

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I. PROFILE

(1) Agency:

Department of State, Bureau of Professional and Occupational Affairs, State Board of Massage Therapy

(2) Agency Number:

Identification Number:

16A-721

IRRC Number: 2843

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(3) Short Title:

Massage Therapy General Provisions

(4) PA Code Cite:

49 Pa. Code §§ 20.1 – 20.55

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Teresa Lazo, Counsel, State Board of Massage Therapy

Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Department of State

(717) 783-7200

2601 N. Third Street, P.O. Box 2649

Harrisburg, PA 17105-2649

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

Judy Harner, Board Administrator, State Board of Massage Therapy

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

Final Regulation

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This rulemaking package effectuates the Massage Therapy Law, Act 118 of October 9, 2008, as amended by Act 45 of September 18, 2009 (63 P.S. § 627.1 - .50). The rulemaking provides for the administrative functions of the State Board of Massage Therapy (Board), the education and qualifications for licensure, licensure renewal, continuing education, and scope and standards of practice for massage therapists.

(9) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments:

30 days after publication as proposed rulemaking

B. The date or dates on which public meetings or hearings will be held:

Board meetings for 2011 are scheduled for the second Tuesday of each month, with the exception of November, when the meeting is scheduled for the first Tuesday of the month. Meeting dates are subject to change. Interested persons should consult the Board's website for up-to-date meeting information.

C. The expected date of promulgation of the proposed regulation as a final-form regulation:

January 2011

D. The expected effective date of the final-form regulation:

Upon publication

E. The date by which compliance with the final-form regulation will be required:

Upon publication

F. The date by which required permits, licenses or other approvals must be obtained:

For existing practitioners applying for licensure under section 5(b) of the act, one year from the date of final publication.

(10) Provide the schedule for continual review of the regulation.

The Board continuously reviews its regulations at its scheduled meetings. Scheduled meetings for 2011 are listed in response to question (9)B.

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SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

The Board is required to promulgate regulations to effectuate the act. See section 50 of the act, 63 P.S. § 627.50.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The Massage Therapy Law requires the Board to promulgate regulations to effectuate the act.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulations will effectuate the Massage Therapy Law and provide for the licensure and discipline of massage therapists, which protects the public from unlicensed practitioners and unscrupulous or incompetent licensees.

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(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

No scientific data, studies, references were used to justify this regulation.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

Although the Massage Therapy Law provided for grandfathering of individuals already in the practice of massage therapy, some individuals may not be able to meet either the education and examination qualifications for licensure or the grandfathering qualifications for licensure. These individuals may be required to attain additional education or take an examination in order to qualify for licensure.

Individuals who are currently unlicensed and that cannot become licensed because they do not meet the requirements of the act and/or do not provide massage therapy services as defined by the act may be adversely impacted by the act and/or regulations. Businesses that provide massage therapy services contrary to the act may be adversely impacted because they may be required to change their names and/or cease offering massage therapy services.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

All individuals who wish to provide massage therapy services in the Commonwealth will be required to comply with the regulation.

Individuals that are currently unlicensed and that cannot become licensed because they do not meet the requirements of the act and/or do not provide massage therapy services as defined by the act will be required to comply with the act and regulations. Businesses that offer or provide massage therapy services contrary to the act may be required to change their names and/or cease offering massage therapy services.

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The following figures are based on an estimate of 3,000 new licensees in each of the first two years followed by 400 new licensees annually thereafter.

3000 x application fee in FY 09-10 = \$195,000

3000 x application fee in FY 10-11 = \$195,000

6000 x biennial renewal fee in FY 11-12 = \$450,000 + 400 x application fee = \$26,000; \$476,000

400 x application fee in FY 12-13 \$26,000

6800 x biennial renewal fee in FY 13-14 = \$510,000 + 400 x application fee = \$26,000; \$536,000

It is impossible for the Board to anticipate how many individuals will decide to apply first for a temporary practice permit and within 6 months apply again for a license. If an applicant does not have a criminal history, the applicant should be able to take an examination within one to three weeks after completing massage therapy training. Exam results are available 24 hours after the date of testing; however, for an individual who chooses to tests on a Friday, the Board's office will not be open to receive the test results until Monday.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no anticipated costs or savings to local governments.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are costs associated with licensing and regulating individuals. Licensing fees offsets the Board's expenses. Some fees are fees for services, such as reviewing and processing an application for licensure. The Board's general operating expenses are recouped through the imposition of a biennial license renewal fee.

BPOA's budget and revenue office, in consultation with the Department's Bureau of Finance and Operations, estimated the Board's operating expenses at approximately \$500,000 biennially.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community		195,000	195,000	476,000	26,000	510,000
Local Government						
State Government						
Total Costs		195,000	195,000	476,000	26,000	510,000
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
State Board of Massage Therapy	No data is available.			

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(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The balance of the public protection benefits of regulation versus the costs and adverse effects of regulation were weighed by the General Assembly when it enacted the Massage Therapy Law. The Board concurs with the General Assembly that the public protection benefits outweigh any cost or adverse effects.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Board received comments from the American Massage Therapy Association, the Federation of State Massage Therapy Boards, the Pennsylvania Physical Therapy Association, the Pennsylvania Association of Private School Administrators, Elite Continuing Education and two members of the public. Comments were also provided by the House Professional Licensure Committee and Independent Regulatory Review Commission.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The primary alternative regulatory provision discussed related to the length of time, if any, after the termination of the professional relationship, that must pass before a massage therapist may engage in sexual intimacies with a client. The Board originally drafted a provision calling for a 12-month period. Upon receipt of pre-draft comments, the Board settled on a 6-month period.

The Board finds its rulemaking is the least burdensome acceptable alternative of alternatives considered or suggested by commenters.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

The Board is not aware of any federal standards that relate to the issues addressed in this rulemaking.

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(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Only three of the states contiguous to Pennsylvania license massage therapists: New York, Ohio and West Virginia. These states' regulations are similar in scope to these proposed regulations. Fees charged by these states are also comparable to the proposed fees; the biennial renewal fee in Ohio is \$45, in West Virginia the biennial renewal fee is \$125. The fee in New York is \$50 triennially. The regulation is comparable to the contiguous states in its scope of practice and facilities regulation.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No other regulations of the Board or other state agencies would be affected by these regulations.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The rulemaking will impose minimal paperwork requirements. LMTs will be required to maintain certificates of attendance at continuing education programs for 5 years. Many LMTs already obtain and maintain these certificates to renew their National certification.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board is not aware of any groups with special needs that could be adversely affected by the proposed amendments.

The proposed designation of the headwaters of Muddy Run as unsuitable for mining prevents pollution by prohibiting further coal mining in the area. The intent of the designation is to protect the public water supply wells of RTMA.

H. *Sunset Review*

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 27, 2010, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed amendment within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. *Public Comments*

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulation to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by June 7, 2010. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one-page in length and must also be received by the Board by June 7, 2010. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by June 7, 2010. A subject heading of the proposal and a return name and address must be included in each transmission.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOHN HANGER,
Chairperson

Fiscal Note: 7-456. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING; GENERAL

Subchapter D. AREAS UNSUITABLE FOR MINING CRITERIA AND PROCEDURES FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE MINING

§ 86.130. Areas designated as unsuitable for mining.

* * * * *

(b) The following is a list of descriptions of areas which are unsuitable for all or certain types of surface mining operations and where all or certain types of surface mining operations will not be permitted:

* * * * *

(18) The surface mineable coal reserves of the Lower Kittanning, Clarion, Brookville, and Mercer coals in the Muddy Run Watershed, Cambria County, located south of State Route 253, including Muddy Run and its eastern tributary, Curtis Run.

[Pa.B. Doc. No. 10-828 Filed for public inspection May 7, 2010, 9:00 a.m.]

STATE BOARD OF MESSAGE THERAPY

[49 PA. CODE CH. 20]

Massage Therapy

The State Board of Massage Therapy (Board) proposes to promulgate regulations to effectuate the Massage Therapy Law (act) (63 P. S. §§ 627.1—627.50).

Effective Date

The regulations will become effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*. Section 50 of the act (63 P. S. § 627.50) directed the Board to promulgate regulations within 18 months of the effective date, or by April 9, 2010. The Board was appointed in April 2009, and members were confirmed on June 24, 2009. The Board held its first meeting on August 5, 2009, to begin drafting regulations. The draft rulemaking was provided to stakeholders for pre-draft comment in September 2009, and comments were reviewed in October 2009. The Federation of State Board of Massage Therapy and the National Certification Board for Massage Therapy and Bodywork sent representatives to speak with the Board about their massage therapy examinations at the Board's October 15, 2009, meeting. Stakeholder comments were also considered at public meetings of the Board throughout the drafting process. The Board voted to promulgate this rulemaking package at its meeting on December 2, 2009.

Statutory Authority

Sections 4(2) (63 P. S. §§ 627.4(2) and 50) of the act require the Board to promulgate regulations to effectuate the act.

Background and Purpose

The act provides for the creation of the Board. The Board is charged with determining qualifications for licensure, issuing temporary practice permits and licensing massage therapists, establishing standards of practice which protect the public, disciplining licensees and protecting the public from unlicensed persons attempting to practice massage therapy.

Description of Amendments

In § 20.1 (relating to definitions), the Board defines key terms used in the regulations. Section 20.2 (relating to applicability of general rules), provides notice that proceedings before the Board are subject to 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

The Board proposed to set forth its fees in § 20.3 (relating to fees). In § 20.3(a), the Board proposes fees for services provided to licensees and persons seeking to conduct continuing education for licensees. These fees are based on estimates of the amount of time required, on average, to perform the services. In § 20.3(b), the Board proposes a biennial renewal fee. The biennial renewal fee creates the funds that sustain the general operations of the Board, primarily investigating and prosecuting violations of the act and regulations.

After providing for definitions and fees, the Board first addresses educational matters. Section 5(a)(3) of the act (63 P. S. § 627.5(a)(3)) authorizes the Board to approve massage therapy education programs. This section also requires an applicant for licensure to complete at least 600 hours of in-class, postsecondary education approved by the Board at a regionally accredited college or university, the Commonwealth's private licensed school or its equivalent as determined by the Board. In § 20.11 (relating to minimum hour requirements for massage therapy programs), the Board proposes standards for massage therapy programs, including permitting the 600-hour requirement to be met through both didactic and clinical courses. Hours a student may spend in an externship or practicing techniques assigned as homework may not be used to meet the 600-hour requirement. The Board proposes to exclude externship hours because there is no mechanism to assure that students in externships receive appropriate supervision and guidance. The Board proposes to exclude homework assignments because homework is not instructional.

In addition, the Board's proposal would provide for minimum hours in certain subject areas. The proposed hour requirements are consistent with recognized standards for massage therapy education, and include a minimum of 175 hours of instruction in anatomy and physiology, kinesiology and pathology, including training in the human immunodeficiency virus and related risks; a minimum of 250 hours in massage therapy and bodywork assessment, theory and practice including sanitation, safety and hygiene; a minimum of 25 hours in business, ethics and law; and a minimum of 150 hours in related courses appropriate to a massage therapy curriculum, including cardiopulmonary resuscitation.

The Board's proposal would also provide, in § 20.12 (relating to information that must be provided to prospective students), for the minimum information that a

massage therapy school must provide to its prospective students. This section requires massage therapy schools to inform prospective students, in writing, prior to enrollment, of the annual passing rate of the school's graduates on each of the approved examinations for licensure for the past 2 calendar years for which the data is available. Massage therapy schools charge significant sums for educating students and must be accountable to students. One foundation of this accountability is to provide prospective students with accurate information regarding the passing rate of the school's graduates on the examinations that are required for licensure. This section also provides that any licensee employed by a massage therapy school who knows or has reason to know that the school is not abiding by this provision will be subject to discipline under section 9(a)(7) of the act (63 P. S. § 627.3(a)(7)). In this way, the Board can hold licensees employed as administrators and instructors in massage therapy schools accountable. Finally, this section provides that the Board will report the failure of a massage therapy school to conform to this section to the school's approving or accrediting body.

In § 20.13(a) (relating to required knowledge base), the Board's proposal would set forth the minimum required knowledge base for graduates of massage therapy schools, which includes massage and bodywork assessment and application, contraindications and precautions for massage therapy, anatomy and physiology, kinesiology, pathology, legal requirements, business practices, professional ethics, basic CPR, communicable diseases and universal precautions, power differentials and other therapeutic boundary issues as they relate to client interaction, and fundamentals of human behavior and respect for clients in the practice of massage therapy.

In § 20.13(b), the Board would set forth the practical skills that must be taught to massage therapy students, including the skills to: administer fundamental therapeutic massage techniques for the treatment of soft tissue manifestations of the human body, safely utilize topical preparations, thermal and cryogenic modalities, hydrotherapy and movements that lengthen and shorten soft tissues within the client's normal range of motion, maintain safe and effective body mechanics in the application of therapeutic massage techniques, locate and palpate muscle attachments, muscle bellies and other anatomical landmarks necessary for the practice of massage therapy, and use draping/coverage practices that address both function and safety.

The Board also lists additional skills that a massage therapy education must cover, including: development, implementation and modification of a treatment plan that addresses client soft tissue manifestations, needs and concerns, including identifying indications, contraindications and precautions of massage therapy within the scope of the act, obtaining informed consent regarding the risks and benefits of the treatment plan and application and modification of the treatment plan as needed, using effective interpersonal communication, utilizing an ethical decision making process, establishing and maintaining a practice environment that provides for the client's safety and comfort, and establishing and maintaining client records, professional records and business records in compliance with standards of practice and legal requirements.

To effectively learn massage therapy, hands on practice is required; therefore, it is vital to public protection that the Board set forth regulations for student practice. In § 20.14(a) (relating to student practice), the Board's

proposal provides that a student may practice massage therapy techniques by providing services under the immediate supervision of an instructor or clinical supervisor as part of a clinical training program operated by the school in which the student is obtaining credit. Homework assignments for massage therapy students typically require the student to practice specific assigned techniques on friends or family members. This practice is authorized in § 20.14(b).

A student may not receive payment from the school or client for services provided as part of a clinical training program operated by the school in which the student is obtaining credit. The Board has also proposed that a student may accept a nominal gratuity voluntarily given by a client in a clinical training program operated by the school in which the student is obtaining credit. The Board found that the structure of a school-run clinical training program provides adequate safeguards to permit students to handle money, and provides for a supervised learning experience for students in handling money. However, because there is no supervision outside the formal clinic setting, the Board would provide that a student may not receive any payment or gratuity for services provided as part of practicing techniques under indirect supervision or on the student's own initiative while enrolled in a massage therapy school.

The Board has also proposed that students providing services as part of a clinical training program operated by a school shall be clearly identified to the public as students, as not to mislead the public. Finally, the Board would require the massage therapy schools to maintain records of services provided by students in a clinical training program for at least 3 years.

The Board next addresses issues related to licensure. In § 20.21 (relating to application for temporary practice permit, initial licensure and licensure by reciprocity), the Board lists the documents that all applicants must submit to the Board with their application. These documents include a legal form of identification, a Criminal History Record Information check current to within 6 months of the date of application, documentation of the applicant's CPR certification, and proof of high school graduation or the equivalent. Requiring identification will assist the Board in monitoring to whom licenses are issued and reducing the possibility of fraud. Requiring a criminal background check will assist the Board in licensing only individuals who do not pose a threat to the public. One commentator opined that it was overly cumbersome for applicant's to provide criminal background checks from the states in which the applicant had resided for the past 5 years. The Board believes this is necessary to protect the public. Applicants are required to disclose any criminal history from any time, but must only provide background checks for the past 5 years. CPR certification is required by statute to protect the public. Additionally, the act requires that applicant have graduated from high school or the equivalent.

Section 20.21(c) would require applicants to request that their massage therapy program send the applicants' transcript directly to the Board. One predraft commentator noted that she would prefer if students could send the transcript to the Board themselves. The Board determined that the transcript should come directly from the school. This provision will reduce the possibility that unscrupulous individuals can provide false transcripts.

Section 20.21(d) would notify applicants that they may be required to submit additional information if requested by the Board. Additional information may be required to

provide more detail about an applicant's criminal history or licensure status in another state. If an applicant indicates on the application that he may be unable to practice safely due to impairment or disability, additional information may be required so that the Board can determine whether licensure is appropriate.

Applicants will be required to supply any missing documentation within 6 months from the date of application. If the documentation is not submitted, the application will be denied and the applicant will be required to apply anew to obtain licensure. The information that the Board requires in the application process is easily obtainable by the applicant; therefore, the 6-month time period is appropriate. Moreover, the Board determined that a fairly short time period was appropriate to protect the public by ensuring that information submitted was up to date. Applicants are also required to notify the Board of any changes that might occur during the application process.

In § 20.22 (relating to procedure for licensure denial), the Board's proposal sets forth the procedure it will follow if it determines that an application for licensure should be denied or the applicant should submit to an evaluation.

Section 7 of the act (63 P. S. § 627.7) authorizes the Board to determine the examinations that an applicant must pass to qualify for licensure. There are currently two organizations that provide examinations for massage therapists appropriate for the licensure of massage therapists—the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) and the Federation of State Massage Therapy Boards (FSMTB). The FSMTB offers the Massage and Bodywork Licensure Examination (MBLEx), an examination developed specifically for the purpose of state licensure. The NCBTMB is an organization that confers National certification on massage therapists through two examinations, one which tests massage therapy (the NCETM—National Certification Examination for Therapeutic Massage) and the second, (the NCETMB—National Certification Examination for Therapeutic Massage and Bodywork) which tests both massage therapy and bodywork. In addition, the NCBTMB offers examination candidates the option of taking the NCETM or NCETMB without being screened by NCBTMB for initial qualifications and without NCBTMB conferring National certification on the candidate. This option is called the National Examination for State Licensure, or NESL option. For consistency, the Board proposes to adopt the NCBTMB's limit on three unsuccessful examination attempts. After the third unsuccessful attempt, a candidate must obtain at least 100 hours of additional instruction. If the candidate fails an additional two times, the candidate must repeat massage therapy school before being allowed to retest.

The act provided for grandfathering of existing massage therapists. The Board clarifies the application requirements for existing practitioners in § 20.24 (relating to application requirements for existing practitioners). Section 20.24(a) requires existing practitioners to submit their application and supporting documentation within 1 year of the effective date of the section. Some supporting documentation required is cross-referenced to § 20.21, which applies to all applicants, and includes the criminal background checks.

To establish that the existing practitioner applicant has conducted a business and been an active participant in that business which was mainly the practice of massage therapy, as required under section 5(b)(1) of the act (63

P. S. 627.5(b)(1)), the applicant shall submit one of the following: a signed copy of the applicant's Federal tax return for the previous year that lists the applicant's occupation as massage therapist, a signed copy of schedule C of the applicant's Federal income tax return for the previous year demonstrating that the individual has reported income from the practice of massage therapy, proof of professional or practitioner membership level or above in a professional association approved by the Board, or a notarized statement from the applicant's employer (on a form provided by the Board) attesting that the individual is a practicing massage therapist together with a copy of the employer's business card or letterhead. These same documents, demonstrating that the applicant was in active, continuous practice for at least 5 years immediately preceding October 9, 2010, may be submitted if they show 5 years of practice, as required in section 5(b)(3)(i) of the act.

For existing practitioners applying for licensure under section 5(b)(3)(ii) of the act, the Board will require the applicant to request that the certification agency provide, directly to the Board, evidence that the practitioner passed a massage therapy examination that is part of a certification program accredited by the National Commission for Certifying Agencies. For existing practitioners applying for licensure under section 5(b)(3)(iii) of the act, the Board will require the applicant to request that the applicant's educational program provide an official transcript directly to the Board to demonstrate that the practitioner completed at least 500 hours of instruction in massage and related subjects. For existing practitioners applying for licensure under section 5(b)(3)(iv) of the act, the Board will require the applicant to demonstrate, through certificates of completion, official transcript, or correspondence from the practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the NESL option of the NCBTMB. For existing practitioners applying for licensure under section 5(b)(3)(v) of the act, the Board will require the applicant to demonstrate, through certificates of completion, official transcript provided directly from educational institution, or correspondence from the practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the MBLEx.

The Board proposes additional application requirements for applicants for licensure by endorsement in § 20.25 (relating to additional application requirements for applicants for licensure by reciprocity). In addition to submitting the application form and supporting documentation, an applicant for licensure by endorsement would be required to demonstrate that the applicant's license in another jurisdiction is in good standing, document any disciplinary action taken in another jurisdiction, provide an official transcript and verification that the school is recognized by the other jurisdiction's licensing authority, accredited by a National accrediting organization, or authorized to operate by the jurisdiction's Department of Education, and provide proof of having passed one of the licensing examinations accepted in the Commonwealth. If an applicant for licensure by endorsement was originally licensed in another jurisdiction through grandfathering, the applicant will be required to demonstrate that the qualifications met in the other jurisdiction are equivalent to the requirements met by existing practitioners in this Commonwealth.

In § 20.26 (relating to application requirements for temporary practice permits), the Board proposes application requirements for applicants for temporary practice

permits. Individuals who have been issued a temporary practice permit may not hold themselves out as a licensed massage therapist, use the initials LMT or advertise their practice of massage therapy. Individuals who have been issued a temporary practice permit will be considered licensees for purposes of applying section 9 of the act (63 P. S. § 627.9) pertaining to the refusal, suspension and revocation of licenses. This provision allows the Board to discipline the holder of a temporary practice permit to protect the public. In accordance with section 5(c) of the act, a temporary practice permit will expire on the earlier of 6 months from the date of issuance or on the date the candidate fails the licensure examination.

Next, the Board provides regulations related to license renewal. In § 20.31 (relating to expiration, renewal and reactivation of license), the Board proposes general requirements related to license renewal, including the requirement that licensees inform the Board if they are licensed in another jurisdiction, disciplined in another jurisdiction or are convicted of any crime. This section also provides licensees with information about requesting inactive status. Reactivation within 5 years from the date of expiration is covered, as well as reactivation after 5 years, which requires the licensee to demonstrate current competence to practice. Finally, this section provides notice that licensees who practice on an inactive or lapsed license are subject to discipline.

Section 20.32 (relating to continuing education hours, maintenance of certificates of completion), is the first in a series of sections related to continuing education requirements. Section 20.32(a) would require licensees to complete 24 hours of continuing education during each biennial renewal period as required under section 4(6) of the act (63 P. S. § 627.4(6)). Section 20.32(b) would require licensees to complete at least 4 hours biennially in professional ethics. Section 20.32(c) would notify licensees that a maximum of 6 hours may be earned to meet the biennial requirement by taking any type of correspondence courses, such as online courses, courses on audio/visual media and print courses. One commentator opined that this was overly restrictive; however, because the majority of massage therapy instruction that occurs post-licensure is practice-oriented rather than didactic, the Board finds the restriction appropriate.

Section 20.32(d) would provide that courses for the renewal of the licensee's CPR certification could not be used to meet the biennial continuing education requirement. One commentator stated that the requirement of 24 hours of continuing education in addition to CPR was excessive and suggested that CPR should be included in the 24-hour requirement. Section 6(b) of the act (63 P. S. § 627.6(b)) provides that "to renew a license, a licensee must do all of the following" and then enumerates both current certification to administer CPR and 24 hours of continuing education. The Board interprets the statute as requiring 24 hours of continuing education in addition to whatever training is necessary to maintain current certification to administer CPR.

Also in § 20.32(e) is the requirement that licensees retain the certificates of completion from continuing education courses for a minimum of 5 years. If a licensee is audited for compliance with the continuing education requirement after license renewal, this provision ensures that the licensee will have the necessary documents to demonstrate compliance. Section 20.32(f) sets forth the process for requesting an extension or waiver of the continuing education requirement. Section 20.32(g) would provide for audits to ensure compliance with the continuing education requirements.

In § 20.33 (relating to continuing education content and providers), the Board proposes requirements for continuing education content and providers. Continuing education must be designed to advance the practitioner's professional knowledge and skills related to the practice of massage therapy as defined in section 2 of the act (63 P. S. § 627.2). One predraft commentator suggested that course in shiatsu, acupressure, tui na or reflexology should be eligible for continuing education credit because they are important modalities. Another commentator suggested that each licensee should decide which class could help them, whether it is a new modality, a business class or a review of anatomy and physiology. Practitioners who utilize only acupressure, tui na or reflexology are not required to be licensed under section 13(6) of the act (63 P. S. § 327.13(6)). The act also restricts the granting of credit for taking courses to build one's business. The Board finds its subject matter restrictions appropriate.

In § 20.33(b), the Board provides a list of proposed preapproved providers of continuing education, which includes schools of massage therapy in this Commonwealth operating under section 5(a)(3) of the act, schools of massage therapy approved by the Board or accredited by a National accrediting agency recognized by the United States Department of Education, the American Massage Therapy Association and its state chapters, NCBTMB-approved providers, and Associated Bodywork and Massage Professionals. Continuing education providers would be required to provide attendees with a certificate of completion. The information that is proposed to be required to be included on the certificate under § 20.33(c). Continuing education providers would be required to retain documentation of the participants in their continuing education programs for at least 5 years. This provision would allow a massage therapist who has lost a certificate of attendance to obtain a duplicate from the course provider. The Board would also provide a process by which LMTs or providers of continuing education who are not on the Board's preapproved list may obtain approval for a creditable continuing education course. Finally, the proposal notes that the Board would reserve the right to reject a continuing education course submitted by a massage therapist who is audited for compliance if the course is outside the scope of practice of massage therapy as defined by the act. A licensee who was notified of a rejection would be provided the opportunity to apply additional courses the licensee has taken or to take additional courses to meet the continuing education requirement.

Section 20.34 (relating to penalty for failure to complete continuing education) would instruct licensees regarding reporting continuing education on the biennial renewal application. A licensee would be required to report the number of continuing education hours completed on the biennial renewal application. If a licensee failed to complete the 24 hours mandated by statute, the licensee would be afforded an opportunity to make up the deficiency within 6 months of the expiration date of the massage therapist's license. If the licensee completed the 24 hours in this time frame, the licensee would be subject only to a civil penalty under the Board's Act 48 civil penalty schedule. If the licensee did not make up the deficient hours, the licensee would be subject to additional disciplinary action.

In the next section of the proposed regulations, the Board would address the scope and standards of practice for massage therapists. Section 20.41(a) (relating to scope of practice) would provide a list of some of the soft tissue manifestations of the human body which massage thera-

pists treat, including pain, edema, hypertonicity, hypotonicity, loss of muscular function, muscle atrophy, muscle cramps or spasms, diminished mobility, adhesions/scarring/scar tissue/fascial thickening, restricted lymph flow, restricted blood flow, fascial restrictions, postural deviations, paresthesia and hypersensitivity. In § 20.41(b), the Board would provide a list of some of the things that are outside the scope of practice of massage therapists, including the diagnosis or treatment of impairment, illness, disease or disability, medical procedures, chiropractic manipulation—adjustment, physical therapy mobilization—manual therapy, therapeutic exercise, the prescription of medicines for which a license to practice medicine, chiropractic, physical therapy, occupational therapy, podiatry or other practice of the healing arts is required, the application of high velocity/low amplitude force further defined as thrust techniques directed toward joint surfaces and the use of equipment or devices that require a prescription, for example, ultrasound, diathermy, electrical neuromuscular stimulation.

The Board proposes standards of professional conduct in § 20.42 (relating to standards of professional conduct). Under § 20.42(a), a massage therapist shall maintain current knowledge of the appropriate application of massage therapy, including indications, contraindications and precautions; undertake a specific technique only if the massage therapist has the necessary knowledge, training or skill to competently execute the technique; base decisions and actions on behalf of a client on sound ethical reasoning and current principles of practice; provide treatment only where there is a reasonable expectation that it will be advantageous to the client; refer to an appropriate health care professional when indicated in the interest of the client; discuss with clients, as appropriate, which massage therapy modalities and techniques will be utilized and the benefits of these modalities and techniques, the treatment objectives, and that participation is voluntary and that consent to treatment or participation may be withdrawn at any time; obtain written consent prior to performing breast massage; modify or terminate the massage therapy session at the client's request; keep client information private and confidential; use safe and functional coverage/draping practices during the practice of massage therapy when the client is disrobed; act to safeguard clients from incompetent, abusive or illegal practices of other massage therapists or caregivers; be clean, fully-clothed and professional in dress; display the massage therapist's current license in a location clearly visible to clients and carry the massage therapist's wallet card whenever practicing off-site; include the massage therapist's license number in all advertisements; conspicuously display the massage therapist's name and the title L.M.T. or the words "Licensed Massage Therapist" on an identification badge or directly on clothing worn in the public areas where massage therapy services are being provided; cooperate with the Board, the Department of State or the Bureau of Enforcement and Investigation in the investigation of complaints filed under the act; provide massage therapy records immediately upon demand of the Board or its authorized agents; maintain massage therapy records for at least 3 years from the last date that services were provided to the client; educate clients about maintaining the beneficial effects of massage therapy treatment when indicated by a treatment plan; obtain the written permission of a parent or guardian, or their representative, prior to providing massage therapy services to a minor; and require that a parent or guardian, or their representative, be physically present in the room during treatment of a minor.

Section 20.42(b) lists prohibitions for massage therapists, including: psychologically or physically abusing a client; violating a client's boundaries with respect to privacy, disclosure and exposure; utilizing techniques that are contraindicated based on the client's condition; falsifying or knowingly making incorrect entries into the client's record or other related documents; intentionally expose a client's genitals, gluteal cleft or the breasts of a female client except temporarily to perform therapeutic treatment of the area; engaging in conduct defined under § 20.1 as sexual harassment, sexual impropriety, sexual violation or sexual abuse; engaging in sexual intimacies during the professional relationship; performing or offering to perform any services for clients other than those connected with giving massage therapy treatments as defined in section 2 of the act, unless the massage therapist has additional training and licensure, if required, to perform those services; knowingly permitting another individual to use the massage therapist's license or temporary permit for any purpose; knowingly aiding, abetting or assisting another person to violate or circumvent a law or Board regulation; misappropriating equipment, materials, property or money from an employer or client; and refusing a client's request for a refund for the unearned portion of prepaid or packaged massage therapy services; however, this provision does not apply to gift certificate purchases.

Section 20.42(b)(5) would prohibit a massage therapist from engaging in sexual intimacies with a client during the professional relationship. "Professional relationship" is defined under § 20.1 to include a period 6 months after the last professional contact between a therapist and a client. The Board discussed these provisions extensively and received input from the public on the issue. One commentator, the Associated Bodywork and Massage Professionals (ABMP), objected to the prohibition because it viewed the prohibition as an attempt by the Board to regulate the personal lives of massage therapists. The Board is regulating the professional lives of massage therapists. The Board's statutory mission is to protect the public. In a profession where a licensee is clothed and a client is often unclothed, the Board finds it imperative to regulate sexual intimacies during the professional relationship.

Some commentators and Board members believed that a massage therapist should never engage in sexual intimacies with a client; others believed that a 6-month period of time after termination of the professional relationship was too long. The majority of the Board determined that the 6-month period would be effective in protecting the public from any unscrupulous licensee who might seek to exploit the therapist-client power differential without being so long as to be overly restrictive.

Specific information related to disciplinary procedures are set forth under § 20.43 (relating to disciplinary procedures). The Board's proposal would notify licensees that immediate temporary suspension in accordance with section 9(d) of the act is appropriate in cases of certain sexual misconduct. In addition, this section would provide that the consent of an individual to engage in conduct defined herein as sexual harassment, sexual impropriety, sexual violation or sexual abuse with a massage therapist is not a defense in any disciplinary action brought under this section and that with the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a client is admissible in a disciplinary action brought under this section.

The Board next proposes to address sanitation and facility and equipment requirements necessary for the safe practice of massage therapy. In § 20.51 (relating to massage therapy treatment areas), the Board would provide that all treatment spaces must provide for client privacy when clients disrobe; provide for sufficient heating, cooling and ventilation for client comfort; provide illumination for cleaning; be clean, sanitary and free from mold and contaminants, and be maintained in a manner to ensure client safety. In § 20.52 (relating to massage therapy equipment), the Board would set forth minimum standards for equipment, including a requirement that equipment be maintained in working order and cleaned between each use. Specifically related to cushions on massage tables and massage chairs, as well as bolsters and pillows, this section would require that this equipment be covered with impervious material that is cleaned regularly. Finally, face rests, whether covered or uncovered, would have to be cleaned between each use.

Topical preparations would be addressed in § 20.53 (relating to topical preparations). The Board would require massage therapists to store topical preparations in a manner that maintains the integrity of the product and prevents spoilage and contamination, dispense topical preparations in a manner that prevents contamination of the unused portion, and dispense topical preparations in a manner that prevents cross-contamination between clients. In addition, for topical preparations that come into contact with a client, such as ice cubes, plasters, herbs, seaweed, muds, scrubs, paraffin or any other similar products, the proposal would require that massage therapists use these topical preparations only once and then dispose of the topical preparations in a sanitary manner. Massage therapists would be required to place used topical preparations that are not washed away in a covered receptacle that is emptied at least daily.

The Board would address linens used in the practice of massage therapy in § 20.54 (relating to linens). This section requires that all single-service materials, including linens, must be stored in a manner that maintains their cleanliness; all single-service materials, linens and any other items, materials or tools that come into contact with a client's body must be furnished clean and fresh for the use of each individual client; all soiled linens must be placed in a covered receptacle after use; and all soiled linens must be washed after every use in hot water with detergent and bleach in a clothes washing machine. Several commentators thought the Board should permit the use of bleach alternative. Bleach alternative does not have the sanitizing effect of bleach. The Board determined that bleach should be used to ensure effective sanitation of linens that generally touch clients' naked bodies.

Fiscal Impact and Paperwork Requirements.

The regulations may have a fiscal impact on massage therapists because there is a cost to licensure and license renewal. Fees, except biennial renewal fees, are based on an estimate of the amount of time required to perform the service to an individual and the type of staff required to perform the service. Biennial renewal fees are developed by the Department's Bureau of Finance and Operations and are used to sustain the day-to-day operations of the Board. The regulations may have a fiscal impact on individual licensees if the massage therapists do not already abide by the minimum safety and cleanliness requirements set forth by the Board. Minor paperwork and recordkeeping requirements are placed on massage therapy schools and providers of continuing education for massage therapists.

The regulations will not otherwise have any fiscal impact nor impose additional paperwork on the private sector, the general public and the Commonwealth and its political subdivisions.

Sunset Date

The Bureau continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 27, 2010, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days from the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations and objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Judy Harner, Board Administrator, State Board of Massage Therapy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation # 16A-721, Massage Therapy, when submitting comments.

ROBERT JANTSCH,
Chairperson

Fiscal Note: 16A-721. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 20. STATE BOARD OF MASSAGE THERAPY

GENERAL PROVISIONS

- § 20.1. Definitions.
- § 20.2. Applicability of general rules.
- § 20.3. Fees.

EDUCATION

- § 20.11. Minimum hour requirements for massage therapy programs.
- § 20.12. Information that must be provided to prospective students.
- § 20.13. Required knowledge base.
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LICENSURE

- § 20.21. Application for temporary practice permit, initial licensure and licensure by reciprocity.
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- § 20.23. Licensure examinations.
- § 20.24. Application requirements for existing practitioners.
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LICENSURE RENEWAL AND REACTIVATION

- § 20.31. Expiration, renewal and reactivation of license.
- § 20.32. Continuing education hours, maintenance of certificates of completion.
- § 20.33. Continuing education content and providers.
- § 20.34. Penalty for failure to complete continuing education.

SCOPE AND STANDARDS OF PRACTICE

- § 20.41. Scope of practice.
- § 20.42. Standards of professional conduct.
- § 20.43. Disciplinary procedures.

SANITATION, FACILITY AND EQUIPMENT REQUIREMENTS

- § 20.51. Massage therapy treatment areas.
- § 20.52. Massage therapy equipment.
- § 20.53. Topical preparations.
- § 20.54. Linens.

GENERAL PROVISIONS

§ 20.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Massage Therapy Law (63 P. S. §§ 627.1—627.50).

Board—The State Board of Massage Therapy.

Client—Any individual, group of individuals, or organization to which an L.M.T. provides massage therapy services.

Contact hour—A 50 to 60 minute period of instruction related to the practice of massage therapy in the physical presence of an instructor or supervisor.

Draping—The use of linens to cover a massage therapy client to preserve client privacy and modesty, to maintain professional boundaries and for client warmth.

FSMTB—The Federation of State Massage Therapy Boards.

Immediate supervision—The supervisor or instructor is within visual or audible range of the individual being supervised.

In-class—In the physical presence of an instructor or under the immediate supervision of a clinical supervisor.

Indirect supervision—The supervision provided by a clinical supervisor or instructor who has given a student instructions on the performance of massage therapy activities, assigned for credit, that are to be practiced outside of class or clinic.

Informed consent—A process wherein the massage therapist and a competent client or the client's guardian come to a mutual understanding of the massage therapy treatment, including objectives, benefits and any risks.

L.M.T.—Licensed Massage Therapist.

MBLEx—Massage and Bodywork Licensure Examination of the Federation of State Boards of Massage Therapy.

NCBTMB—National Certification Board for Therapeutic Massage and Bodywork.

NCETM—National Certification Examination for Therapeutic Massage.

NCETMB—National Certification Examination for Therapeutic Massage and Bodywork.

NESL—National Examination for State Licensure, an option offered by the NCBTMB which allows individuals to take the NCETM or NCETMB without obtaining National certification.

Professional relationship—The relationship between a massage therapist and a client which shall be deemed to exist from the first professional contact or consultation and continue thereafter until 6 months after the last date of a professional service.

Sexual abuse—Conduct which constitutes a violation of any provision 18 Pa.C.S. (relating to crimes and offenses related to sexual offenses) (See 18 Pa.C.S. §§ 3121—3130 (relating to definition of offenses).)

Sexual harassment—Deliberate or repeated comments, gestures or physical contacts of a sexual nature.

Sexual impropriety—The term includes the following offenses during the professional relationship:

- (i) Making sexually demeaning or sexually suggestive comments about or to a client, including comments about a client's body or clothing.
- (ii) Unnecessarily exposing a client's body or watching a client dress or undress, unless the client specifically requests assistance due to disability.
- (iii) Discussing or commenting on a client's potential sexual performance or requesting details of a client's sexual history or preferences.
- (iv) Volunteering information to a client about one's sexual problems, preferences or fantasies.
- (v) Behavior, gestures or expressions to a client that are seductive or of a sexual nature.
- (vi) Using draping practices that reflect a lack of respect for the client's privacy.

Sexual intimacies—Romantic, sexually suggestive or erotic behavior or soliciting a date.

Sexual violation—Sexual conduct, during the professional relationship, between a massage therapist and a client, including any of the following:

- (i) Indecent exposure.
- (ii) Touching, with the massage therapist's body or an object, the genitals or any sexualized body part of the client for any purpose other than appropriate examination or treatment or when the client has refused or withdrawn consent.
- (iii) Encouraging a client to masturbate in the presence of the massage therapist or masturbating while a client is present.
- (iv) Providing or offering to provide treatment in exchange for sexual favors.

Supervisor—A licensee or instructor who meets the qualifications under section 13(3) of the act (63 P.S. § 627.13(3)).

§ 20.2. Applicability of general rules.

The provisions of 1 Pa. Code § 31.1 (relating to scope of part), and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) are applicable to the activities of and proceedings before the Board.

§ 20.3. Fees.

(a) The following fees are charged for services provided by the Board:

Application for licensure	\$65
Verification of licensure	\$15
Certification of licensure history	\$25
Reactivation of license	\$65

Restoration after suspension or revocation.....	\$65
Approval of continuing education program.....	\$65

(b) The following fees are charged to sustain the operations of the Board:

Biennial renewal of license	\$75
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(c) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the MBLEx shall be responsible for any fees charged by the FSBMT for taking the examination.

(d) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the NESL, the NCETM or the NCETMB shall be responsible for any fees charged by the NCBTMB for taking the examinations.

EDUCATION

§ 20.11. Minimum hour requirements for massage therapy programs.

(a) Massage therapy programs must provide at least 600 hours of in-class, postsecondary education instruction, including:

- (1) At least 175 contact hours of instruction in anatomy and physiology, kinesiology and pathology, including training in the human immunodeficiency virus and related risks.
- (2) At least 250 contact hours in massage therapy and bodywork assessment, theory and practice including sanitation, safety and hygiene.
- (3) At least 25 contact hours in professional ethics, and business and law related to a massage therapy business.
- (4) At least 150 contact hours in related courses appropriate to a massage therapy curriculum as set forth in § 20.13 (related to required knowledge base), including cardiopulmonary resuscitation.

(b) Massage therapy programs may meet the 600-hour requirement through both didactic and clinical courses.

(c) Externship hours may not be included in the 600-hour minimum education instruction. For purposes of this section, an externship is an offsite practical technique learning experience where the student's supervision is provided by a licensed massage therapist, supervisor or other appropriate licensed health professional.

(d) Hours for practicing assigned techniques under indirect supervision may not be included in the 600-hour minimum education instruction.

§ 20.12. Information that must be provided to prospective students.

Massage therapy schools shall inform prospective students, in writing, prior to enrollment, of the annual passing rate of the school's graduates on each of the approved examinations for licensure for the past 2 years. Any licensee employed by a massage therapy school who knows or has reason to know that the school is not abiding by this provision will be subject to discipline under section 9(a)(7) of the act (63 P.S. § 627.9(a)(7)). In addition, the Board will report the failure of a massage therapy school to conform to this section to the school's approving or accrediting body.

§ 20.13. Required knowledge base.

(a) Massage therapy education must provide students with knowledge of the following:

- (1) Massage and bodywork assessment and application.

(2) Contraindications and precautions for massage therapy.

(3) Anatomy and physiology.

(4) Kinesiology.

(5) Pathology.

(6) Legal requirements.

(7) Business practices.

(8) Professional ethics.

(9) Basic CPR.

(10) Communicable diseases and universal precautions.

(11) Power differentials and other therapeutic boundary issues as they relate to client interaction.

(12) Fundamentals of human behavior and respect for clients in the practice of massage therapy.

(b) Massage therapy education must provide students with the practical skills to:

(1) Administer fundamental therapeutic massage techniques for the treatment of soft tissue manifestations of the human body.

(2) Safely utilize topical preparations, thermal and cryogenic modalities, hydrotherapy and movements that lengthen and shorten soft tissues within the client's normal range of motion.

(3) Maintain safe and effective body mechanics in the application of therapeutic massage techniques.

(4) Locate and palpate muscle attachments, muscle bellies and other anatomical landmarks necessary for the practice of massage therapy.

(5) Use draping/coverage practices that address both function and safety.

(c) Massage therapy education must provide students with additional skills in the following areas:

(1) Development, implementation and modification of a treatment plan that addresses client soft tissue manifestations, needs and concerns, including identifying indications, contraindications and precautions of massage therapy within the scope of this act.

(2) Obtaining informed consent regarding the risks and benefits of the treatment plan and application and modification of the treatment plan as needed.

(3) Using effective interpersonal communication in the professional relationship.

(4) Utilizing an ethical decision making process. Decision making that conforms to the ethical standards of the profession, as set forth in this chapter and in the codes of ethics of massage therapy professional associations.

(5) Establishing and maintaining a practice environment that provides for the client's safety and comfort.

(6) Establishing and maintaining client records, professional records and business records in compliance with § 20.42(a)(20) (relating to standards of professional conduct).

§ 20.14. Student practice.

(a) A student enrolled in an approved massage therapy program may practice massage therapy by providing services under immediate supervision as part of a clinical training program operated by the school in which the student is obtaining credit.

(b) A student, while enrolled in an approved massage therapy program, may perform techniques learned in class under indirect supervision.

(c) A student may not receive payment from the school or client for services provided as part of a clinical training program operated by the school in which the student is obtaining credit.

(d) A student may accept a nominal gratuity voluntarily given by a client in a clinical training program operated by the school in which the student is obtaining credit.

(e) A student may not receive payment or a gratuity for services provided as part of performing techniques learned in class under indirect supervision, whether the performance is assigned by an instructor as homework or undertaken on the student's own initiative.

(f) Massage therapy schools shall maintain records of services provided by students in a clinical training program for at least 3 years.

(g) Students providing services as part of a clinical training program operated by a school shall be clearly identified to the public as students.

LICENSURE

§ 20.21. Application for temporary practice permit, initial licensure and licensure by reciprocity.

(a) Application forms may be obtained from the Board and are posted on the Board's web site.

(b) An applicant for licensure shall submit to the Board a completed and signed application form, the application fee as set forth in § 20.3 (relating to fees) and the following documents:

(1) A copy of a legal form of identification, such as a valid driver's license, a current passport, or a valid State identification card.

(2) An official Criminal History Record Information check sent to the Board directly from the State Police or other state agency for every state in which the candidate has resided during the past 5 years. The reports must be dated within 6 months of the date of application.

(3) CPR certification, that is valid for at least 6 months following the date of application. A list of CPR certifying bodies will be posted on the Board's web site.

(4) Proof of graduation from high school or the equivalent.

(c) An applicant shall request that the applicant's massage therapy school send directly to the Board the applicant's official transcript showing successful completion of study in the required subject matter and hours required by the act and this chapter. If a school is no longer in operation, the Board may accept a copy of the official transcript from the school's record depository.

(d) An applicant shall provide a written explanation and copies of all relevant documents as requested by the Board if:

(1) The applicant is under investigation or has ever been denied professional licensure or disciplined by any professional licensing authority of the Commonwealth or any other jurisdiction of the United States or a foreign country.

(2) The applicant has surrendered a massage therapy license or other professional license in this Commonwealth or any other jurisdiction of the United States or a foreign country.

(3) The applicant has been arrested, charged or convicted of a misdemeanor or felony in this Commonwealth or any other jurisdiction of the United States or a foreign country.

(4) The applicant is unable to practice massage therapy with a reasonable skill and safety by reason of use of alcohol, drugs, narcotics, chemicals or any other type of material.

(5) The applicant is unable to practice massage therapy with a reasonable skill and safety by reason of illness or as a result of any mental or physical condition.

(e) An applicant shall verify that the applicant has read, understood and will comply with the act and this chapter.

(f) An applicant is responsible for ensuring that the Board receives all required documentation. If the application is incomplete, the Board will notify the applicant by means of first class mail, within 8 weeks of the receipt of the application, that the application is incomplete.

(g) Applicants shall supply the missing documentation within 6 months from the date the application is executed by the applicant. After that time, if the documentation has not been submitted, the application will be denied and the application fee forfeited. An applicant who wishes to reapply shall submit a new application and application fee.

(h) An applicant whose name changes during the application process or whose name has changed since the applicant completed massage therapy school shall notify the Board in writing and submit, with the notification of name change, the appropriate supporting documentation (such as, marriage certificate, divorce decree, court documents showing a legal name change).

(i) An applicant whose address changes shall notify the Board in writing and submit both the old and new address to the Board.

(j) If any other information requested on the application changes after the date the applicant submits the application to the Board for licensure, the applicant shall immediately notify the Board, in writing, of the change. Failure to update an application may subject an applicant to refusal of the license or a licensee to discipline under section 9(a)(4) of the act (63 P. S. § 627.9(a)(4)).

§ 20.22. Procedure for licensure denial.

(a) The Board will inform the applicant, in writing, of the basis upon which the Board has refused the license. The Board will provide the applicant with an opportunity to demonstrate, at a hearing, that the license should be issued.

(b) If information submitted with the application indicates that an applicant may be unable to safely practice massage therapy, the Board will require the applicant to participate in an evaluation to determine if the applicant can safely practice. An applicant may contest the results of the evaluation at a hearing. The Board will provide an applicant who refuses to participate in an evaluation with an opportunity to demonstrate, at a hearing, that the license should be granted.

(c) In a case when the Board refuses to issue a license, the Board will issue a written final decision setting forth the grounds for the refusal.

§ 20.23. Licensure examinations.

(a) The Board adopts the NCETM and NCETMB, including the NESL option, and MBLEx as approved examinations for initial licensure under section 7 of the act (63 P. S. § 627.7).

(b) An individual who plans to take the MBLEx offered by the FSBMT shall contact the FSBMT directly to apply for examination. The FSBMT will issue the candidate an Authorization to Test, which the candidate may use to schedule the examination. Candidates are responsible for registering for the licensure examination date and site. Candidates who are unable to test within 90 days of the date the FSBMT issued the candidate's Authorization to Test will be required to reapply as a new candidate subject to all application and fee requirements in place at that time.

(c) An individual who plans to take the NCETM or NCETMB examinations, including the NESL option offered by the NCBTMB, shall contact the NCBTMB directly to apply for examination. The NCBTMB will issue the candidate an Authorization to Test, which the candidate may use to schedule the examination. Candidates are responsible for registering for the licensure examination date and site. Candidates who are unable to test within 90 days of the date the NCBTMB issued the candidate's Authorization to Test will be required to reapply as a new candidate subject to all application and fee requirements in place at that time.

(d) Fees paid to the FSBMT or NCBTMB are nonrefundable.

(e) The following standards apply for failure to pass the licensure examinations:

(1) An applicant who is unsuccessful on any three attempts to pass a licensure examination or combination of licensure examinations shall obtain at least 100 additional hours of instruction in massage therapy at an approved school before the applicant may reexamine.

(2) An applicant who is unsuccessful an additional two times will not be allowed to retest without completing a massage therapy program of at least 600 hours.

§ 20.24. Application requirements for existing practitioners.

(a) Existing practitioners shall submit, by _____ (*Editor's Note:* The blank refers to a date 1 year after the effective date of adoption of this proposed rulemaking.), an application, application fee and the information required under § 20.21(b), (c) and (d) (relating to application for temporary practice permit, initial licensure and licensure by reciprocity) if applicable, and shall be subject to the provisions of § 20.21(e)—(i).

(b) Existing practitioners shall establish that they have conducted a business and been an active participant in that business which was mainly the practice of massage therapy by submitting one of the following:

(1) A signed copy of the applicant's Federal tax return for the previous year, that lists the applicant's occupation as massage therapist.

(2) A signed copy of Schedule C of the applicant's Federal income tax return for the previous year demonstrating that the individual has reported income from the practice of massage therapy.

(3) Proof of professional or practitioner membership level or above in a professional association approved by the Board.

(4) For applicants who have been employed as massage therapists, a notarized statement from the applicant's employer (on a form provided by the Board) attesting that the individual is a practicing massage therapist, a copy of the employer's business card or letterhead, and a copy of the applicant's Federal W-2 or 1099 form.

(c) Existing practitioners applying for licensure under section 5(b)(3)(i) of the act (63 P. S. § 627.5(b)(3)(i)) shall demonstrate that they have been in active, continuous practice for at least 5 years immediately preceding October 9, 2010, by submitting one of the following:

(1) Signed copies of the applicant's tax returns for the past 5 years, each listing the applicant's occupation as massage therapist.

(2) Copies of Schedule C of the Federal income tax return for the past 5 years demonstrating that the applicant has reported income from the practice of massage therapy.

(3) Proof of at least 5 years membership at the professional or practitioner level or above in a professional association approved by the Board.

(4) For applicants who have been employed as massage therapists, a notarized letter from the applicant's employer (on a form provided by the Board) attesting that the individual has practiced massage therapy for at least the last 5 years, a copy of the employer's business card or letterhead, and copies of the applicant's Federal W-2 or 1099 forms for the last 5 years.

(d) Existing practitioners applying for licensure under section 5(b)(3)(ii) of the act shall have the certification agency provide, directly to the Board, evidence that the practitioner passed a massage therapy examination that is part of a certification program accredited by the National Commission for Certifying Agencies.

(e) Existing practitioners applying for licensure under section 5(b)(3)(iii) of the act shall request that their educational program provide an official transcript directly to the Board to demonstrate that the practitioner completed at least 500 hours of instruction in massage and related subjects. Transcripts generated in a language other than English shall be translated into English at the applicant's expense by a professional translation service and verified to be complete and accurate.

(f) Existing practitioners applying for licensure under section 5(b)(3)(iv) of the act shall demonstrate, through certificates of completion, official transcript, or correspondence from the practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the NESL option of the NCBTMB.

(g) Existing practitioners applying for licensure under section 5(b)(3)(v) of the act shall demonstrate, through certificates of completion, official transcript provided directly from educational institution, or correspondence from the practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the MBLEx.

§ 20.25. Additional application requirements for applicants for licensure by reciprocity.

(a) An applicant for licensure by reciprocity shall submit an application form provided by the Board and information required under § 20.21(b)(1)—(3) and (c) (relating to application for temporary practice permit, initial licensure and licensure by reciprocity), and shall be subject to the provisions of § 20.21(d) and (e).

(b) An applicant for licensure by reciprocity shall have the official licensing authority of every jurisdiction in which the applicant holds a license to practice massage therapy provide the Board with verification that the applicant is a licensee in good standing and documentation of any disciplinary action taken by the jurisdiction's licensing authority.

(c) An applicant for licensure by reciprocity shall request that the applicant's massage therapy school provide the Board with the applicant's official transcript and verification that the school is recognized by the jurisdiction's licensing authority, accredited by a National accrediting organization, or authorized to operate by the jurisdiction's Department of Education.

(d) An applicant for licensure by reciprocity shall provide evidence that the applicant passed the MBLEx, the NCETM, NCETMB or successfully completed the NESL option, or evidence that the applicant obtained original licensure through qualifications equivalent to those for existing practitioners under section 5(b) of the act (63 P. S. § 627.5(b)).

§ 20.26. Application requirements for temporary practice permits.

(a) An applicant for a temporary practice permit shall submit an application form provided by the Board.

(b) In addition to the completed application form, an applicant for a temporary practice permit shall comply with the application procedures under § 20.21(b)(1)—(3) and (c) (relating to application for temporary practice permit, initial licensure and licensure by endorsement), and shall be subject to the provisions of § 20.21(d) and (e).

(c) A temporary practice permit will expire on the earlier of 6 months from the date of issuance or on the date the candidate fails the licensure examination.

(d) Individuals who have been issued a temporary practice permit will be considered licensees for purposes of applying section 9 of the act, pertaining to refusal, suspension and revocation of licenses.

(e) Individuals who have been issued a temporary practice permit may not hold themselves out as a licensed massage therapist, use the initials LMT or advertise their practice of massage therapy.

LICENSURE RENEWAL AND REACTIVATION

§ 20.31. Expiration, renewal and reactivation of license.

(a) *Expiration of license.* Licenses expire on (date) of each (even/odd) -numbered year, regardless of the date of issuance. Licenses are renewable for a 2-year period beginning each (day and month) of each (even/odd) -numbered year. (*Editor's Note:* The blanks for the date and day and month will be added upon publication of final adoption of this proposed rulemaking.)

(b) *Practice prohibited.* A licensee may not practice massage therapy in this Commonwealth after the last day of (month) of the renewal year unless the license has been renewed. (*Editor's Note:* The blank for the data and day and month will be added upon publication of final adoption of this proposed rulemaking.)

(c) *Renewal application.* A licensee shall:

(1) Apply for licensure renewal online or on the form provided by the Board.

(2) Pay the biennial renewal fee as set forth in § 20.3 (relating to fees).

(3) Submit proof of current certification in CPR.

(4) Submit verification of completion of at least 24 hours of Board-approved continuing education.

(5) Submit verification that the licensee has read, understood and will comply with the act and this chapter.

(d) *Disclosure of licensure or discipline.* A licensee who becomes licensed to practice massage therapy in another jurisdiction shall report this information on the biennial renewal form or within 30 days of licensure, whichever occurs sooner. Disciplinary action taken in another jurisdiction or the filing of or disposition of any criminal charges shall be reported to the Board on the biennial renewal form or within 30 days, whichever is sooner.

(e) *Licensure documentation.* Upon renewing a license, a licensee will receive a wall certificate and wallet-size card that will show the next expiration date of the license. A licensee who renews online may print a temporary license that may be used until the biennial license is received.

(f) *Inactive status.* A license may be placed on inactive status by the licensee notifying the Board during the online renewal process or in a signed, notarized statement that the licensee wishes to have the license marked inactive. The licensee shall immediately return all licensure documents to the Board and may not practice massage therapy in this Commonwealth until the licensee's license is reactivated and renewed.

(g) *Reactivation.* The holder of an inactive or expired license to practice massage therapy may reactivate and renew the license within 5 years from the date of its expiration by submitting:

- (1) An application to the Board.
- (2) Payment of the current biennial renewal fee as set forth in § 23.3.
- (3) Certificates of attendance at continuing education courses required by § 20.32 (relating to continuing education hours, maintenance of certificates of completion) for the previous biennial renewal period.
- (4) Current CPR certification.
- (5) An affidavit of nonpractice within this Commonwealth.

(h) *Late fees.* A licensee who practiced massage therapy on an inactive or expired license will be subject to late fees as prescribed by the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. §§ 1401-101—1401-501) upon renewal.

(i) *Disciplinary action authorized.* A licensee who practiced massage therapy on an inactive or expired license may be subject to discipline by the Board under section 9(a)(7) of the act.

(j) *Demonstration of competence after 5 years.* The holder of an inactive or expired license to practice massage therapy will not be reactivated and renewed if more than 5 years have passed from the date of the license expiration unless the licensee has demonstrated current competence to practice. To demonstrate current competence to practice, a licensee must either prove continuous active practice in another jurisdiction during the past 5 years or achieve a passing score on a licensure examination approved for entry into practice in this Commonwealth.

§ 20.32. Continuing education hours, maintenance of certificates of completion.

(a) Licensees shall complete a minimum of 24 hours of continuing education in the field of massage therapy as set forth in section 4(6) of the act (63 P. S. § 627.4(6)) and § 20.33 (relating to continuing education content and providers) in the 2-year period immediately preceding the application for license renewal. To be creditable, continu-

ing education must meet the requirements for Board approval set forth in this section and § 20.33.

(b) Licensees shall complete a minimum of 4 contact hours of continuing education in professional ethics in each biennial renewal period.

(c) A maximum of 6 hours may be earned to meet the biennial requirement by taking any type of correspondence courses, such as online courses, courses on audio/visual media and print courses.

(d) Courses for the renewal of the licensee's CPR certification may not be used to meet the biennial continuing education requirement.

(e) Licensees shall retain the certificates of completion from continuing education courses for a minimum of 5 years.

(f) A licensee who is unable to complete the required continuing education shall request a waiver or extension from the Board at least 60 days prior to the expiration of the license. The request must include details about the licensee's illness, emergency or hardship, including documentation such as a letter from the licensee's physician or a copy of the licensee's military orders. The Board will respond in writing either granting or denying a request for waiver or extension.

(g) Licensees may be audited to ensure their compliance with the continuing education requirements.

§ 20.33. Continuing education content and providers.

(a) Continuing education must be designed to advance the licensee's professional knowledge and skills related to the practice of massage therapy as defined in section 2 of the act (63 P. S. § 627.2).

(b) The following continuing education providers are approved to offer creditable continuing education provided they comply with subsections (a), (c) and (d):

(1) Schools of massage therapy in this Commonwealth operating under section 5(a)(3) of the act (63 P. S. § 627.5(a)(3)).

(2) Schools of massage therapy approved by the Board or accredited by a National accrediting agency recognized by the United States Department of Education.

(3) The American Massage Therapy Association and its state chapters.

(4) NCBTMB-approved providers.

(5) Associated Bodywork and Massage Professionals.

(c) Continuing education providers shall provide certificates of completion to massage therapists that include the name of the massage therapist, name of the course provider, title of the course, date of the course, and number of hours.

(d) Continuing education providers shall retain documentation of the participants in their continuing education programs for at least 5 years.

(e) Providers of continuing education who are not listed in subsection (b) may apply to the Board for approval of a continuing education course by submitting an application and paying the application fee under § 20.3 (relating to fees). The Board will approve only courses that are designed to advance the knowledge and skills of licensees relative to massage therapy as defined in section 2 of the act and that are taught by approved faculty. Approved faculty include massage therapists licensed in the state in which they practice if licensure is required in that state,

physical therapists, physicians, professional nurses and chiropractors. Other instructors with demonstrated expertise may be approved on a case-by-case basis.

(f) An LMT may submit a course offered by a continuing education provider not listed in subsection (b) by filing an application with the Board for approval of a continuing education course and paying the application fee set forth in § 20.3. The Board will approve only courses that are designed to advance the knowledge and skills of licensees relative to massage therapy as defined in section 2 of the act and that are taught by approved faculty, as set forth in subsection (e).

(g) The Board reserves the right to reject a continuing education course submitted by a massage therapist who is audited for compliance if the course is outside the scope of practice of massage therapy as defined in the act. A licensee will be notified of the rejection of a course and will be provided the opportunity to apply additional courses the licensee has taken or to take additional courses to meet the continuing education requirement.

§ 20.34. Penalty for failure to complete continuing education.

(a) Failure to complete a minimum of 24 hours of continuing education in a biennial period may subject a licensee to discipline under section 9(7) of the act (63 P. S. § 627.9(7)) in accordance with the schedule of civil penalties at § 43b.23 (relating to schedule of civil penalties—massage therapists).

(b) A licensee who has not completed a minimum of 24 hours of continuing education shall report the number of continuing education hours completed on the biennial renewal application and shall make up the deficiency within 6 months of the expiration date of the massage therapist's license. Failure to accurately report the number of continuing education hours completed may subject the licensee to discipline under section 9(5) of the act (63 P. S. § 627.9(5)).

(c) A licensee who, under subsection (b), has made up a deficiency in continuing education hours, shall provide copies of the certificates of completion for 24 hours of continuing education upon completion of the deficient hours. The documentation shall be submitted to the Board no later than 1 month following the make up period (a period 7 months after the end of the biennial renewal period).

(d) Notwithstanding any civil penalty assessed under subsection (a), failure to provide the Board with certificates of completion under subsection (c) may subject the licensee to additional discipline under section 9(7) of the act.

SCOPE AND STANDARDS OF PRACTICE

§ 20.41. Scope of practice.

(a) Massage therapists treat the soft tissue manifestations of the human body, which may include the following:

- (1) Pain.
- (2) Edema.
- (3) Hypertonicity.
- (4) Hypotonicity.
- (5) Loss of muscular function.
- (6) Muscle atrophy.
- (7) Muscle cramps or spasms.
- (8) Diminished mobility.

(9) Adhesions/scarring/scar tissue/fascial thickening.

(10) Restricted lymph flow.

(11) Restricted blood flow.

(12) Fascial restrictions.

(13) Postural deviations.

(14) Paresthesia.

(15) Hypersensitivity.

(b) Massage therapy practice does not include:

(1) The diagnosis or treatment of impairment, illness, disease or disability.

(2) Medical procedures.

(3) Chiropractic manipulation—adjustment.

(4) Physical therapy mobilization—manual therapy.

(5) Therapeutic exercise.

(6) Ordering or prescribing drugs or treatments for which a license to practice medicine, osteopathic medicine, nursing, podiatry, optometry, chiropractic, physical therapy, occupational therapy, or other healing art is required.

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

(8) The use of equipment or devices that require a prescription (for example, ultrasound, diathermy or electrical neuromuscular stimulation).

§ 20.42. Standards of professional conduct.

(a) A massage therapist shall:

(1) Maintain current knowledge of the application of massage therapy, including indications, contraindications and precautions.

(2) Undertake a specific technique or use a product or equipment only if the massage therapist has the necessary knowledge, training or skill to competently execute the technique.

(3) Base decisions and actions on behalf of a client on sound ethical reasoning and current principles of practice.

(4) Provide treatment only where there is an expectation that it will be advantageous to the client.

(5) Refer to an appropriate health care professional when indicated in the interest of the client.

(6) Discuss with clients which massage therapy modalities and techniques will be utilized and the benefits of these modalities and techniques, the treatment objectives, and that participation is voluntary and that consent to treatment or participation may be withdrawn at any time.

(7) Obtain written consent prior to performing breast massage.

(8) Modify or terminate the massage therapy session at any time upon request of the client.

(9) Keep client information private and confidential. This standard does not prohibit or affect reporting mandated under State or Federal law to protect children, older adults, or others.

(10) Use safe and functional coverage/draping practices during the practice of massage therapy when the client is disrobed. Safe and functional coverage/draping means that the client's genitals and gluteal cleft and the breast area of female clients are not exposed and that massage

or movement of the body does not expose genitals, gluteal cleft or breast area. With voluntary and informed consent of the client, the gluteal and breast drapes may be temporarily moved to perform therapeutic treatment of the area.

(11) Act to safeguard clients from incompetent, abusive or illegal practices of other massage therapists or caregivers.

(12) Continuously maintain current CPR certification.

(13) Be clean, fully-clothed and professional in dress and appearance.

(14) Display the massage therapist's current license in a location clearly visible to clients and carry the massage therapist's wallet card whenever practicing offsite.

(15) Include the massage therapist's license number in all advertisements.

(16) Conspicuously display the massage therapist's name and the title L.M.T. or the words "Licensed Massage Therapist" on an identification badge or directly on clothing worn in the public areas where massage therapy services are being provided.

(17) Cooperate with the Board, the Department of State or the Bureau of Enforcement and Investigation in the investigation of complaints filed under the act.

(18) Provide massage therapy records immediately upon demand of the Board or its authorized agents.

(19) Maintain massage therapy records for at least 3 years from the last date that services were provided to the client.

(20) Educate clients about maintaining the beneficial effects of massage therapy treatment when indicated by a treatment plan.

(21) Obtain the written permission of a parent or guardian, or their representative, prior to providing massage therapy services to a minor.

(22) Require that a parent or guardian, or their representative, be physically present in the room during treatment of a minor.

(b) A massage therapist may not:

(1) Psychologically or physically abuse a client.

(2) Violate a client's boundaries with regard to exposure, privacy or disclosure.

(3) Utilize techniques that are contraindicated based on the client's condition.

(4) Falsify or knowingly make incorrect entries into the client's record or other related documents.

(5) Intentionally expose a client's genitals, gluteal cleft or the breasts of a female client except temporarily to perform therapeutic treatment of the area.

(6) Engage in sexual harassment, sexual impropriety, sexual violation or sexual abuse.

(7) Engage in sexual intimacies during the professional relationship.

(8) Perform or offer to perform any services for clients other than those connected with giving massage therapy treatments as defined in section 2 of the act (63 P. S. § 627.2), unless the massage therapist has additional training and licensure, if required, to perform those services.

(9) Knowingly permit another individual to use the massage therapist's license or temporary permit for any purpose.

(10) Knowingly aid, abet or assist another person to violate or circumvent a law or this chapter.

(11) Misappropriate equipment, materials, property or money from an employer or client.

(12) Refuse a client's request for a refund for the unearned portion of prepaid or packaged massage therapy services. This provision does not apply to gift certificate purchases.

§ 20.43. Disciplinary procedures.

(a) A massage therapist whose conduct constitutes a sexual violation or sexual abuse is subject to immediate temporary suspension in accordance with section 9(d) of the act (63 P. S. § 627.9(d)).

(b) The consent of an individual to engage in conduct defined herein as sexual harassment, sexual impropriety, sexual violation or sexual abuse with a massage therapist is not a defense in any disciplinary action brought under this section.

(c) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a client is admissible in a disciplinary action brought under this section.

SANITATION, FACILITY AND EQUIPMENT REQUIREMENTS

§ 20.51. Massage therapy treatment areas.

Massage therapists shall maintain their treatment spaces to:

(1) Provide for client privacy when clients disrobe.

(2) Provide for heating, cooling and ventilation to enhance client comfort.

(3) Provide illumination for cleaning.

(4) Be clean, sanitary and free from mold and contaminants.

(5) Ensure client safety.

§ 20.52. Massage therapy equipment.

(a) Massage therapists shall maintain equipment used in the practice of massage therapy in working order.

(b) Massage therapists shall clean equipment that comes into direct contact with a client's skin between each use.

(c) Massage therapists shall cover with impervious material and regularly clean cushions on massage tables and massage chairs, as well as bolsters and pillows.

(d) Massage therapists shall clean face rests, whether covered or uncovered, between each use.

§ 20.53. Topical preparations.

(a) Massage therapists shall store topical preparations in a manner that maintains the integrity of the product and prevents spoilage and contamination.

(b) Massage therapists shall dispense topical preparations in a manner that prevents contamination of the unused portion and that prevents cross-contamination between clients.

(c) Massage therapists shall use topical preparations that come into contact with a client, such as ice cubes, plasters, herbs, seaweed, muds, scrubs, paraffin or any

other similar products only once and shall then dispose of the topical preparations in a sanitary manner. Preparations that are not washed away must be placed in a covered receptacle that is emptied at least daily.

§ 20.54. Linens.

(a) Massage therapists shall store single-service materials, including clean linens, in a manner that maintains their cleanliness.

(b) Massage therapists shall furnish clean and fresh for the use of each individual client single-service materials,

linens and any other items, materials or tools that come into contact with a client's body.

(c) Massage therapists shall place soiled linens in a covered receptacle or washing machine after use.

(d) Massage therapists shall wash soiled linens in a clothes washing machine in hot water with detergent and bleach after every use.

[Pa.B. Doc. No. 10-829. Filed for public inspection May 7, 2010, 9:00 a.m.]

FEE REPORT FORM

Agency: State - BPOA

Date: December 2, 2009

Contact: Basil Merenda
Commissioner, Bureau of Professional & Occupational Affairs

Phone No. 783-7192

Fee Title, Rate and Estimated Collections:

Application for Massage Therapy License:	\$65.00
Estimated Biennial Revenue:	\$390,000.00 (6,000 application x \$65.00)

Fee Description:

The fee will be charged to every applicant for a Massage Therapy license.

Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Massage Therapy to process an application and (2) defray a portion of the Board's administrative overhead.

Fee-Related Activities and Costs:

Staff time-process application	(0.50 hr)	16.23
Attorney – avg. time to review legal issues	(0.17 hr)	10.50
Board Meeting – avg. time to review	(0.03 hr)	5.86
Administrative Overhead:		<u>30.16</u>
	Total Estimated Cost:	\$ 62.75
	Proposed Fee:	\$ 65.00

Analysis, Comment, and Recommendation:

It is recommended that a fee of \$65.00 be established for processing an application for a Massage Therapy license.

Application for Massage Therapy

Board Staff - receives application, reviews for completeness, verifies that supporting documents are attached, contacts applicant to request any missing information and/or documents. Information provided on the application regarding criminal conviction/chemical dependency/etc. may necessitate further research and review. Time to cover review and action by legal office and board meeting review has been averaged over total number of applications anticipated in a biennial cycle. Board staff issues license through computer when application is complete.

FEE REPORT FORM

Agency: State - BPOA

Date: July 1, 2010

Contact: Basil Merenda
Commissioner, Bureau of Professional & Occupational Affairs

Phone No. 783-7192

Fee Title, Rate and Estimated Collections:

Application for Massage Therapy Temporary Practice Permit: \$65.00

Estimated Biennial Revenue: \$39,000.00 (600 applications x \$65.00)

Fee Description:

The fee will be charged to every applicant for a Massage Therapy Temporary Practice Permit.

Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Massage Therapy to process an application and (2) defray a portion of the Board's administrative overhead.

Fee-Related Activities and Costs:

Staff time-process application	(0.50 hr)	16.23
Attorney – avg. time to review legal issues	(0.17 hr)	10.50
Board Meeting – avg. time to review	(0.03 hr)	5.86
Administrative Overhead:		<u>30.16</u>
	Total Estimated Cost:	\$ 62.75
	Proposed Fee:	\$ 65.00

Analysis, Comment, and Recommendation:

It is recommended that a fee of \$65.00 be established for processing an application for a Massage Therapy Temporary Practice Permit.

Application for Massage Therapy Temporary Practice Permit

Board Staff - receives application, reviews for completeness, verifies that supporting documents are attached, contacts applicant to request any missing information and/or documents. Information provided on the application regarding criminal conviction/chemical dependency/etc. may necessitate further research and review. Time to cover review and action by legal office and board meeting review has been averaged over total number of applications anticipated in a biennial cycle. Board staff issues temporary practice permit through computer when application is complete.

FEE REPORT FORM

Agency: State - BPOA

Date: November 23, 2009

Contact: Basil Merenda
Commissioner, Bureau of Professional & Occupational Affairs

Phone No. 783-7192

Fee Title, Rate and Estimated Collections:

Massage Therapy License Reactivation Fee: \$65.00

Estimated Biennial Revenue: \$13,000.00 (200 applications x \$65.00)

Fee Description:

The fee will be charged to each applicant who requests reactivation of an expired license.

This fee is charged in addition to the appropriate biennial renewal fee

Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Massage Therapy to review and process an application for reactivation of an inactive license and (2) defray a portion of the Board's administrative overhead.

Fee-Related Activities and Costs:

Staff time-application review	(0.50 hr)	16.23
Board Admin – app. Preparation	(0.25 hr)	10.57
Board Meeting – avg. time to review	(0.03 hr)	5.86
Administrative Overhead:		<u>30.16</u>
	Total Estimated Cost:	\$ 62.82
	Proposed Fee:	\$ 65.00

Analysis, Comment, and Recommendation:

It is recommended that a fee of \$65.00 be established to process an application for reactivation of an inactive license. **This fee is charged in addition to the appropriate biennial renewal fee.**

Massage Therapy – License Reactivation Fee

Board Staff - receives application, reviews for completeness, verifies that supporting documents are attached, contacts applicant to request any missing information and/or documents. Information provided on the application regarding criminal conviction/chemical dependency/etc. may necessitate further research and review. Time to cover review and action by legal office and board meeting review has been averaged over total number of applications anticipated in a biennial cycle. Board staff issues license through computer when application is complete.

FEE REPORT FORM

Agency: State - BPOA

Date: November 23, 2009

Contact: Basil Merenda
Commissioner, Bureau of Professional & Occupational Affairs

Phone No. 783-7192

Fee Title, Rate and Estimated Collections:

Massage Therapy License Restoration After Sanction Fee: \$65.00

Estimated Biennial Revenue: \$ 650.00 (10 applications x \$65.00)

Fee Description:

The fee will be charged to every applicant who applies to reactivate a license following legal sanction in Pennsylvania. **This fee is charged in addition to the appropriate biennial renewal fee.**

Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Massage Therapy to review and process an application for reactivating a license following legal sanction in Pennsylvania and (2) defray a portion of the Board's administrative overhead.

Fee-Related Activities and Costs:

Staff time-process application	(0.50 hr)	16.23
Attorney – avg. time to review legal issues	(0.17 hr)	10.50
Board Meeting – avg. time to review	(0.03 hr)	5.86
Administrative Overhead:		<u>30.16</u>
	Total Estimated Cost:	\$ 62.75
	Proposed Fee:	\$ 65.00

Analysis, Comment, and Recommendation:

It is recommended that a fee of \$65.00 be established to review and evaluate an application for reactivation following legal sanction in Pennsylvania. **This fee is charged in addition to the appropriate biennial renewal fee**

Board Staff - receives application, reviews for completeness, verifies that supporting documents are attached, contacts applicant to request any missing information and/or documents. Application is forwarded to legal staff for review to ensure that legal questions and board criteria for reactivation have been met. Information provided on the application regarding criminal conviction/chemical dependency/etc. may necessitate further research and review. Time to cover review and action by legal office and board meeting review has been averaged over total number of applications anticipated in a biennial cycle. Board staff issues license through computer when application is complete.

FEE REPORT FORM

Agency: State - BPOA

Date: November 23, 2009

Contact: Basil Merenda
Commissioner, Bureau of Professional & Occupational Affairs

Phone No. 783-7192

Fee Title, Rate and Estimated Collections:

Massage Therapy –

Application for Approval of Continuing Education Program: \$65.00

Estimated Biennial Revenue: \$ 13,000.00 (200 applications x \$65.00)

Fee Description:

The fee will be charged to every applicant for approval of a continuing education program.

Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Massage Therapy to review and process an application for approval of a continuing education program and (2) defray a portion of the Board's administrative overhead.

Fee-Related Activities and Costs:

Staff time-application review	(0.50 hr)	16.23
Board Admin – app. preparation	(0.25 hr)	10.57
Board Meeting – avg. time to review	(0.03 hr)	5.86
Administrative Overhead:		<u>30.16</u>
	Total Estimated Cost:	\$ 62.82
	Proposed Fee:	\$ 65.00

Analysis, Comment, and Recommendation:

It is recommended that a fee of \$65.00 be established to process an application for approval of a continuing education program.

Massage Therapy – Application for Approval of Continuing Education Program:

Board Staff - receives request from a provider of continuing education requesting approval as a provider of courses/programs that licensees are required to complete as a condition of license renewal. Board administrator sends the application and supporting documents to a board member for evaluation of course content and recommendation to approve or deny. Following decision, applicant is notified of decision; if approved, program is entered into computer system.

FEE REPORT FORM

Agency: State - BPOA

Date: December 2, 2009

Contact: Basil Merenda
Commissioner, Bureau of Professional & Occupational Affairs

Phone No. 783-7192

Fee Title, Rate and Estimated Collections:

Biennial Renewal Fee-Massage Therapy: **\$75.00**

Estimate Biennial Revenue: \$450,000.00 (6,000 applications x \$75.00)

Fee Description:

The fee will be charged biennially to every Massage Therapist for renewal of their license through the next biennial cycle.

Fee Objective:

The fee should defray a portion of the general operation costs of the State Board of Massage Therapy.

Analysis, Comment, and Recommendation:

It is recommended that a renewal fee of \$75.00 be established thereby causing those entities to contribute to the general operational costs of the State Board of Massage Therapy.

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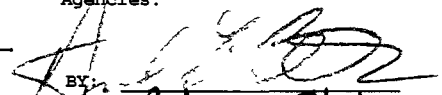
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BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Massage Therapy
(AGENCY)


BY: 
Andrew C. Clark
SEP 8 2010

DOCUMENT/FISCAL NOTE NO. 16A-721

DATE OF APPROVAL

DATE OF APPROVAL

DATE OF ADOPTION:

BY: 
Robert J. Jantsch

(Deputy General Counsel
~~Chief Counsel,~~
~~Independent Agency~~
~~(Strike inapplicable title)~~)

[] Check if applicable
Copy not approved.
Objections attached.

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable.
No Attorney General approval
or objection within 30 day
after submission.

FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF MASSAGE THERAPY

49 Pa. Code Ch. 20
GENERAL PROVISIONS

The State Board of Massage Therapy (Board) hereby adopts §§ 20.1–20.54 to effectuate the Massage Therapy Law (act) (63 P.S. § 627.1 – 627.50).

Effective Date

The amendments will be effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin. The Board will publish applications for licensure on its website after the final rulemaking has been approved by the Office of Attorney General; however, applications will not be processed until the final regulation is published in the Pennsylvania Bulletin.

Statutory Authority

Sections 4(2) and 50 of the act (63 P.S. § 627.4(2) and 627.50) require the Board to promulgate regulations to effectuate the act.

Summary of Comments and the Board's Response

The Board received comments from Elite Continuing Education, of Ormond Beach, Florida, a company that offers both correspondence and classroom education throughout the United States. The company urged the Board to permit its licensees to complete up to 12 hours of the 24 hours of required continuing education biennially through correspondence courses. The company provided information regarding the continuing education requirements in other states and the number of hours that other states permit licensees to complete through online or other distance education modalities. The company also suggested that the Board consider contracting with a company that tracks continuing education hours and require continuing education providers to report licensee hours to the company, a process used in Florida, which would enable the Board to audit 100% of its licensees.

The American Massage Therapy Association also suggested that the Board increase the number of hours of continuing education that a licensee could earn from distance education. Because of the nature of the practice of massage therapy, the Board believes the majority of licensees' ongoing education should be obtained from sources where the instructor is in the room and able to observe the licensee and provide feedback to the licensee. In response to the comments, the Board has increased from 6 to 8 the number of hours that may be earned from distance education sources. The Board has rewritten the provision to require that licensees complete at least 16 contact hours of continuing education, as the Board has already defined contact hour to mean in the physical presence of the instructor.

An individual in Pittsburgh suggested that the requirement that all massage linens be washed with bleach is unnecessary, bad for the environment and destructive of the sheets and that washing in hot water with appropriate detergent is more than sufficient. Given that massage

linens are used on unclothed persons, the Board believes that linens should be washed with bleach to ensure that any microbes transferred to the linens are killed.

The Pennsylvania Association of Private School Administrators (PAPSA) sent numerous comments. PAPSA stated that other Board licensees are provided verification of license for free and asked if the Board could do the same. The licensees of the Board will be provided the same verification services as are licensees of other boards within the Bureau of Professional and Occupational Affairs. All boards licensees are listed on the searchable website, www.licensepa.state.pa.us. No fee is charged to access this website. The fee for license verification listed in § 20.3 (relating to fees) is the fee charged for formal verification by the Board office, which is sent on Board letterhead. This verification is generally required when a licensee seeks to obtain licensure by reciprocity to another state. If the other state is satisfied with verifying the license through the website, the licensee will not need to obtain verification from the Board office or pay the fee for license verification.

Regarding § 20.12 (relating to information that must be provided to prospective students), PAPSA stated that schools accredited by the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS) are required to provide an overall licensure pass rate to students for all programs at the school and that those schools will then have to provide a separate licensure pass rate only for their massage therapy programs. PAPSA expressed concern that this could be confusing to students. Schools that are licensed by the Board of Private Licensed Schools and approved to offer training in massage therapy will be required to report the pass rate of graduates from the massage therapy training program on the massage therapy licensure examinations. The Board does not believe that students will be confused if the school also reports its overall pass rate on other examinations.

Regarding § 20.13 (relating to required knowledge base), PAPSA next noted that there were online sites that offer “nationally recognized” CPR courses that lead to a certificate. PAPSA suggested that online CPR course should not be accepted because of their brief duration and lack of supervised practice. The Board agrees that CPR courses should be taken from sources where there is an instructor present to correct a licensee’s technique. The Board has added language to § 20.13 to clarify its intent. In addition, the Board notes that it will place on its website the list of approved CPR courses and will not allow distance education for CPR training.

Regarding § 20.14(b) (relating to student practice), PAPSA noted that some school administrators expressed concerns about the schools’ liability that might arise from assigning homework to massage family and friends under indirect supervision. The regulation does not require schools to assign the performance of massage tasks as homework. Schools that have this concern do not have to assign massage tasks for homework.

PAPSA asked for clarification regarding § 20.14(f), which requires a school to maintain records for services provided by students for 3 years. The 3-year period would commence at the last date of service. The Board has added language to clarify its intent.

Regarding § 20.21(c) (relating to application for temporary practice permit, initial licensure and licensure by reciprocity), PAPSA asked whether associate degree students would be able to obtain licensure after completing 600 hours even though they still have a minimum of an additional 900 hours to complete to obtain their degree. The act requires that an individual complete a massage therapy program of at least 600 hours in order to be eligible for licensure. A student in a program of more than 600 hours would only be eligible for licensure if the school provided documentation that the student had completed the school's massage therapy program.

Regarding § 20.21(d)(3), PAPSA noted that massage therapy students were concerned that they might be unable to obtain a license because they were arrested or charged with a crime, although they were not convicted. PAPSA opined that the regulations extended the barrier to licensure for individuals who have been arrested or charged. PAPSA suggested that the provision should be changed to apply only to convictions and that the Board should provide guidelines for the review process of a conviction to help schools determine if a prospective student will be able to secure a license upon graduation. The act authorizes the Board to deny licensure only to individuals who have been convicted. The regulations do not expand the Board's authority. The act does not restrict the Board from obtaining information relevant to its mission of protecting the public. Obtaining this information from applicants will allow the Board to monitor the criminal process to ensure that it can take appropriate action if a licensee is convicted of a crime. The Board will limit the information that must be disclosed to criminal charges that have been filed. In addition, the Board will provide an explanation on its website regarding its review of applicants with criminal records.

Regarding § 20.24 (relating to application requirements for existing practitioners), PAPSA asked whether applicants under section 5(b) of the act would need to provide proof of CPR, submit a background check and provide proof of high school graduation or equivalent with their initial application. These applicants will be required to provide this information and any other information set forth on the application form. Proposed § 20.24(a) requires existing practitioner applicants to submit the information required by § 20.21(b), (c) and (d), which includes, in subsection (b)(1) – (4), a legal form of identification, a criminal history record information, CPR certification and proof of graduation from high school.

Regarding § 20.26(e) (relating to application requirements for temporary practice permits), PAPSA questioned the prohibition on temporary practice permit holders advertising their practice, holding themselves out as licensed massage therapists or using the initials L.M.T.. PAPSA stated that a student could not build a practice and become gainfully employed if the student cannot market him- or herself as a licensed massage therapist. The statute clearly defines a licensed massage therapist or L.M.T. as an individual who has been granted licensure by the

Board. Neither students nor temporary practice permit holders have been granted licensure; therefore, neither students nor temporary practice permit holders may hold themselves out as licensed massage therapists or L.M.T.s or may advertise that they hold a license when they do not. Moreover, the provisions in § 20.14 limit student practice. The normal process for a massage therapy student to obtain licensure should be quite short. The National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) and the Federation of State Massage Therapy Boards (FSMTB) report test scores to the Board electronically and the Board can obtain test results on a daily basis. Therefore, a student who tests promptly after completing an educational program could obtain licensure within a matter of a few weeks.

Regarding § 20.33 (relating to continuing education content and providers), PAPSA asked whether at least 6 hours of pedagogical technique be counted towards meeting the continuing education requirement for massage therapy faculty. The law specifies that continuing education develop the skills as a massage therapist, not as a teacher. Therefore, massage therapy faculty will be required to take continuing education courses related to massage therapy techniques, not teaching techniques.

PAPSA asked whether § 20.51(3) (relating to massage therapy treatment areas), which requires that massage therapy treatment areas provide “illumination for cleaning,” was a necessary provision. The provision requires that the illumination be adequate for the purpose of cleaning, meaning bright enough to determine areas that might need cleaning, which is a level of brightness not generally used in a treatment area during treatment.

The Pennsylvania Physical Therapy Association (PPTA) provided comments to the Board. PPTA stated its concern with § 20.41 (relating to scope of practice), specifically objecting to the list of soft tissue manifestations and the use of the words “treat” and “treatment.” PPTA also objected to the Board’s use of the term “therapeutic massage techniques.” PPTA suggested that the term should be replaced with “massage therapy techniques.” PPTA suggested that the Board provide a definition of the term “treatment plan.” Regarding § 20.26, PPTA indicated confusion with what level of services an individual with a temporary practice permit was authorized to perform, and suggested the Board further define the level of supervision required. Finally, regarding § 20.34 (relating to penalty for failure to complete continuing education), PPTA questioned whether an individual who had failed to complete required continuing education could practice on an expired license.

The Board received similar comments from the Insurance Federation of Pennsylvania, opposing proposed § 20.41, which the organization viewed as overly broad and vague. The Insurance Federation suggested using “tonic relief” to describe the “level of treatment” to be achieved by massage therapy. The Insurance Federation also suggested that the Board include the statutory limitation from section 17 of the act, which provides that licensure of massage therapists does not mandate insurance companies to provide new coverage for massage therapy services.

Representatives from the PPTA and the Insurance Federation did not attend the publicly-announced meetings of the Board on June 29 and 30 and July 7, when the Board discussed these comments and its responses. The Board thoroughly addressed the comments from the PPTA and Insurance Federation in writing in its final preamble, and, on September 15, 2010, delivered the final preamble and other regulatory documents to the Legislative committees and IRRC. On that same date, the Board advised all commenters that the final rulemaking package had been delivered and directed commenters to IRRC’s website where they could view the final rulemaking package. The HPLC was scheduled to meet to consider the final rulemaking on September 28, 2010.

On September 24, 2010, the PPTA and Insurance Federation wrote to the HPLC and objected to the Board’s final rulemaking package and urged the HPLC to disapprove the rulemaking and to express its disapproval to IRRC. In its September 24, 2010, letter, the PPTA reasserted that the Board’s list of soft tissue manifestations should be stricken. PPTA also restated its objection to the Board’s use of “treat,” “treatment” and “therapeutic massage techniques.” In its September 24, letter to the HPLC, the Insurance Federation stated that the Board should strike its list of soft tissue manifestations. In addition, the Insurance Federation renewed its request that the regulations repeat section 17 of the act.

On September 29, 2010, representatives of the HPLC and legislature met with representatives of the Department of State, the Board, the PMTA, the PPTA and the Insurance Federation to discuss the concerns. The HPLC then asked the Board to withdraw the regulation. The Board agreed. The Board announced that it would meet in special session on October 12 to discuss possible revisions.

By way of letters dated October 8, received by the Board on October 12, the PPTA and Insurance Federation provided additional comments to the HPLC and the Board. In its October 8 letter, PPTA provided its suggestion for the regulatory definition of massage therapists’ scope of practice. PPTA suggested the Board eliminate any reference to “treatment” or “pain” and also asserted that the Board should eliminate all references to “treatment objectives” in its rulemaking. In its October 8 letter, the Insurance Federation endorsed the changes proposed by PPTA and proposed additional amendments. First, the Insurance Federation proposed that the Board eliminate any statements suggesting that massage therapists “treat” soft tissue manifestations and instead state that massage therapists “provide palliative treatment” to soft tissue manifestations. The Insurance Federation also proposed changes to the scope of practice proposal made by HPLC.

The Board met on October 12 and discussed the proposals by the PPTA, Insurance Federation and HPLC. The Board entertained comments from the representatives of the HPLC and PPTA. The Board will generally accept the proposals made by the PPTA, Insurance Federation and HPLC, and amend § 20.41(a). However, rather than create a new definition when massage therapy is already defined in the act, Board will amend this subsection to track the

language in section 2 of the act. The Board rejects the suggestions of deviating from the statutory language – “treatment of the soft tissue manifestations of the human body” – to refer to “tonic treatment” or “palliative treatment.” In addition to tracking the statutory language in § 20.41(a), the Board will strike the list of soft tissue manifestation which limited massage therapy practice in the proposed rulemaking. By striking the list of soft tissue manifestations, the emphasis of the scope of practice provision is shifted to the “structured system of touch, pressure movement, holding and treatment” set forth in the act and away from the Board’s prior emphasis on what is touched, applied pressure, moved, held or treated. The system of touch, pressure, movement, holding and treatment that traditionally comprise Western massage therapy includes both soft tissue manipulation (effleurage, petrissage and friction) and active and passive joint movements. The Board will retain § 20.41(b), which provided for both the statutory prohibitions on massage therapists’ practice and additional regulatory prohibitions. The Board will also add a new subsection (c) that tracks section 17 of the act.

Regarding the use of “therapeutic massage techniques,” the Board recognizes that this terminology may be overly restrictive because these techniques comprise only a part of massage therapy practice and massage therapists may employ massage therapy techniques that are not considered “therapeutic massage techniques.” As noted by the PPTA, physical therapists are also authorized by their statute to provide massage. *See* section 2 of the Physical Therapy Practice Act, Act of October 10, 1975, *as amended*, 63 P.S. § 1302 (defining “physical therapy” to include “the treatment of the individual through the utilization of the effective properties of physical measures such as . . . massage . . .”). Other licensed professionals may also employ some therapeutic massage techniques. *See, for example*, section 2 of the Professional Nursing Law, *as amended*, 63 P.S. § 212 (defining the “practice of professional nursing” to include “treating human responses to actual or potential health problems through such services as . . . provision of care supportive to or restorative of life and well-being”). The Board will change “therapeutic massage techniques” to “massage therapy” throughout the regulation. This will also eliminate the need to define “therapeutic massage techniques.” Finally, the Board will amend “treatment plan” to “massage therapy treatment plan.”

In its comments on the proposed rulemaking and in its September 24 letter, PPTA objected to allowing an applicant to practice without supervision for up to 6 months after graduation from a massage therapy program but before passing a licensure examination. The act does not limit the practice of temporary practice permit holders; therefore, the Board did not limit the practice of these individuals. Unlicensed persons, including temporary practice permit holders, are forbidden from using the title L.M.T. or holding themselves out as licensees.

The Federation of State Massage Therapy Boards (FSMTB) also submitted comments. FSMTB opined that the Board should accept only the MBLEx examination, which is offered by FSMTB. The act recognizes the two examinations offered by the National Certification Board for Therapeutic Massage and Bodywork as well as the MBLEx, and the Board believes it is constrained to do the same.

FSMTB pointed out a typographical error where the Board referred to the organization as FSBMT. The error has been corrected.

FSMTB pointed out that fees paid to it are refunded, minus a processing fee. The Board has made this correction by removing § 20.23(d) (relating to licensure examinations).

FSMTB noted that it does not restrict the number of times a candidate can fail the MBLEx without having to undertake some intervention before subsequent attempts. FSMTB opined that it would be difficult for the Board to monitor compliance with its limitation in § 20.23(e), and that attempting to enforce the provision could result in the disparate treatment of applicants for licensure by examination and applicants for licensure by reciprocity. The Board agrees and has stricken § 20.23(e) from the final-form rulemaking.

Regarding § 20.33, FSMTB asked that it be added to the list of pre-approved providers of continuing education, even though FSMTB does not currently provide continuing education review and approval services and apparently has no definite plans to do so. The Board believes it would be inappropriate to prospectively approve FSMTB's continuing education process before it has been developed.

The American Massage Therapy Association (AMTA) submitted comments on several sections of the proposed rulemaking. Regarding § 20.24, AMTA opined that a student who will graduate from a massage therapy education program "on or before the approval and passage of these rules and regulations" should be included as an existing practitioner. AMTA also stated that "many of the students begin working for employers in the state in the latter portions of their programs. Excluding them would greatly affect business at these establishments and place an undue burden on a student who until this point would have been grandfathered in."

Subsection 5(b)(1) of the act (63 P.S. § 627.5(b)(1)) requires an individual seeking licensure as an existing practitioner to, on the effective date of the subsection, "demonstrate that the applicant has conducted a business and been an active participant in that business which was mainly the practice of massage therapy." The subsection becomes effective on October 9, 2010. Individuals who can demonstrate that they were in the active practice of massage therapy on that date, and who comply with the other provisions of the act, can be considered existing practitioners. The effective date of the regulations does not affect an individual's status as an existing practitioner. Once the regulations have been passed, § 20.14 will prohibit massage therapy students from practicing except in the clinical training program operated by the student's school. Students are permitted to practice specific techniques that are being learned as part of the massage therapy education program, but may not receive any compensation, including a gratuity, for practicing these techniques. Therefore, once the regulations become final, students will no longer be able to be employed as massage therapists.

AMTA next expressed concern about individuals who have taken a maternity leave or a sick/short term disability leave during the last 5 years and questioned whether such individuals could qualify for licensure under section 5(b) of the act (63 P.S. § 627.5(b)). One of the ways that an existing practitioner can qualify for licensure is if the existing practitioner can demonstrate that he has been in “active, continuous practice for at least 5 years immediately preceding the effective date of this section.” The Board’s proposal, which allows a practitioner to demonstrate the required 5 years of practice through tax documents and other means, would allow an individual to obtain licensure even if the individual took a period of maternity leave. Several other licensing boards have period of practice requirements and the Board is not aware of any difficulties in determining whether an applicant is qualified for licensure despite having taken maternity or a short term disability leave.

AMTA next explained its historic levels of membership and asked for applicants who were at the associate level in 2007 to be permitted to use that membership level to show the first of the past 5 years as a practitioner. Associate level membership was for students and new graduates, but was discontinued on November 30, 2004. Beginning after November 20, 2007, individuals were required to participate at the professional level. It is the Board’s understanding that AMTA requires, as a prerequisite to professional level membership, that an individual have completed a minimum of 500 hours of massage therapy instruction or hold a National certification. Therefore, all professional members of AMTA will qualify for licensure under section 5(a)(3)(iii) of the act and do not need to apply for licensure under section 5(a)(3)(i) of the act.

AMTA suggested that the Board increase the number of continuing education hours that can be completed online to 8 hours. The Board has done so. AMTA questioned how the Board would address individuals with disabilities such as deafness who rely on online continuing education and whether there would be requirements placed on continuing education providers to make accommodations for those who are disabled. The General Rules of Administrative Practice and Procedure provide a mechanism by which an individual may request a waiver of a regulatory provision where the individual’s circumstances frustrate compliance. The Board will strive to be considerate and treat all licensees fairly. As for requiring, through its regulations, continuing education providers to provide accommodations for the disabled, the Board believes that Federal law governs the provision of accommodations.

AMTA also queried whether working toward a degree in a related field, such as kinesiology, at a 2- or 4- year college could count toward meeting the continuing education requirement. The act requires that continuing education courses be related to massage therapy practice. Not all classes in fields such as kinesiology are related to massage therapy practice. An individual may apply to the Board to receive continuing education credit for college courses and provide a detailed syllabus that will allow the Board to determine if continuing education credit can be granted.

Finally, AMTA noted that some of its members expressed concern about the number of continuing education hours required by the Board. The General Assembly determined the number of hours required biennially and the Board cannot deviate from that number.

Regarding § 20.41, AMTA stated that some people hold dual positions within their offices and asked how this would be regulated as to what services they can do and when they can do those services. AMTA gave the example that in the cosmetology field, esthetics must be done in a separate room from massage therapy, and asked if the individual holds both licenses, can they perform esthetics and massage in the same room. AMTA also asked whether a massage therapist who is also a chiropractic assistant can use devices such as a muscle stimulation unit. Each licensing board regulates the practice of a particular profession or occupation with a defined scope of practice. While practicing and holding oneself out as a massage therapist, an individual must practice within the scope of practice of a massage therapist. If the same individual also holds another license, that individual can practice within the scope of that license when practicing the other profession and holding him- or herself out as that type of licensee. It is the Board's understanding that the State Board of Cosmetology restricts the practice of cosmetology and its related subfields, such as esthetics, to the floor space of the cosmetology salon. Therefore, it would appear to the Board that massage therapy cannot be practiced within the floor space of the cosmetology salon, regardless of who is performing the massage therapy services. The Board is not familiar with the scope of practice of a chiropractic assistant but would reiterate its opinion that individuals may practice within the scope of practice of the profession or occupation they are practicing and holding themselves out as practicing during any period of time.

Regarding § 20.42(a)(14), which requires a licensee to display his or her license in a location clearly visible to clients, AMTA expressed concern with listing the licensee's home address on documents that would be in the plain sight of clients. The Board does not require the licensee to display their home address in plain sight of clients; in fact, the Board would encourage licensees to cover their home addresses, such as with black construction paper, when displaying their licenses. However, licenses must be displayed so that the public can know that an individual possesses the license.

Regarding § 20.42(a)(15), which requires licensees to include their license number in all advertisements, AMTA asked whether a massage therapist who works for a spa has to have the therapist's license number posted in the spa's advertisement and asked how would a spa with multiple therapists be required to post each therapist's number in the advertising. The provision provides for what a massage therapist must do; it does not regulate spas. If a massage therapist advertises their practice, the massage therapist must include the therapist's license number in the advertisement. If a business, such as a spa, advertises massage therapy services without naming any massage therapist, the spa is not subject to the regulation. The Board notes, however, that businesses providing massage therapy may only provide massage therapy by licensed individuals.

The Board received a comment from an individual asking the Board to amend the medical device restriction to be open ended, specifically so that licensees could use Spray and Stretch topical anesthetic skin refrigerant. According to the commenter, the product was classified as a medical device by the Federal Food and Drug Administration under that agency's authority to approve prescription devices used by health care practitioners under 21 CFR § 801.109 (relating to prescription devices). The General Assembly defined massage therapy to exclude massage therapists from practicing medicine or using medical procedures or prescribing medicines for which a license to practice the healing arts is required. Massage therapists are not considered practitioners of the healing arts in the Commonwealth and are not permitted to use medical devices in their practice.

On June 9, 2010, the House Professional Licensure Committee (HPLC) voted to take no formal action on the Board's proposal until final rulemaking was submitted, and provided the Board with five comments. First, HPLC requested that the Board define the term "treatment plan" and asked why a massage therapy student would be developing or modifying a treatment plan on his or her own. The Board has added a definition for the term. Section 20.13 (related to required knowledge base) requires a massage therapy education to provide students with skills in the area of the development, implementation and modification of treatment plans. The Board's proposal does not allow a massage therapy student to develop or modify a treatment plan on his or her own. The proposed § 20.14 (related to student practice) does not mention treatment plans.

HPLC next asked the Board to explain its rationale for the inclusion of business subjects in the knowledge base curriculum and continuing education courses for massage therapy. The HPLC commented that this inclusion is inconsistent with continuing education courses of other professions or occupations where business management courses, in particular, are prohibited. The Board's proposal provides for at least 25 contact hours of education, out of the minimum 600 hours of required instruction, in professional ethics, and business and law related to a massage therapy business. Because many massage therapists run their own business, the Board believes that some minimal amount of education should be provided to students to give them a better chance of being successful in their practice. Proposed § 20.33(a) requires that creditable continuing education "be designed to advance the licensee's professional knowledge and skills related to the practice of massage therapy as defined in section 2 of the act." In response to a commenter's suggestion that the Board should allow a business class to be creditable toward the continuing education requirement, the Board, in its preamble to the proposed rulemaking, noted that the act "restricts the granting of credit for taking courses to build one's business." The Board does not believe that its proposal indicates that business courses constitute creditable continuing education.

HPLC noted that no procedure was presented for licensure by endorsement and that § 20.21 is cross-referenced to in § 20.26(b). The Board used the term reciprocity and endorsement

interchangeably. The Board conformed its language use to the Act, which uses the term reciprocity.

HPLC next questioned whether an applicant whose license is refused has due process rights to appeal after unfavorable results from the hearing. The hearing is the Board's provision of the applicant's due process right to be heard. The Administrative Agency Law (2 Pa. C.S.A. § 702) provides aggrieved parties the right to appeal a final determination by a governmental unit to the Commonwealth Court of Pennsylvania.

Finally, HPLC questioned the definition of contact hour in proposed § 20.1 (relating to definitions) which combines the length of time (50 to 60 minute period of instruction) and the circumstances (in the physical presence of an instructor or supervisor) where § 20.32(b) (relating to continuing education hours, maintenance of certificates of completion) provides for a maximum of 6 hours of continuing education in correspondence courses. HPLC questioned whether the correspondence courses are in 50 to 60 minute periods to meet the quantitative aspect of the definition. The Board anticipates that the course provider would determine the amount of content that would take an average person 50 to 60 minutes to work through, as is done by all other Boards within BPOA. For clarity, the Board rewrote § 20.32(c) to delete the reference to correspondence courses and instead refer to the number of hours that must be taken as contact hours, a term defined in § 20.1. In addition, the Board deleted the word "contact" from § 20.32(b), which was inadvertent; ethics courses do not need to be taken in the physical presence of the instructor, a requirement most relevant to therapeutic technique classes.

The Independent Regulatory Review Commission (IRRC) submitted comments on July 7, 2010. IRRC recommended that the Board define the terms "soft tissue manifestations," "therapeutic massage techniques," "treatment," and "treatment plan." The Board believes that the term "soft tissue manifestations" is self-defining; "soft tissue" is defined in many medical and lay dictionaries and refers to muscle, fat, blood and lymph vessels and other tissues that are not bone or cartilage. As discussed above in response to a comment from PPTA, the Board believes that the term "manifestations" is in common usage. Moreover, the General Assembly used the term "soft tissue manifestations" in the act and did not find it necessary to define the term. Given the detail in § 20.41, the Board believes that the term does not need further clarification. Regarding the term "therapeutic massage techniques," which was also questioned by PPTA, the Board has added a definition for this term that references the act. Similarly, the Board has added a definition for "treatment" that references the act. As noted previously, the Board has added a definition for "treatment plan."

IRRC next commented that the Board's definition for sexual harassment should refer to conduct that is "unwanted" or "unwelcome" because PHRC provisions related to unlawful employment actions use these terms. The Board disagrees that these terms belong in regulations governing the conduct of massage therapists. On the contrary, a massage therapist is prohibited from deliberate physical contact of a sexual nature with a client even if the contact is "wanted"

or “welcome” because professional ethics prohibit this type of personal contact within the professional relationship.

IRRC asked how the Board determined that the proposed fees were appropriate. Related to the reasonableness of its fees for services in § 20.3, the Board bases the fees on reports made by the Department’s revenue office. Fee report forms showing the costs for providing the services are attached to the Regulatory Analysis Form required by the Regulatory Review Act and IRRC’s regulations at 1 Pa. Code § 307.2(c)(1) (relating to delivery of final-form regulations). The fee report forms show the amount of time expended in processing fee for service items and the amount of overhead charged based on that amount of time.

With regard to education programs under § 20.11, IRRC asked how the Board determined the appropriate number of hours in each subject area that a massage therapy curriculum would be required to provide. The Board reviewed the standards set by massage therapy education program accrediting bodies and the regulations of other states. The Board’s rulemaking reflects industry standards for the number of hours in particular subject areas for a massage therapy curriculum.

Regarding § 20.13, IRRC asked for more specificity regarding the “legal requirements” to be taught to massage therapy students in Pennsylvania schools. The Board has amended its rulemaking to refer to Pennsylvania legal requirements, which would include licensure requirements and standards of conduct. IRRC also asked the Board to add language to clarify what level of “knowledge” massage therapy education must provide to its students. The Board declines to add clarifying language because it believes that massage therapy schools already know that they must educate their students sufficiently to enable the students to pass a licensure examination and practice massage therapy.

Related to student practice, IRRC asked what was the basis for the 3-year time period to maintain records of student practice in a school’s clinical program. The Board based the time period on the 2-year tort statute of limitations and added an additional year. IRRC also suggested relating the provision to the date of service. As noted above in the response to a similar suggestion from PAPSA, the Board added language to inform the regulated community that records must be kept for 3 years from the last date of service.

Regarding § 20.14(g), IRRC suggested that the final rulemaking include the means by which schools could comply with the requirement that students be identified as students when they are performing services in a student clinic. The Board believes that the schools already identify student clinics as such and that each school can determine the best way to identify students. Some ways already in use include signs, nametags, and requiring clients to sign an acknowledgement that a student will perform their massage.

IRRC raised the same concern as HPLC regarding the Board's interchangeable use of the term "endorsement" and "reciprocity in § 20.21." The Board has made the language consistent. IRRC questioned how the Board determined that requiring criminal history records for every state the applicant had lived for the past 5 years was an appropriate limit on the years of review. The provision is for verification purposes only; an applicant is required to disclose all criminal convictions. Criminal History Records show all convictions, even those that occurred 15 or 20 years ago. The five year limitation is geographical and the Board's thinking is that if an applicant is moving from state to state to avoid detection of a criminal history, they would likely move more often than every 5 years.

IRRC asked about the Board's requirement that applicants disclose arrests. This issue was addressed above in response to the same inquiry by PAPSA. IRRC erroneously states that the act only permits the Board to refuse licensure to an applicant who has been convicted of a felony under the Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. § 780-101 et seq.) or comparable law in another jurisdiction or the United States. However, section 9(a)(1) of the act (63 P.S. § 627.9(a)(1)) authorizes the Board to refuse licensure to an applicant who has been convicted of a crime of moral turpitude or an offense that would constitute a felony in Pennsylvania. In addition, section 5(a)(1) of the Act (63 P.S. § 627.5(a)(1)) requires that applicants demonstrate good moral character.

Regarding § 20.21(d)(4) and (5), IRRC also questioned whether a licensed professional would make the determination of whether an applicant is unable to practice with reasonable skill and safety due to mental or physical conditions or impairment based on the use of drugs or alcohol. Individuals would be referred to the Professional Health Monitoring Program and an appropriate professional would conduct the evaluation. However, if an applicant contests the findings, a hearing is held before the Board and the applicant may present expert testimony on the subject of their ability to practice safely. Other licensing boards that have successfully used this process for many years do not provide extensive regulatory provisions related to these matters and the Board does not believe there is a need for its regulations to include extensive sections related to these matters. Finally, IRRC suggested that the Board remove from subsection (d)(4) the phrase "any other type of material" because it is vague. The phrase comes directly from the statute and thus was included.

IRRC next asked for the basis for a 6-month period of time for an applicant to supply missing documentation for an application. The time period was chosen to conform to the length of time that an applicant can practice on a temporary practice permit.

IRRC also suggested that § 20.22 (relating to procedure for licensure denial) reference who will conduct evaluations and licensee appeal rights. The Board added a reference to PHMP and to section 9(c) of the act (63 P.S. § 627.9(c)).

IRRC questioned the 90-day time frame for applicants to reapply for the examinations; these are requirements of the testing organizations placed in regulation to inform applicants. The Board corrected the typographical reference to the FSMTB. IRRC also questioned the process of monitoring the additional hours of instructions required in § 20.23(e) for applicants who have failed a licensure examination multiple times to obtain additional hours of instructions. The Board removed the limit on the number of times an applicant could fail the examinations before being required to take more coursework.

IRRC questioned the Board's use of the date October 9, 2010, in § 20.24(c). The date is required by the statute. IRRC, like AMTA, asked about new graduates; the Board addressed this issue in its response to AMTA's comments. IRRC also suggested that the Board define "existing practitioners." The Board believes this term is defined by the statute.

IRRC next asked what services could be performed by a temporary practice permit holder. The statute does not limit the services and the Board does not believe that the services should be limited.

Regarding § 20.32(g) (relating to continuing education hours, maintenance of certificates of completion), IRRC asked under what circumstances the Board would determine an audit was necessary. A certain percentage of the licensee population will be audited at random, as is done by most of the licensing boards.

Regarding § 20.41, IRRC asked how the Board would regulate "overlapping licensure." The Board can only regulate the practice of massage therapy; other licensing boards must regulate the practice of the professions that they oversee. IRRC also recommended that the Board, in its final rulemaking, set forth a list of services that dual licensees can perform. The Board cannot define in regulation what services dual licensees can perform; it can only define what services L.M.T.s can perform. The Board believes its regulation sets forth the scope of practice of L.M.T.s consistent with the act.

Regarding § 20.42, IRRC asked how the Board would address a situation if a soft tissue manifestation is also a symptom of an underlying condition. The Board is aware that soft tissue manifestations may be symptoms of an underlying condition; for example, some massage therapists provide services solely on referral from a physician and report to the referring physician. The act authorizes L.M.T.s to apply a system of structured touch, pressure, movement, holding and treatment of the soft tissue manifestations of the human body with the primary intent to enhance health; thus, while an L.M.T. does not treat an underlying disease, an L.M.T. does provide treatment to soft tissue manifestations to enhance health by treating the soft tissue manifestations of an underlying disease. Section 20.42(a)(5) of the Board's regulation requires an L.M.T. to refer a client to an appropriate health care profession when indicated. If a complaint were filed against a licensee related to licensee misconduct or a licensee exceeding the

permitted scope of practice, the Board would hold a hearing to determine the facts and issue an adjudication, as required by the Administrative Agency Law. The Board has the authority to discipline a licensee who exceeds the scope of practice of an L.M.T..

Finally, IRRC asked how a massage therapist would act to safeguard a client from incompetent, abusive or illegal practices, as required by § 20.42(a)(11). By way of example, the Board would point to the Commonwealth Court case of Stephens v. State Board of Nursing, 657 A.2d 71 (Pa. Cmwlth. Ct. 1995), wherein the Commonwealth Court affirmed a decision of the State Board of Nursing disciplining a licensee for failing to safeguard a patient from incompetent or abusive practices when a nurse waited 10 minutes before intervening on a patient's behalf when a nurse aide was teasing a patient and failed to report the nurse aide to the facility. An L.M.T. might fail to safeguard a client if the L.M.T. witnessed another L.M.T. or other health care worker, such as a nurse aide or physical therapist, abusing a patient and failed to intervene and report the matter to the proper authorities.

During its review of the rulemaking at its October 12, meeting, the Board corrected § 20.21(b)(2). The provision required applicants to have the state police send the applicant's criminal history record directly to the Board; however, the Board recently learned that the state policy would release the criminal history record only to the applicant. The amended version will permit an applicant to obtain his or her record and forward the record to the Board.

Fiscal Impact and Paperwork Requirements

The regulations will have a fiscal impact on massage therapists because there is a cost to licensure and license renewal. Fees, except biennial renewal fees, are based on an estimate of the amount of time required to perform the service to an individual and the type of staff required to perform the service. Biennial renewal fees are developed by the Department's Bureau of Finance and Operations and are used to sustain the day-to-day operations of the Board. The regulations may have a fiscal impact on individual licensees if the massage therapists do not already abide by the minimum safety and cleanliness requirements set forth by the Board. Minor paperwork and recordkeeping requirements are placed on massage therapy schools and providers of continuing education for massage therapists.

The amendments will not otherwise have any fiscal impact nor impose additional paperwork on the private sector, the general public and the Commonwealth and its political subdivisions.

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 40 Pa. B. 2428 (May 9, 2010), to IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on _____, 2010, the final-form rulemaking was approved by the HPLC. On _____, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC approved the final-form rulemaking on _____, 2010.

Findings

The Board finds that:

1. Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240), (45 P.S. §§ 1201 – 1202), and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 – 7.2.
2. A public comment period was provided as required by law and all comments were considered.
3. The amendments made to the final regulation do not expand the scope of the proposed rulemaking published at 40 Pa. B. 2428 (May 8, 2010).
4. This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this Preamble.

Order

The Board, acting under its authorizing statute, orders that:

- (A) The regulations of the Board at 49 Pa. Code §§ 20.1 – 20.54 are adopted to read as set forth in Annex A.

- (B) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.
- (C) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (D) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

Robert C. Jantsch
Board Chairman

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 20. STATE BOARD OF MASSAGE THERAPY

GENERAL PROVISIONS

§ 20.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act – The Massage Therapy Law (63 P.S. §§ 627.1–627.50).

Board – The State Board of Massage Therapy.

Client – Any individual, group of individuals, or organization to which an L.M.T. provides massage therapy services.

Contact hour – A 50 to 60 minute period of instruction related to the practice of massage therapy in the physical presence of an instructor or supervisor.

Draping – The use of linens to cover a massage therapy client to preserve client privacy and modesty, to maintain professional boundaries and for client warmth.

FSMTB – The Federation of State Massage Therapy Boards.

Immediate supervision – The supervisor or instructor is within visual or audible range of the individual being supervised.

In-class – In the physical presence of an instructor or under the immediate supervision of a clinical supervisor.

Indirect supervision – The supervision provided by a clinical supervisor or instructor who has given a student instructions on the performance of massage therapy activities, assigned for credit, that are to be practiced outside of class or clinic.

Informed consent – A process wherein the massage therapist and a competent client or the client's guardian come to a mutual understanding of the massage therapy treatment, including objectives, benefits and any risks.

L.M.T. – Licensed Massage Therapist.

MBLEx – Massage and Bodywork Licensure Examination of the Federation of State Boards of Massage Therapy BOARDS.

NCBTMB – National Certification Board for Therapeutic Massage and Bodywork.

NCETM – National Certification Examination for Therapeutic Massage.

NCETMB – National Certification Examination for Therapeutic Massage and Bodywork.

NESL – National Examination for State Licensure, an option offered by the NCBTMB which allows individuals to take the NCETM or NCETMB without obtaining National certification.

Professional relationship – The relationship between a massage therapist and a client which shall be deemed to exist from the first professional contact or consultation and continue thereafter until 6 months after the last date of a professional service.

Sexual abuse – Conduct which constitutes a violation of any provision of 18 Pa.C.S. (relating to crimes and offenses) related to sexual offenses (See 18 Pa. C.S. §§ 3121-3130 (relating to definition of offenses).)

Sexual harassment – Deliberate or repeated comments, gestures or physical contacts of a sexual nature.

Sexual impropriety – The term includes the following offenses during the professional relationship:

- (i) Making sexually demeaning or sexually suggestive comments about or to a client, including comments about a client's body or clothing.
- (ii) Unnecessarily exposing a client's body or watching a client dress or undress, unless the client specifically requests assistance due to disability.
- (iii) Discussing or commenting on a client's potential sexual performance or requesting details of a client's sexual history or preferences.

- (iv) Volunteering information to a client about one's sexual problems, preferences or fantasies.
- (v) Behavior, gestures, or expressions to a client that are seductive or of a sexual nature.
- (vi) Using draping practices that reflect a lack of respect for the client's privacy.

Sexual intimacies – Romantic, sexually suggestive or erotic behavior or soliciting a date.

Sexual violation – Sexual conduct, during the professional relationship, between a massage therapist and a client, including any of the following:

- (i) Indecent exposure.
- (ii) Touching, with the massage therapist's body or an object, the genitals or any sexualized body part of the client for any purpose other than appropriate examination or treatment or when the client has refused or withdrawn consent.
- (iii) Encouraging a client to masturbate in the presence of the massage therapist or masturbating while a client is present.
- (iv) Providing or offering to provide treatment in exchange for sexual favors.

Supervisor – A licensee or instructor who meets the qualifications under section 13(3) of the act (63 P.S. § 627.13(3)).

TREATMENT – THE USE OF MASSAGE THERAPY WHERE THE PRIMARY INTENT IS TO ENHANCE THE HEALTH AND WELL-BEING OF THE CLIENT.

MASSAGE THERAPY TREATMENT PLAN – WRITTEN DOCUMENTATION THAT ADDRESSES SOFT TISSUE MANIFESTATIONS, NEEDS AND CONCERNS OF THE CLIENT, INCLUDING IDENTIFYING INDICATIONS, CONTRAINDICATIONS AND PRECAUTIONS OF MASSAGE THERAPY WITHIN THE SCOPE OF THE ACT, HOW THE NEEDS AND CONCERNS WILL BE ADDRESSED, MASSAGE THERAPY GOALS AND HOW PROGRESS WILL BE ASSESSED.

§ 20.2. Applicability of general rules.

The provisions of 1 Pa. Code § 31.1 (relating to scope of part), and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) are applicable to the activities of and proceedings before the Board.

§ 20.3. Fees.

(a) The following fees are charged for services provided by the Board:

Application for licensure.....	\$65
APPLICATION FOR TEMPORARY PRACTICE PERMIT.....	\$65
Verification of licensure OR LETTER OF GOOD STANDING.....	\$15
Certification of licensure history	\$25

Reactivation of license	\$65
Restoration after suspension or revocation	\$65
Approval of continuing education program	\$65

(b) The following fees are charged to sustain the operations of the Board:

Biennial renewal of license.....	\$75
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(c) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the MBLEx shall be responsible for any fees charged by the FSBMTF FSMTB for taking the examination.

(d) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the NESL, the NCETM or the NCETMB shall be responsible for any fees charged by the NCBTMB for taking the examinations.

EDUCATION

§ 20.11. Minimum hour requirements for massage therapy programs.

(a) Massage therapy programs must provide at least 600 hours of in-class, postsecondary education instruction, including:

- (1) At least 175 contact hours of instruction in anatomy and physiology, kinesiology and pathology, including training in the human immunodeficiency virus and related risks.
 - (2) At least 250 contact hours in massage therapy and bodywork assessment, theory and practice including sanitation, safety and hygiene.
 - (3) At least 25 contact hours in professional ethics, and business and law related to a massage therapy business.
 - (4) At least 150 contact hours in related courses appropriate to a massage therapy curriculum as set forth in § 20.13 (related to required knowledge base), including cardiopulmonary resuscitation.
- (b) Massage therapy programs may meet the 600-hour requirement through both didactic and clinical courses.
- (c) Externship hours may not be included in the 600-hour minimum education instruction. For purposes of this section, an externship is an offsite practical technique learning experience where the student's supervision is provided by a licensed massage therapist, supervisor or other appropriate licensed health professional.
- (d) Hours for practicing assigned techniques under indirect supervision may not be included in the 600-hour minimum education instruction.

§ 20.12. Information that must be provided to prospective students.

Massage therapy schools shall inform prospective students, in writing, prior to enrollment, of the annual passing rate of the school's graduates on each of the approved examinations for licensure for the past 2 years. Any licensee employed by a massage therapy school who knows or has reason to know that the school is not abiding by this provision will be subject to discipline under section 9(a)(7) of the act, (63 P.S. § 627.9(a)(7)). In addition, the Board will report the failure of a massage therapy school to conform to this section to the school's approving or accrediting body.

§ 20.13. Required knowledge base.

- (a) Massage therapy education must provide students with knowledge of the following:
- (1) Massage and bodywork assessment and application.
 - (2) Contraindications and precautions for massage therapy.
 - (3) Anatomy and physiology.
 - (4) Kinesiology.
 - (5) Pathology.
 - (6) ~~Legal~~ PENNSYLVANIA LEGAL requirements.
 - (7) Business practices.
 - (8) Professional ethics.

- (9) ~~Basic~~ CPR RESULTING IN A BOARD-APPROVED CERTIFICATION.
 - (10) Communicable diseases and universal precautions.
 - (11) Power differentials and other therapeutic boundary issues as they relate to client interaction.
 - (12) Fundamentals of human behavior and respect for clients in the practice of massage therapy.
- (b) Massage therapy education must provide students with the practical skills to:
- (1) Administer fundamental ~~therapeutic massage techniques~~ MASSAGE THERAPY for the treatment of soft tissue manifestations of the human body.
 - (2) Safely utilize topical preparations, thermal and cryogenic modalities, hydrotherapy and movements that lengthen and shorten soft tissues within the client's normal range of motion.
 - (3) Maintain safe and effective body mechanics in the application of ~~therapeutic massage techniques~~ MASSAGE THERAPY.
 - (4) Locate and palpate muscle attachments, muscle bellies and other anatomical landmarks necessary for the practice of massage therapy.
 - (5) Use draping/coverage practices that address both function and safety.

(c) Massage therapy education must provide students with additional skills in the following areas:

- (1) Development, implementation and modification of a MASSAGE THERAPY treatment plan that addresses client soft tissue manifestations, needs and concerns, including identifying indications, contraindications and precautions of massage therapy within the scope of ~~this~~ THE act.
- (2) Obtaining informed consent regarding the risks and benefits of the MASSAGE THERAPY treatment plan and application and modification of the MASSAGE THERAPY treatment plan as needed.
- (3) Using effective interpersonal communication in the professional relationship.
- (4) Utilizing an ethical decision making process. ~~Decision-making~~ that conforms to the ethical standards of the profession, as set forth in this chapter and in the codes of ethics of massage therapy professional associations.
- (5) Establishing and maintaining a practice environment that provides for the client's safety and comfort.
- (6) Establishing and maintaining client records, professional records and business records in compliance with § ~~20.42(a)(20)~~ 20.42(A)(19) (relating to standards of professional conduct).

§ 20.14. Student practice.

- (a) A student enrolled in an approved massage therapy program may practice massage therapy by providing services under immediate supervision as part of a clinical training program operated by the school in which the student is obtaining credit.
- (b) A student, while enrolled in an approved massage therapy program, may perform techniques learned in class under indirect supervision.
- (c) A student may not receive payment from the school, or client, OR OTHER SOURCE for PROVIDING MASSAGE THERAPY services ~~provided as part of a clinical training program operated by the school in which the student is obtaining credit~~ ; HOWEVER, A STUDENT MAY ACCEPT A NOMINAL GRATUITY VOLUNTARILY GIVEN BY A CLIENT IN A CLINICAL TRAINING PROGRAM OPERATED BY THE SCHOOL IN WHICH THE STUDENT IS OBTAINING CREDIT.
- ~~(d) A student may accept a nominal gratuity voluntarily given by a client in a clinical training program operated by the school in which the student is obtaining credit.~~
- ~~(e) A student may not receive payment or a gratuity for services provided as part of performing techniques learned in class under indirect supervision, whether the performance is assigned by an instructor as homework or undertaken on the student's own initiative.~~
- (f) Massage therapy schools shall maintain records of services provided by students in a clinical training program for at least 3 years FROM THE LAST DATE OF SERVICE.

~~(g)~~ (E) Students providing services as part of a clinical training program operated by a school shall be clearly identified to the public as students.

LICENSURE

§ 20.21. Application for temporary practice permit, initial licensure and licensure by reciprocity.

- (a) Application forms may be obtained from the Board and are posted on the Board's web site.
- (b) An applicant for licensure shall submit to the Board a completed and signed application form, the application fee as set forth in § 20.3 (relating to fees) and the following documents:
 - (1) A copy of a legal form of identification, such as a valid driver's license, a current passport, or a valid State identification card.
 - (2) An official Criminal History Record Information check ~~sent to the Board directly~~ from the State Police or other state agency for every state in which the candidate has resided during the past 5 years. The reports must be dated within 6 months of the date of application.

- (3) CPR certification, that is valid for at least 6 months following the date of application. A list of BOARD-APPROVED CPR ~~certifying bodies~~ PROVIDERS will be posted on the Board's web site.
 - (4) Proof of graduation from high school or the equivalent.
- (c) An applicant shall request that the applicant's massage therapy school send directly to the Board the applicant's official transcript showing successful completion of ~~study~~ A MASSAGE THERAPY PROGRAM in the ~~required~~ subject matter and hours required by the act and this chapter. If a school is no longer in operation, the Board may accept a copy of the official transcript from the school's record depository.
- (d) An applicant shall provide a written explanation and copies of all relevant documents as requested by the Board if:
- (1) The applicant is under investigation or has ever been denied professional licensure or disciplined by any professional licensing authority of the Commonwealth or any other jurisdiction of the United States or a foreign country.
 - (2) The applicant has surrendered a massage therapy license or other professional license in this Commonwealth or any other jurisdiction of the United States or a foreign country.
 - (3) The applicant has been ~~arrested~~, charged WITH or convicted of a misdemeanor or felony in this Commonwealth or any other jurisdiction of the United States or a foreign country.

- (4) The applicant is unable to practice massage therapy with a reasonable skill and safety by reason of use of alcohol, drugs, narcotics, chemicals or any other type of material.
- (5) The applicant is unable to practice massage therapy with a reasonable skill and safety by reason of illness or as a result of any mental or physical condition.
- (e) An applicant shall verify that the applicant has read, understood and will comply with the act and this chapter.
- (f) An applicant is responsible for ensuring that the Board receives all required documentation. If the application is incomplete, the Board will notify the applicant by means of first class mail, within 8 weeks of the receipt of the application, that the application is incomplete.
- (g) Applicants shall supply the missing documentation within 6 months from the date the application is executed by the applicant. After that time, if the documentation has not been submitted, the application will be denied and the application fee forfeited. An applicant who wishes to reapply shall submit a new application and application fee.
- (h) An applicant whose name changes during the application process or whose name has changed since the applicant completed massage therapy school shall notify the Board in writing and submit, with the notification of name change, the appropriate supporting documentation (such as, marriage certificate, divorce decree, court documents showing a legal name change).

- (i) An applicant whose address changes shall notify the Board in writing and submit both the old and new address to the Board.
- (j) If any other information requested on the application changes after the date the applicant submits the application to the Board for licensure, the applicant shall immediately notify the Board, in writing, of the change. Failure to update an application may subject an applicant to refusal of the license or a licensee to discipline under section 9(a)(4) of the act (63 P.S. § 627.9(a)(4)).

§ 20.22. Procedure for licensure denial.

- (a) The Board will inform the applicant, in writing, of the basis upon which the Board has refused the license. The Board will provide the applicant with an opportunity to demonstrate, at a hearing, that the license should be issued.
- (b) If information submitted with the application indicates that an applicant may be unable to safely practice massage therapy, the Board will require the applicant to CONTACT THE BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS' PROFESSIONAL HEALTH MONITORING PROGRAM AND participate in an evaluation to determine if the applicant can safely practice. An applicant may contest the results of the evaluation at a hearing. The Board will provide an applicant who refuses to participate in an evaluation with an opportunity to demonstrate, at a hearing, that the license should be granted.

- (c) In a case when the Board refuses to issue a license, the Board will issue a written final decision setting forth the grounds for the refusal AND INFORMING THE APPLICANT OF THE APPLICANT'S RIGHT TO A HEARING UNDER SECTION 9(C) OF THE ACT (63 P.S. § 627.9(C)).

§ 20.23. Licensure examinations.

- (a) The Board adopts the NCETM and NCETMB, including the NESL option, and MBLEx as approved examinations for initial licensure under section 7 of the act (63 P.S. § 627.7).
- (b) An individual who plans to take the MBLEx offered by the ~~FSBMT~~ FSMTB shall contact the ~~FSBMT~~ FSMTB directly to apply for examination. The ~~FSBMT~~ FSMTB will issue the candidate an Authorization to Test, which the candidate may use to schedule the examination. Candidates are responsible for registering for the licensure examination date and site. Candidates who are unable to test within 90 days of the date the ~~FSBMT~~ FSMTB issued the candidate's Authorization to Test will be required to reapply as a new candidate subject to all application and fee requirements in place at that time.
- (c) An individual who plans to take the NCETM or NCETMB examinations, including the NESL option offered by the NCBTMB, shall contact the NCBTMB directly to apply for examination. The NCBTMB will issue the candidate an Authorization to Test, which the candidate may use to schedule the examination. Candidates are responsible for registering for the licensure examination date and site. Candidates who are unable to test within 90 days of the date the NCBTMB issued the candidate's Authorization to Test will

be required to reapply as a new candidate subject to all application and fee requirements in place at that time.

~~(d) Fees paid to the FSBMT or NCBTMB are nonrefundable.~~

~~(e) The following standards apply for failure to pass the licensure examinations:~~

~~(1) An applicant who is unsuccessful on any three attempts to pass a licensure examination or combination of licensure examinations shall obtain at least 100 additional hours of instruction in massage therapy at an approved school before the applicant may reexamine.~~

~~(2) An applicant who is unsuccessful an additional two times will not be allowed to retest without completing a massage therapy program of at least 600 hours.~~

§ 20.24. Application requirements for existing practitioners.

(a) Existing practitioners shall submit, by _____ (*Editor's Note: The blank refers to a date 1 year after the effective date of adoption of this proposed rulemaking.*), an application, application fee and the information required under § 20.21(b), (c) and (d) (relating to application for temporary practice permit, initial licensure and licensure by reciprocity) if applicable, and shall be subject to the provisions of § 20.21(e)–(i).

(b) Existing practitioners shall establish that they have conducted a business and been an active participant in that business which was mainly the practice of massage therapy by submitting one of the following:

- (1) A signed copy of the applicant's Federal tax return for the previous year, that lists the applicant's occupation as massage therapist.
 - (2) A signed copy of Schedule C of the applicant's Federal income tax return for the previous year demonstrating that the individual has reported income from the practice of massage therapy.
 - (3) Proof of professional or practitioner membership level or above in a professional association approved by the Board.
 - (4) For applicants who have been employed as massage therapists, a notarized statement from the applicant's employer (on a form provided by the Board) attesting that the individual is a practicing massage therapist, a copy of the employer's business card or letterhead, and a copy of the applicant's Federal W-2 or 1099 form.
- (c) Existing practitioners applying for licensure under section 5(b)(3)(i) of the act (63 P.S. § 627.5(b)(3)(i)) shall demonstrate that they have been in active, continuous practice for at least 5 years immediately preceding October 9, 2010, by submitting one of the following:
- (1) Signed copies of the applicant's tax returns for the past 5 years, each listing the applicant's occupation as massage therapist.
 - (2) Copies SIGNED COPIES of Schedule C of the Federal income tax returns for the past 5 years demonstrating that the applicant has reported income from the practice of massage therapy.

- (3) Proof, SENT DIRECTLY FROM A BOARD-APPROVED PROFESSIONAL ASSOCIATION, of at least 5 years membership at the professional or practitioner level or above in a- THE professional association ~~approved by the Board.~~
- (4) For applicants who have been employed as massage therapists, a notarized letter from the applicant's employer (on a form provided by the Board) attesting that the individual has practiced massage therapy for at least the last 5 years, a copy of the employer's business card or letterhead, and copies of the applicant's Federal W-2 or 1099 forms for the last 5 years.
- (d) Existing practitioners applying for licensure under section 5(b)(3)(ii) of the act shall have the certification agency provide, directly to the Board, evidence that the practitioner passed a massage therapy examination that is part of a certification program accredited by the National Commission for Certifying Agencies.
- (e) Existing practitioners applying for licensure under section 5(b)(3)(iii) of the act shall request that their educational program provide an official transcript directly to the Board to demonstrate that the practitioner completed at least 500 hours of instruction in massage and related subjects. Transcripts generated in a language other than English shall be translated into English at the applicant's expense by a professional translation service and verified to be complete and accurate.
- (f) Existing practitioners applying for licensure under section 5(b)(3)(iv) of the act shall demonstrate, through certificates of completion, official transcript PROVIDED DIRECTLY FROM THE EDUCATIONAL INSTITUTION, or correspondence from the

practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the NESL option of the NCBTMB.

- (g) Existing practitioners applying for licensure under section 5(b)(3)(v) of the act shall demonstrate, through certificates of completion, official transcript provided directly from educational institution, or correspondence from the practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the MBLEx.

§ 20.25. Additional application requirements for applicants for licensure by reciprocity.

- (a) An applicant for licensure by reciprocity shall submit an application form provided by the Board and information required under § 20.21(b)(1)–(3) and (c) (relating to application for temporary practice permit, initial licensure and licensure by reciprocity), and shall be subject to the provisions of § 20.21(d) and (e).
- (b) An applicant for licensure by reciprocity shall have the official licensing authority of every jurisdiction in which the applicant holds a license to practice massage therapy provide the Board with verification that the applicant is a licensee in good standing and documentation of any disciplinary action taken by the jurisdiction's licensing authority.
- (c) An applicant for licensure by reciprocity shall request that the applicant's massage therapy school provide the Board with the applicant's official transcript and verification that the school is recognized by the jurisdiction's licensing authority, accredited by a

National accrediting organization, or authorized to operate by the jurisdiction's Department of Education.

- (d) An applicant for licensure by reciprocity shall provide evidence that the applicant passed the MBLEx, the NCETM, NCETMB or successfully completed the NESL option, or evidence that the applicant obtained original licensure through qualifications equivalent to those for existing practitioners under section 5(b) of the act (63 P.S. § 627.5(b)).

§ 20.26. Application requirements for temporary practice permits.

- (a) An applicant for a temporary practice permit shall submit an application form provided by the Board.
- (b) In addition to the completed application form, an applicant for a temporary practice permit shall comply with the application procedures under § 20.21(b)(1)–(3) and (c) (relating to application for temporary practice permit, initial licensure and licensure by ~~endorsement~~ RECIPROCITY), and shall be subject to the provisions of § 20.21(d) and (e).
- (c) A temporary practice permit will expire on the earlier of 6 months from the date of issuance or on the date the candidate fails the licensure examination.
- (d) Individuals who have been issued a temporary practice permit will be considered licensees for purposes of applying section 9 of the act, pertaining to refusal, suspension and revocation of licenses.

- (e) Individuals who have been issued a temporary practice permit may not hold themselves out as a licensed massage therapist, use the initials L.M.T. or advertise their practice of massage therapy.

LICENSURE RENEWAL AND REACTIVATION

§ 20.31. Expiration, renewal and reactivation of license.

- (a) *Expiration of license.* Licenses expire on ~~(date)~~ JANUARY 31 of each ~~(even/odd)~~ ODD-numbered year BEGINNING IN 2013, regardless of the date of issuance. Licenses are renewable for a 2-year period beginning each ~~(day and month)~~ OCTOBER 31 of each ~~(even/odd)~~ EVEN-numbered year BEGINNING IN 2012. ~~(Editor's note: The blanks for the date and day and month will be added upon publication of final adoption of this proposed rulemaking.)~~
- (b) *Practice prohibited.* A licensee may not practice massage therapy in this Commonwealth after the last day of ~~(month)~~ JANUARY of the renewal year unless the license has been renewed. ~~(Editor's note: The blank for the data and day and month sill be added upon publication of final adoption of this proposed rulemaking.)~~
- (c) *Renewal application.* A licensee shall:
- (1) Apply for licensure renewal online or on the form provided by the Board.
 - (2) Pay the biennial renewal fee as set forth in § 20.3 (relating to fees).
 - (3) Submit proof of current certification in CPR.

- (4) Submit verification of completion of at least 24 hours of Board-approved continuing education.
 - (5) Submit verification that the licensee has read, understood and will comply with the act and this chapter.
- (d) *REPORTING REQUIREMENTS.*
- (1) *Disclosure of licensure or discipline IN ANOTHER JURISDICTION.* A licensee who becomes licensed to practice massage therapy in another jurisdiction shall report this information on the biennial renewal form or within ~~30~~ 90 days of licensure, whichever occurs sooner. Disciplinary action taken in another jurisdiction ~~or the filing of or disposition of any criminal charges~~ shall be reported to the Board on the biennial renewal form or within ~~30~~ 90 days, whichever is sooner.
 - (2) *DISCLOSURE OF THE FILING OF FORMAL CRIMINAL CHARGES (INFORMATION OR INDICTMENT).* A LICENSEE SHALL REPORT, ON THE BIENNIAL RENEWAL FORM OR WITHIN 30 DAYS, WHICHEVER OCCURS SOONER, THE FILING OF ANY CRIMINAL CHARGES, THE LICENSEE'S SENTENCING ON ANY CRIMINAL CHARGES OR THE LICENSEE'S ADMISSION INTO AN ACCELERATED REHABILITATIVE DISPOSITION PROGRAM.

- (e) *Licensure documentation.* Upon renewing a license, a licensee will receive a ~~wallet certificate~~ AN UPDATED LICENSE and wallet-size card that will show the next expiration date of the license. A licensee who renews online may print a temporary license that may be used until the biennial license is received.
- (f) *Inactive status.* A license may be placed on inactive status by the licensee notifying the Board during the online renewal process or in a ~~signed~~, notarized statement that the licensee wishes to have the license marked inactive. The licensee shall immediately return all licensure documents to the Board and may not practice massage therapy in this Commonwealth until the licensee's license is reactivated and renewed.
- (g) *Reactivation.* The holder of an inactive or expired license to practice massage therapy may reactivate and renew the license within 5 years from the date of its expiration by submitting:
- (1) An application to the Board.
 - (2) Payment of the current biennial renewal fee as set forth in § 23.3.
 - (3) Certificates of attendance at continuing education courses required by § 20.32 (relating to continuing education hours; maintenance of certificates of completion) for the previous biennial renewal period.
 - (4) Current CPR certification.
 - (5) An affidavit of non-practice within the Commonwealth.

- (h) *Late fees.* A licensee who practiced massage therapy on an inactive or expired license will be subject to late fees as prescribed by the Bureau of Professional and Occupational Affairs Fee Act (63 P.S. §§ 1401-101 – 1401-501) upon renewal.
- (i) *Disciplinary action authorized.* A licensee who practiced massage therapy on an inactive or expired license may be subject to discipline by the Board under section 9(a)(7) of the act.
- (j) *Demonstration of competence after 5 years.* The holder of an inactive or expired license to practice massage therapy will not be reactivated and renewed if more than 5 years have passed from the date of the license expiration unless the licensee has demonstrated current competence to practice. To demonstrate current competence to practice, a licensee must either prove continuous active practice in another jurisdiction during the past 5 years or achieve a passing score on a licensure examination approved for entry into practice in this Commonwealth.

§ 20.32. Continuing education hours, maintenance of certificates of completion.

- (a) Licensees shall complete a minimum of 24 hours of continuing education in the field of massage therapy as set forth in section 4(6) of the act (63 P.S. § 627.4(6)) and § 20.33 (related to continuing education content and providers) in the 2-year period immediately preceding the application for license renewal. To be creditable, continuing education must meet the requirements for Board approval set forth in this section and § 20.33.

- (b) Licensees shall complete a minimum of 4 ~~contact~~ hours of continuing education in professional ethics in each biennial renewal period.
- (c) ~~A maximum of 6 hours may be earned to meet the biennial requirement by taking any type of correspondence courses, such as online courses, courses on audio/visual media and print courses~~ MINIMUM OF 16 HOURS OF CONTINUING EDUCATION MUST BE EARNED THROUGH CONTACT HOURS.
- (d) Courses for the renewal of the licensee's CPR certification MUST BE EARNED THROUGH CONTACT HOURS AND may not be used to meet the biennial continuing education requirement.
- (e) Licensees shall retain the certificates of completion from continuing education courses for a minimum of 5 years.
- (f) A licensee who is unable to complete the required continuing education shall request a waiver or extension from the Board at least 60 days prior to the expiration of the license. The request must include details about the licensee's illness, emergency or hardship, including documentation such as a letter from the licensee's physician or a copy of the licensee's military orders. The Board will respond in writing either granting or denying a request for waiver or extension.
- (g) Licensees may be audited to ensure their compliance with the continuing education requirements.

§ 20.33. Continuing education content and providers.

- (a) Continuing education must be designed to advance the licensee's professional knowledge and skills related to the practice of massage therapy as defined in section 2 of the act (63 P.S. § 627.2).
- (b) The following continuing education providers are approved to offer creditable continuing education provided they comply with subsections (a), (c) and (d):
 - (1) Schools of massage therapy in this Commonwealth operating under section 5(a)(3) of the act (63 P.S. § 627.5(a)(3)).
 - (2) Schools of massage therapy approved by the Board or accredited by a National accrediting agency recognized by the United States Department of Education.
 - (3) The American Massage Therapy Association and its state chapters.
 - (4) NCBTMB-approved providers.
 - (5) Associated Bodywork and Massage Professionals.
- (c) Continuing education providers shall provide certificates of completion to massage therapists that include the name of the massage therapist, name of the course provider, title of the course, date of the course, and number of hours.
- (d) Continuing education providers shall retain documentation of the participants in their continuing education programs for at least 5 years.

- (e) Providers of continuing education who are not listed in subsection (b) may apply to the Board for approval of a continuing education course by submitting an application and paying the application fee under § 20.3 (relating to fees). The Board will approve only courses that are designed to advance the knowledge and skills of licensees relative to massage therapy as defined in section 2 of the act and that are taught by approved faculty. Approved faculty include massage therapists licensed in the state in which they practice if licensure is required in that state, physical therapists, physicians, professional nurses and chiropractors. Other instructors with demonstrated expertise may be approved on a case-by-case basis. COURSE APPROVAL IS VALID FOR 2 YEARS FROM THE DATE THE COURSE IS FIRST GIVEN FOR CREDIT PROVIDED THE FACULTY AND LEARNING OBJECTIVES ARE UNCHANGED.
- (f) An L.M.T. may submit a course offered by a continuing education provider not listed in subsection (b) by filing an application with the Board for approval of a continuing education course and paying the application fee set forth in § 20.3. The Board will approve only courses that are designed to advance the knowledge and skills of licensees relative to massage therapy as defined in section 2 of the act and that are taught by approved faculty, as set forth in subsection (e).
- (g) The Board reserves the right to reject a continuing education course submitted by a massage therapist who is audited for compliance if the course is outside the scope of practice of massage therapy as defined in the act. A licensee will be notified of the rejection of a course and will be provided the opportunity to apply additional courses the

licensee has taken or to take additional courses to meet the continuing education requirement.

§ 20.34. Penalty for failure to complete continuing education.

(a) APPLICANTS FOR LICENSE RENEWAL SHALL PROVIDE, ON FORMS PROVIDED BY THE BOARD, A SIGNED STATEMENT VERIFYING WHETHER CONTINUING EDUCATION REQUIREMENTS HAVE BEEN MET. Failure to complete a minimum of 24 hours of continuing education in a biennial period may subject a licensee to discipline under section 9(A)(7) of the act (63 P.S. § 627.9(A)(7)) in accordance with the schedule of civil penalties at § 43b.23 (relating to schedule of civil penalties – massage therapists).

~~(b) A licensee who has not completed a minimum of 24 hours of continuing education shall report the number of continuing education hours completed on the biennial renewal application and shall make up the deficiency within 6 months of the expiration date of the massage therapist's license. Failure to accurately report the number of continuing education hours completed may subject the licensee to discipline under section 9(5) of the act (63 P.S. § 627.9(5)).~~

~~(c) A licensee who, under subsection (b), has made up a deficiency in continuing education hours, shall provide copies of the certificates of completion for 24 hours of continuing education upon completion of the deficient hours. The documentation shall be submitted to the Board no later than 1 month following the make-up period (a period 7 months after the end of the biennial renewal period).~~

~~(d) Notwithstanding any civil penalty assessed under subsection (a), failure to provide the Board with certificates of completion under subsection (c) may subject the licensee to additional discipline under section 9(7) of the act.~~

SCOPE AND STANDARDS OF PRACTICE

§ 20.41. Scope of practice.

(a) ~~Massage therapists treat the soft tissue manifestations of the human body, which may include the following~~ APPLY A SYSTEM OF STRUCTURED TOUCH, PRESSURE, MOVEMENT, HOLDING AND TREATMENT OF THE SOFT TISSUE MANIFESTATIONS OF THE HUMAN BODY IN WHICH THE PRIMARY INTENT IS TO ENHANCE THE HEALTH AND WELL-BEING OF THE CLIENT. MASSAGE THERAPY INCLUDES:

(1) THE EXTERNAL APPLICATION OF WATER, HEAT, COLD, LUBRICANTS AND OTHER TOPICAL PREPARATIONS.

(2) LYMPHATIC TECHNIQUES.

(3) MYOFASCIAL RELEASE TECHNIQUES.

(4) THE USE OF ELECTRO-MECHANICAL DEVICES WHICH MIMIC OR ENHANCE THE ACTION OF THE MASSAGE TECHNIQUES.

~~(1) Pain.~~

- ~~(2) — Edema.~~
- ~~(3) — Hypertonicity.~~
- ~~(4) — Hypotonicity.~~
- ~~(5) — Loss of muscular function.~~
- ~~(6) — Muscle atrophy.~~
- ~~(7) — Muscle cramps or spasms.~~
- ~~(8) — Diminished mobility.~~
- ~~(9) — Adhesions/scarring/scar tissue/fascial thickening.~~
- ~~(10) — Restricted lymph flow.~~
- ~~(11) — Restricted blood flow.~~
- ~~(12) — Fascial restrictions.~~
- ~~(13) — Postural deviations.~~
- ~~(14) — Paresthesia.~~
- ~~(15) — Hypersensitivity.~~

(b) Massage therapy practice does not include:

- (1) The diagnosis or treatment of impairment, illness, disease or disability.

- (2) Medical procedures.
- (3) Chiropractic manipulation—adjustment.
- (4) Physical therapy mobilization—manual therapy.
- (5) Therapeutic exercise.
- (6) Ordering or prescribing drugs or treatments for which a license to practice medicine, osteopathic medicine, nursing, podiatry, optometry, chiropractic, physical therapy, occupational therapy, or other healing art is required.
- (7) The application of high velocity/low amplitude force further defined as thrust techniques directed toward joint surfaces.
- (8) The use of equipment or devices that require a prescription (for example, ultrasound, diathermy or electrical neuromuscular stimulation)

(C) LICENSURE UNDER THE ACT SHALL NOT BE CONSTRUED AS REQUIRING NEW OR ADDITIONAL THIRD-PARTY REIMBURSEMENT OR OTHERWISE MANDATING COVERAGE UNDER 75 PA.C.S. CH. 17 (RELATING TO FINANCIAL RESPONSIBILITY) OR THE ACT OF JUNE 2, 1915 (P.L. 736, NO. 338) KNOWN AS THE WORKERS' COMPENSATION ACT.

§ 20.42. Standards of professional conduct.

- (a) A massage therapist shall:

- (1) Maintain current knowledge of the application of massage therapy, including indications, contraindications and precautions.
- (2) Undertake a specific technique or use a product or equipment only if the massage therapist has the necessary knowledge, training or skill to competently execute the technique.
- (3) Base decisions and actions on behalf of a client on sound ethical reasoning and current principles of practice.
- (4) Provide treatment only where there is an expectation that it will be advantageous to the client.
- (5) Refer to an appropriate health care professional when indicated in the interest of the client.
- (6) Discuss with clients which massage therapy modalities and techniques will be utilized and the benefits of these modalities and techniques, the treatment objectives, and that participation is voluntary and that consent to treatment or participation may be withdrawn at any time.
- (7) Obtain written consent prior to performing breast massage.
- (8) Modify or terminate the massage therapy session at any time upon request of the client.

- (9) Keep client information private and confidential. This standard does not prohibit or affect reporting mandated under State or Federal law to protect children, older adults, or others.
- (10) Use safe and functional coverage/draping practices during the practice of massage therapy when the client is disrobed. Safe and functional coverage/draping means that the client's genitals and gluteal cleft and the breast area of female clients are not exposed and that massage or movement of the body does not expose genitals, gluteal cleft or breast area. 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.
- (11) Act to safeguard clients from incompetent, abusive or illegal practices of other massage therapists or caregivers.
- (12) Continuously maintain current CPR certification.
- (13) Be clean, fully-clothed and professional in dress and appearance.
- (14) Display the massage therapist's current license WITH EXPIRATION DATE in a location clearly visible to clients ~~and carry~~ OR, WHEN PRACTICING OFFSITE, DISPLAY the massage therapist's wallet card ~~whenever practicing offsite~~.
- (15) Include the massage therapist's license number in all advertisements.
- (16) Conspicuously display the massage therapist's name and the title L.M.T. or the words "Licensed Massage Therapist" on an identification badge or directly on

clothing worn in the public areas where massage therapy services are being provided.

- (17) Cooperate with the Board, the Department of State or the Bureau of Enforcement and Investigation in the investigation of complaints filed under the act.
 - (18) Provide massage therapy records immediately upon demand of the Board or its authorized agents.
 - (19) Maintain massage therapy records for at least 3 years from the last date that services were provided to the client.
 - (20) Educate clients about maintaining the beneficial effects of massage therapy treatment when indicated by a MASSAGE THERAPY treatment plan.
 - (21) Obtain the written permission of a parent or guardian, or their representative, prior to providing massage therapy services to a minor.
 - (22) Require that a parent or guardian, or their representative, be physically present in the room during treatment of a minor.
- (b) A massage therapist may not:
- (1) Psychologically or physically abuse a client.
 - (2) Violate a client's boundaries with regard to exposure, privacy or disclosure.
 - (3) Utilize techniques that are contraindicated based on the client's condition.

- (4) Falsify or knowingly make incorrect entries into the client's record or other related documents.
- (5) Intentionally expose a client's genitals, gluteal cleft or the breasts of a female client except temporarily to perform therapeutic treatment of the area.
- (6) Engage in sexual harassment, sexual impropriety, sexual violation or sexual abuse.
- (7) Engage in sexual intimacies during the professional relationship.
- (8) Perform or offer to perform any services for clients other than those connected with giving massage therapy treatments as defined in section 2 of the act (63 P.S. § 627.2), unless the massage therapist has additional training and licensure, if required, to perform those services.
- (9) Knowingly permit another individual to use the massage therapist's license or temporary permit for any purpose.
- (10) Knowingly aid, abet or assist another person to violate or circumvent a law or this chapter.
- (11) Misappropriate equipment, materials, property or money from an employer or client.

- (12) Refuse a client's request for a refund for the unearned portion of prepaid or packaged massage therapy services. This provision does not apply to gift certificate purchases.

§ 20.43. Disciplinary procedures.

- (a) A massage therapist whose conduct constitutes a sexual violation or sexual abuse is subject to immediate temporary suspension in accordance with section 9(d) of the act (63 P.S. § 627.9(d)).
- (b) The consent of an individual to engage in conduct defined herein as sexual harassment, sexual impropriety, sexual violation or sexual abuse with a massage therapist is not a defense in any disciplinary action brought under this section.
- (c) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a client is admissible in a disciplinary action brought under this section.

SANITATION, FACILITY AND EQUIPMENT REQUIREMENTS

§ 20.51. Massage therapy treatment areas.

Massage therapists shall maintain their treatment spaces to:

- (1) Provide for client privacy when clients disrobe.

- (2) Provide for heating, cooling and ventilation to enhance client comfort.
- (3) Provide illumination for cleaning.
- (4) Be clean, sanitary and free from mold and contaminants.
- (5) Ensure client safety.

§ 20.52. Massage therapy equipment.

- (a) Massage therapists shall maintain equipment used in the practice of massage therapy in working order.
- (b) Massage therapists shall clean equipment that comes into direct contact with a client's skin between each use.
- (c) Massage therapists shall cover with impervious material and regularly clean cushions on massage tables and massage chairs, as well as bolsters and pillows.
- (d) Massage therapists shall clean face rests, whether covered or uncovered, between each use.

§ 20.53. Topical preparations.

- (a) Massage therapists shall store topical preparations in a manner that maintains the integrity of the product and prevents spoilage and contamination.

- (b) Massage therapists shall dispense topical preparations in a manner that prevents contamination of the unused portion and that prevents cross-contamination between clients.
- (c) Massage therapists shall use topical preparations that come into contact with a client, such as ice cubes, plasters, herbs, seaweed, muds, scrubs, paraffin or any other similar products only once and shall then dispose of the topical preparations in a sanitary manner. Preparations that are not washed away must be placed in a covered receptacle that is emptied at least daily.

§ 20.54. Linens.

- (a) Massage therapists shall store single-service materials, including clean linens, in a manner that maintains their cleanliness.
- (b) Massage therapists shall furnish clean and fresh for the use of each individual client single-service materials, linens and any other items, materials or tools that come into contact with a client's body.
- (c) Massage therapists shall place soiled linens in a covered receptacle or washing machine after use.
- (d) Massage therapists shall wash soiled linens in a clothes washing machine in hot water with detergent and bleach after every use.

Public Comments for 16A-721 General Provisions

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF MASSAGE THERAPY
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October 18, 2010

The Honorable Arthur Coccodrilli, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Redelivery of Final Regulation
State Board of Massage Therapy
16A-721: General Provisions

Dear Chairman Coccodrilli:

Enclosed is a copy of the final rulemaking package of the State Board of Massage Therapy.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Jantsch".

Robert D. Jantsch, Chairperson
State Board of Massage Therapy

RDJ/TL:klh
Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Steven V. Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel & Senior Counsel in Charge
Department of State
Teresa Lazo, Counsel
State Board of Massage Therapy
State Board of Massage Therapy

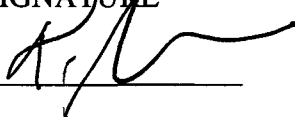
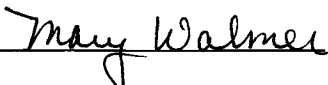
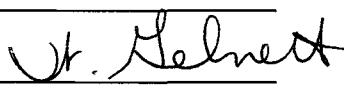
TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER:	16A-721	RECEIVED IRRC 2010 OCT 18 P 2:00
SUBJECT:	GENERAL PROVISIONS	
AGENCY:	DEPARTMENT OF STATE	

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/18/10		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Michael McGeehan</u>
10/18/10		SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Robert Tomlinson</u>
10/18/10		INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL LEGISLATIVE REFERENCE BUREAU

October 18, 2010