

Notice of Rulemaking Hearing

Tennessee Massage Licensure Board

There will be a hearing before the Tennessee Massage Licensure Board to consider the promulgation of amendments to rules and new rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, 63-18-115, and 63-18-116. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Department of Health Conference Center's Poplar Room on the First Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CST) on the 18th day of December, 2007.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243 (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

Substance of Proposed Rules

Amendments

Chapter 0870-01

General Rules Governing Licensed Massage Therapists and Establishments

Chapter 0870-02

General Rules Governing Massage Therapy Educational Programs

Rule 0870-01-.01 Definitions, is amended by deleting paragraph (7) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (16) in its entirety and renumbering the remaining subparagraphs accordingly, so that as amended, the new paragraph (7) shall read:

- (7) Closed File - An incomplete or denied file which has been rendered inactive by an administrative action.

Authority: T.C.A. §§ 63-18-111 and 63-18-116.

Rule 0870-01-.02 Practice Standards and Inspection of Establishments, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraph (2) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraph (2) (a) in its entirety and substituting instead the following language, and is further amended by inserting the following language as part (2) (b) 2. and renumbering the current parts (2) (b) 2., (2) (b) 3. and (2) (b) 4. as parts (2) (b) 3., (2) (b) 4. and (2) (b)

5., and is further amended by deleting part (2) (c) 1. in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (2) (d) in its entirety, and is further amended by deleting paragraph (3) in its entirety and substituting instead the following language, and is further amended by deleting paragraphs (4) and (5) in their entirety, so that as amended, the new catchline, the new paragraph (2) but not its subparagraphs, the new subparagraph (2) (a), the new parts (2) (b) 2. and (2) (c) 1., and the new paragraph (3) shall read:

0870-01-.02 Establishment Standards and Inspections.

(2) Standards for Massage Establishments, Personnel, and Equipment

(2) (a) Massage Establishments Standards - The holder of a massage establishment license must comply with all of the following:

1. Each facility must have one (1) of the following:
 - (i) Written proof of being fully sprinklered with a smoke detection system; or
 - (ii) Written proof of a sprinkler system, and a smoke detector within one hundred (100) feet of every room in which massages are provided on each floor; or
 - (iii) In the absence of a sprinkler system on each floor, the facility must have a functioning fire extinguisher within one hundred (100) feet of every room in which massages are provided on each floor, and either:
 - (I) Written documentation of compliance with local fire codes; or
 - (II) A smoke detector within one hundred (100) feet of every room in which massages are provided on each floor.
2. Floors, walls, ceilings and windows shall be kept clean, in good repair and free of pests.
3. Rest Rooms. Every establishment shall contain rest room facilities; including at least one flushing toilet, equipped with toilet tissue, from which the waste water shall be discharged into a sewage system acceptable to the Department of Environment and Conservation. Establishments located in buildings housing multiple businesses under one (1) roof such as arcades, shopping malls, terminals, hotels, etc., may substitute centralized toilet facilities. Such central facilities shall be within three hundred (300) feet of the massage establishment.
 - (i) Hand cleansing capabilities for the therapists must be located within twenty (20) feet of the treatment area and each establishment shall have at least one (1) sink with running water within three hundred (300) feet of the treatment area; and
 - (ii) Shall be equipped with soap dispenser and soap or other hand cleaning materials, clean towels or other hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle; and

- (iii) Such facilities and all of the foregoing fixtures and components shall be kept clean, in good repair, and free of pests.
 - 4. Provide for safe and unobstructed passage in the public areas of the premises.
 - 5. Provide for removal of garbage and refuse.
 - 6. Flammable and hazardous materials must be stored or removed.
- (2) (b) 2. Establishment owners shall maintain in a centralized location a current copy of the certificate of renewal for all licensed massage therapists 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.
- (2) (c) 1. Maintain all equipment and supplies used to perform massage services on the premises in a safe and sanitary condition.
- (3) Inspection of Establishments - Licensed massage therapy establishments are subject to initial inspections and periodic subsequent inspections by the Board or its authorized representative(s) during normal and customary business hours. Inspections may be announced or unannounced.
- (a) The purpose of inspection of establishments is to verify compliance with the establishment standards of this rule and verify that the establishment and all licensed massage therapists while providing services have their licenses conspicuously displayed on the premises.
 - (b) The establishment license may be subject to disciplinary action, pursuant to Rule 0870-01-.13, when the inspection reveals that the establishment does not meet the standards and requirements set by this rule or when the inspection reveals that the license of any massage therapist providing services at the establishment is not current, or has been suspended or revoked.
 - (c) A massage establishment which receives an inspection score of eighty-five (85) or higher achieves a passing score on the inspection. A massage establishment which receives an inspection score of eighty-four (84) or below does not pass the inspection.
 - (d) Reinspection - When an establishment does not pass inspection, the establishment shall submit an application for reinspection.
 - 1. The inspector shall provide the establishment with an application for reinspection.
 - 2. The application shall be submitted to the Board's administrative office within thirty (30) days after the failed inspection.
 - 3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-01-.06.
 - 4. The Board's Unit Director, Manager, or Designee shall cause to have the reinspection scheduled.

- (e) Failure to Allow or Appear for Inspection - An establishment whose owner or operator fails to allow an inspection to be scheduled shall be deemed to have failed the inspection. An establishment whose owner or operator does not appear for his/her scheduled inspection shall be deemed to have failed the inspection unless the Board's administrative office or the Board's authorized representative is notified at least twenty-four (24) hours prior to the scheduled appointment time for inspection. A subsequent scheduled inspection shall be considered a reinspection. When a reinspection is necessitated, the following shall occur:
1. The Board's administrative office shall provide the establishment with an application for reinspection.
 2. The establishment's owner or operator shall submit the reinspection application to the Board's administrative office within ten (10) days after the establishment received the application.
 3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-01-.06.
 4. The Board's Unit Director, Manager, or Designee shall cause to have the reinspection scheduled.

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

Rule 0870-01-.04 Licensure Process, is amended by deleting part (1) (f) 2. in its entirety and substituting instead the following language, and is further amended by deleting part (1) (f) 3. in its entirety, so that as amended, the new part (1) (f) 2. shall read:

- (1) (f) 2. Request that verification of having successfully completed one (1) of the exams provided in Rule 0870-01-.08 be submitted directly from the N.C.B.T.M.B., or its successor organization or the appropriate testing agency to the Board Administrative Office; or

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

Rule 0870-01-.05 Establishment Licensure Process, is amended by deleting paragraphs (2) and (3) in their entirety and substituting instead the following language, and is further amended by deleting subparagraphs (5) (a) and (5) (b) in their entirety, so that as amended, the new paragraphs (2) and (3) shall read:

- (2) An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The applicant shall submit the application along with all required documentation and fees to the Board Administrative Office, at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243. It is the intent of this rule that activities necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed as close to simultaneously as possible.
- (3) "Applicant," for purposes of this rule shall mean the person under whose name the massage establishment shall be licensed. The applicant need not be licensed as a massage therapist. However, all persons who provide massage therapy on the premises must be licensed in compliance with rule 0870-01-.04.

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

Rule 0870-01-.06 Fees, is amended by deleting subparagraphs (1) (h) (2) (a), (2) (b), (2) (c), (2) (d) and (2) (h) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (h), (2) (a), (2) (b), (2) (c), (2) (d) and (2) (h) shall read:

(1) (h) Reinspection Fee - A non-refundable fee to be paid when an establishment does not pass inspection, or fails to allow an inspection to be scheduled, or does not appear for a scheduled inspection, or changes address because of moving to a new location.

(2) (a) Individual Application Fee - Which includes:

1.	Application Fee	\$ 65.00
2.	Initial Licensure Fee	\$165.00
3.	State Regulatory Fee	<u>\$ 10.00</u>
	Total application fee due at the time of application.	\$240.00

(2) (b) Establishment Application Fee - Which includes:

1.	Application Fee	\$ 75.00
2.	Initial Licensure Fee	\$100.00
3.	State Regulatory Fee	<u>\$ 10.00</u>
	Total application fee due at the time of application.	\$185.00

(2) (c) Individual Biennial Licensure Renewal Fee \$165.00

(2) (d) Establishment Biennial Licensure Renewal Fee \$110.00

(2) (h) Reinspection Fee

1.	due to a failed inspection or for failure to allow or to appear for inspection	\$110.00
2.	due to a change of address because of moving to a new location	\$ 90.00

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

Rule 0870-01-.08 Examinations, is amended by deleting subparagraphs (2) (a) and (2) (b) in their entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraphs (2) (c) and (2) (d), and paragraph (3), so that as amended, the new subparagraphs (2) (a), (2) (b), (2) (c) and (2) (d), and the new paragraph (3) shall read:

(2) (a) The N.C.B.T.M.B.'s and/or its successor organization's National Certification Examination for Therapeutic Massage (NCETM); or

- (2) (b) The N.C.B.T.M.B.'s and/or its successor organization's National Certification Examination for Therapeutic Massage and Bodywork (NCETMB); or
- (2) (c) The N.C.B.T.M.B.'s and/or its successor organization's National Examination for States Licensing (NESL); or
- (2) (d) Any other Board-approved examination.
- (3) Application for, proof of having successfully completed a massage, bodywork, and/or somatic therapy curriculum(s) as provided in subparagraph 0870-01-.04 (1) (f), and fees necessary to take the above examinations must be sent to the N.C.B.T.M.B. or to the appropriate testing agency and not to the Board.

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

Rule 0870-01-.09 Licensure Renewal, is amended by deleting part (1) (b) 1. in its entirety and substituting instead the following language, so that as amended, the new part (1) (b) 1. shall read:

- (1) (b) 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennessee.gov

Authority: T.C.A. §§ 63-18-111.

Rule 0870-01-.14 License, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (2) Replacement License - A licensee whose "artistically designed" license has been lost or destroyed may be issued a replacement license upon receipt of a signed written request in the Board Administrative Office. Such request must state the facts concerning the loss or destruction of the original license and the required fee pursuant to rule 0870-01-.06.

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

Rule 0870-01-.15 Change of Name and/or Address, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) Change of Address - Each licensee who has had a change of address shall file in writing with the Board his/her current address, giving both old and new addresses. Such requests shall be received in the Board Administrative Office no later than thirty (30) days after such change is effective and must reference the individual's or the establishment's name, social security number, and license number.

Authority: T.C.A. §§ 63-18-111.

Rule 0870-01-.19 Professional Ethical Standards, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraph (1) but not its subparagraphs and substituting instead the following language, and is further amended

by deleting subparagraph (1) (k) in its entirety and substituting instead the following language, and is further amended by inserting the following as new subparagraph (1) (l) and renumbering the current subparagraphs (1) (l) through (1) (r) as subparagraphs (1) (m) through (1) (s), and is further amended by inserting the following language as new subparagraph (1) (t) and renumbering the current subparagraphs (1) (s) through (1) (w) as subparagraph (1) (u) through (1) (y), and is further amended by deleting renumbered subparagraph (1) (y) and substituting instead the following language, and is further amended by adding the following language as new subparagraphs (1) (z), (1) (aa), (1) (bb) and (1) (cc), and is further amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new catchline, the new paragraph (1) but not its subparagraphs, the new subparagraphs (1) (k), (1) (l), (1) (t), renumbered (1) (y), (1) (z), (1) (aa), (1) (bb) and (1) (cc), and the new paragraph (2) shall read:

0870-01-.19 Professional Ethical Standards for Therapists and Establishments.

- (1) The Board requires licensed therapists and licensed establishments to uphold professional 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, shall at a minimum adhere to the following:
 - (1) (k) Refrain, under all circumstances, from initiating, arranging for, or engaging in any sexual conduct, sexual activity, or sexualizing behavior involving a client, even if the client attempts to sexualize the relationship. As used in this rule, “sexual activity” means any direct or indirect physical contact or communication by any person or between persons which is intended to erotically stimulate either person or both or which is likely to cause such stimulation and include sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse. For purposes of this rule part, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. As used herein, sexual activity can involve the use of any device or object or conversation and is not dependent on whether penetration, orgasm, or ejaculation has occurred.
 - (1) (l) Refrain, under all circumstances, from providing the following treatments, which are prohibited and not within the scope of practice for massage therapists:
 - 1. therapeutic treatments to the anus and anal canal, including, but not limited to colonic irrigations and enemas; and
 - 2. therapeutic cross-gender breast massage; and
 - 3. therapeutic vaginal massage.
 - (1) (t) Before proceeding with a massage to the client, each massage therapist shall have explained to the client expected draping techniques and provide the client a clean drape large enough for the purpose of draping the buttocks and genitalia and in the case of a female client 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.
 - (1) (y) Not practice in an unlicensed massage establishment.
 - (1) (z) Sexual activity by any person or persons in any massage establishment is absolutely prohibited.

- (1) (aa) No massage establishment owner shall engage in or permit any person or persons to engage in sexual activity in such owner's massage establishment or use such establishment to make arrangements to engage in sexual activity in any other place.
- (1) (bb) Launder or sanitize, before reuse, all materials, equipment and supplies utilized for each client.
- (1) (cc) Reasonable effort for sanitation shall be maintained for temporary locations such as athletic events or public service fund raisers in temporary venues.
- (2) Violation of any provision listed in paragraph (1) is grounds for disciplinary action against a therapist and/or establishment, as provided in Rule 0870-01-.13.

Authority: T.C.A. §§ 63-18-111.

Rule 0870-02-.02 Program Approval and Curriculum Requirements, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, and is further amended by deleting part (2) (a) 7. in its entirety and substituting instead the following language, and is further amended by deleting subparagraphs (3) (m) and (3) (n) in their entirety and substituting instead the following language, so that as amended the new paragraph (1), the new part (2) (a) 7., and the new subparagraphs (3) (m) and (3) (n) shall read:

- (1) Massage therapy programs must receive written initial approval from the Tennessee Massage Licensure Board. Such approval is not transferable. The Board's period of approval for massage therapy programs is always one (1) fiscal year beginning on July 1st and ending on June 30th.
- (2) (a) 7. A complete copy of the program catalog, submitted on plain copy paper, front-side only; and
- (3) (m) The Board shall be notified 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;
- (3) (n) Approved massage therapy programs may annually apply for a one (1) year renewal of approval. Applications for renewal are due annually on or before June 30th;

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

Rule 0870-02-.03 Withdrawal of Program Approval, is amended by deleting the language of the rule in its entirety, and is further amended by adding the following language as new paragraphs (1) and (2), so that as amended, the new paragraphs (1) and (2) shall read:

- (1) Program approval may be downgraded to probational approval status or withdrawn altogether if the Board finds the program in violation of any of its statutes or regulations or if the Board finds the program inadequate based upon random auditing of the program and/or its effectiveness in producing qualified graduates.
- (2) Any program which has been granted approval but has failed to maintain minimum standards of the Board may be placed on probational approval status and notified that it must meet the Board's requirements within one (1) year from the date of notice. A school may be placed on

probational approval status if, in the opinion of the Board, it fails to meet the major educational criteria and/or curriculum standards. If within a period of one (1) year after being placed on probational approval the school has not demonstrated evidence of meeting the major criteria and/or standards, then the school must appear before the Board, and Board approval for the program may be withdrawn. The minimum standard for continued program approval shall be a pass rate for initial attempts of the licensure examination of at least seventy percent (70%) calculated on a fiscal year basis.

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

Rule 0870-02-.05 Minimum Standards for Directors, Instructors and Classrooms, is amended by deleting subparagraph (1) (h) in its entirety.

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

Rule 0870-02-.06 Program Policies and Procedures, is amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, and is further amended by deleting paragraphs (3), (4), and (5) in their entirety, so that as amended, the new paragraphs (1) and (2) shall read:

- (1) All programs shall create written policies for all of the following and shall distribute them to all students:
 - (a) Infection control;
 - (b) Emergency management;
 - (c) Fire and safety; and
 - (d) Sexual harassment and misconduct.
- (2) A program shall have at least one (1) person qualified in Basic Life Support (BLS) available during all business hours.

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

Rule 0870-02-.07 Annual Report, is amended by deleting the introductory language of the rule in its entirety substituting instead the following language, so that as amended, the new introductory language shall read:

0870-02-.07 Annual Report. The program shall file with the Board, no later than July 31st of each year, an annual report for the preceding fiscal year (July 1 through June 30).

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

New Rules

Chapter 0870-02
General Rules Governing Massage Therapy Educational Programs

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0870-02-.09 Fees

0870-02-.08 Change of Program Name and/or Address. An approved massage program shall notify the Board in writing each time such program's name and/or address changes, no later than thirty (30) days after such change is effective. Such notification shall include the program's license number, old and new names, old and new addresses, and a new replacement approval fee, pursuant to rule 0870-02-.09 (1) (e).

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

0870-02-.09 Fees.

(1) Types of fees

- (a) Program Application Fee - A non-refundable fee to be paid by all applicants for approval of a massage therapy program. This fee includes an initial approval fee and the state regulatory fee.
- (b) Annual Program Renewal Fee - A non-refundable fee to be paid prior to the issuance of the renewal certificate. This fee includes an annual renewal fee and the state regulatory fee. This fee must be received annually on or before June 30th.
- (c) Late Renewal Fee - A non-refundable fee to be paid when a program fails to apply for renewal of approval on or before June 30th. This is an additional fee which must be submitted with the annual program renewal fee and state regulatory fee.
- (d) State Regulatory Fee - A non-refundable fee to be paid by all individuals at the time of application for initial approval and at the time of applications for renewal of approval.
- (e) Replacement Approval Fee - A non-refundable fee to be paid when an approved massage program requests replacement approval for the massage program due to name and/or address changes, pursuant to rule 0870-02-.08.

(2) Fee Schedule:

(a) Program Application Fee - Which includes:

- 1. Initial Approval Fee \$ 500.00

2.	State Regulatory Fee	\$ <u>5.00</u>
	Total program application fee due at the time of application for initial approval	\$ 505.00
(b)	Annual Program Renewal Fee - Which includes:	
1.	Annual Renewal Fee	\$ 250.00
2.	State Regulatory Fee	\$ <u>5.00</u>
	Total annual program renewal fee due at the time of application for renewal	\$ 255.00
(c)	Late Re-Approval Fee	\$ 250.00
(d)	Replacement Approval Fee	\$ 25.00

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 21st day of September, 2007. (0931-07; DBID 724-725)