 687.121, ORS 678.140, HB 2992, 2021 Legislative Session, ORS 292.495

Statutes/Other Implemented: ORS ~~182.460, 687.121~~ 687.121, ORS 182.460, ORS 678.140

RULE SUMMARY: The proposed amendments will locate and replace all agency rules with the terminology contact and noncontact hours with supervised and unsupervised hours. The proposed regulations will reestablish definitions for the new terminology supervised and unsupervised hours in Division 001.

CHANGES TO RULE:

334-001-0060

Definitions ¶¶

- (1) "Advantageous" means in the Board's best interests, as assessed according to the judgment of the Board. ¶¶
- (2) "Award" means either the act or occurrence of the Board's identification of the Person with whom the Board will enter into a Contract. ¶¶
- (3) "Barter" means partial or complete trade or exchange of massage or bodywork services for any other type of goods or service other than money. ¶¶
- (4) "Board" means the State Board of Massage Therapists or its authorized representatives as provided by ORS 687.115. ¶¶
- (5) "Bodywork" means the use on the human body, for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition of: ¶¶
 - (a) Pressure, friction, stroking, tapping, kneading, vibration or stretching by manual or mechanical means or gymnastics; ¶¶
 - (b) Appliances, tools or devices; ¶¶
 - (c) Topical preparations; or ¶¶
 - (d) Hot and cold applications. ¶¶
- (6) "Boundary" means the limits in a professional relationship which create safety based on the needs of the client. ¶¶
- (7) "Boundary violation" means an alteration or shift in the limits of a professional relationship so that what is allowed in the relationship becomes ambiguous and/or may not be based on the needs of the client. ¶¶
- (8) "Caring" means acting in a manner in which things, events, people or relationships matter. ¶¶
- (9) "Certified Class or program" means a class or program that is approved by the Board and is offered: ¶¶
 - (a) By a person or institution licensed as a career school under ORS 345.010 to 345.450; or ¶¶
 - (b) By a community college or university approved by the Higher Education Coordinating Commission; ¶¶
 - (c) By an accredited College or University; or ¶¶
 - (d) 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. ¶¶

(2019) "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. ¶

(210) "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; ¶

(221) Equivalent Credit Hours: are those credit hours as determined by the respective educational institution or its certified classes or programs ¶

(232) 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. ¶

(243) "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 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 ¶

(265) "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. ¶

(276) "Licensee" means any person holding a license, permit, or certificate issued by this Board; an LMT ¶

(287) "LMT" means a Licensed Massage Therapist. ¶

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

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

(331) 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. ¶

(342) "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. ¶

(353) "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. ¶

(364) "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. ¶

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

(386) "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. ¶

(397) "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. ¶

(4038) "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. ¶

(4139) "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. ¶

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

(431) "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. ¶

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

(453) "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. ¶

(44) "Supervised hours" means actual hours in class under the instruction of and in the physical presence of an instructor; or an interactive distance learning course.¶

(45) "Unsupervised hours" means education hours independently acquired outside the ¶ presence of an instructor. ¶

(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: ORS 687.011, ORS 687.121

Statutes/Other Implemented: ORS 687.011

AMEND: 334-010-0009

RULE SUMMARY: Amend verbiage to reflect the terminology contact/noncontact to supervised and unsupervised changes.

CHANGES TO RULE:

334-010-0009

Credentialing Review ¶¶

(1) The Board may grant a license to applicants who are or have legally practiced massage and/or bodywork for a minimum of the previous 3 years after successful completion of the jurisprudence examinations, the written examination and upon a credentialing review.¶¶

(a) Credentialing review must be submitted on the approved Board of Massage forms (Credentialing Review), submitted with official transcripts and/or certificates as proof of completion.¶¶

(b)(A) Of the 200 Anatomy & Physiology, Pathology and Kinesiology hours required, 120 hours minimum must be from certified class instruction. Of the 200 hours required, up to 80 ~~contacts~~supervised hours of prior continuing education in subject areas may apply. Official Transcripts or Certificates of Completion must be documented on the approved Board of Massage form: Credentialing Review.¶¶

(B) Of the 300 Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, and Sanitation hours required, 140 hours minimum must be from certified class instruction. Of the 300 hours required up to 120 ~~contacts~~supervised hours of prior continuing education in subject areas may apply. Of the 300 hours required, up to 40 hours of practical work experience may apply.¶¶

(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. Of the 125 hours required, up to 75 ~~contacts~~supervised hours of prior continuing education in subject areas may apply.¶¶

(2) Credentialing Review applications must be accompanied by:¶¶

(a) Current Credentialing Review fee and¶¶

(b) Any additional documentation required by the Board.

Statutory/Other Authority: ORS 687

Statutes/Other Implemented: ORS 687.031

AMEND: 334-010-0015

RULE SUMMARY: Amend rules to reflect changes to the terminology contact/noncontact to supervised and unsupervised.

CHANGES TO RULE:

334-010-0015

Licensure ¶

- (1) An applicant for 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 fingerprint for a criminal background check. ¶
- (3) All applications for licensure must be accompanied by proof of current cardiopulmonary resuscitation (CPR) certification from the American Heart Association's Basic Life Support (BLS) Healthcare Providers Course or its equivalent. The CPR certification card must include an expiration 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, in the state of Oregon or other jurisdictions 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 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 cardiopulmonary resuscitation (CPR) certification from the American Heart Association's Basic Life Support (BLS) Healthcare Providers Course or its equivalent. The CPR certification card must include an expiration date; ¶¶
- (d) Proof of 25 hours of continuing education as required in OAR 334-010-0050(42); ¶
- (e) All licensees must take and submit proof of completing the 1 hour online Pain management module, provided by the Oregon Pain Management Commission (OPMC), at least once, by a licensee's next required continuing education reporting; and ¶
- (f) 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 must be accompanied by: ¶
 - (a) Current licensing fee; ¶
 - (b) Verification of current cardiopulmonary resuscitation (CPR) certification from the American Heart

Association's Basic Life Support (BLS) Healthcare Providers Course or its equivalent. The CPR certification card must include an expiration date. ¶

¶
(c) Verification of 25 hours of continuing education for each biennium the license was inactive. Of the 25 hours, at least ~~15~~⁸ must be ~~contact~~^{contact}~~supervised~~ hours of continuing education training or Board approved activities. At least 4 ~~contact~~^{contact}~~supervised~~ hours must be in Professional Ethics, Boundaries and/or Communication. The remaining ~~10~~⁷ of 25 hours may be ~~contact or noncontact~~^{contact or noncontact}~~supervised or unsupervised~~ hours. At least 1 hour must be in Cultural Competency as per ORS 413.450; Cultural Competency continuing education approved by the Oregon Health Authority, will be accepted for meeting the cultural competency requirement. ¶

(d) 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~~¹⁶ must be ~~contact~~^{contact}~~supervised~~ hours of continuing education training or Board approved activities. At least 8 ~~contact~~^{contact}~~supervised~~ hours must be in Professional Ethics, Boundaries and/or Communication. The remaining ~~20~~³⁴ of 50 hours may be ~~contact or noncontact~~^{contact or noncontact}~~supervised or unsupervised~~ hours. At least 1 hour must be in Cultural Competency as per ORS 413.450; Cultural Competency continuing education approved by the Oregon Health Authority, will be accepted for meeting the cultural competency requirement; and ¶

(e) 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: Amend rules language to reflect changes to the terminology contact/noncontact to supervised/unsupervised.

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) Late fee payment; ¶¶
 - (c) Proof of 25 hours of continuing education; ¶¶
 - (d) Verification of 4 ~~contacts~~^{supervised} hours in Professional Ethics, Boundaries and/or Communication. ¶¶
 - (e) Proof of current ~~certification in in~~ cardiopulmonary resuscitation (CPR) certification from the American Heart Association's Basic Life Support (BLS) Healthcare Provider ~~cardiopulmonary resuscitation (CPR). The CPR certification card must be received by the CPR provider and~~ Course or its equivalent. The CPR certification card must include the an expiration date of the CPR certification; and ¶¶
 - (f) Complete and submit a completed electronic fingerprint for criminal background check. ¶¶
- (4) 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 8 ~~contacts~~^{supervised} hours in Professional Ethics, Boundaries and/or Communication. ¶¶
 - (f) Proof of current ~~certification in~~ cardiopulmonary resuscitation (CPR) certification from the American Heart Association's Basic Life Support (BLS) Healthcare Providers Course or its equivalent. The CPR certification card must include an expiration (CPR) date; 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 with the completed application. ¶¶
- (a) Payment of the current fee for activation of the license; ¶¶
 - (b) Payment of the licensing fee applicable for ~~each biennium the license was lapsed and for the current licensing period but not to exceed, a maximum of two renewal periods, for any~~ the periods of the lapsed license; ¶¶
 - (c) Late fee payment; ¶¶
 - (d) Proof of 50 hours of continuing education; ¶¶
 - (e) Verification of 8 ~~contacts~~^{supervised} hours in Professional Ethics, Boundaries and/or Communication. ¶¶
 - (f) Proof of current ~~certification in~~ cardiopulmonary resuscitation (CPR) certification from the American Heart Association's Basic Life Support (BLS) Healthcare Providers Course or its equivalent. The CPR certification card must include an expiration (CPR) date; and ¶¶
 - (g) Complete and submit a completed electronic fingerprint for criminal background check. ¶¶
- (6) An applicant whose license is lapsed for 12 months or less may renew as an inactive status; a license that is lapsed for 12 months or more is prohibited from renewing as an inactive status ¶¶
- (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). ¶¶~~
- (8) 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: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086, 687.121

AMEND: 334-010-0028

RULE SUMMARY: Amend rules language to reflect changes to the terminology contact/noncontact to supervised/unsupervised.

CHANGES TO RULE:

334-010-0028

Breast Massage ¶

(1) Prior to performing breast massage to treat certain medical conditions, a LMT must:¶

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

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

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

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

(3) Additional prior written consent and the actual presence of a parent or legal guardian is required when treating individuals under 18 years of age.

Statutory/Other Authority: ORS 687

Statutes/Other Implemented: ORS 687.121

AMEND: 334-010-0029

RULE SUMMARY: Amend rules language to reflect changes to the terminology contact/noncontact to supervised/unsupervised.

CHANGES TO RULE:

334-010-0029

Internal Cavity ¶¶

- (1) All Internal Cavities massage must be performed utilizing universal precautions for communicable disease control. ¶¶
- (2) Internal Cavities consist of nasal cavities, oral cavities, auricular cavities, anal cavities, and vaginal cavities. ¶¶
- (3) Internal cavity massage that must be performed using gloves: ¶¶
 - (a) Anal cavities and ¶¶
 - (b) Vaginal cavities. ¶¶
- (4) Internal cavity massage that must be performed using gloves or finger cots: ¶¶
 - (a) Nasal cavities and ¶¶
 - (b) Oral cavities. ¶¶
- (5) Prior to performing these special procedures, an LMT must: ¶¶
 - (a) ~~B~~be able to present evidence of the completion of specialized ~~contact~~supervised hours as training beyond the minimum competencies, which includes but is not limited to, indications, contraindications, therapeutic treatment techniques, expected outcomes, client safety, client consent, client communication, draping techniques, sanitation, and ethical responsibilities related to internal cavity massage; ¶¶
 - (b) ~~B~~be able to articulate a therapeutic rationale which is acknowledged by the client; rationale may include a medical prescription and/or permission to consult with the clients health care provider(s); ¶¶
- (6) Prior to performing internal cavity massage a LMT must obtain written and verbal consent before proceeding, written consent must include clients' option to accept or decline to provide a witness in addition to the client and LMT. ¶¶
- (7) While performing these procedures a LMT must use appropriate draping techniques at all times. Any temporary exposure of the genital area for the purposes of treatment is acceptable only in respect to appropriate procedures for that treatment. Immediately following treatment of the area, the genital area must be covered again. ¶¶
- (8) Under no circumstances will intravaginal or intra-anal techniques be performed on individuals under 18 years of age.

Statutory/Other Authority: ORS 687

Statutes/Other Implemented: ORS 687.121

AMEND: 334-010-0050

RULE SUMMARY: Amend to clarify continuing education rule language and requirement to be in concert with current times. The proposed rules reduce the minimum requirement for in-person continuing education from 15 to 8 hours, end the use of excess/rollover continuing education hours for subsequent renewal, and clarify continuing education requirements for first-time license renewal.

CHANGES TO RULE:

334-010-0050

Continuing Education ¶¶

~~(1) The intent of Continuing Education is to protect the public by maintaining knowledge and skill continued competency in the knowledge, skills, and abilities of massage and/or bodywork. Each licensee must complete 25 hours of continuing education each renewal period. Continued competence is the ongoing ability of a licensee to integrate and apply the knowledge, skills, judgment and personal attributes required to practice safely and ethically.¶¶~~

~~(a) Each licensee must complete 25 hours of continuing education each renewal period.¶¶~~

~~(b) Of the 25 hours, at least 4 must be in either Professional Ethics, Boundaries, or Communication. These hours must be obtained by participation in supervised learning as defined in 334-010-0050 (3)(a).¶¶~~

~~(c) Of the 25 hours, at least 1 must be in Cultural Competency.¶¶~~

~~(d) Of the 25 hours, at least once by a licensee's next required continuing education reporting, 1 must be in Pain Management as provided by the Oregon Pain Management Commission (OPMC). This module may be repeated and will apply to continuing education hours. ¶¶~~

~~(e) Each licensee must hold a current Basic Life Support (BLS) card.¶¶~~

~~¶¶~~
~~(2) The continuing education hours must be from the following topics and within the scope of the license:¶¶~~

~~(a) Massage and bodywork techniques;¶¶~~

~~(b) Use of thermal modalities, topical preparations, mechanical assistive devices/appliances;¶¶~~

~~(c) Stretching and gymnastics that lengthen and shorten over-the-counter massage tools; ¶¶~~

~~(c) Active and passive range of motion and stretching techniques;¶¶~~

~~(d) Assessment of client's soft tissues;¶¶~~

~~(d) P, posture, and movement assessment; patterns; ¶¶~~

~~(e) Massage and bodywork business practices;¶¶~~

~~(f) Massage and bodywork instructor training¶¶~~

~~(g) Anatomy and physiology of the human body;¶¶~~

~~(gh) Kinesiology of the human body;¶¶~~

~~(hi) Pathology of the human body;¶¶~~

~~(ij) Professional Ethics, Boundaries or Communication;¶¶~~

~~(jk) Cultural competency as defined in ORS 413.45;¶¶~~

~~(kl) Body mechanics;¶¶~~

~~(lm) Somatic education;¶¶~~

~~(mn) CPR/First Aid Basic Life Support (BLS); or¶¶~~

~~(no) Pain Management¶¶~~

~~(A) At renewal time, each licensee must sign and submit a Board-supplied CE form indicating they have completed 25 hour as provided by the Oregon Pain Management commission (OPMC)¶¶~~

~~(3) The methods of continuing education. The Board may require proof of CE hours.¶¶~~

~~(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 of 25 hours may be contact or noncontact hours.¶¶~~

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

~~(a) Attendance of courses, seminars, and workshops sponsored or, certify the topics listed in OAR 334-010-0050~~

~~(2) for continuing education shall include:¶¶~~

~~(a) Participation in instructor supervised, formal learning courses, seminars, workshops (formerly "contact hours"). A minimum of 8 hours of the required 25 hours must be from this method. ¶¶~~

~~(A) These shall be provided by:¶¶~~

~~i. a licensed or accredited massage and bodywork training program;¶¶~~

~~(b) Attendance of courses or activities for continuing education offered by ii. a provider recognized by a massage and bodywork professional organization;¶¶~~

- (c) Attendance of courses provided by iii. an accredited institution of higher education if topics are listed in OAR 334-010-0050(1)(a-m).
- (d) Attendance of courses, seminars, and workshops that meets the content requirement of OAR 334-010-0050(1)(a-m).
- (e) Individual interactive distance learning study courses with subject matter that is listed in OAR 334-010-0050(1)(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 Oreg;
- iv. a licensed healthcare provider, including an LMT or equivalent license;
- v. an American Heart Association (AHA) or OSHA compliant CPR provider.
- (B) These may be delivered in person or by virtual learning. Virtual learning method is one in which there is an instructor available to directly answer questions from course participants or interact with them through various formats such as electronic discussion Board of Massage Therapists board meeting, board committees, email, social media groups, or other meeting, board task force or serving on thhods of direct communication.
- (C) These must have a syllabus that includes 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.
- (d) All licensees must take and submit proof of completing the one (1) hour online Pain management module, provided by the Oregon Pain Management Commission (OPMC), at least once, by a licensee's next required continuing education report
- petencies covered and methods of assessment.
- (b) Participation in unsupervised, informal learning presentations, webinars, seminars, meetings. A maximum of 17 hours of the required 25 hours may be from this method.
- (A) These shall be provided by:
- i. a licensed or accredited massage and bodywork training program;
- ii. a provider recognized by a massage and bodywork professional organization;
- iii. an accredited institution of higher education;
- iv. a licensed healthcare provider, including an LMT or equivalent license;
- v. an American Heart Association (AHA) or (Occupational Safety & Health Administration (OHSA) compliant CPR provider;
- vi. OBMT Board or Committee meeting with a limit of 3 hours per renewal period. One hour will be given for each meeting.
- (B) These may be delivered in person or onlinge.
- (4) If the Continuing Education subject matter is not listed under OAR 334-010-0050(12) 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 the licensee will have 30 days to complete the audit form and submit copies (not originals) of their Continuing Education certificates.
- (b) If the licensee fails 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) Contact hours taken in Professional Ethics, Boundaries and/or Communication in excess of the four hour requirement may be carried over to the next subsequent renewal period.
- (b) First renewal CE are not required to be submitted at the time of renewal, CE taken during the first renewal period may be submitted wi, as determined by the class' completion date.
- (7) The continuing education requirement does not apply to a licensee's first license renewal. Continuing Education taken during the first renewal period must be submitted during the first renewal and all hours will carry over to the second renewal. period only.
- (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 shall be taken. 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.¶

(11) During a Governor of Oregon declared State of Emergency:¶

(a) Continuing education hours may be reduced from the current required hours to no fewer than the statutorily required hours as per ORS 687.051.¶

(b) The Board or their designee may authorize alternative methods of obtaining required continuing education hours through ~~contact or noncontact~~ supervised and unsupervised hours. The subject matter of the continuing education hours must meet the requirements set forth in OAR 334-010-0050 (42) continuing education rules.¶

(c) The Board or their designee may utilize a period of up to one year to phase any adjusted rules back to normal requirements.¶

~~(d)~~ This rule does not apply to the cultural competency continuing education subject matter requirements pursuant to ORS 676.850.

Statutory/Other Authority: ORS 687.081, 687.121, 687.122

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

AMEND: 334-020-0005

RULE SUMMARY: Amend to modify rule language for clarity.

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 ~~the practice of massage and bodywork is routinely conducted~~ 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; ¶¶

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

(b) 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. ¶¶

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

(iii) A permitted Facility must display original licenses of its LMT employee(s) in a location inside the premises, clearly visible to the general public. ¶¶

(iv) A permitted Facility is required to include its permit number in all massage therapy 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) 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; ¶¶

(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: 334-020-0055

RULE SUMMARY: Amend the rule to added verbiage defining healthcare providers as per OHA. Incorporate OHA rules requiring licensees to comply with OHA rules on masking and vaccination to control communicable diseases into OAR 334-020-0055.

CHANGES TO RULE:

334-020-0055

Communicable Disease Control ¶

- (1) All therapists must always practice communicable disease prevention and control. ¶
- (2) LMT's are required to follow the communicable disease guidelines as adopted by the Board. ¶
- (3) The Oregon Health Authority (OHA) has adopted certain rules to control the communicable disease COVID-19. Unprofessional conduct pursuant to OAR 334-040-0010 (17), (22) and 25 (C)(f) includes failing to comply with any applicable provision of an OHA COVID-19-related rule or any provision of this rule. ¶
- (4) Failing to comply as described in subsection (1) includes, but is not limited to:¶
 - (a) Failing to comply with OHA's rules requiring masks, face coverings or face shields, including ¶ [OAR 333-019-1011(healthcare), if applicable:¶
 - (b) Failing to comply with OHA's rules requiring vaccinations, including OAR 333-019-1010 ¶ (healthcare), if applicable. Note, a Healthcare setting is defined as "any place where health care, including physical or behavioral health care is delivered and includes, but is not limited to any health care facility or agency licensed under ORS chapter 441 or 443, such as hospitals, ambulatory surgical centers, birthing centers, special inpatient care facilities, long-term acute care facilities, inpatient rehabilitation facilities, inpatient hospice facilities, nursing facilities, assisted living facilities, residential facilities, residential behavioral health facilities, adult foster homes, group homes, pharmacies, hospice, vehicles or temporary sites where health care is delivered (for example, mobile clinics, ambulances), and outpatient facilities, such as dialysis centers, health care provider offices, behavioral health care offices, urgent care centers, counseling offices, offices that provide complementary and alternative medicine such as acupuncture, homeopathy, naturopathy, chiropractic and osteopathic medicine, and other specialty centers." Or: ¶
 - (c) See definition of healthcare setting in OAR 333-019-1010.¶
- (5) No disciplinary action or penalty action shall be taken under this rule if the rule alleged to have been violated is not in effect at the time of the alleged violation.¶
- (6) Civil penalties for violating this rule include: Imposition of discipline for violating this rule includes: \$500 civil penalty. Any such civil penalties or discipline shall be imposed in accordance with ORS Ch. 183.

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: Amend the rule to add language for clarity and allow the board to require information during an interview as needed to make disciplinary decisions.

CHANGES TO RULE:

334-040-0010

Discipline ¶¶

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; ¶¶
- (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; ¶¶
 - (d) Failure to participate in an interview during a Board investigation, either at the time of the investigation or failing to schedule an interview within a reasonable period of time when requested as part of a Board investigation. ¶¶
 - (e) Failing to respond or directly answer questions asked during an interview or investigation, or failure to verbally provide information reasonably known at the time of the interview or investigation. ¶¶
- (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 334-0420-00405 (1)(a)(B). ¶¶
- (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; ¶

(v) 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 ¶

(vi) 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) Failing to disclose or 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. ¶

(i) 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.¶

(C) 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