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# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	Department of Health
<b>Division:</b>	Board of Massage Licensure
<b>Contact Person:</b>	Francine Baca-Chavez
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	ADA Coordinator
<b>Address:</b>	710 James Robertson Parkway, Andrew Johnson Building, 5th Floor, Nashville, Tennessee 37243
<b>Phone:</b>	(615) 741-6350
<b>Email:</b>	Tina.M.Harris2@tn.gov

## Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Metro Center
Address 2:	665 Mainstream Drive, Iris Conference Room
City:	Nashville, Tennessee
Zip:	37228
Hearing Date :	10/24/16
Hearing Time:	9:00 am
	<input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

## Additional Hearing Information:

### Revision Type (check all that apply):

- Amendment  
 New  
 Repeal

**Rule(s) (ALL** chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0870-01	General Rules Governing Licensed Massage Therapists and Establishments
Rule Number	Rule Title
0870-01-.01	Definitions

0870-01-02	Practice Standards and Inspection of Establishments
0870-01-03	Necessity of Licensure
0870-01-04	Licensure Process
0870-01-05	Establishment Licensure Process
0870-01-06	Fees
0870-01-07	Application Review, Approval, and Denial
0870-01-08	Examination
0870-01-09	Licensure Renewal
0870-01-10	Repealed
0870-01-11	Retirement, Reinstatement, Inactivation, and Reactivation of Licensure
0870-01-12	Continuing Education
0870-01-13	Disciplinary Actions and Civil Penalties
0870-01-14	License
0870-01-15	License Address and Name
0870-01-19	Professional and Ethical Standards for Therapists and Establishments

<b>Chapter Number</b>	<b>Chapter Title</b>
0870-02	General Rules Governing Massage Therapy Educational Programs
<b>Rule Number</b>	<b>Rule Title</b>
0870-02-.01	Definitions
0870-02-.02	Program Approval and Curriculum Requirements
0870-02-.05	Minimum Standards for Directors, Instructors and Classrooms
0870-02-.08	Fees

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0870-01  
General Rules Governing Licensed Massage Therapists and Establishments

Amendments

Rule 0870-01-.01 Definitions is amended by deleting paragraph (16) and renumbering the remaining paragraphs accordingly and is further amended by adding new paragraph (18) and then renumbering the remaining paragraph.

- (18) Responsible person – The individual listed on a massage establishment's licensure application form, who has agreed to be held accountable to the Board for the establishment's compliance with all state statutes and regulations governing massage therapy, among other things.

Authority: T.C.A. §§ 63-18-102, 63-18-104, 63-18-105, 63-18-108, and 63-18-111.

Rule 0870-01-.02 Practice Standards and Inspection of Establishments is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph shall read:

- (1) It is the responsibility of establishment owners and responsible persons to ensure compliance with all provisions of these rules and any violation of these rules may result in disciplinary action or denial of licensure pursuant to T.C.A. § 63-18-108.

Authority: T.C.A. §§ 63-18-104, 63-18-105, 63-18-106, 63-18-108, and 63-18-111.

Rule 0870-01-.02 Practice Standards and Inspection of Establishments is amended by deleting parts (2)(a)1, (2)(a)2, (2)(a)3, (2)(a)6 in their entirety and substituting instead the following language, so that as amended, the new parts shall read:

1. Establishment owners and responsible persons shall ensure and maintain an adequate waiting area for clients.
2. Establishment owners and responsible persons shall maintain properly installed smoke detectors and fire extinguishers in compliance with local fire codes. If there are no local fire codes, there shall be a minimum of one smoke detector and one fire extinguisher per one thousand (1000) square feet of treatment area. If local fire codes require fire inspections, establishment owners shall maintain written documentation of all fire inspections for a period of four (4) years.
3. Massage therapy may be conducted only in rooms which are adequately lighted and ventilated, and so constructed that they can be kept clean. Establishment owners and responsible persons shall ensure that floors, walls, ceilings and windows are kept clean, in good repair and free of pests.
6. Establishment owners and responsible persons shall provide for safe and unobstructed human passage in the public areas of the premises, provide for removal of garbage and refuse, and provide for safe storage or removal of flammable and hazardous materials.

Authority: T.C.A. §§ 63-18-104, 63-18-105, 63-18-106, 63-18-108, and 63-18-111.

Rule 0870-01-.02 Practice Standards and Inspection of Establishments is amended by deleting parts (2)(b)1, (2)(b)2, (2)(b)4 and (2)(b)5 in their entirety and substituting instead the following language, so that as amended, the new parts shall read:

1. Establishment owners and responsible persons are responsible for ensuring that all persons who perform massage therapy in a massage establishment maintain current licensure by the Board pursuant to rule 0870-01-.05.
2. Establishment owners and responsible persons shall maintain in a centralized location a

current copy of the certificate of renewal for each licensed massage therapist providing services at the establishment. A copy of any such certificate shall be made available upon request of any client or any representative of the Board.

4. Establishment owners and responsible persons shall be responsible for maintaining all parts thereof in a sanitary condition at all times, and for otherwise ensuring that such establishment is operated in compliance with this Chapter. However, this rule shall not relieve any individual therapist of responsibility for the sanitary conditions of the space or equipment used in their practice.
5. Establishment owners and responsible persons shall maintain a list of what individuals have provided massage therapy at the establishment during the preceding two years. This list shall be promptly furnished on request by a Board investigator or other representative of the Board.

Authority: T.C.A. §§ 63-18-104, 63-18-105, 63-18-106, 63-18-108, and 63-18-111.

Rule 0870-01-02 Practice Standards and Inspection of Establishments is amended by deleting part (2)(c)1, subparagraph (3)(c), parts (3)(d)3 and (3)(d)4 and subparagraph (3)(e) in their entirety and substituting instead the following language, and is further amended by deleting part (3)(d)5 in its entirety, so that as amended, the new parts and subparagraphs shall read:

1. Establishment owners and responsible persons shall ensure that all equipment and supplies used to perform massage services on the premises are maintained in a safe and sanitary condition.
  - (c) A massage establishment which does not pass its inspection may be subject to discipline or reinspection.
  3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-01-.07.
  4. Failure to submit a reinspection form or fee, or failure to pass a reinspection, may result in disciplinary action.
- (e) Failure to Allow or Appear for Inspection - An establishment whose owner or responsible person refuses to allow an inspection without good cause shall be deemed to have failed the inspection, and the establishment shall comply with the reinspection rule.

Authority: T.C.A. §§ 63-18-104, 63-18-105, 63-18-106, 63-18-108, and 63-18-111.

Rule 0870-01-03 Necessity of Licensure is amended by deleting paragraph (2) in its entirety and substituting the following language, so that as amended, the new paragraph shall read:

- (2) Use of Titles - Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the titles "Massage Therapist (M.T.)" or "Licensed Massage Therapist (L.M.T.)" and to practice as a massage therapist, as defined in T.C.A. § 63-18-102. Any person licensed by the Board to whom this rule applies must use one of the titles authorized by this rule in every advertisement he or she publishes. Failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the massage therapist to disciplinary action pursuant to T.C.A. §§ 63-18-104(b) and 63-18-108(5), and rule 0870-01-.19(1)(m).

Authority: T.C.A. §§ 63-1-123, 63-1-145, 63-1-146, 63-18-102, 63-18-104, 63-18-105, 63-18-108, and 63-18-111.

Rule 0870-01-04 Licensure Process is amended by deleting subparagraphs (1)(c), (1)(f), (1)(g), (1)(k), (1)(m) and paragraph (3) in their entirety and substituting instead the following language, and is further amended by adding new paragraph (4), so that as amended the new parts and subparagraphs shall read:

- (c) Applications will be accepted throughout the year. Supporting documentation required by these rules must be timely received in the Board Administrative Office as provided in rule 0870-01-.08(3) or the file will be closed.

- (f) Applicants shall request that verification of having successfully completed an examination, as provided in Rule 0870-01-.09, be submitted directly from the examining agency or its successor organization to the Board Administrative Office.
- (g) Applicants shall submit evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original signed, dated, and notarized letters from health care professionals that include the professional's licensing credentials and attest to the applicant's personal character and professional ethics. The letters should be drafted on the writer's professional letterhead and include the writer's contact information.
- (k) An applicant shall submit the application fee and state regulatory fee as provided in rule 0870-01-.07.
- (m) Reciprocity Licensure
  - 1. Applicants who are licensed or have been licensed in another state and are seeking reciprocity licensure in Tennessee may do so in one of two ways:
    - i. An applicant may request that one or more transcripts compliant with Rule 0870-01-.05(1)(e)1-4 and verification of having successfully completed an approved competency examination as provided in 0870-01-.09 be submitted directly to the Board Administrative Office; or
    - ii. An applicant can avoid the educational requirements of rule 0870-01-.05(1)(e)1-4 if they qualify under the terms of Tennessee Code Annotated § 63-18-116. Such applicants must request that proof from the NCBTMB of their certification for the five (5) year period immediately preceding application for licensure be submitted directly to the Board Administrative Office and must submit documentation satisfactory to the Board that they have engaged in the practice of massage therapy in another state for the five (5) year period immediately preceding application for licensure.
  - 2. All applicants for reciprocity licensure must submit proof of having successfully completed five (5) classroom hours of instruction regarding Tennessee massage statutes and regulations and ten (10) classroom hours of ethics instruction, as required in rule 0870-01-.05(1)(e)4. and 5. These hours shall not be self directed.
- (3) Application review and all licensure decisions shall be governed by Rule 0870-01-.08.
- (4) Applicants who graduated from schools that are no longer in operation may be asked to submit additional documentary evidence of their education.

Authority: T.C.A. §§ 63-1-104, 63-18-104, 63-18-105, 63-18-108, 63-18-111, 63-18-112, and 63-18-116.

Rule 0870-01-.05 Establishment Licensure Process is amended by deleting paragraphs (2), (9), and (15) in their entirety, and substituting instead the following language, and is further amended by adding new paragraphs (16) and (17), so that as amended, the new paragraphs shall read:

- (2) An applicant/responsible person need not be licensed as a massage therapist. However, all persons who provide massage therapy on the premises must be licensed pursuant to rule 0870-01-.05. Failure to comply with this provision may result in the denial or revocation of the establishment license.
- (9) An applicant shall submit the establishment application fee and state regulatory fee as provided in rule 0870-01-.07.
- (15) An establishment that wishes to change its responsible person must submit a new application, comply with rule 0870-01-.06(5), (7), (8), (10), (11), and (13). An establishment application fee, a new initial license fee, and regulatory fee shall not be collected.

- (16) An establishment wishing to change its address must apply for an establishment license for the new address.
- (17) Application review and licensure decisions shall be governed by rule 0870-01-08.

Authority: T.C.A. §§ 63-1-104, 63-18-104, 63-18-105, 63-18-108, and 63-18-111.

Rule 0870-01-06 Fees is amended by deleting subparagraph (2)(h) in its entirety and substituting instead the following language, so that as amended, the new subparagraph shall read:

(h) Reinspection fee \$110.00

Authority: T.C.A. §§ 63-1-103, 63-1-107, 63-1-108, 63-1-112, 63-18-104, 63-18-105, 63-18-106, and 63-18-111.

Rule 0870-01-07 Application Review, Approval, and Denial is amended by deleting paragraph (7) in its entirety and substituting instead the following language, so that as amended, the new paragraph (7) shall read:

- (7) If the Board finds it has erred in the issuance of any type of license, the Board will give written notice by certified mail of its intent to revoke the license. The notice will allow the applicant the opportunity to meet the requirements for licensure within thirty (30) days from the date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke the license, the applicant shall have the right to proceed according to rule 0870-01-08(5)(b).

Authority: T.C.A. §§ 63-1-142, 63-18-104, 63-18-105, 63-18-108, 63-18-109, 63-18-111, and 63-18-112.

Rule 0870-01-08 Examination is amended by deleting paragraph (1) and subparagraphs (2)(a) and (2)(b) in their entirety and substituting instead the following language, so that as amended, the new paragraph and subparagraph shall read:

- (1) With the exception of applicants qualifying pursuant to Rule 0870-01-05(1)(m)1.(ii) or Rule 0870-01-06, all persons intending to apply for licensure must successfully complete one (1) of the competency examinations adopted by the Board pursuant to this Rule as a prerequisite to licensure. Such examinations must be completed prior to application for licensure. Evidence of successful completion must be submitted by the examining agency directly to the Board Administrative Office as part of the application process contained in Rule 0870-01-05.
  - (a) The MBLEx and/or its successor examination. Application to take the exam, proof of having successfully completed a massage, bodywork, and/or somatic therapy curriculum(s) as provided in subparagraph 0870-01-05(1)(f), and fees necessary to take the exam must be sent to the FSMTB, not to the Board.
  - (b) Any other Board-approved examination - Application for, proof of having successfully completed a massage, bodywork, and/or somatic therapy curriculum(s) as provided in subparagraph 0870-01-05(1)(f), and fees necessary to take a Board-approved examination must be sent to such exam's testing agency and not to the Board.

Authority: T.C.A. §§ 63-18-104, 63-18-105, 63-18-111, 63-18-112, and 63-18-116

Rule 0870-01-09 Licensure Renewal is amended by deleting parts (1)(c)2 and subparagraph (2)(c) in their entirety and substituting instead the following language, and is further amended by adding new part (1)(c)3 and new subparagraph (2)(d), so that as amended, the new parts and subparagraphs shall read:

2. The renewal and state regulatory fees as provided in rule 0870-01-07.
  3. For establishment licenses, a list of the massage therapists currently working at that location.
- (c) Submission of proof of compliance with the continuing education requirements of rule 0870-01-12; and
  - (d) For massage establishments, a list of the massage therapists that will be working at that location.

Authority: T.C.A. §§ 63-1-107, 63-18-104, 63-18-106, and 63-18-111.

Rule 0870-01-10 Repealed is amended by deleting the rule in its entirety and renumbering the remaining rules.

Authority: T.C.A. §§ 63-18-104 and 63-18-111.

Rule 0870-01-11 Retirement, Reinstatement, Inactivation, and Reactivation of Licensure is amended by deleting subparagraphs (2)(b) and (4)(b) and paragraph (5) in their entirety and substituting the following language, so that as amended, the new subparagraphs and paragraph shall read:

- (2) (b) Pay the licensure renewal fee and state regulatory fee as provided in rule 0870-01 .07.
- (4) (b) Pay the establishment biennial licensure renewal fee and state regulatory fee as provided in rule 0870-01-07, and
- (5) Application review and decisions required by this rule shall be governed by rule 0870-01-08.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-111, 63-18-104, 63-18-106, and 63-18-111.

Rule 0870-01-12 Continuing Education is amended by deleting paragraph (1) and subparagraphs (1)(a), (1)(b), (1)(c), and (1)(d), but not its parts, in their entirety and substituting instead the following, and is further amended by adding new subparagraphs (1)(e) and (1)(f), so that as amended, the new paragraph and subparagraphs shall read:

- (1) All massage therapist licensees must complete twenty four (24) hours of continuing education every two (2) calendar years, as a prerequisite to licensure renewal. The first two year cycle for continuing education ran from January 1, 2003 to December 31, 2004 and shall continue on two year cycles thereafter.
  - (a) Continuing education credit shall only be awarded for those courses which are approved by the Board pursuant to paragraph (5) of this Rule. The Board approves courses for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once toward the twenty-four (24) hour requirement of any two-year cycle, regardless of the number of times the course is attended or completed by any licensee.
  - (b) Two (2) of the twenty-four (24) hours requirement shall pertain to Tennessee statutes and rules concerning massage therapists and establishments. The two (2) hour courses must be approved by the Board.
  - (c) Two (2) of the twenty-four (24) hours requirement shall pertain to the management of practicing massage therapy, professional ethics or substance abuse.
  - (d) Eight (8) of the twenty-four (24) hours requirement may be completed in any of the following multi-media formats:
  - (e) The maximum of eight (8) hours earned in multi-media formats per continuing education cycle shall apply regardless of whether the hours are earned to comply with the current cycle, as makeup hours for a prior cycle, or for any other reason.
  - (f) A licensee whose massage therapist license was retired for a portion of the two-year cycle is required to obtain a total of one hour of continuing education for each month the license was active, except that the licensee must obtain at least four (4) hours: two (2) hours pertaining to Tennessee statutes and rules as specified in 0870-01-12(1)(b) and two (2) hours pertaining to management of practicing massage therapy, professional ethics or substance abuse as specified in 0870-01-12(1)(c).

Authority: T.C.A. § 63-18-111.

Rule 0870-01-12 Continuing Education is amended by deleting paragraph (2) in its entirety and substituting instead the following language, and is further amended by inserting new paragraph (3) and renumbering the

remaining paragraphs, so that as amended, the new paragraphs shall read:

- (2) Initial massage therapist licensees shall have their required continuing education hours pro-rated over the remaining months of the two (2) year cycle in which they become licensed according to the following chart.

First Year of the Cycle		Second Year of the Cycle	
Month Licensed	Hours Required	Month Licensed	Hours Required
January	24	January	13
February	24	February	12
March	23	March	11
April	22	April	10
May	21	May	9
June	20	June	8
July	19	July	7
August	18	August	6
September	17	September	5
October	16	October	4
November	15	November	4
December	14	December	4

- (3) Massage establishment owners and responsible persons who are not licensed massage therapists must complete an approved two (2) hour continuing education course pertaining to Tennessee statutes and rules concerning massage therapists and establishments every two year cycle.

Authority: T.C.A. §§ 63-18-111.

Rule 0870-01-.12 Continuing Education is amended by deleting newly-numbered part (5)(b)1, subpart (5)(b)1(i), and parts (5)(b)5 and (5)(b)6 and substituting instead the following language, so that as amended, the new parts and subparts shall read:

1. Associations, corporations, or organizations authorized as a provider by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or the Federation of State Massage Therapy Boards (FSMTB). Provided however, any provider approved by any organization identified in this part who intends to include in their course the hours necessary to meet the requirements of subparagraph 0870-01-.12(1)(b) of this rule must nevertheless comply with all of the following before those hours can be presented:
  - (i) The provider must submit the course materials for those hours for review and approval pursuant to subparagraph (5)(c) of this rule; and
5. Massage continuing education courses offered by colleges, universities, or massage schools approved by the United States Department of Education, the Tennessee Higher Education Commission or the Tennessee Board of Regents.
6. Formal educational courses relating directly to the theory or clinical application of massage therapy sponsored by an accredited college/university or institution approved by the Tennessee Higher Education Commission, Board of Regents or its equivalent in another state(s). If such course is taken for or assigned quarter or semester credit hours, each semester hour or equivalent quarter hour shall be equivalent to five (5) continuing education hours. No credits will be counted for courses not passed.

Authority: T.C.A. §§ 63-18-111.

Rule 0870-01-.12 Continuing Education is amended by deleting newly-numbered subparagraphs (5)(c) in its entirety and subparagraph (5)(d), but not its parts, and substituting instead the following language, and is further amended by adding new part (5)(c)6 and renumbering the remaining parts, so that as amended, the new parts and subparts shall read:

- (c) If a sponsor is unable to obtain or chooses not to obtain approval pursuant to subparagraph (5)(b)

of this rule, the sponsor may request Board approval by submitting the following information to the Board Administrative Office at least forty five (45) days prior to the proposed or scheduled date of the course:

6. A prospective approximate start date on which the sponsor intends to begin offering the course.
- (d) Individual licensees may receive continuing education credit for courses presented out of state with the Board's prior approval. To obtain approval, the individual should submit the following to the Board Administrative Office:

Authority: T.C.A. §§ 63-18-111.

Rule 0870-01-12 Continuing Education is amended by adding new subparagraph (7)(b) and deleting newly numbered subparagraphs (7)(c) and (7)(d) and substituting instead the following language, so that as amended, the new subparagraphs shall read:

- (b) A licensee who applies for reactivation or reinstatement will also be required to submit evidence of having completed the continuing education required pursuant to rule 0870-01-12 during the most recent cycle in which the applicant's license was active.
- (c) The continuing education hours required by the provisions of subparagraph (7)(a) of this rule may not be counted toward the continuing education hours required to be obtained before the end of the renewal period of reactivation or reinstatement.
- (d) The Board may grant a waiver of the continuing education requirements set out in subparagraph (7)(a) of this rule, as provided in paragraph (6) of this rule.

Authority: T.C.A. §§ 63-18-111.

Rule 0870-01-13 Disciplinary Actions and Civil Penalties is amended by deleting part (3)(a)3 in its entirety and substituting instead the following language, so that as amended, the new part shall read:

3. A Type C civil penalty may be imposed whenever the Board finds the person required to be licensed, permitted, or authorized by the Board is guilty of a violation of T.C.A. § 63-18-101, et seq. or regulations promulgated pursuant thereto, which is neither directly detrimental to the clients or public, nor directly impacts their care, but has only an indirect relationship to client care or the public. Type C civil penalties may be assessed in the amount of not less than \$1 and not more than \$100.

Authority: T.C.A. §§ 63-18-106, 63-18-108, 63-18-109, and 63-18-111.

Rule 0870-01-14 License is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph shall read:

- (2) Replacement License - A licensee whose initial or renewal license has been lost or destroyed may be issued a replacement license upon receipt of a signed, written request in the Board Administrative Office. The licensee shall include in such request the facts concerning the loss or destruction of the original license and include the required fee pursuant to Rule 0870-01-07.

Authority: T.C.A. §§ 63-1-106, 63-1-108, 63-1-109, 63-1-118, 63-6-106, 63-18-104, and 63-18-111.

Rule 0870-01-15 License Address and Name is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph shall read:

- (3) Change of Establishment Name - A licensed massage establishment shall notify the Board in writing each time the establishment's name changes no more than thirty (30) days after such change is effective. Such notification shall include the establishment's license number and old and new names. The establishment must also pay the replacement license fee, pursuant to rules 0870-01-07(1)(f) and 0870-01-07(2)(f).

Authority: T.C.A. §§ 63-1-106, 63-1-108, and 63-18-111.

Rule 0870-01-19 Professional and Ethical Standards for Therapists and Establishments is amended by deleting paragraph (1) and substituting the following language, so that as amended, the new paragraph shall read:

- (1) The Board requires licensed therapists and licensed establishments to uphold professional and ethical standards that allow for the proper discharge of their responsibilities to those served, that protect the integrity of the profession, and that safeguard the interests of individual clients. To ensure compliance with these professional ethical standards, licensed therapists, and, when applicable, licensed establishments, must:
- (a) Accurately inform clients, other health care practitioners, and the public of the scope and limitations of their discipline; and
  - (b) Acknowledge the limitations of and contraindications for massage and bodywork and, when appropriate, refer clients to appropriate health professionals; and
  - (c) Avoid any interest, activity or influence which might be in conflict with the licensee's obligation to act in the best interests of the client or the profession; and
  - (d) Comply with all applicable Tennessee statutes and regulations as well as Orders issued by the Board pursuant to its disciplinary and/or declaratory order authority; and
  - (e) Conduct their business and professional activities with honesty and integrity, and respect the inherent worth of all persons; and
  - (f) Consistently maintain and improve professional knowledge and competence, striving for professional excellence through regular assessment of personal and professional strengths and weaknesses and through continued education training; and
  - (g) Exercise the right to refuse to treat any person or part of the body for just and reasonable cause; and
  - (h) Have a sincere commitment to provide the highest quality of care to those that seek their professional services; and
  - (i) Provide treatment only where there is reasonable expectation that it will be advantageous to the client; and
  - (j) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-02-03, from dating or having a sexual relationship with any student of such program while the student is enrolled, including the period of time between semesters of attendance; and
  - (k) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-02-03, from soliciting any student of such program to be a client or customer for massage therapy services while the student is enrolled, including the period of time between semesters of attendance; and
  - (l) Refrain from providing services when the licensee is either physically or mentally incapable of safely doing so. The term "safely" as used in this rule means safety of the massage therapists and anyone they come in contact with during the course of professional practice; and
  - (m) Represent their qualifications honestly, including their educational achievements and professional affiliations, and provide only those services which they are qualified and licensed to perform; and
  - (n) Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, and autonomy, as well as the client's reasonable expectations of professional behavior; and
  - (o) Respect the client's right to refuse, modify, or terminate treatment regardless of prior consent given; and

- (p) Respect the client's right to treatment with informed and voluntary consent by obtaining and recording informed voluntary written consent of the client, or client's advocate, before performing:
  - 1. Therapeutic treatments beyond the normal narrowing of the ear canal and normal narrowing of the nasal passages; and
  - 2. Therapeutic treatments in the oropharynx; and
  - 3. Therapeutic same-gender breast massage.
- (q) Respect the client's right to treatment with informed and voluntary consent by obtaining and recording informed voluntary written or verbal consent of the client, or client's advocate, before providing treatment other than the treatments identified in subparagraph (1)(m) of this rule; and
- (r) Safeguard the confidentiality of all client information, unless the client provides written permission to release such information; or
  - 1. Unless such information is requested during a formal investigation by representatives of the State of Tennessee or other law enforcement agencies; or
  - 2. Unless required to do so pursuant to any action in a court of law; or
  - 3. Where required by law to report to state or federal agencies.
- (s) Refrain from practicing in an unlicensed establishment.
- (t) Launder or sanitize, before reuse, all materials, equipment and supplies utilized for each client.

Authority: T.C.A. §§ 63-18-108 and 63-18-111.

Chapter 0870-01  
General Rules Governing Licensed Massage Therapists and Establishments

New Rule 0870-01-02

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0870-01-02 Standards and Requirements for Draping; Prohibition of Sexual Activity; Prohibited Treatments.

(1) Proper draping technique is of the utmost importance when performing massage therapy to ensure the

comfort and safety of the therapist and the client. At all times massage therapists must provide draping and treatment in a way that ensures the safety, comfort and privacy of the client.

- (2) Before beginning a massage, the therapist must explain to the client the draping techniques that will be used and provide the client a clean drape large enough for the purpose of draping the buttocks and genitalia and, in the case of female clients, the breasts. Such body parts must remain covered except during therapeutic treatment of those specific areas, with the exception of the genitalia, which shall always remain covered.
- (3) Sexual conduct, sexual activity, or sexualizing behavior involving a client is strictly prohibited at all times. A massage therapist may not initiate, arrange for, or engage in such activities, including if the client attempts to sexualize the relationship.
- (4) Massage therapists must refrain, under all circumstances, from providing the following treatments, which are prohibited and not within the scope of practice for massage therapists:
  - (a) Treatments to the anus or anal canal, including, but not limited to, colonic irrigations and enemas;
  - (b) Cross-gender breast massage;
  - (c) Treatments to the genitals.

Authority: T.C.A. 4-5-202, 4-5-204, 63-18-108, 63-18-111

Chapter 0870-02  
General Rules Governing Massage Therapy Educational Programs

Amendments

Rule 0870-01-01 Definitions is amended by deleting paragraphs (5) and (6) in their entirety and renumbering the remaining paragraphs.

Authority: T.C.A. §§ 63-18-111, and 63-18-115.

Rule 0870-02-02 Program Approval and Curriculum Requirements is amended by deleting subparagraph (2)(b), in its entirety and substituting the following language, so that as amended, the new subparagraph shall read:

- (b) The program director may, at the discretion of the Board, be required to appear before the Board as part of the initial approval process. The curriculum shall be presented at the meeting.

Authority: T.C.A. §§ 63-1-136, 63-18-111, and 63-18-115.

Rule 0870-02-02 Program Approval and Curriculum Requirements is amended by deleting paragraph (3), including its subparagraphs and parts, in its entirety and substituting the following language, so that as amended, the new subparagraph shall read:

- (3) The Board-approved program shall adhere to the following minimum standards:
  - (a) Instructor/student ratio shall be at least one (1) instructor to every fourteen (14) students for any hands-on class;
  - (b) The program curriculum shall include, but not be limited to, the topics contained in the MBLEx or other current examination approved by the Board, content outline at the time of admission of the student. The program shall, at a minimum, consist of five hundred (500) classroom hours and must contain:
    1. Two hundred (200) classroom hours of sciences including, but not limited to, anatomy, physiology-Western and/or/Eastern, kinesiology, pathology, HIV/AIDS and blood-borne pathogens, and hygiene (including standard precautions). Other sciences related to the human body may be included with Board approval.

2. Two hundred (200) classroom hours of basic massage theory and practice including, but not limited to, history, benefits, indications, contraindications, demonstration and supervised practice, client assessment/evaluation, soft tissue manipulations including: gliding, kneading, friction, compression, vibration, percussion, stretching, joint movements, draping, positioning, turning, feedback, charting/documentation, proper body mechanics, and self-care.
  3. Eighty-five (85) classroom hours of related subjects including, but not limited to, business standards of practice, communication skills, CPR/First Aid, the Americans with Disabilities Act, referral methods, specialized populations, and specialized and adjunct therapies/modalities (including hydrotherapy).
  4. Ten (10) classroom hours of ethics instruction.
  5. Five (5) classroom hours regarding Tennessee massage statutes and regulations.
- (c) The program catalog, program syllabus, policies, procedures and the handbook or brochure regarding the approved examination, current content outline and eligibility criteria, are to be distributed on or before the first (1st) class session.
- (d) The program shall ensure that each graduating class shall have received a minimum of two (2) hours classroom presentation prior to graduation by the impaired professional assistance program contracted by the Board. Both the program and the impaired professional assistance program shall each maintain documentation of each presentation reflecting the date, time and attendance of the presentation and shall make such documentation available upon request by the Board. Failure to comply with this provision may subject the program to withdrawal of program approval.
- (e) The program must document that each student has signed and dated an acknowledgement that they understand the requirements for licensure, specifically the provisions and the Board's policies regarding criminal convictions, prior to enrollment in the program.
- (f) The program must document that each student has signed and dated an acknowledgement that they are prohibited from receiving any form of compensation for massage, including but not limited to tips, gift cards, donations, etc., while enrolled in the program.
- (g) The program must have a written policy on the accepted pass-fail rates or grading system used by the program.
- (h) The program must have a written protocol or policy on the mechanism to evaluate a student's performance. At least one (1) evaluation is required within the first half of the program.
- (i) The program shall create and maintain records on each student, including official transcripts, in compliance with the rules of the Tennessee Higher Education Commission or the Tennessee Board of Regents.
- (j) Upon request, the program shall provide a copy of the transcript to the student upon completion of or withdrawal from the program. The student must comply with the enrollment agreement to receive a copy.
- (k) The transcript shall comply with all THEC requirements concerning what must be included on official transcripts.
- (l) The program shall notify the Board of any change in directorship and/or instructors within ten (10) days of hire or discharge. Documentation of the training and experience of any new hires must be received within ten (10) days of hire.
- (m) The program shall notify the Board within ten (10) days of any changes made in the operation of the school such as a change of ownership, director of education, institutional director, location, and/or approval status with THEC or TBR;

- (n) At any time, designees of the Department of Health or other state agencies shall be provided full access to program materials, examinations, and the classroom during instruction. Failure to provide access pursuant to this provision may subject the provider to withdrawal of program approval.
- (o) A member of the Board or a Board designee may issue preliminary program approval subject to subsequent Board ratification.
- (p) The program must have a written policy on the dismissal of students.

Authority: T.C.A. §§ 63-1-136, 63-18-111, and 63-18-115.

Rule 0870-02-05 Minimum Standards for Directors, Instructors, and Classrooms is amended by deleting paragraph (2), including its subparagraphs, and substituting instead the following language, so that as amended, the new paragraph shall read:

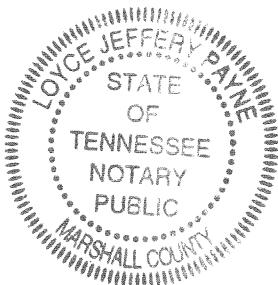
- (2) Classrooms. Classrooms must be appropriately equipped to promote effective instruction.

Authority: T.C.A. §§ 63-18-111, and 63-18-115.

Rule 0870-02-08 Fees is amended by deleting the rule, including the rule title, in its entirety.

Authority: T.C.A. §§ 63-18-111, and 63-18-115.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



Date: August 26, 2016

Signature: Francine Baca - g

Name of Officer: Francine Baca-Chavez

Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 8/26/2016

Notary Public Signature: Tre Hargett

My commission expires on: June 29, 2020

**Department of State Use Only**

Filed with the Department of State on: 8/26/16

A handwritten signature of Tre Hargett.

Tre Hargett  
Secretary of State

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