

State of Alaska
Board of Massage Therapists

Board Packet
November 15, 2018

333 Willoughby Ave.
Conference Room "C"
Juneau, AK

Roll Call

State of Alaska
Office of Boards and Commissions Roster
BOARD OF MASSAGE THERAPISTS

<u>Member</u>	<u>Appointed</u>	<u>Term Expires</u>
Ron Gibbs <i>Licensed Massage Therapist</i>	November 25, 2014	March 1, 2020
Traci K. Gilmour <i>Licensed Massage Therapist</i>	November 25, 2014	March 1, 2021
Rebecca McCoy <i>Public Member</i>	September 11, 2018	March 1, 2021
Chair David Edwards-Smith <i>Licensed Massage Therapist</i>	November 25, 2014	March 1, 2022
Jill Motz <i>Licensed Massage Therapist</i>	Jan 23, 2017	March 1, 2022

Ethics

MEMORANDUM**State of Alaska
Department of Law**

TO: _____ DATE: _____

FILE NO.: _____

TEL. NO.: _____

FROM: Angie White
Litigation Assistant
Department of Law
Opinions, Appeals, & Ethics Section

FAX: _____

SUBJECT: Executive Branch Ethics Act, AS
39.52 Quarterly Report
**[INSERT QUARTERLY DATE
RANGE]**

******SAMPLE LANGUAGE – PLEASE COPY ONLY THE PARTS THAT APPLY
ONTO YOUR BOARD OR COMMISSION’S LETTERHEAD ******

As designated ethics supervisor and chair [executive director] for the _____, I wish to advise you that I have received no notifications of potential violations or requests for ethics determinations under the Ethics Act (AS 39.52) and have made no written determinations for this quarter.

OR

As designated ethics supervisor and chair [executive director] for the _____, I have received ___ notification(s) of a potential violation and ___ requests for ethics determinations under the Ethics Act (AS 39.52). I have attached a copy of the notices and requests along with my written determination(s) for review by the attorney general. I did [did not] receive an advisory opinion from the Attorney General.

AND

Except as addressed above, no other [board member] [commissioner] disclosed a potential conflict of interest at a recorded public meeting during this quarter.

OR

In addition to the above, at the [date] meeting, [Board member] [Commissioner] _____ disclosed a potential conflict with respect to _____ [*insert brief description*]____. *Insert disposition:* [S/He refrained from participation.] *or* [I determined s/he could [could not] participate.] *or* [The Board [Commission] members voted to permit [not to permit] participation.]

CONFIDENTIAL

ETHICS SUPERVISOR DETERMINATION FORM
(Board or Commission Member)

Board or Commission: _____

Member Disclosing Potential Ethics Violation: _____

I have determined that the situation described on the attached ethics disclosure form

does or would violate AS 39.52.110 - .190. Identify applicable statute below.

does not or would not violate AS 39.52.110 - .190.

Signature of Designated Ethics Supervisor (Chair)

Printed Name of Designated Ethics Supervisor

Date: _____

COMMENTS (Please attach a separate sheet for additional space):

Large light blue rectangular area for comments.

Note: Disclosure Form must be attached. Under AS 39.52.220, if the chair or a majority of the board or commission, not including the disclosing member, determines that a violation of AS 39.52.110-39.52.190 will exist if the member participates, the member shall refrain from voting, deliberating, or participating in the matter. A member will not be liable under the Ethics Act for action in accordance with such a determination so long as the member has fully disclosed all facts reasonably necessary to the determination and the attorney general has not advised the member, chair, or board or commission that the action is a violation. Forward disclosures with determinations to the State Ethics Attorney as part of your quarterly report. Quarterly reports are submitted to Litigation Assistant, Opinions, Appeals & Ethics, Department of Law, 1031 W. 4th Avenue, Suite 200, Anchorage, AK 99501.
Revised 2012

State of Alaska Department of Law

Who Is My Designated Ethics Supervisor?

Every state public officer, employee or board or commission member, has a designated ethics supervisor.

Executive Agencies

The ethics supervisor for each agency is the Commissioner or a senior manager to whom the Commissioner has delegated the function. The current ethics supervisor for each agency is listed below. The ethics supervisor for a Commissioner is Guy Bell, Director of Administrative Services in the Office of Governor, by delegation from the Governor.

Boards and Commissions

The Chair of each board and commission serves as the ethics supervisor for the other members and any executive director. The ethics supervisor for the Chair is Guy Bell, Director of Administrative Services in the Office of Governor, by delegation from the Governor. If a board or commission employs staff, the executive director serves as the ethics supervisor for these employees.

Public Corporations

The Chair of the board serves as the ethics supervisor for the other members of the board and any executive director. The executive director is the ethics supervisor for employees of the corporation.

Office of the Governor

The ethics supervisor for the Governor and Lieutenant Governor is the Attorney General. By delegation from the Governor, the ethics supervisor for the staff of the offices of the Governor and Lieutenant Governor is Guy Bell, Director of Administrative Services.

University of Alaska

By delegation of the University President, the ethics supervisor for university employees is Associate General Counsel Andy Harrington.

EXECUTIVE BRANCH AGENCIES

Administration: Leslie Ridle, Deputy Commissioner

Commerce, Community & Economic Development: Jon Bittner, Deputy Commissioner

Corrections: April Wilkerson, Director of Administrative Services

Education & Early Development: Les Morse, Deputy Commissioner

Environmental Conservation: Tom Cherian, Director of Administrative Services

Fish & Game: Kevin Brooks, Deputy Commissioner

Health & Social Services: Dallas Hargrave, Human Resource Manager

Labor & Workforce Development: Michael Monagle, Director, Division of Workers Compensation

Law: Jonathan Woodman, Assistant Attorney General

Military & Veterans Affairs: Marty Meyer, Special Assistant to Commissioner

Natural Resources: John Crowther, Inter-Governmental Coordinator

Public Safety: Terry Vrabec, Deputy Commissioner

Revenue: Dan DeBartolo, Administrative Services Director

Transportation & Public Facilities:

- Highways & Public Facilities: Steve Hatter, Deputy Commissioner
- Aviation: John Binder, Deputy Commissioner
- Central Region: Rob Campbell, Regional Director
- Northern Region: Rob Campbell, Acting Regional Director
- Southcoast Region: Acting Regional Director
- Alaska Marine Highway System: Michael Neussl, Deputy Commissioner
- Headquarters: Mary Siroky, Administrative Services Director

Updated April 2015

Department of Law attorney.general@alaska.gov P.O. Box 110300, Juneau, AK 99811-0300
Phone: 907-465-3600 Fax: 907-465-2075 TTY: 907-258-9161
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State of Alaska

Department of Law

Ethics Information for Members of Boards & Commissions (AS 39.52)

Introduction

This is an introduction to AS 39.52, the Alaska Executive Branch Ethics Act. This guide is not a substitute for reading the law and its regulations. State board and commission members who have further questions should contact their board chair or staff.

The Ethics Act applies to all current and former executive branch public employees and members of statutorily created boards and commissions.

Scope of Ethics Act (AS 39.52.110)

Service on a state board or commission is a public trust. The Ethics Act prohibits substantial and material conflicts of interest. Further, board or commission members, and their immediate family, may not improperly benefit, financially or personally, from their actions as board or commission members. The Act does not, however, discourage independent pursuits, and it recognizes that minor and inconsequential conflicts of interest are unavoidable.

Misuse of Official Position (AS 39.52.120)

Members of boards or commissions may not use their positions for personal gain or to give an unwarranted benefit or treatment to any person. For example, board members may not:

- use their official positions to secure employment or contracts;
- accept compensation from anyone other than the State for performing official duties;
- use State time, equipment, property or facilities for their own personal or financial benefit or for partisan political purposes;
- take or withhold official action on a matter in which they have a personal or financial interest; or
- coerce subordinates for their personal or financial benefit.
- attempt to influence outcome of an administrative hearing by privately contacting the hearing officer.



Terry knew that a proposal that was before the board would harm Terry's business competitor. Instead of publicly disclosing the matter and requesting recusal, Terry voted on the proposal.



Board member Mick has board staff employee Bob type an article for him that Mick hopes to sell to an Alaskan magazine. Bob types the article on State time.

Improper Gifts (AS 39.52.130)

A board member may not solicit or accept gifts if a person could reasonably infer from the circumstances that the gift is intended to influence the board member's action or judgment. "Gifts" include money, items of value, services, loans, travel, entertainment, hospitality, and employment. All gifts from registered lobbyists are presumed to be improper, unless the giver is immediate family of the person receiving the gift.

A gift worth more than \$150 to a board member or the board member's immediate family must be reported within 30 days if:

- the board member can take official action that can affect the giver, or
- the gift is given to the board member because he or she is on a state board.

The receipt of a gift worth less than \$150 may be prohibited if a person could reasonably infer from the circumstances that the gift is intended to influence the board member's action or judgment. Receipt of such a gift should be disclosed.

Any gift received from another government, regardless of value, must be reported; the board member will be advised as to the disposition of this gift.

A form for reporting gifts is available at www.law.alaska.gov/doclibrary/ethics or from the board or commission staff.

This restriction on gifts does not apply to lawful campaign contributions.



The commission is reviewing Roy's proposal for an expansion of his business. Roy invites all the board members out to dinner at an expensive restaurant. He says it will be okay, since he isn't excluding any of the members.



Jody receives a holiday gift every year from Sam. Jody was recently appointed to a state board, but Sam has no business that is before the board. Jody may accept the gift.

Improper Use or Disclosure of Information (AS 39.52.140)

No former or current member of a board may use or disclose any information acquired from participation on the board if that use or disclosure could result in a financial or personal benefit to the board member (or immediate family), unless that information has already been disseminated to the public. Board members are also prohibited from disclosing confidential information, unless authorized to do so.



Sheila has been on the board for several years. She feels she has learned a great deal of general information about how to have a successful business venture. So she sets up her own business and does well.



Delores has always advised and assisted the other doctors in her clinic on their continuing education requirements. After Delores is appointed to the medical board, she discloses this role to the board and continues to advise the doctors in her clinic.



Jim reviews a confidential investigation report in a licensing matter. He discusses the practitioner's violation with a colleague who is not a board member.

Improper Influence in State Grants, Contracts, Leases or Loans (AS 39.52.150)

A board member, or immediate family, may not apply for, or have an interest in a State grant, contract, lease, or loan, if the board awards or takes action to administer the State grant, contract, lease, or loan.

A board member (or immediate family) may apply for or be a party to a competitively solicited State grant, contract or lease, if the board as a body does not award or administer the grant, contract, or lease and so long as the board member does not take official action regarding the grant, contract, or lease.

A board member (or immediate family) may apply for and receive a State loan that is generally available to the public and has fixed eligibility standards, so long as the board member does not take (or withhold) official action affecting the loan's award or administration.

Board members must report to the board chair any personal or financial interest (or that of immediate family) in a State grant, contract, lease or loan that is awarded or administered by the agency the board member serves. A form for this purpose is available at www.law.alaska.gov/doclibrary/ethics or from the board or commission staff.



John sits on a board that awards state grants. John hasn't seen his daughter for nearly ten years so he figures that it doesn't matter when her grant application comes up before the board.



The board wants to contract out for an analysis of the board's decisions over the last ten years. Board member Kim would like the contract since she has been on the board for ten years and feels she could do a good job.

Improper Representation (AS 39.52.160)

A board or commission member may not represent, advise, or assist a person in matters pending before the board or commission for compensation. A nonsalaried board or commission member may represent, advise, or assist in matters in which the member has an interest that is regulated by the member's own board or commission, if the member acts in accordance with AS 39.52.220 by disclosing the involvement in writing and on the public record, and refraining from all participation and voting on the matter. This section does not allow a board member to engage in any conduct that would violate a different section of the Ethics Act.



Susan sits on the licensing board for her own profession. She will represent herself and her business partner in a licensing matter. She discloses this situation to the board and refrains from participation in the board's discussions and determinations regarding the matter.

Restriction on Employment After Leaving State Service (AS 39.52.180)

For two years after leaving a board, a former board member may not provide advice or work for compensation on any matter in which the former member personally and substantially participated while serving on the board. This prohibition applies to cases, proceedings, applications, contracts, legislative bills, regulations, and similar matters. This section does not prohibit a State agency from contracting directly with a former board member.

With the approval of the Attorney General, the board chair may waive the above prohibition if a determination is made that the public interest is not jeopardized.

Former members of the governing boards of public corporations and former members of boards and commissions that have regulation-adoption authority, except those covered by the centralized licensing provisions of AS 08.01, may not lobby for pay for one year.



The board has arranged for an extensive study of the effects of the Department's programs. Andy, a board member, did most of the liaison work with the contractor selected by the board, including some negotiations about the scope of the study. Andy quits the board and goes to work for the contractor, working on the study of the effects of the Department's programs.



Andy takes the job, but specifies that he will have to work on another project.

Aiding a Violation Prohibited (AS 39.52.190)

Aiding another public officer to violate the Ethics Act is prohibited.

Agency Policies (AS 39.52.920)

Subject to the Attorney General's review, a board may adopt additional written policies further limiting personal or financial interests of board members.

Disclosure Procedures

DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS OF BOARDS OR COMMISSIONS (AS 39.52.220)

A board member whose interests or activities could result in a violation of the Ethics Act if the member participates in board action must disclose the matter on the public record and in writing to the board chair who determines whether a violation exists. A form for this purpose is available at www.law.alaska.gov/doclibrary/ethics or from the board or commission staff. If another board member objects to the chair's ruling or if the chair discloses a potential conflict, the board members at the meeting (excluding the involved member) vote on the matter. If the chair or the board determines a violation will occur, the member must refrain from deliberating, voting, or participating in the matter. For more information, see Ethics Act Procedures for Boards and Commissions available at the above noted web site.

When determining whether a board member's involvement in a matter may violate the Ethics Act, either the chair or the board or commission itself may request guidance from the Attorney General.

ATTORNEY GENERAL'S ADVICE (AS 39.52.240-250)

A board chair or a board itself may request a written advisory opinion from the Attorney General interpreting the Ethics Act. A former board member may also request a written advice from the Attorney General. These opinions are confidential. Versions of opinions without identifying information may be made available to the public.

REPORTS BY THIRD PARTIES (AS 39.52.230)

A third party may report a suspected violation of the Ethics Act by a board member in writing and under oath to the chair of a board or commission. The chair will give a copy to the board member and to the Attorney General and review the report to determine whether a violation may or does exist. If the chair determines a violation exists, the board member will be asked to refrain from deliberating, voting, or participating in the matter.

Complaints, Hearings, and Enforcement

COMPLAINTS (AS 39.52.310-330)

Any person may file a complaint with the Attorney General about the conduct of a current or former board member. Complaints must be written and signed under oath. The Attorney General may also initiate complaints based on information provided by a board. A copy of the complaint will be sent to the board member who is the subject of the complaint and to the Personnel Board.

All complaints are reviewed by the Attorney General. If the Attorney General determines that the complaint does not warrant investigation, the complainant and the board member will be notified of the dismissal. The Attorney General may refer a complaint to the board member's chair for resolution.

After investigation, the Attorney General may dismiss a complaint for lack of probable cause to believe a violation occurred or recommend corrective action. The complainant and board member will be promptly notified of this decision.

Alternatively, if probable cause exists, the Attorney General may initiate a formal proceeding by serving the board or commission member with an accusation alleging a violation of the Ethics Act. Complaints or accusations may also be resolved by settlement with the subject.

CONFIDENTIALITY (AS 39.52.340)

Complaints and investigations prior to formal proceedings are confidential. If the Attorney General finds evidence of probable criminal activity, the appropriate law enforcement agency shall be notified.

HEARINGS (AS 39.52.350-360)

An accusation by the Attorney General of an alleged violation may result in a hearing. An administrative law judge from the state's Office of Administrative Hearings serves as hearing officer and determines the time, place and other matters. The parties to the proceeding are the Attorney General, acting as prosecutor, and the accused public officer, who may be represented by an attorney. Within 30 days after the hearing, the hearing officer files a report with the Personnel Board and provides a copy to the parties.

PERSONNEL BOARD ACTION (AS 39.52.370)

The Personnel Board reviews the hearing officer's report and is responsible for determining whether a violation occurred and for imposing penalties. An appeal may be filed by the board member in the Superior Court.

PENALTIES (AS 39.52.410-460)

When the Personnel Board determines a board member has violated the Ethics Act, it will order the member to refrain from voting, deliberating, or participating in the matter. The Personnel Board may also order restitution and may recommend that the board member be removed from the board or commission. If a recommendation of removal is made, the appointing authority will immediately remove the member.

If the Personnel Board finds that a former board member violated the Ethics Act, it will issue a public statement about the case and will ask the Attorney General to pursue appropriate additional legal remedies.

State grants, contracts, and leases awarded in violation of the Ethics Act are voidable. Loans given in violation of the Ethics Act may be made immediately payable.

Fees, gifts, or compensation received in violation of the Ethics Act may be recovered by the Attorney General.

The Personnel Board may impose a fine of up to \$5,000 for each violation of the Ethics Act. In addition, a board member may be required to pay up to twice the financial benefit received in violation of the Ethics Act.

Criminal penalties are in addition to the civil penalties listed above.

DEFINITIONS (AS 39.52.960)

Please keep the following definitions in mind:

Benefit - anything that is to a person's advantage regardless financial interest or from which a person hopes to gain in any way.

Board or Commission - a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch, including the Alaska Railroad Corporation.

Designated Ethics Supervisor - the chair or acting chair of the board or commission for all board or commission members and for executive directors; for staff members, the executive director is the designated ethics supervisor.

Financial Interest - any property, ownership, management, professional, or private interest from which a board or commission member or the board or commission member's immediate family receives or expects to receive a financial benefit. Holding a position in a business, such as officer, director, partner, or employee, also creates a financial interest in a business.

Immediate Family - spouse; another person cohabiting with the person in a conjugal relationship that is not a legal marriage; a child, including a stepchild and an adoptive child; a parent, sibling, grandparent, aunt, or uncle of the person; and a parent or sibling of the person's spouse.

Official Action - advice, participation, or assistance, including, for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer.

Personal Interest - the interest or involvement of a board or commission member (or immediate family) in any organization or political party from which a person or organization receives a benefit.

For further information and disclosure forms, visit our Executive Branch Ethics web site or please contact:

State Ethics Attorney
Alaska Department of Law
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-5903
(907) 269-5100
attorney.general@alaska.gov

Revised 9/2013

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State of Alaska
Department of Law
Executive Branch Ethics Act

Responsibilities of Designated Ethics Supervisors for Boards and Commissions

Boards and commissions subject to the Ethics Act have designated ethics supervisors. The chair serves as the designated ethics supervisor for board or commission members and the executive director. The executive director is the designated ethics supervisor for staff. The designated ethics supervisor for a chair is the governor, who has delegated this responsibility to Guy Bell, Administrative Director of the Office of the Governor.

Designated ethics supervisors should refer to the Manual for Designated Ethics Supervisors (April 2008), available from the state ethics attorney, regarding their responsibilities under the Ethics Act. Briefly, as designated ethics supervisor, you must --

1. Ensure that members and employees are provided copies of the guides, Ethics Information for Members of Boards and Commissions and Ethics Act Procedures for Boards and Commissions -- and keep a supply of disclosure forms.
 1. These guides, other educational materials, disclosure forms, statutes and regulations are available for review and copying on the Department of Law ethics web site. If access to this page is not available, please contact the Attorney General's office at 269-7195.
2. Review all disclosures, investigate potential ethics violations, make determinations regarding conduct, and take action.
3. Keep member or employee disclosure statements (of potential violations, receipt of gifts, and interests in grants/contracts/leases/loans) on file in your office. Disclosure of a gift received from another government must be forwarded to the Office of the Governor.
4. Submit an ethics report to the Department of Law in April, July, October and January for the preceding quarter. You will receive a reminder. There is a sample report on the ethics web page.
 1. Mail, email or fax to Kim Halstead, Litigation Assistant, Department of Law, Opinions, Appeals & Ethics Section, 1031 W. 4th Avenue, Suite 200, Anchorage, AK, 99501, ethicsreporting@alaska.gov, fax no. 907-279-2834.

You may request ethics advice from your agency's Assistant Attorney General or from the State Ethics Attorney, Jon Woodman, at 269-5100 or jonathan.woodman@alaska.gov. Please direct questions about reporting procedures to Kim Halstead at 269-7195 or kimberly.halstead@alaska.gov.

6/14

Department of Law attorney.general@alaska.gov P.O. Box 110300, Juneau, AK 99811-0300
Phone: 907-465-3600 Fax: 907-465-2075 TTY: 907-258-9161
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Review of Agenda

Previous Task List

Massage Establishment Licensing Draft Regulations Project

Regulations Questionnaire

Regulation Changes Questionnaire

Division/Board: _____ Meeting Date: _____

Regulation change being proposed: 12 AAC _____

General top of the regulation: _____

This worksheet is designed to help the board think through an anticipated regulations project. Staff will provide this worksheet to the board at the time a regulations project is being approved for public notice. This information will be used to develop a FAQ to be posted on the board's web page to help the public understand the project. Staff will submit the completed worksheet with the draft board minutes to the Regulations Specialist within 10 days of the meeting and provide a copy to the supervisor. Appropriate staff will be assigned to complete this worksheet if a division regulation. **NOTE: Use a separate worksheet for each section being proposed.**

1. Is the new regulation needed to comply with new legislation or federal law? If yes, effective date of new statute/federal law: _____ <i>(If appropriate, ensure the new regulation is in line with federal requirements prior to initiating a regulation project.)</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>
2. Does the change add a new license type? If yes: Does it affect current licensees? Do current licensees/non-licensees already perform the service for which the new license type is required? Is there a grace period or date explicitly included in the regulation to allow for a transition period?	Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
3. Does it change the qualifications or requirements of an existing license? If yes, does it affect current licensees?	Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
4. Does it affect continuing education/competency requirements? If yes: Does it add additional requirements or hours? Does it clarify existing regulations? Is there an effective date in the future to give licensees time to comply?	Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
5. Is it a fee change or does it create a new fee? If yes: Does it move fees in the centralized regulations to a new number, therefore affecting other program regulations?	Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
6. Does it make changes to the requirements of licensees? If yes: All licensees Certain licensees (List: _____) Initial licensees	Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
7. In addition to interested parties, who should receive the public notice? (All licensees or certain license types?)	

8. In addition to the 30-day minimum written notice, does the board request a public hearing? If yes, when and where.
9. What will the regulation do?
10. What is the demonstrated public need or purpose of this regulation?
11. What is the known or estimated cost of the new regulation to a private person, another agency, or a municipality (see Step 3 of the <i>Steps in the Regulation Process...</i>)?
12. What <u>positive</u> consequences may this regulation have on public or private people, businesses, or organizations?
13. What <u>negative</u> consequences may this regulation have on public or private people, business, or organizations?
14. If any <u>negative</u> consequences, please address the reasons why the public need for this change outweighs the negative impact.
15. List any additional questions or comments that may arise from the public during the comment period. Include a response to the questions.
16. What type of notification outlining the changes will be required once the regulation is adopted? Check appropriate boxes. FAQ on website <input type="checkbox"/> Email to licensees <input type="checkbox"/> Letter to licensees <input type="checkbox"/>

Staff submitting this worksheet: _____ Date submitted to Regulations Specialist: _____

Massage Establishment Outline

September 10-11, 2018 Meeting

From: David Edwards-Smith
To: [Dulebohn, Dawn L \(CED\)](#)
Subject: establishment draft language
Date: Tuesday, September 11, 2018 3:08:30 PM

Application Requirement

(a) An applicant for a shop owner license shall submit a completed application on a form provided by the department. A complete application must include

- (1) payment of the fees established
- (2) name of the owner or lessee;
- (3) business name of the establishment;
- (4) mailing and street address of the shop;
- (5) if the establishment owner is not a licensed practitioner, the name and license number of the licensed massage therapist who is employed as manager of the establishment;

A may serve as the Professional-in-Charge for only one establishment at a time.

(6) a listing of all other establishments the applicant owns which includes the business name, mailing address, and street address of each; and

(9) A completed self-inspection of the premises (form included in application)

Inspection: requirements....

.....

Citizenshp documentation?

Application Renewal

Biannual renewal

Fingerprinting requirements?

Self Inspection attestation?

Licensing fee

Employed mts?

BOARD INSPECTION

A. The division may make periodic inspections of all massage establishments.

B. Such inspections may include, but need not be limited to, confirmation that the site is being utilized for massage therapy and a determination of whether the establishment is in compliance

with the laws and rules governing the establishment's operation, facilities, personnel, safety,

and sanitary requirements.

SELF INSPECTION REQUIREMENTS for discussion

General Requirements.

A. On a form provided by the department the establishment owner inspects and attest compliance with operations:

(1) Standards of Practice and Code of Ethics is displayed in a location available to the public

(2) Display in a full public view place the massage establishment business license and all employed massage

therapist licenses

(3) **A written and or digital system of maintaining client records** for at least three (3) years.

This includes

safeguarding verbal and written confidential information of the client, unless disclosure is required by law, court order, or authorized by the client.

(4) Shall maintain proof that the massage therapy establishment location or premises has current

general liability insurance;

(5) Maintain all equipment used to perform massage therapy services on the premises in a safe

and sanitary condition;

(6) Maintain compliance with all applicable state and local building and fire codes

(7) Provide for the removal of garbage and refuse in a sanitary manner; and Provide for safe storage or removal of soiled linens

(8) Rooms or any cubicle for massage or massage therapy practices are not equipped with an externally locking door.

OPERATIONS

EMPLOYMENT

Employ or permit to practice on the premises only licensed, or officially enrolled student massage therapists to perform massage therapy as defined in statute and regulations.

A. Student enrollment documentation must be current and on premises

HOURS OF OPERATION

1. No massage establishment shall operate or be open for business between the hours of 12:00 a.m. and 5:00 a.m.

RESTRICTED BUSINESS ACTIVITY

2. No massage establishment shall operate where a **primary business** is

Alcohol beverage sales, photography studio, model studio, art studio, telephone answering service, motion picture theater or adult-oriented business.

The establishment shall ensure that no Inappropriate employee dress is permitted.

Inappropriate dress includes clothing which exposes the breasts , buttock, genitalia or attire that shows the practitioners undergarments. No swim attire is permitted unless treatment is a water modality

ALCOHOL / CONTROLLED SUBSTANCE CONSUMPTION

No alcohol or controlled substance consumption or sales within the massage establishment (PUBLIC COMMENT ?)

No owner, manager, massage therapist, or employee shall consume, sell, give, dispense, provide, or keep, or cause or permit to be consumed, sold, given, dispensed, provided, or kept, any controlled substance within any massage establishment.

MASSAGE ROOM REQUIREMENTS

No person shall perform massage or massage therapy in any cubicle, room, or area equipped with an externally locking door.

ONSITE LIVING RESTRICTIONS

No massage establishment shall be used as a shelter or living quarters for any person. No owner or manager shall allow a licensed massage establishment to be used for housing, sheltering, or harboring any person(s), or as living or sleeping quarters for any person(s). If a massage establishment is located within, but is ancillary to, a business such as a hotel or motel, this prohibition shall apply only to the areas designed, designated, or used as a massage establishment .

OUTCALL

A massage establishment may dispatch a licensed massage therapist to perform outcall massage, but only if the therapy is to take place at the client's transient lodging, temporary or permanent residence or at the client's place of business.

AGE RESTRICTION

No owner, manager, massage therapist, or employee shall administer services to any person under the age of eighteen (18) years without a parent or legal guardian present or written consent parent or legal guardian.

SEXUAL CONTACT / ACT PROHIBITION (DEFINE!!)

No owner, manager, massage therapist, or employee shall initiate or engage in any sexual contact or sexual act in any massage establishment.

No owner, manager, massage therapist, or employee shall promote, solicit, initiate, engage in, permit, or allow any act that violates Alaska Statutes sections 08.61 et seq., the Regulations of the Alaska State Board of Massage Therapists, or the code of ethics or standards of practice set forth by the Alaska State Board of Massage Therapists.

No owner, manager, massage therapist, or employee shall engage in unprofessional conduct, including but not limited to the following:

- a. Engaging in sexually suggestive advertising related to massage services.
- b. Engaging in any form of sexual activity on the premise of a massage establishment where massage is provided for compensation.

SEX DEVICE RESTRICTION

No owner, manager, massage therapist, or employee shall keep, or allow to be kept, within any massage establishment any item known as or commonly used as a marital or sexual aid, including, but not limited to, any contraceptive item or device, vaginal or anal lubricant, or any sex toy.

RESTRICTION OF VIDEO / PHOTOGRAPHY

No owner, manager, massage therapist, or employee shall allow television, video or recording equipment in any room where massage services are being provided, but a security surveillance monitor that can only receive images of the inside of the common areas of the establishment may be located in these rooms at any time. With written client consent, a massage therapist may use video and photography equipment for therapeutic purposes.

TRANSFER OF LICENSE

In the event the licensed establishment sold, subleased, or legal possession of the establishment is changed, the new owner, lessee, or legal possessor of the establishment shall be required to submit a completed application within thirty (30) days of the change of ownership, lessee, or legal possess. The establishment license is not assignable or transferable.

EXEMPTIONS

The following are exempt from the massage establishment license requirement:

1. Hospitals, residential care facilities, and assisted living facilities licensed by the state of

Alaska;

2. Public and private secondary schools or accredited colleges and universities who are approved by the

board and when massage is performed in a massage therapy school curriculum.

3. Sports venues at which massage may be conducted on the members of professional sports franchises

by athletic trainers employed by professional sports or collegiate sports franchises.

5. Place of business is not required to hold a license under this chapter if:

(1) the place of business is located on property owned by the federal government

(3) at the place of business, an acupuncturist, athletic trainer, chiropractor, cosmetologist, midwife,

nurse, occupational therapist, physical therapist, physician, physician assistant, podiatrist, respiratory

care practitioner licensed in the state of Alaska employs or contracts with a licensed massage therapist

to provide massage therapy as part of the person's practice

6. a business or corporations owned and operated by massage therapist(s) licensed in the state of Alaska.

Corporations must be majority owned by licensed massage therapists.



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FSMTB Data on Establishment Licensing in the U.S.

State Establishment Regulation: Statutes and Rules

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Regulatory Clarification & Legislative Notes

Arkansas – Current statutory authority provides for a registration of massage therapy clinics and spas

Mississippi – Current statutory authority provides the board with a mechanism similar to Arkansas –registration.

New Jersey – Requires the registration of employers, rather than establishments –basic background information, location information, and requirement of a background check on the employer.

North Dakota – Current statutory authority requires establishments to meet requirements adopted by the board, and requires the board to periodically inspect all massage establishments.

Alaska – adopted legislation in 2018 to enable the board to adopt regulations governing massage establishments.

California – introduced legislation in 2018 (3061) to establish a registry for massage establishments and owners at the county level.

New York – introduced legislation in 2017 to require massage establishments to obtain a license from the NY Secretary of State.

Oklahoma – introduced several pieces of legislation in 2017 and 2018 related to licensing and inspection of massage establishments.

South Carolina – introduced legislation in 2018 to regulate and license massage establishments.

Wisconsin – introduced legislation to allow local municipalities to regulate massage establishments.

Iowa – introduced and passed legislation in 2017 to permit cities to regulate establishments.

Ohio – introduced legislation in 2017 to allow local municipalities to regulate massage establishments.

Alabama

Statutory Authority: §34-43-11

- (a) Establishments shall be licensed by the board. A sexually oriented business may not be licensed as an establishment and shall not operate as an establishment licensed pursuant to this chapter.
- (b) Establishments shall employ only licensed massage therapists to perform massage therapy.
- (c) The board shall provide by rule, for a fair and reasonable procedure to grant exemptions from the licensure requirement of this section when the applicant can show that the advertising of massage therapy services is incidental to the primary function of his or her business. No such exemption shall be granted to a sexually oriented business.
- (d) An establishment license issued pursuant to this chapter is not assignable or transferable.
- (e) Subsequent to an official complaint, the board may request a criminal background check of the establishment's licensees through the district attorney of the circuit in which the licensee is located.

(Acts 1996, No. 96-661, p. 1060, §11; Act 2000-704, p. 1430, §1.)

Administrative Regulations: Ch. 532-X-3-.04

- (1) Each massage therapy establishment and on-site or out-call establishment as defined in these rules and regulations shall obtain a license to operate from the Board.
- (2) The applicant for licensure of the establishment shall be the owner, lessee, or legal possessor of the establishment.
- (3) In the event the licensed establishment sold, subleased, or legal possession of the establishment is changed, the new owner, lessee, or legal possessor of the establishment shall be required to apply for and obtain a new license within sixty (60) days of the change of ownership, lessee, or legal possess. The establishment license is not assignable or transferable.
- (4) An establishment or business whose primary function is not the provision of massage therapy services may be exempt from the requirement of obtaining licensure as a massage therapy establishment by filing with the Board a sworn and notarized statement by the owner, lessee, or legal possessor declaring the primary function of the establishment; and by filing with the Board official government related or business records, city business license, Internal Revenue Service tax returns and records or correspondence regarding advertisement, appointment books kept in the normal course of business, or statements of business associates consulted in relation to the practice of the primary function of the establishment to be other than massage therapy, and as to which massage therapy is an incidental practice. The Board may request such other and further documentation of the interaction of massage therapy practice and the primary function of the establishment as seems reasonable in making its determination as to the granting of exemption from establishment licensure.¹
- (5) Each massage therapy establishment shall be subject to an inspection by the Board at any time during normal business hours and must demonstrate:

¹ See Massage Therapy Establishment Exemption Instructions Memo, dated June 1, 2008, at <http://www.almtbd.state.al.us/PDF/Forms/ExemptionMemo04-04-12.pdf>

- (a) current liability insurance coverage for bodily injury and property damage for the establishment;
 - (b) compliance with state and local fire and safety requirements;
 - (c) a fire extinguisher in good working condition; (d) provision for extermination of vermin, insects, termites, and rodents;
 - (e) laundering or sanitation of all equipment and linens or other materials furnished for use of the customer or client, prior to reuse, if applicable;
 - (f) maintenance of equipment in a safe and sanitary condition;
 - (g) adequate toilet and lavatory facilities with running water, equipped with toilet tissue, soap dispenser with soap or other hand cleansing materials, sanitary towels or hand-drying devices, waste receptacle, with adequate lighting and ventilation sufficient to remove objectionable odors;
 - (h) adequate and sanitary shower facilities if the establishment maintains a whirlpool bath, sauna, hot tub, spa, steam cabinet or steam room; the shower, if any, is to be equipped with soap, sanitary cloth towels, and adequate lighting and ventilation;
 - (i) clean drape material for draping clients during the massage, use of which shall be explained to the client prior to the massage, and which shall cover the buttocks and genitals of a male client at all times during the massage, and which shall cover the buttocks, breasts, and genitals of a female client at all times during the massage.
- (6) Upon receipt of an application for a massage therapy establishment license, the Board may cause an initial inspection to be made of the site to confirm that the establishment meets the above requirements and is to be utilized for massage therapy and not for the purposes unlawful under the massage therapy statutes.
- (7) Inspections may be initiated by the Board at any time during reasonable business hours after licensure of the establishment, which may include but are not limited to determining whether the establishment is in compliance with the rules governing the establishment's operation, facilities, personnel, safety, sanitary requirements, and review of existing insurance coverage. Failure to cooperate with such inspection may lead to disciplinary action.
- (8) No massage therapy establishment owner, lessee, or legal possessor shall knowingly engage in or permit any person or persons to engage in sexual activity in that owner's massage establishment or to use that establishment to make arrangements to engage in sexual activity in any other place.

Author: Keith E. Warren Statutory Authority: Code of Ala. 1975, §§34-43-7. History: New Rule: Filed January 29, 2001; effective March 5, 2001. Amended: Filed November 9, 2006; effective December 14, 2006. Amended: Filed April 20, 2009; effective May 25, 2009. Amended: Filed February 10, 2012; effective March 16, 2012.

Arkansas

Statutory Authority: Arkansas Code Annotated §17-86-102, -203, -302, -307

§17-86-102 Definitions

...

4) "Massage therapy clinic" means a clinic, place, premises, building, or part of a building in which a branch or any combination of branches of massage therapy or the occupation of a massage therapist is practiced;

...

7) "Massage therapy spa" means a site or premises, or portion of a site or premises, in which a massage therapist practices massage;

...

§17-86-203 Powers and duties

...

(b)(1)(A) The Department of Health shall inspect or cause an inspection of student records at least one (1) time each year for each massage therapy school operated in this state. (B) The Department of Health and its agents and employees may enter and inspect a massage therapy clinic, spa, or school during operating hours of the business.

(2) The Department of Health and its agents and employees shall not request or be granted permission to enter a room of a massage therapy clinic, spa, or school in which a client is receiving treatment from a licensee under this chapter.

§17-86-302 Sanitary requirements

(a) It shall be unlawful for any person or school to be licensed or any clinic to be operated under the provisions of this chapter unless the following requirements are met and practiced:

(1) A sink for hand washing with hot and cold running water and soap must be accessible;

(2) A restroom must be accessible;

(3) A towel or sheet that has been used by one (1) client may not be used on another person unless the towel or sheet has been re-laundered;

(4) Anyone who has any infectious, contagious, or communicable disease which may be spread by airborne, droplet, contact, or indirect methods and who is in contact with the public must not practice until all risk of disease transmission is cleared. Any employee with such a disease must be immediately relieved from duty until all risk of disease transmission is cleared;

(5) A school or clinic must be equipped with a massage table or tables or a massage chair or 13 chairs or equipped with such standard equipment dictated by the practice engaged in as defined in § 17-86-102; and

(6) A clinic or school must comply with all requirements of the Department of Health, city ordinances, and state laws.

(b) Failure to comply with any of the requirements as set forth by this section will be grounds for suspension or revocation of license.

17-86-307 Massage therapy clinic and spa

- (a) A person shall not establish, maintain, or operate a massage therapy clinic or massage therapy spa, or both, until the address and telephone number of the office, clinic, or spa have been supplied in writing to the Department of Health.
- (b) If a massage therapy clinic, massage therapy spa, or both moves to a new location or changes its phone number, the new address or phone number, or both, shall be submitted immediately to the department in writing before operating the clinic or spa, or both, at the new address.
- (c) The annual inspection fee for each clinic and spa shall not exceed seventy-five dollars (\$75.00).

Arkansas Regulations: Article 7

Article 7 Massage Clinics

1. Massage therapists working in bathhouses, clinics, spas, or other facilities must be given adequate workspace.
 - a. The work area must be well ventilated, clean, and well equipped.
 - b. There must be a sink for hand-washing with hot and cold running water and soap must be accessible.
 - c. A restroom must be accessible.
2. In-home massage clinics/offices must be located in a separate room or rooms, used only for massage therapy services during ordinary business operations.
 - a. There must be no bed in a room used for massage therapy services.
3. A school or clinic must be equipped with a massage table or tables or a massage chair or chairs and equipped with such standard equipment dictated by the practice of massage therapy as defined in Article Two.
4. A towel or sheet that has been used by one (1) client may not be used on another person unless the towel or sheet has been laundered.
5. Therapists must comply with all city, county, and/or state regulations.
6. Anyone who has an infectious, contagious, or communicable disease which may be spread by airborne, droplet, contact, or indirect methods and who is in contact with the public must not practice until all risk of disease transmission is cleared. Any employee with such a disease must be immediately relieved from duty until all risk of disease transmission is cleared.

Colorado

12-35.5-118. Local government - regulations - enforcement.

(1) No city, county, city and county, or other political subdivision of this state shall enact or enforce any local ordinance that regulates the practice or the profession of massage therapy.

(2) Local government law enforcement agencies may inspect massage therapy licenses and the business premises where massage therapy is practiced for compliance with applicable laws. Nothing in this section precludes criminal prosecution for a violation of any criminal law. If an inspection reveals the practice of massage therapy by a person without a valid license, the local government law enforcement agency shall charge the person with a misdemeanor pursuant to section 12-35.5-115.

(3) A city, county, city and county, or other political subdivision may inspect massage businesses, except for a sole proprietorship with a person's residence, upon complaint of illegal activity and ensure that the people performing massage therapy are licensees. A city, county, city and county, or other political subdivision shall not charge a fee for the inspection or license verification.

Delaware

Statutory Authority: Delaware Code §5307, §5313 – 5315, §5317, §5319 – 5321

§ 5307 License; certification required [Effective Jan. 22, 2018]

(a) No person shall engage in the practice of massage and bodywork therapy or hold himself or herself out to the public in this State as being qualified to practice massage and bodywork therapy; or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to practice massage and bodywork therapy, unless such person has been duly licensed or certified under this chapter. Massage and bodywork therapists licensed under this chapter may practice massage and/or bodywork therapy on referral or prescription from a licensed medical or osteopathic physician or chiropractor as deemed appropriate by the referring physician or chiropractor. Massage technicians certified under this chapter are prohibited from practicing on referral or prescription from a licensed medical or osteopathic physician or chiropractor and from treating medically diagnosed conditions.

(b) Whenever a license or certificate to practice massage and bodywork in this State has expired or been suspended or revoked, it shall be unlawful for the person to practice massage and bodywork in this State.

(c) No person shall act as a massage technician, or hold himself or herself out as a massage technician, unless such person has been duly certified by the Board under this chapter. Massage technicians shall practice massage and/or bodywork on other than medically diagnosed conditions.

(d) Massage establishment license; necessity. No person, firm, corporation, partnership, or other legal entity shall operate, maintain, or use premises as a massage establishment without first having secured a massage establishment license from the Board.

(e) Services rendered in unlicensed massage establishment, prohibition; exceptions. No person shall offer or render any of the services encompassed within the definition of massage and bodywork in a place that is not licensed as a massage establishment. This section shall not apply to a duly licensed massage therapist or certified massage technician who practices massage or bodywork outside of a massage establishment.

(f) This chapter shall not apply to:

(1) Actions by any person, who is certified or licensed in this State by any other law, and who is engaged in and acting within the scope of the profession or occupation for which that person is certified or licensed;

(2) Actions by any person engaged in an occupation which does not require a certificate or certification, including, but not limited to, physical education teachers, athletic coaches, health or recreation directors, instructors at health clubs or spas, martial arts, water safety and dance instructors, or coaches, who is acting within the scope of activity for which such person is trained; and

(3) Any student of massage who is practicing within the scope of his or her course of study.

70 Del. Laws, c. 582, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 108, § 1; 78 Del. Laws, c. 363, § 6; 81 Del. Laws, c. 104, § 4.;

§ 5313 Grounds for discipline [Effective Jan. 22, 2018]

(a) A practitioner licensed or certified under this chapter shall be subject to disciplinary actions set forth in § 5315 of this title, if, after a hearing, the Board finds that the massage and bodywork therapist or massage technician:

- (1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a massage and bodywork therapist or certification as a massage technician; has employed or knowingly cooperated in fraud or material deception in order to acquire a massage establishment license; has impersonated another person holding a license or certification, or allowed another person to use the massage or bodywork license or massage technician certification, or aided or abetted a person not licensed as a massage or bodywork therapist or certified as a massage technician to represent that person as a massage or bodywork therapist or massage technician;
 - (2) Has been convicted of a crime that is substantially related to the practice of massage and bodywork, as set forth in the Board's rules and regulations; a copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence thereof;
 - (3) Has an impairment related to drugs or alcohol or a finding of mental incompetence by a physician that would limit the practitioner's ability to undertake his or her practice in a manner consistent with the safety of the public;
 - (4) Has violated a lawful provision of this chapter, or any lawful regulation established thereunder;
 - (5) Has had that practitioner's license as a massage and bodywork therapist or that practitioner's certificate as massage technician suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a massage and bodywork therapist or certified as a massage technician in this State shall be deemed to have given consent to the release of this information by the Board of Massage and Bodywork Therapy or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;
 - (6) Has failed to notify the Board that the practitioner's license as a massage and bodywork therapist or certificate as massage technician in another state has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof;
 - (7) Has engaged directly or indirectly in the division, transferring, assigning, rebating or refunding of fees received for professional services or who profits by means of a credit or other valuable consideration such as wages or an unearned commission, discount or gratuity with any person who referred a patient or with any relative or business associate of the referring person. Nothing in this paragraph shall be construed as prohibiting the members of any regularly and properly organized business entity recognized by the Delaware law and comprised of massage therapists from making any division of their total fees among themselves as they determine by contract necessary to defray their joint operating costs; or
 - (8) Has knowingly employed or cooperated in the hiring or contracting for the services of, or, as the professional-in-charge of a massage establishment, leased space or otherwise entered into a contractual relationship with or permitted, any unlicensed person or persons required by this chapter to hold an unrestricted license to practice any of the professions regulated by this chapter; or
 - (9) Has been guilty of unprofessional conduct, as adopted in the rules and regulations, and which shall include departure from or the failure to conform to the national code of professional ethics and standards of acceptable massage and bodywork practices.
- (b) Where a practitioner fails to comply with the Board's request that the practitioner attend a hearing, the Board may petition the Superior Court to order such attendance, and the said Court or any judge assigned thereto shall have jurisdiction to issue such order.

(c) Subject to the provisions of this chapter and subchapter IV of Chapter 101 of Title 29, no license shall be disciplined, restricted, suspended or revoked by the Board, and no practitioner's right to practice shall be limited by the Board, until such practitioner has been given notice and an opportunity to be heard in accordance with the Administrative Procedures Act [Chapter 101 of Title 29].

70 Del. Laws, c. 582, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 108, §§ 2, 3; 74 Del. Laws, c. 262, § 100; 75 Del. Laws, c. 436, § 52; 77 Del. Laws, c. 199, § 40; 78 Del. Laws, c. 44, §§ 78, 79; 78 Del. Laws, c. 363, § 11; 81 Del. Laws, c. 104, § 5.;

§ 5314 Complaints [Effective Jan. 22, 2018]

(a) A practitioner or member of the public desiring to file a complaint against a practitioner or licensee, massage establishment, or certificate holder regulated by the Board shall file a written complaint with the Division of Professional Regulation. All complaints shall be received and investigated by the Division in accordance with the procedures as specified in § 8735 of Title 29. The Division shall be responsible for issuing a final written report at the conclusion of the investigation.

(b) Those complaints involving unsanitary conditions or other conditions in any massage establishment which may harm the health of any person on the premises shall be investigated by the Division of Public Health.

70 Del. Laws, c. 582, § 1; 81 Del. Laws, c. 104, § 6.;

§ 5315 Disciplinary sanctions [Effective Jan. 22, 2018]

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that any of the conditions or violations set forth in § 5313 of this title applies to a practitioner regulated by this chapter.

(1) Issue a letter of reprimand;

(2) Place a practitioner on probationary status, and require the practitioner to:

a. Report regularly to the Board upon the matters which are the basis of the probation;

b. Limit all practice and professional activities to those areas prescribed by the Board; and/or

c. Continue or renew the practitioner's professional education until the required degree of skill has been attained in those areas which are the basis of the probation;

(3) Suspend any practitioner's license or certification;

(4) Revoke a practitioner's license or certification;

(5) Impose a monetary penalty not to exceed \$500 for each violation.

(b) The Board may withdraw or reduce conditions of probation when it finds that the deficiencies which required such action have been remedied.

(c) In the event of a formal or informal complaint concerning the activity of a licensee, massage establishment, or certificate holder that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person's license or certificate, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Board chair or the Board chair's designee. An order

temporarily suspending a license or certificate may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license or certificate has been temporarily suspended pursuant to this section may request an expedited hearing. The Board shall schedule the hearing on an expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the person received notification of the decision to temporarily suspend the person's license or certificate.

(d) Where a licensee or certificant has been suspended due to a disability of the licensee or certificant, the Board, at a Board meeting, may reinstate such licensee or certificant if the Board is satisfied that the licensee or certificant is able to practice with reasonable skill and safety.

(e) As a condition of reinstatement of a suspended license, or removal from probationary status, the Board may impose such disciplinary or corrective measures as are authorized under this chapter.

(f) The Board shall permanently revoke the license or certificate of a person licensed as a massage and bodywork therapist or certified as a massage technician who is convicted of a felony sexual offense.

70 Del. Laws, c. 582, § 1; 78 Del. Laws, c. 363, § 12; 79 Del. Laws, c. 213, § 2; 81 Del. Laws, c. 104, § 7.;

§ 5317 Penalties [Effective Jan. 22, 2018]

(a) A person not currently licensed as a massage or bodywork therapist or certified as a massage technician under this chapter, when guilty of engaging in the practice of massage or bodywork therapy or of practicing as a massage technician, or using in connection with the practitioner's own name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the practitioner is qualified to practice massage or bodywork therapy, or to act as a massage technician, such offender shall be guilty of a misdemeanor. Upon the first offense, the practitioner shall be fined not less than \$100, nor more than \$500 for each offense. For a second or subsequent conviction, the fine shall be not less than \$500, nor no more than \$1,000 for each offense. Superior Court shall have jurisdiction over all violations of this chapter.

(b) Where a person unlawfully operates, manages, owns, or advertises for any massage establishment or place where massage and bodywork services are rendered, the person shall be guilty of a class A misdemeanor, and be imprisoned not more than 1 year or fined not more than \$2300, or both. Superior Court shall have jurisdiction over all violations of this chapter.

§ 5319 Qualifications of applicants for massage establishments [Effective Jan. 22, 2018]

(a) All massage establishments must be licensed pursuant to this chapter. Applications for licensure shall be submitted together with the required fees set by the Division of Professional Regulation.

(b) An application for massage establishment licensure shall identify the professional-in-charge and shall include notarized acknowledgement by the person identified as the professional-in-charge. At all times, the professional-in-charge shall be licensed pursuant to this chapter and shall hold a license in good standing as defined in this title. A

licensee may serve as professional-in-charge for only 1 establishment at any given time, unless the licensee has sought and received a waiver. The Board shall be notified in writing of any change in the professional-in-charge within 10 business days of such change.

(c) Massage establishments shall employ only licensed massage and bodywork therapists or certified massage technicians to practice massage and bodywork.

(d) No massage establishment shall be used as or for a dormitory nor shall any licensee under this chapter permit any massage establishment to be so used.

(e) The Board shall establish by regulation the permissible operating hours of massage establishments, as well as the mechanisms to apply for a waiver. Services shall be rendered to the public in any massage establishment only during permissible operating hours when the establishment is open and may be inspected by any agent of the Division.

(f)(1) All internal and external doors shall be kept unlocked during operating hours except as follows:

a. Restroom doors may be locked.

b. External doors may be locked if the massage establishment is a business entity owned by 1 individual and has no more than 1 employee or independent contractor.

c. Internal doors may be locked to protect confidential patient or business information.

(2) If the inspecting official requests access to doors locked under this subsection during an inspection, the doors must be opened immediately. A person who refuses to immediately open a locked door during an inspection is unlawfully operating or managing the massage establishment under § 5317(b) of this title.

(g) No professional-in-charge of a massage establishment may allow, authorize, or tolerate in his or her massage establishment any activity or behavior prohibited by the laws of the State including such laws proscribing acts of or promotion of prostitution, indecent exposure, lewdness or obscenity.

(h) Any conviction of any crime identified in paragraph (g) of this section occurring on or in connection with the massage establishment shall be grounds for revocation of the license of the establishment and no new license for the operation of a massage establishment on the same premises or to the same professional-in-charge thereafter shall be issued for a period of 1 year.

(i) A massage establishment license issued pursuant to this chapter shall be issued for a single, identified location and is not assignable or transferable.

(j) A massage establishment may not advertise for sexually explicit services or engage in any sexually explicit advertising. Any such advertising will be imputed to the professional-in-charge and is grounds for discipline of the massage establishment license and the professional-in-charge's license.

(k) The Board may establish by regulation additional requirements and prohibitions regarding the operation of massage establishments.

81 Del. Laws, c. 104, § 10; 70 Del. Laws, c. 186, § 1.;

§ 5320 Unlicensed practice violations; penalties [Effective Jan. 22, 2018]

(a) A placard, as provided by the Attorney General, shall be prominently displayed at all entrances of establishments that have failed to obtain a valid license or have a license that is suspended, revoked, or expired.

(b) Whenever, in the judgment of the Division, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter or any rule, regulation or order issued thereunder, the Division may request the Attorney General to make application to the Court of Chancery for an order enjoining such acts or practices or for an order directing compliance and, upon a showing by the Division that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order or other order may be granted.

(c) The unlawful operation, management, ownership, or advertisement of any massage establishment or place where massage and bodywork services are rendered is hereby deemed a public nuisance.

81 Del. Laws, c. 104, § 10.;

§ 5321 Inspections [Effective Jan. 22, 2018]

(a) An agent of the Division may enter and inspect during business hours, without prior notice, any massage establishment.

(b) An agent of the Division acting pursuant to subsection (a) of this section: may inspect and copy records of the establishment; may inspect within reasonable limits and in a reasonable manner the premises and all pertinent equipment; and may inspect other things therein, including records, files, papers, and facilities relating to violation of this chapter.

(c) If a massage establishment is located within a therapist's residence, an out call location, or is located within an office space shared with other businesses, an agent of the Division must have independent and sufficient legal justification before inspecting areas not used as a place of business for massage and bodywork by the establishment.

81 Del. Laws, c. 104, § 10.;

Delaware Regulations: Administrative Code : Title 24

12.0 Massage Establishments

12.1 Definitions.

"Advertise" or "advertising" means the public promotion of a service, by use of printed media, the internet, or any other advertising method or medium, to attract and encourage individuals to engage, purchase, or use the service referenced in the content of the advertisement.

"Dormitory" means a location in a massage establishment, other than a residence, where there are signs that individuals are living there or engaged in communal sleeping, including but not limited to, beds, mattresses or cots.

"Massage establishment" means any place of business that offers the practice of massage and bodywork and where the practice of massage and bodywork is conducted on the premises of the business, or that represents itself to the public by any title or description of services incorporating the words "bodywork," "massage," "massage therapy," "massage practitioner," "massagist," "masseur," "masseur," "masseur," "masseur," "masseur," or other terms or modalities included in the definition of "massage and bodywork" in Section 2.0 of the Board's rules and regulations or any images or photographs depicting massage or bodywork. A "place of business" includes any office, clinic, facility, salon, spa, or other location where a person or persons engage in the practice of massage and bodywork. The residence of a therapist, or an out call location which is not owned, rented, or leased by a massage therapist or massage establishment, shall not be

considered a massage establishment, unless the location is advertised as the therapist's or establishment's place of business. The term "massage establishment" shall not include any "facility" as defined in §1131(4) of Title 16, any "hospital" as defined in §1001(3) of Title 16, physician offices, physical therapy facilities, chiropractic offices, or athletic training facilities, whether or not they employ, contract with, or rent to massage therapists, or institutions of secondary or higher education when massage therapy is practiced in connection with employment related to athletic teams or any other business establishment licensed pursuant to another chapter of this Title 24 of the Delaware Code.

"Professional-in-charge" means a licensee who is responsible for the operation of a massage establishment, including ensuring that all employees and contractors are licensed, where required by law.

"Sexual activity" means any direct or indirect physical contact 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 includes sexual intercourse, fellatio, cunnilingus, masturbation or anal intercourse. Sexual activity can involve the use of any device or object and is not dependent on whether penetration, orgasm or ejaculation has occurred.

"Sexually oriented business" means a sex parlor, massage parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult motel, or other commercial enterprise which has as its primary business the offering of a service or the sale, rent or exhibit of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

12.2 License required.

12.2.1 All massage establishments shall be licensed pursuant to Chapter 53 of Title 24 of the Delaware Code and Section 12.0.

12.2.2 No massage establishment shall operate until the Board has approved and licensed the establishment.

12.2.3 A massage establishment license shall issue for a single, identified location and is not assignable or transferable.

12.2.4 When a massage establishment closes, is sold, has a change of name or change of ownership, the establishment shall notify the Board of such change within 10 days, and the license of the establishment shall be voided and a new license must be obtained.

12.2.4.1 The application for a new license shall be on the same form, containing the same information required for an original license, and shall be accompanied by the fee as determined by the Division.

12.2.4.2 The Board may issue a temporary operating permit to continue operation of the establishment for a period of up to ninety days pending the final disposition of the application.

12.2.5 All massage establishments shall have a professional-in-charge, who is a Delaware licensed massage therapist or certified massage technician, and who is responsible for supervision and operation of the establishment.

12.2.6 A massage establishment shall employ or contract for only Delaware licensed massage therapists or certified massage technicians to practice massage and bodywork.

12.2.7 A person licensed by the Board as a massage therapist or certified massage technician shall not work in a massage establishment unless such establishment has been licensed by the Board.

12.2.8 A sexually oriented business may not obtain a massage establishment license from the Board or operate as a massage establishment.

12.3 Application for massage establishment license.

12.3.1 An applicant for a massage establishment license shall file an application, on a Board approved form, with the fee set by the Division.

12.3.2 The application shall include:

12.3.2.1 The name and address of the massage establishment.

12.3.2.2 If a corporation:

12.3.2.2.1 The name and address of any person who directly or indirectly owns or controls the outstanding shares of stock in the massage establishment;

12.3.2.2.2 The names and addresses of the directors; and

12.3.2.2.3 A copy of the corporate charter and a statement identifying the corporation's registered agent for service.

12.3.2.3 The name and address of the sole proprietor or partners.

12.3.2.4 If any other type of organization, the name and address of the owners.

12.3.2.5 The name, address and license number of the professional-in-charge and a notarized acknowledgment by the person so designated.

12.3.2.6 A current list of all establishment employees and/or contractors, which includes:

12.3.2.6.1 Full name;

12.3.2.6.2 Address; and

12.3.2.6.3 License number and expiration date (if a licensed massage therapist or certified massage technician).

12.3.2.7 A detailed floor plan of the proposed massage establishment that includes entrances and exits, length and width of establishment (in feet), total square feet and location of restrooms.

12.3.2.8 An attestation that the proposed location of the massage establishment is in compliance with all applicable laws and ordinances.

12.3.3 The Board shall not consider an application for licensure as a massage establishment until all items specified in subsection 12.3 are submitted to the Board's office. If an application is complete in terms of required documents, but the applicant has not responded to a Board request for further information, explanation or clarification within 60 days of the Board's request, the Board shall vote on the application as is.

12.3.4 Where an establishment license application has been denied, the Board shall not consider an establishment license for the same location until 6 months after denial of the initial application.

12.4 Professional-in-charge.

12.4.1 Each massage establishment shall be under the direction of a professional-in-charge, who shall provide complete and adequate supervision of that establishment.

12.4.2 At all times, the massage establishment's professional-in-charge shall be a Delaware licensed massage therapist or certified massage technician with a license in good standing.

12.4.3 A licensee may serve as professional-in-charge for only 1 establishment at any given time.

12.4.4 The professional-in-charge is responsible for ensuring that all licensees providing massage services at the massage establishment comply with the Board's Practice Act, Chapter 53 of Title 24 of the Delaware Code, and regulations.

12.4.5 The professional-in-charge is responsible for ensuring that all of the individuals providing massage services at the massage establishment are currently licensed, make timely application for license renewal, and meet the Board's continuing education requirements.

12.4.6 The professional-in-charge shall not allow, authorize or tolerate any activity or behavior prohibited by the laws of this State, including such laws proscribing acts of or promotion of prostitution, indecent exposure, lewdness or obscenity or any of the criminal code violations set forth in Section 14.0.

12.4.7 The massage establishment shall notify the Board of any change in the professional-in-charge within 10 business days of such change.

12.5 Hours of operation.

12.5.1 Massage services may be provided at a massage establishment only between the hours of 7:00 a.m. and 9:00 p.m., except that a massage commenced prior to 9:00 p.m. may be completed, and, subject to this qualification, no massage establishment shall be open and no massage services shall be provided between 9:00 p.m. and 7:00 a.m.

12.6 Operation requirements.

12.6.1 Sign. A massage establishment shall post a sign containing the establishment's name in a conspicuous location at the entrance.

12.6.2 Display of license. The original or copy of the massage establishment license, and the originals or copies of individual licenses of licensees providing massage services, shall be displayed in a conspicuous location in the establishment. A licensee who is working outside of a massage establishment shall have his/her license identification card in his/her possession and shall present it upon request of a client or Division agent.

12.6.3 Presence of licensee. A licensee who is either an employee or contractor of the massage establishment shall be on the premises of the establishment if a client is in a treatment room for the purpose of receiving a massage.

12.6.4 Dormitory prohibited. A massage establishment shall not be used as a dormitory nor shall any licensee permit any massage establishment to be so used.

12.6.5 Records. For each client receiving services, the massage establishment shall keep a client intake form which shall contain at least the following information: client's name and licensee's name; dated signatures; and client's medical history, including medications, health status, allergies and past surgeries. Pursuant to subsection 11.1.15, such forms and any other client records shall be retained on the premises of the massage establishment for a period of at least three years from the last date that services were provided.

12.6.6 Attire. All establishment employees and/or contractors, including licensees, shall wear clean, non-transparent outer garments, such as uniforms, scrubs or business casual wear. Such garments shall not expose their genitals, pubic areas, buttocks or breasts.

12.6.7 Doors: All internal and external doors shall be kept unlocked during operating hours except as follows:

12.6.7.1 Restroom doors may be locked.

12.6.7.2 External doors may be locked if the massage establishment is a business entity owned by 1 individual and has no more than 1 employee or contractor.

12.6.7.3 Internal doors may be locked to protect confidential patient or business information.

12.6.7.4 Where a massage establishment is located in a residence, the door between the establishment and the residence may be locked.

12.6.8 Windows: No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints or any other material that obstructs, blurs or unreasonably darkens the view into the premises.

12.7 Prohibition of sexual activity.

12.7.1 Sexual activity in a massage establishment is absolutely prohibited.

12.7.2 No massage establishment owner, professional-in-charge or licensee shall engage in, or permit any person or persons, to engage in, sexual activity in a massage establishment or to use that establishment to make arrangements to engage in sexual activity in any other place.

12.7.3 No licensed massage therapist or certified massage technician shall use the practitioner-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.

12.8 Advertising.

12.8.1 The contents of any advertising shall include the name of the massage establishment, its address, its business phone number and establishment license number.

12.8.2 An advertisement shall not contain any representations that a massage establishment employee or contractor is willing to provide services which are illegal under the laws or regulations of the State of Delaware or the United States.

12.8.3 Photographs, drawings, written or verbal statements used in any advertising shall not explicitly communicate that services offered are for the purpose of sexual stimulation or gratification.

12.9 Inspections.

12.9.1 Licensed massage establishments are subject to inspection by an agent of the Division, presenting appropriate identification, during business hours, with or without notice.

12.9.2 During the inspection, the agent of the Division shall not interrupt an in-progress treatment session.

12.9.3 The purpose of massage establishment inspections is to verify compliance with the standards of Section 12.0 and Chapter 53 of Title 24 of the Delaware Code and to verify that the establishment and all individuals providing massage services have valid licenses issued by the Board and that such licenses are conspicuously displayed on the premises.

12.9.4 An agent of the Division may inspect and copy records of the massage establishment; may inspect within reasonable limits and in a reasonable manner the premises, subject to subsection 12.9.2, and all pertinent equipment; and may inspect other things therein, including records, files, papers and facilities.

12.9.5 If a massage establishment is located within a licensee's residence, an out call location or is located within an office space shared with other businesses, an agent of the Division must have independent and sufficient legal justification before inspecting areas not to be used as a place of business for massage and bodywork.

12.9.6 The massage establishment shall allow, appear for and cooperate with an inspection.

12.10 License renewal. All massage establishment licenses shall be renewed biennially. Licenses shall expire on August 31 of each even numbered year. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date. A massage establishment shall not provide massage services after a license has expired.

12.11 Request for waiver or variance.

12.11.1 The Board may grant a waiver of any of the requirements of Section 12.0 where there is a showing that complying with the requirement would result in extreme and undue hardship, as long as granting the waiver will not jeopardize the public health, safety or welfare.

12.11.2 The Board may vary the application of any requirement of Section 12.0 as long as the requestor demonstrates that the intent of the requirement is being met in an alternative manner to that described in the Section.

12.11.3 A waiver or variance is not transferable to another licensee or another location.

12.11.4 The Board may modify, suspend or revoke a waiver or variance.

21 DE Reg. 815 (04/01/18)

Florida

Statutory Authority: §480.043, .0475, .052 & .0535

480.043 Massage establishments; requisites; licensure; inspection.

(1) No massage establishment shall be allowed to operate without a license granted by the department in accordance with rules adopted by the board.

(2) A person who has an ownership interest in an establishment shall submit to the background screening requirements under s. 456.0135. However, if a corporation submits proof of having more than \$250,000 of business assets in this state, the department shall require the owner, officer, or individual directly involved in the management of the establishment to submit to the background screening requirements of s. 456.0135. The department may adopt rules regarding the type of proof that may be submitted by a corporation.

(3) The board shall adopt rules governing the operation of establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.

(4) Any person, firm, or corporation desiring to operate a massage establishment in the state shall submit to the department an application, upon forms provided by the department, accompanied by any information requested by the department and an application fee.

(5) Upon receiving the application, the department may cause an investigation to be made of the proposed massage establishment.

(6) If, based upon the application and any necessary investigation, the department determines that the proposed establishment would fail to meet the standards adopted by the board under subsection (3), the department shall deny the application for license. Such denial shall be in writing and shall list the reasons for denial. Upon correction of any deficiencies, an applicant previously denied permission to operate a massage establishment may reapply for licensure.

(7) If, based upon the application and any necessary investigation, the department determines that the proposed massage establishment may reasonably be expected to meet the standards adopted by the department under subsection (3), the department shall grant the license under such restrictions as it shall deem proper as soon as the original licensing fee is paid.

(8) The department shall deny an application for a new or renewal license if a person with an ownership interest in the establishment or, for a corporation that has more than \$250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the establishment has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a violation of s. 796.07(2)(a) which is reclassified under s. 796.07(7) or a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

- (a) Section 787.01, relating to kidnapping.
- (b) Section 787.02, relating to false imprisonment.
- (c) Section 787.025, relating to luring or enticing a child.
- (d) Section 787.06, relating to human trafficking.
- (e) Section 787.07, relating to human smuggling.
- (f) Section 794.011, relating to sexual battery.
- (g) Section 794.08, relating to female genital mutilation.
- (h) Former s. 796.03, relating to procuring a person under the age of 18 for prostitution.
- (i) Former s. 796.035, relating to selling or buying of minors into prostitution.
- (j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.
- (k) Section 796.05, relating to deriving support from the proceeds of prostitution.
- (l) Section 796.07(4)(a)3., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

- (n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.
 - (o) Section 827.071, relating to sexual performance by a child.
 - (p) Section 847.0133, relating to the protection of minors.
 - (q) Section 847.0135, relating to computer pornography.
 - (r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.
 - (s) Section 847.0145, relating to the selling or buying of minors.
 - (9)(a) Once issued, no license for operation of a massage establishment may be transferred from one owner to another.
 - (b) A license may be transferred from one location to another only after inspection and approval by the board and receipt of an application and inspection fee set by rule of the board, not to exceed \$125.
 - (c) A license may be transferred from one business name to another after approval by the board and receipt of an application fee set by rule of the board, not to exceed \$25.
 - (10) Renewal of license registration for massage establishments shall be accomplished pursuant to rules adopted by the board. The board is further authorized to adopt rules governing delinquent renewal of licenses and may impose penalty fees for delinquent renewal.
 - (11) The board is authorized to adopt rules governing the periodic inspection of massage establishments licensed under this act.
 - (12) A person with an ownership interest in or, for a corporation that has more than \$250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of an establishment that was issued a license before July 1, 2014, shall submit to the background screening requirements of s. 456.0135 before January 31, 2015.
 - (13) This section does not apply to a physician licensed under chapter 458, chapter 459, or chapter 460 who employs a licensed massage therapist to perform massage on the physician's patients at the physician's place of practice. This subsection does not restrict investigations by the department for violations of chapter 456 or this chapter.
- History.—s. 12, ch. 78-436; ss. 13, 15, 25, 30, 34, 54, 62, ch. 80-406; s. 2, ch. 81-318; ss. 6, 12, 13, ch. 85-280; s. 4, ch. 91-429; s. 156, ch. 97-264; s. 4, ch. 2014-139; s. 60, ch. 2015-2; s. 64, ch. 2016-10.
- ¹Note.—Repealed by s. 10, ch. 2014-160.

480.0475 Massage establishments; prohibited practices.

- (1) A person may not operate a massage establishment between the hours of midnight and 5 a.m. This subsection does not apply to a massage establishment:
 - (a) Located on the premises of a health care facility as defined in s. 408.07; a health care clinic as defined in s. 400.9905(4); a hotel, motel, or bed and breakfast inn, as those terms are defined in s. 509.242; a timeshare property as defined in s. 721.05; a public airport as defined in s. 330.27; or a pari-mutuel facility as defined in s. 550.002;
 - (b) In which every massage performed between the hours of midnight and 5 a.m. is performed by a massage therapist acting under the prescription of a physician or physician assistant licensed under chapter 458, an osteopathic physician or physician assistant licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, an advanced registered nurse practitioner licensed under part I of chapter 464, or a dentist licensed under chapter 466; or
 - (c) Operating during a special event if the county or municipality in which the establishment operates has approved such operation during the special event.
 - (2) A person operating a massage establishment may not use or permit the establishment to be used as a principal domicile unless the establishment is zoned for residential use under a local ordinance.
 - (3) A person violating the provisions of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A second or subsequent violation of this section is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- History.—s. 4, ch. 2013-212.

480.052 Power of county or municipality to regulate massage.

A county or municipality, within its jurisdiction, may regulate persons and establishments licensed under this chapter. Such regulation shall not exceed the powers of the state under this act or be inconsistent with this act. This section shall not be construed to prohibit a county or municipality from enacting any regulation of persons or establishments not licensed pursuant to this act.

History.—s. 20, ch. 78-436; ss. 13, 15, 25, 30, 34, 56, 62, ch. 80-406; s. 2, ch. 81-318; ss. 12, 13, ch. 85-280; s. 4, ch. 91-429.

480.0535 Documents required while working in a massage establishment.

(1) In order to provide the department and law enforcement agencies the means to more effectively identify, investigate, and arrest persons engaging in human trafficking, a person employed by a massage establishment and any person performing massage therein must immediately present, upon the request of an investigator of the department or a law enforcement officer, valid government identification while in the establishment. A valid government identification for the purposes of this section is:

- (a) A valid, unexpired driver license issued by any state, territory, or district of the United States;
- (b) A valid, unexpired identification card issued by any state, territory, or district of the United States;
- (c) A valid, unexpired United States passport;
- (d) A naturalization certificate issued by the United States Department of Homeland Security;
- (e) A valid, unexpired alien registration receipt card (green card); or
- (f) A valid, unexpired employment authorization card issued by the United States Department of Homeland Security.

Security.

(2) A person operating a massage establishment must:

- (a) Immediately present, upon the request of an investigator of the department or a law enforcement officer:
 - 1. Valid government identification while in the establishment.
 - 2. A copy of the documentation specified in paragraph (1)(a) for each employee and any person performing massage in the establishment.

(b) Ensure that each employee and any person performing massage in the massage establishment is able to immediately present, upon the request of an investigator of the department or a law enforcement officer, valid government identification while in the establishment.

(3) A person who violates any provision of this section commits:

(a) For a first violation, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) For a second violation, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) For a third or subsequent violation, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. [History.—s. 2, ch. 2012-97.]

Administrative Regulations: 64B7-26

64B7-26.001 Definitions.

(1) The term “owner” means the sole proprietor, partnership, limited partnership or corporation that operates the massage establishment.

(2) The term “business name” means the name under which the owner applies for the establishment license to provide massage therapy, if different from the name of the owner.

Rulemaking Authority 480.035(7) FS. Law Implemented 480.043(7) FS. History—New 7-16-98, Amended 8-5-03, 2-26-12.

64B7-26.002 Licensure of Massage Establishments.

(1) Each establishment, shall obtain a license from the Department as required by Section 480.043(1), F.S., by submitting a completed form DH-MQA 1263, "Massage Establishment Licensure Application" (Rev. 11/15), incorporated herein by reference, together with the fee set forth in subsection 64B7-27.100(2), F.A.C. The form and the attached instructions may be obtained from the Board office at 4052 Bald Cypress Way, Bin C-06, Tallahassee, Florida 32399 or from the website located at <http://floridasmassagetherapy.gov/applications/app-bus-original-mt.pdf> or <http://www.flrules.org/Gateway/reference.asp?No=Ref->_____.

(2) The application for licensure shall be submitted in the name of the owner or owners of the establishment. If the owner is a partnership, limited partnership or corporation, the application shall be submitted in the name of the business entity and shall be signed by an authorized representative.

(3) An owner operating an establishment under a fictitious name as defined in s. 865.09, F.S., must provide such name to the Board on the application for licensure. Any advertisement by the establishment of massage therapy must include the fictitious name, and must comply with Rule 64B7-33.001, F.A.C.

(4) The applicant shall submit proof confirming property damage and bodily injury liability insurance coverage for the proposed establishment. If the establishment is operated under a business name, the proof of insurance shall include both the name of the owner and the business name.

Rulemaking Authority 480.035(7), 480.043(2) FS. Law Implemented 480.043, 456.0635 FS. History—New 11-27-79, Formerly 21L-26.02, Amended 1-7-86, Formerly 21L-26.002, Amended 3-9-95, 9-25-95, Formerly 61G11-26.002, Amended 7-16-98, 1-26-00, 4-2-09, 10-7-14, 3-14-16.

64B7-26.003 Massage Establishment Operations.

(1) Facilities, Each establishment shall meet the following facility requirements:

(a) Comply with all local building code requirements.

(b) Provide for the use of clients a bathroom with at least one toilet and one sink with running water. Such facilities shall be equipped with toilet tissue, soap dispenser with soap or other hand cleaning materials, sanitary towels or other hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle.

(c) Maintain toilet facilities in a common area of the establishment. Establishments located in buildings housing multiple businesses under one 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.

(d) If equipped with a whirlpool bath, sauna, steam cabinet and/or steam room, maintain clean shower facilities on the premises.

(2) Personnel. A licensed massage therapist must be on the premises of the establishment if a client is in a treatment room for the purpose of receiving massage therapy.

(3) Safety and sanitary requirements. Each establishment shall:

(a) 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 materials.

(b) Maintain a fire extinguisher in good working condition on the premises. As used herein "good working condition" means meeting the standards for approval by the State Fire Marshal. Such standards are presently contained in Chapter 69A-21, F.A.C.

(c) Exterminate all vermin, insects, termites, and rodents on the premises.

(d) Maintain all equipment used to perform massage services on the premises in a safe and sanitary condition, including the regular application of cleansers and bactericidal agents to the massage table. Unless clean sheets, towels, or other coverings are used to cover the massage table for each client, "regular application," as used herein, means after the massage of each client. If clean coverings are used for each client, then "regular application" shall mean at least one time a day and also whenever oils or other substances visibly accumulate on the massage table surface.

(e) Maintain a sufficient supply of clean drapes for the purpose of draping each client while the client is being massaged, and launder before reuse all materials furnished for the personal use of the client, such as drapes, towels and linens. As used herein "drapes" means towels, gowns, or sheets.

(f) Maintain lavatories for hand cleansing and/or a chemical germicidal designed to disinfect and cleanse hands without the use of a lavatory in the treatment room itself or within 20 feet of the treatment area.

(g) Maintain all bathroom and shower facilities and fixtures in good repair, well-lighted and ventilated.

(4) Financial responsibility and insurance coverage. Each establishment shall maintain property damage and bodily injury liability insurance coverage. The original or a copy of such policy shall be available on the premises of the establishment.

Rulemaking Authority 480.035(7), 480.043(2) FS. Law Implemented 480.043(2) FS. History--New 11-27-79, Amended 10-13-81, 9-10-84, 9-25-85, Formerly 21L-26.03, Amended 4-30-87, 6-12-89, 8-15-89, 5-31-92, 11-2-92, Formerly 21L-26.003, 61G11-26.003, Amended 2-16-99, 11-4-99, 6-8-00.

64B7-26.004 Inspection Upon Application for License.

Upon receipt of an application for a massage establishment license, employees of the Department shall cause an inspection to be made of the site. Such inspection shall be to confirm that the site is to be utilized for "massage" as defined by Section 480.033(4), F.S., and that the criteria enunciated in Rule 64B7-26.003, F.A.C., are satisfied.

Rulemaking Authority 480.043(1), (2) FS. Law Implemented 480.043(2), (4) FS. History--New 11-27-79, Formerly 21L-26.04, 21L-26.004, Amended 1-9-95, 3-9-95, Formerly 61G11-26.004.

64B7-26.005 Periodic Inspections.

The Department shall make periodic inspections of all massage establishments licensed in this state no less than once each year. Such inspection shall include, but not be limited to, whether the establishment is in compliance with Rule 64B7-26.003, F.A.C., governing the establishment's operation facilities, personnel, safety, sanitary requirements, and a review of existing insurance coverage.

Rulemaking Authority 480.043(2), (9) FS. Law Implemented 480.043 FS. History--New 11-27-79, Formerly 21L-26.05, Amended 4-30-87, Formerly 21L-26.005, 61G11-26.005, Amended 1-26-00.

64B7-26.007 Transfer of Massage Establishment License.

(1) When there is no change of ownership or location, the owner may change the business name of the establishment. The owner shall apply for a change of business name by submitting a completed Form DH-MQA 1264 "Massage Establishment Change of Location/Name Application" (Rev. 6/14), incorporated herein by reference, accompanied by the application fee provided in paragraph 64B7-27.100(2)(d), F.A.C. The form and the attached instructions may be obtained from the Board Office at 4052 Bald Cypress Way, Bin C-06, Tallahassee, Florida 32399 or from the website located at <http://floridasmassagetherapy.gov> or <http://www.flrules.org/Gateway/reference.asp?No=Ref-04618>. When a massage establishment business name is

changed, without a change in ownership or location, a new establishment inspection is not required.

(2) When there is no change of ownership, the owner of a massage establishment may transfer the license from one location to another. The owner shall apply for a change of location by submitting a completed Form DH-MQA 1264 "Massage Establishment Change of Location/Name Application" (Rev. 6/14), accompanied by the application fee provided in paragraph 64B7-27.100(2)(e), F.A.C. A massage establishment license may not be transferred from one location to another until after inspection by the department.

Rulemaking Authority 480.035(7), 480.043(2), (9) FS. Law Implemented 480.043(2), (7), (9), 456.0635 FS. History—New 5-17-90, Formerly 21L-26.007, 61G11-26.007, Amended 9-14-98, 10-8-14.

64B7-26.010 Sexual Activity Prohibited.

(1) Sexual activity by any person or persons in any massage establishment is absolutely prohibited.

(2) 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.

(3) No licensed massage therapist shall use the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.

(4) As used in this rule, "sexual activity" means any direct or indirect physical contact 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 includes sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse. For purposes of this subsection, 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 and is not dependent on whether penetration, orgasm, or ejaculation has occurred. Nothing herein shall be interpreted to prohibit a licensed massage therapist, duly qualified under Rule 64B7-31.001, F.A.C, from practicing colonic irrigation.

Rulemaking Authority 480.035(7), 480.043(2) FS. Law Implemented 480.043(2), 480.046(1)(h) FS. History—New 5-31-92, Formerly 21L-26.010, 61G11-26.010.

Hawaii

Statutory Authority: §452-3

§452-3 Massage therapy establishments to be licensed. No massage therapy establishment shall be operated unless it has been duly licensed as provided for in this chapter. [L 1947, c 192, §3; RL 1955, §63-3; HRS §452-3; am L 1980, c 208, §5; am L 1981, c 82, §28; am L 1987, c 190, §3; am L 1990, c 205, §2]

Administrative Regulations: §16-84-15

§16-84-15 Massage establishment and out-call massage service requirements.

- (a) No massage establishment or out-call massage service shall be licensed or allowed to operate unless the massage business thereof is under the direct management of a massage therapist designated as the principal massage therapist and the name of the person has been recorded with the board's office.
- (b) An establishment or out-call massage service shall notify the board within five days after the disassociation of its principal massage therapist. The establishment and out-call massage service shall have ten days from the date of disassociation of the principal massage therapist in which to designate another massage therapist as principal massage therapist. If after fifteen days from the date of the disassociation of its principal massage therapist the establishment or out-call massage service has not designated another principal massage therapist, the license of the establishment or out-call massage service shall be automatically suspended. Suspension shall remain in effect until such time as a massage therapist is designated principal massage therapist and the person's name is recorded at the board's office.
- (c) Every establishment shall display, in a conspicuous place, its license, together with the licenses and permits of all persons employed by the establishment with the current validation of the certificates of the massage therapists and apprentices.
- (d) No establishment shall operate without a licensed massage therapist in attendance on the premises of the establishment at all times. During the absence of the principal massage therapist, a massage therapist must be designated to act in that capacity. That designated person, with the principal massage therapist, shall be responsible for the operation and activities of the establishment during the absence of the principal massage therapist.
- (e) An establishment or out-call massage service may be charged either separately or with its principal massage therapist with any violation of the law or rules of the board.
- (f) No establishment or out-call massage service shall employ, allow, or permit any unlicensed person to practice massage or assist in the practice of massage on its premises, except if the person has an apprentice permit.
- (g) Every massage establishment or out-call massage service shall be responsible for all lascivious conduct, lewdness, or any sexual act on its premises.
- (h) The maximum ratio of apprentices to each massage therapist in any establishment shall be ten to one.
- (i) Every establishment shall assure proper supervision and training of the apprentice. The establishment shall notify all customers when they are to be Massaged by an apprentice. If upon notice the customer does not want a massage By an apprentice, the establishment shall furnish a massage therapist or refund any money paid in advance by the customer for the massage. Apprentices shall not be sent on hotel or house calls.

(j) All establishments may be inspected at any time during business hours by any member of the department of health or the board or their authorized agents. Appropriate identification shall be presented by the investigators on request.

(k) Rest quarters provided for employees shall not be used for massage purposes and shall be properly identified by a sign over the doorway.

(l) No establishment shall install or permit the use of any locks on the doors of massage rooms. Any device used to secure a door against easy entry or exit shall be considered a lock.

(m) An establishment or an out-call massage service license is nontransferable. Application for a new license must be made within ten days after the death of the owner or upon sale or transfer of the establishment and the out-call massage service.

(n) When relocating an establishment, all requirements shall be fulfilled except for the license fee.

(o) When relocating an out-call massage service, all requirements shall be fulfilled except for the license fee and sanitation clearance form.

[Eff3/28/66; am 4/4/70; am and ren §16-84-15, 6/22/81; am and comp 4/9/82; am and comp 7/19/87; am and comp 3/26/90](Auth: HRS§452-6)(Imp: HRS§§452-3,452-6, 452-13, 452-15, 452-19)

Louisiana

Statutory Authority: §37: 3558

A. Massage establishments shall be required to be licensed as follows:

(1) Each person engaging in the practice of massage therapy at a massage establishment shall be the holder of a Licensed Massage Therapist Identification Card (LMT-ID Card), which shall identify the therapist as being properly licensed and shall authorize the therapist to provide off- site massage services.

(2) All locations where one or more persons are regularly engaged in the practice of massage therapy shall register with the board as a massage establishment. Additionally, all locations where more than one person is regularly engaged in the practice of massage therapy shall pay the establishment license fee.

(3) Obtaining a massage establishment license shall be the responsibility of the entity which controls the physical location where the services are provided, which entity may be a sole proprietor, lessee, owner, partnership, corporation, cooperative, association, or other legal entity.

B. A massage establishment shall employ or contract only licensed massage therapists to perform massage therapy.

C. For purposes of this Chapter, "sexually oriented business" means a sex parlor, massage parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult motel, or other commercial enterprise which has as its primary business the offering of a service or the sale, rent, or exhibit of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

D. A sexually oriented business shall be ineligible for registration as a massage establishment and shall not operate as a massage establishment.

History.—Acts 1992, No. 753, §2, eff. Sept. 1, 1992; Acts 1993, No. 766, §1; Acts 2001, No. 387, §1; Acts 2012, No. 605, §1, eff. Jan. 1, 2013.

Administrative Regulations: §46-2501, 2701, 2901, 3101, & 3301

§2501. Safety and Sanitary Requirements

A. Sanitary Requirements. Each massage establishment shall be maintained and operated in a safe and sanitary manner. Massage establishments shall adhere to local regulations as provided for in R.S. 37:3567. Each massage establishment shall:

1. maintain all equipment used to perform massage services on the premises in a safe and sanitary condition;
2. launder, before reuse, all materials furnished for the personal use of the customer, such as towels and linens;
3. provide adequate toilet and lavatory facilities. To be adequate, such facilities:
 - a. shall have at least one toilet and one sink with running water;
 - b. shall be equipped with toilet tissue, soap dispenser with soap or other hand cleaning materials, sanitary towels or other hand-drying device such as a wall mounted electric hand dryer, and waste receptacle; and
 - c. all of the foregoing fixtures and components shall be kept clean, in good repair, well-lighted, and adequately ventilated to remove objectionable odors;
4. adequately maintain shower facilities on the premises if equipped with a whirlpool bath, sauna, steam cabinet and/or steam room.

B. Draping. Each massage establishment shall maintain a sufficient supply of clean towels, gowns or sheets, for the purpose of covering each client during a massage. Before beginning a massage, each massage therapist shall

explain to the client expected draping techniques and provide the client a clean drape for that purpose. At all times during a massage session, reasonable efforts must be made to keep covered the gluteal cleft and genitalia for male clients and the breasts, the gluteal cleft, and genitalia for female clients. The board may establish a protocol for any variation from the above described draping procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq., R.S. 37:3555 et seq., and R.S. 37:3567. HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20: 1002 (September 1994), repromulgated LR 20:1111 (October 1994), amended LR 32:1234 (July 2006), LR 39:1771 (July 2013).

§2701. Inspections—Licensed and Unlicensed Establishments

- A. The board may make periodic inspections of all massage establishments, including licensed and/or unlicensed massage establishments.
- B. Such inspections may include, but need not be limited to, confirmation that the site is being utilized for massage therapy and a determination of whether the establishment is in compliance with the laws and rules governing the establishment's operation, facilities, personnel, safety, and sanitary requirements.
- C. Failure to cooperate with such inspections may lead to disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq., and R.S. 37:3555 et seq. HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20: 1002 (September 1994), repromulgated LR 20:1111 (October 1994), amended LR 32:1234 (July 2006), LR 39:1771 (July 2013).

§2901. Name, Ownership and/or Location Changes

- A. All name, location and/or ownership changes of licensure must be reported in writing to the board within 30 days of occurrence using a form provided by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq., and R.S. 37:3555 et seq. HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20: 1002 (September 1994), repromulgated LR 20:1111 (October 1994), amended LR 32:1235 (July 2006), LR 39:1772 (July 2013)

§3101. Prohibition of Sexual Activity

- A. All sexual activity by any person or persons in any massage establishment is absolutely prohibited.
- B. No massage establishment owner or operator shall engage in, or permit any person or persons to engage in, sexual activity in a massage establishment or to use that establishment to make arrangements to engage in sexual activity in any other place.
- C. No massage therapist shall engage in sexual activity with a current client of the therapist.
- D. No massage therapist shall engage in sexual activity with a former client of the therapist within three months after cessation of professional services.
- E. As used in this Rule and §5301 of this Part:
 - a. sexual activity—includes:
 - i. coital sexual intercourse;
 - ii. anal sexual intercourse;
 - iii. fellatio, cunnilingus;

- iv. masturbation;
- v. passionate kissing and acts of sadomasochistic abuse;
- vi. flagellation; or
- vii. torture in the context of sexual conduct;

b. the purposeful touching of the genitals of another person and the purposeful erotic stimulation of the anus, the male or female nipple, or the female breast, whether through draping or clothing, whether resulting in penetration or orgasm or not, and whether by instrumental manipulation, touching with the hands, or other bodily contact;

c. any sexual offenses proscribed by the criminal laws of Louisiana including, but not limited to, R.S. 14:83.3 and 83.4. F. For purposes of this rule, the term client means and includes any person receiving massage therapy services provided for compensation (regardless of the source, recipient or nature of the compensation), and any person receiving massage therapy services that are not provided for compensation either because of indigence or because the massage therapy services were provided within the context of a community outreach or other public service program. A massage therapist's own spouse is excluded from the term client under this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3555 et seq., R.S. 37:3556(A)(4) and (6), and R.S. 14:83.3 and 83.4. **HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994), amended LR 32:1235 (July 2006), LR 39:1772 (July 2013).

§3301. How to Display; Board Ownership

A. Each massage establishment shall post, in plain sight, its establishment license and the license or the licensed massage therapist identification card (LMT-ID) of each massage therapist who practices in the massage establishment. Each massage therapist must have his licensed massage therapist identification card (LMT-ID) in his possession while providing massage therapy for a client and present it for review upon request.

B. A license is the property of the board and shall be surrendered upon demand of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3555 et seq., and R.S. 37:3556 et seq. **HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994), amended LR 32:1235 (July 2006), LR 39:1772 (July 2013).

Massachusetts

Statutory Authority

Authority arises via c. 112, § 227 through 235.

Administrative Regulations: §269 – 6

6.01: Scope and Purpose

269 CMR 6.00 establishes the standards for applying for licensure and operating a licensed Massage Therapy Establishment pursuant to M.G.L. c. 112, § 227 through 235. The purpose of 269 CMR 6.00 is to protect the health, safety, and welfare of the public by promoting minimum standards for Massage Therapy Establishments throughout the Commonwealth.

6.02: Definitions

Adult Entertainment Venues. Any Establishment, including but not limited to a nightclub, bar, restaurant, tavern, dance hall, stage or other performance venue, which displays live entertainment, including but not limited to persons or entertainers appearing in a state of nudity or other live performance, distinguished by an emphasis on depicting, describing or relating to sexual conduct or sexual excitement as defined in M.G.L. c. 272, § 31.

Chair Massage. Massage therapy performed on a clothed, seated (i.e. not in a reclining or prone position) client.

Establishment. Any location, or portion thereof, which advertises and/or provides Massage Therapy services, which has been licensed by the Board pursuant to M.G.L. c. 112, § 227 through 236.

Operator. A person who, by their direction or control, allows Massage Therapy to be offered for compensation on premises owned/leased or controlled by that individual or an entity controlled by the individual. For the purposes of 269 CMR 6.03(5) a Massage Therapist practicing alone shall be considered an Operator.

Regular. More than eight hours in a one week period.

6.03: Establishment Licensure Required

(1) **Delivery of Massage Therapy.** Massage Therapy, including the provision of out of office massage therapy services, shall only be delivered or offered at any location or portion thereof covered by valid Massage Therapy Establishment license issued by the Board or otherwise exempted from licensure under 269 CMR 6.03(8).

(2) **License Required.** Each Massage Therapy Establishment within the Commonwealth shall be licensed by the Board before providing or offering to provide Massage Therapy and shall annually renew its license using an application provided by the Board, unless there is a change in ownership or location.

(3) Establishment License Type Classes.

(a) **Solo Establishment License.** A Solo Establishment License shall entitle a single Massage Therapist to deliver or offer massage therapy services from one designated location.

(b) **Multiple Therapists Establishment License.** A Multiple Therapists Establishment License shall entitle two or more Massage Therapists to deliver or offer massage therapy services from one designated location.

(4) **Multiple Therapists Establishment License Required.** A Multiple Therapists Establishment License shall be required at all locations where two or more Massage Therapists are delivering or offering massage therapy services jointly.

(5) **Responsibility for Obtaining an Establishment License.** The responsibility for obtaining an Establishment License shall rest with the Operator of the location.

(6) **Failure to Obtain an Establishment License.** Failure to obtain an Establishment License shall be considered unlicensed practice, unless otherwise exempted.

(7) **Number of Licenses Required for Two or More Establishments at the Same Address.** Each Massage Therapy Establishment shall require a separate license. The Board will consider the following in determining whether two or more Massage Therapists delivering Massage Therapy services at the same address constitute one or more Massage Therapy Establishments:

(a) The business structure of each Establishment, including but not limited to, overlap in areas of financing, management, or ownership;

(b) The resources shared by the Establishments, including but not limited to, office space, staff, record storage and maintenance facilities; and

(c) The overall impression created by advertising, signage, stationery, and office layouts.

(8) **Exemptions.**

(a) A Massage Therapy Establishment license is not required for the following:

1. Any healthcare facility licensed by the Massachusetts Department of Public Health;
2. Board approved continuing education programs and student clinics operated by Board licensed Massage Schools;
3. Locations at which Chair Massage is exclusively done; and
4. Locations at which Massage Therapy is offered for not more than 24 hours in a one week period every six months at a public or charitable event with a primary purpose unrelated to massage.

(b) The Board may require any location at which Massage Therapy is provided to provide satisfactory evidence why it is eligible for the exemption from Massage Therapy Establishment licensure requirements. The burden of proving eligibility shall rest with the entity claiming the exemption.

(9) **Locations at which the Delivery of Massage Therapy is Prohibited.**

(a) Massage Therapy shall not be delivered in adult entertainment venues;

(b) Massage Therapy shall not be delivered in bars or nightclubs; and

(c) Regular Massage Therapy shall not be delivered on the streets or sidewalks.

6.04: Initial Application for an Establishment License

(1) Application for a Massage Therapy Establishment license may be made by a sole proprietorship, partnership, corporation, limited liability company, or limited liability partnership. A Massage Therapy Establishment may be owned by an individual who is not a licensed Massage Therapist.

(2) An application for a Massage Therapy Establishment License shall be:

(a) made on forms prescribed by, and available from the Board;

(b) signed under the pains and penalties of perjury by the applicant or a person authorized to act on behalf of the applicant;

(c) accompanied by information concerning ownership and control that identifies: if owned by an individual, partnership or trust, the names and ownership.

(d) percentages of such individual, partners or trustees, except that, in the case of a limited partnership, such information shall be provided only for those limited partners owning 5% or more of the partnership interest and the general partner;

1. if owned by a for profit corporation, the names of all stockholders who hold 5% or more of any class of the outstanding stock, specifying the percentage owned;

2. if owned by a not for profit corporation, the names of the members and directors of the corporation; and

3. the name and ownership percentage of each individual who directly or indirectly has any ownership interest of 5% or more, unless otherwise provided pursuant to 269 CMR 6.03(c)1. through 3.;

(e) accompanied by any information required by the Board as part of the application, including, but not limited to, such additional information concerning ownership and control as the Board may require.

(f) accompanied by the required nonrefundable fees;

(g) accompanied by a floor plan that demonstrates compliance with the specifications necessary to meet the minimum standards required to meet the public health, safety and welfare set forth in 269 CMR 6.07(4); and

(h) accompanied by evidence of suitability of ownership required by the Board as set forth in 269 CMR 6.04(4);

(3) The Board shall not approve an application for original or renewal license unless the Board has conducted an investigation of the proposed licensee(s) and/or owners of 5% or more and determined that each proposed licensee/owner is suitable and responsible to establish or maintain an Establishment.

(4) Evidence of Responsibility and Suitability.

(a) In determining whether an applicant is responsible and suitable to be granted an Establishment license, the Board shall consider all relevant information including, but not limited to, the following:

1. the proposed licensee's history of prior compliance with Massachusetts state and local laws governing operation of Massage Therapy Establishments and the practice of Massage Therapy. Assessment of this factor shall include, but not be limited to, the ability and willingness of the proposed licensee to take corrective action when notified by the authority having jurisdiction over any regulatory violations;

2. the history of criminal conduct of the proposed licensee and owners, officers and directors as evidenced by criminal proceedings against those individuals which resulted in convictions, or guilty pleas, or pleas of nolo contendere, or admission of sufficient facts; and

3. the proposed licensee's history of statutory and regulatory compliance for Massage Therapy Establishments in other jurisdictions or localities, including, but not limited to, proceedings in which the proposed licensee was involved which proposed or led to a limitation upon or a suspension, revocation, or refusal to grant or renew a Massage Therapy Establishment license.

(b) If the Board receives information about an applicant for Establishment licensure that reasonably raises a question about whether that applicant is suitable to hold an Establishment license or lacks the responsibility to hold an Establishment license,

the Board shall conduct a further inquiry into the relevant facts and circumstances before making a final decision on the application.

(c) If the Board determines, in its discretion, that such steps are reasonably necessary, the Board may require the applicant to appear personally before the Board, and/or furnish additional written information to the extent permitted by applicable state or federal law.

(d) The burden of demonstrating that the applicant possesses the responsibility required for Establishment licensure or is suitable for such licensure shall rest with the applicant.

(e) Conduct which reasonably raises a question about whether an applicant possesses the responsibility required for Establishment licensure or is suitable for such licensure includes, but is not necessarily limited to, any of the following:

1. Conviction of any criminal offense, other than a routine traffic violation;

2. Disciplinary action taken against any professional license, registration or certification held by the applicant, or denial of licensure, by the applicable governmental authority of any state, territory or political subdivision of the United States or any foreign jurisdiction; or

3. Conduct which is not described in 269 CMR but which nevertheless involves any of the following: failure to exercise proper regard for the applicant's own health, welfare or safety; failure to exercise proper regard for the health, welfare, safety or legal rights of another person; or fraud, deception or lack of honesty or truthfulness.

(5) Inspection. The Board shall not approve an application for an original Establishment license or renewal of such license unless the Board has been afforded the opportunity to inspect the Establishment;

(a) The applicant for an Establishment license must arrange for the inspection by the Board of the location seeking that license.

(b) In order to pass that inspection, the location must meet the minimum standards necessary to protect the public health, safety and welfare set forth in 269 CMR 6.07.

(6) The Board may require and consider supplemental Establishment licensure application information and materials reasonably necessary to prevent insurance fraud, protect the health, safety, or welfare of the public, or for other valid regulatory purposes, including obtaining appropriate permits either prior to or as a condition subsequent to receiving an Establishment License.

(7) The Board shall not issue an Establishment license based on an incomplete submission.

(8) The Board may not issue an Establishment license if the Board's inspection reveals any violation of 269 CMR 1.00 through 6.00.

(9) The Board will consider the evidence produced and make licensing decisions accordingly

6.05: Renewal/Reinstatement

(1) A Massage Therapy Establishment shall renew its license annually on or before the anniversary of the date of issue by submitting:

(a) Massage Therapy Establishment renewal form as prescribed by the Board;

(b) complete information as required on the form, including changes in information since the original application or last renewal; and

(c) the nonrefundable renewal fee;

(2) If a Massage Therapy Establishment's license has expired, the Massage Therapy Establishment may request that the Board reinstate its license. The authorized representatives may be required to personally appear before the

Board to discuss the request for reinstatement. All requests for reinstatement must be in writing and shall include the following submissions:

- (a) an application;
- (b) a nonrefundable late fee; and
- (c) any other pertinent information as required by the Board.

6.06: Record Retention

- (1) Required records shall be maintained in a manner that protects them from foreseeable damage or destruction.
 - (a) A Massage Therapy Establishment shall maintain required records on the premises for each active client.
 - (b) For a client who is under two years of age when he or she receives Massage Therapy, records shall be maintained at least until the client reaches nine years of age.
 - (c) For clients who receive Massage Therapy on or after the client reaches two years of age, records shall be maintained for a minimum of seven years from the date of the last client encounter.
 - (d) Records stored electronically shall have an established system of regular back-up. Copies of the back-up records shall be maintained safely and securely.

6.07: Establishment Standards

- (1) **Compliance Officer.** Each Multiple Massage Therapist Establishment shall designate a Licensed Massage Therapist who is responsible for the Massage Therapy Establishment's compliance with the laws of the Commonwealth and 269 CMR 1.00 through 6.00. Said Licensed Massage Therapist shall agree to be accessible to the Board and shall be responsible for cooperating with inspections or investigations conducted by the Board or its agents. Upon the request of the Board or its agents, the designated Licensed Massage Therapist shall provide immediate access to, and, if requested, copies of records maintained by the Massage Therapy Establishment. Such Massage Therapist shall be designated the Massage Therapy Establishment's compliance officer.
- (2) **Compliance Plan.** Each Multiple Therapists Establishment shall implement and maintain a business compliance plan, that shall include, but not be limited to, standards, procedures, and policies that address the Massage Therapy Establishment's administrative and clinical protocols. The standards, procedures, and policies in the compliance plan shall include, but not be limited to, addressing the following issues:
 - (a) A plan for ascertaining that all individuals providing massage therapy in the Massage Therapy Establishment have current, valid licenses;
 - (b) A list of all Massage Therapists who practice at the Establishment;

- (c) The methods for training personnel regarding the Massage Therapy Establishment's standards, procedures, and policies, including appropriate right-to know training, standard precautions to prevent communicable disease, proper documentation, clients' rights, and proper billing, on an ongoing basis;
- (d) The methods of maintaining and encouraging open lines of communication among the Massage Therapy Establishment's personnel;
- (e) The methods of maintaining and ensuring that equipment is inspected on an annual basis and is in safe operating condition;
- (f) The mechanisms used to report and respond to violations or complaints in an appropriate manner;
- (g) The implementation and maintenance of a schedule of the Establishment's compliance audits; and
- (h) In the event of the dissolution of the Massage Therapy Establishment or the departure of a licensed Massage Therapist from the Establishment, a plan for the dissolution of the Massage Therapy Establishment or for the departure of a practicing Massage Therapist, including, but not limited to, a plan for the storage and retrieval of clients' records.

(3) Personnel.

- (a) All Massage Therapists at an Establishment must hold a current Massage Therapist license from the Board, unless exempted by regulation or statute.
- (b) All Massage Therapists conducting massage at an Establishment shall be deemed the responsibility of the Operator of the Establishment.

All students who perform massage therapy at an Establishment must be supervised by a licensed Massage Therapist.

- (c) Massage Establishment Licenses are not transferable.
- (d) The use of aliases by Massage Therapists is prohibited.

(4) Interior Specifications.

- (a) The Establishment shall maintain a properly installed smoke detector and fire extinguisher.
- (b) Massage therapy may be conducted only in rooms, which are adequately lighted and ventilated, and so constructed that they can be kept clean. Floors, walls, ceilings and windows must be kept free of dust, soil, and other unclean substances.
- (c) Massage rooms shall have at least 65 square feet of floor space for all Establishments licensed after December 12, 2008.

- (d) Smoking is prohibited anywhere on the premises.
- (e) Every Establishment shall have accessible rest room facilities, including at least one toilet with toilet tissue provided, a hand sink with soap, disposable towels, single use linens, or air dryers provided.
- (f) Every Establishment shall have hand-washing facilities for therapist use. Said facilities shall provide an adequate supply of hot water at a temperature that complies with 105 CMR 410.000 (State Sanitary Code).
- (g) Hand washing facilities for Establishments shall be accessible and located no more than 50 feet from the treatment area.
- (h) Soap, disposable towels, single use linens or air dryers and adequate waste receptacles shall be provided at all times.
- (i) Toilet and hand washing facilities shall meet the requirements of the state plumbing code and shall be maintained in good repair, well-lighted and adequately ventilated, kept in a clean and sanitary condition and free of vermin.
- (j) Every Establishment shall provide for safe and unobstructed passage in the public and private areas of the premises.
- (k) Facilities shall be provided for the storage and removal of garbage, waste and refuse.
- (l) Any flammable or hazardous materials in the Establishment shall be stored in a safe manner in accordance with local and state regulations and Massachusetts General Laws.

(5) Equipment.

- (a) All equipment and supplies used in the performance of massage shall be maintained in a safe and clean manner. All tables and other cleanable surfaces that come into contact with clients shall be cleaned by the regular application of a cleanser and sanitized with an EPA registered sanitizer. "Regular application" as used in 269 CMR 6.07(5)(a) means a thorough cleansing of the massage table at least one time a day or whenever oils, lotions, or other substances visibly accumulate on client contact surfaces.
- (b) Each client shall receive a separate, clean covering for use on the massage table, such as sheets or towels.
- (c) All re-usable sheets, towels, and other cloth materials used in the conduct of a massage that come in contact with a client shall be laundered after each use.
- (d) Each Establishment shall maintain a sufficient supply of clean linens for the purpose of draping each client while the client is being massaged. As used in 269 CMR 6.07(5)(d) drapes means towels, gowns, or sheets.
- (e) If any latex-containing products are used, a sign shall be conspicuously posted so stating and all clients shall be advised that latex-containing products are used.

(6) **Sanitary Conditions.** The Massage Therapy Establishment shall be equipped with proper and adequate lighting and ventilation and kept in clean, orderly, and sanitary condition.

(7) **Change in Massage Therapy Establishment Ownership.** A change in Massage Therapy Establishment Ownership shall require application for and receipt of a new Massage Therapy Establishment license. A change in Massage Therapy Establishment ownership shall occur on the date that there is a transfer of a controlling interest in a Massage Therapy Establishment. When a change in ownership occurs, the Massage Therapy Establishment license shall expire, and the new owner must apply for a new license within 30 days.

(8) **Change in Location.** An Establishment license is valid only for the location stated on the license and is neither transferable nor assignable.

(a) The Board must be notified in writing at least 30 days prior to a change in location of a Massage Therapy Establishment.

(b) The license for the previous location will be cancelled and will be invalid as of the date of relocation.

(c) The Massage Therapy Compliance Officer or Establishment owner shall file a new application for a massage therapy Establishment license that is subject to the Board's approval.

(d) The Massage Therapy Establishment shall not operate at the new location until the Board has approved a massage therapy Establishment license for the new location.

(9) **Required Displays.** Current true copies of the following must be conspicuously displayed for the benefit of the public at each Massage Therapy Establishment. A licensee may redact his/her residential address from the posted license.

(a) The Massage Therapy Establishment's license;

(b) The license of each licensed Massage Therapist licensed by the Board who provides Massage Therapy services at the Massage Therapy Establishment; and

(c) The most recent inspection report completed by the Board or its agents.

(10) **Variances.**

(a) **Variance Permitted.** The Board may vary the application of any provision of 269 CMR 6.00 with respect to any particular case when, in its opinion, the enforcement thereof would create a manifest injustice. This may include practitioners who do not deliver massage at a specific location. Any variance granted by the Board shall be in writing.

(b) **Expiration, Modification, Suspension.** Any variance or other modification authorized to be made by 269 CMR 6.07(10) may be subject to such qualification, revocation, suspension, or expiration as the Board expresses in its grant. A variance or other modification authorized to be made by 269 CMR 6.00 may otherwise be revoked, modified,

or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard.

6.08: Inspections

(1) The Board or its agent may inspect any Massage Therapy Establishment at any time during regular business hours, and without prior notice, for the purpose of verifying that the Massage Therapy Establishment, and its agents or employees are in compliance with all applicable requirements of M.G.L. c. 112, §§ 61 through 65, M.G.L. c. 112, §§ 227 through 236, and 269 CMR 6.00, and all other applicable federal, state and local laws or regulations.

6.09: Grounds for Disciplinary Action

(1) Pursuant to G. L. c. 13, § 99(a)(v) the Board may, through the processes set out in M.G.L. c. 30A, M.G.L. c. 112, §§ 61 through 65, and 801 CMR 1.00 et seq., take disciplinary action against any Massage Therapy Establishment. Grounds for disciplinary action shall include, but shall not be limited to:

(a) Violation of any provision of 269 CMR 6.00 et seq. by any person associated with the Establishment;

(b) Unlicensed practice at the Massage Therapy Establishment or arranged through the Massage Therapy Establishment. Unlicensed practice includes practice by an individual who:

1. has never held a license to render care within the discipline in which he or she is acting;
2. has let his or her license to practice lapse or expire;
3. has had her or his license to practice suspended or revoked; or
4. has voluntarily surrendered his or her license.

(c) Where a person having more than 5% ownership interest, company officer, principal, or any employee of, or person associated with, the Massage Therapy Establishment:

1. violates or permits the violation of any of the grounds for disciplinary action under 269 CMR;
2. interferes with or obstructs the Board or its agent in the performance of the Board's duties;
3. is sanctioned for violations of state or federal laws regarding insurance fraud; or
4. solicits, facilitates, or otherwise permits illicit behavior.

Mississippi

Statutory Authority: *Mississippi Code Annotated §73-67-7, -17, -33*

73-67-7. Definitions

(h) "Massage establishment" means a place of business 18 where massage is being conducted.

73-67-17 Rulemaking powers

The board may adopt rules:

(a) Establishing reasonable standards concerning the 264 sanitary, hygienic and healthful conditions of the licensed massage therapist and of premises and facilities used by massage therapists;

...

§ 73-67-33. Massage establishment requirements

(1) Lavatories or wash basins provided with an adequate supply of both hot and cold running water should be available. Lavatories or wash basins shall be provided with soap in a dispenser and paper, individual use towels, or air dryers.

(2) Any mobile massage shall have a previous recording of the client's name, address where the therapy is to occur, estimated time of return, and phone number (if available) in a conspicuous record.

(3) Every massage establishment shall be equipped with a workable telephone for emergency calls.

(4) A copy of the State of Mississippi Professional Massage Therapy Code of Ethics and Professional Conduct shall be prominently displayed.

Delaware Regulations: Part 2501, Chapter 11 Massage Establishments

11.1 Advertising, Business License and other Requirements

A. It shall be the responsibility of the massage establishment to verify and include current license number(s) in all advertising, no matter the format, for every licensed massage therapist; however, massage establishments with 6 or more licensed massage therapists shall be exempt from this requirement, provided that such therapy or service is performed by person(s) licensed under this chapter.

B. Sanitary lavatories or wash basins provided with an adequate supply of both hot and cold running water shall be available. Lavatories or wash basins shall be provided with soap in a dispenser and paper, individual use towels, or air dryers.

C. Sanitary linens shall be provided for each individual client.

D. Any out call massage shall have a previous recording of the client's name, address where the therapy is to occur, estimated time of return, and phone number (if available) in a conspicuous record.

E. Every massage establishment shall be equipped with a workable telephone for emergency calls.

F. A copy of the Mississippi State Board of Massage Therapy Code of Ethics and Professional Conduct shall be prominently displayed.

G. Every massage establishment shall have prominently displayed during business hours a current and valid Provisional Permit or License issued by the Mississippi State Board of Massage Therapy for every person who provides massage therapy services on the premises or offsite on behalf of the establishment.

H. It shall be the responsibility of a massage therapy establishment to verify the current license of any and all persons practicing massage therapy at the location of or on behalf of the establishment.

I. Every massage establishment designated as the custodian of client records shall retain all required client documentation of massage sessions for a period of two (2) years and insure that it is legible and readily available for inspection at the request of the Board or their duly appointed representative. This includes, but is not limited to client history/intake forms and client release forms, as well as SOAP notes, appointment schedule book and client evaluations if requested by the Board or their duly appointed representative.

J. Massage therapists or establishments may not be discriminated against by cities or municipalities in obtaining business licenses and shall be treated as any other health care profession.

K. A summary of the fines applicable to massage establishments is re-produced here from Rule 2.2.A:

...

11.2 Inspections

A. The Board or its agent(s) shall conduct on-site inspections upon notification that massage therapy services are being rendered. Notification may include but not be limited to the following sources:

1. The general public through any means of advertising in any format; or
2. A new or existing licensed massage therapist applies for a license or an LMT who is renewing their license has identified the establishment as their place of business; or
3. Notification by the MSBMT office that LMT's are due for renewal within 90 days, or
4. Notification by the MSBMT office that LMT's did not renew, go inactive or move to retired status 91 days after expiration, or
5. Notification by the MSBMT office that the license of an LMT has been suspended or revoked. 6. Reapplication (reactivation) received by Board office.

B. The inspection may be conducted within ninety (90) days of the receipt of notification.

C. The inspection may be conducted for the following purposes:

1. To ascertain whether or not all massage therapists working on the premises are properly licensed and in compliance with all Board regulations and statute.
2. To ascertain whether or not the establishment is in compliance with MSBMT including but not limited to equipment and sanitation requirements.

D. Follow-up inspections may be required at the discretion of the Board.

E. Fines and penalties are set forth in Chapter 2.

Missouri

Statutory Authority: §324.247, .250, .252, .255, .257, .260, &.262

Massage business, license required, application, fee, discipline for failure to obtain.

324.247. A person desiring to receive a license to operate a massage business in the state of Missouri shall file a written application with the board on a form prescribed by the board and pay the appropriate required fee. It shall be unlawful for a business to employ or contract with any person in this state to provide massage therapy as defined in subdivision (7) of section 324.240 unless such person has obtained a license as provided by this chapter. Failure to comply with the provisions of this section shall be cause to discipline the licensee.

(L. 1998 H.B. 1601, et al., A.L. 1999 H.B. 343 merged with S.B. 362, A.L. 2006 S.B. 756, A.L. 2009 S.B. 296)

Massage business, issuance of licenses, when--renewal--posting required.

324.250. 1. The board shall review the applications and shall issue a license to applicants who have complied with the requirements of sections 324.240 to 324.275 and have received approval of the board after a survey inspection.

2. A license shall be renewed every two years upon approval of the board when the following conditions have been met:

(1) The application is accompanied by the appropriate required renewal fee;

(2) The massage business is in compliance with the requirements established pursuant to the provisions of sections 324.240 to 324.275 as evidenced by a survey inspection by the board within ninety days prior to renewal;

(3) The application is accompanied by a statement of any changes in the information previously filed with the board pursuant to section 324.247.

3. Each license shall be issued only for the massage business listed in the application. Licenses shall be posted in a conspicuous place on the premises of the licensed massage business.

(L. 1998 H.B. 1601, et al., A.L. 1999 H.B. 343 merged with S.B. 362)

Massage business licenses, nontransferable and nonassignable.

324.252. A license shall not be transferable or assignable. When a massage business is sold or ownership or management is transferred, or the corporate legal organization status is substantially changed, the license of the massage business shall be voided and a new license obtained. Application for a new license shall be made to the board in writing, at least ninety days prior to the effective date of the sale, transfer, or change in corporate status. The application for a new license shall be on the same form, containing the same information required for an original license, and shall be accompanied by a license fee to be determined by the board. The board may issue a temporary operating permit to continue the operation of the massage business for a period of up to ninety days pending the survey inspection and the final disposition of the application.

(L. 1998 H.B. 1601, et. al.)

Survey inspections, when.

324.255. In addition to the survey inspection required for licensing or license renewal, the board may make other survey inspections during normal business hours. Each massage business shall allow the board or its authorized representatives to enter upon its premises during normal business hours for the purpose of conducting any survey inspection.

(L. 1998 H.B. 1601, et al.)

Report of inspection findings, deficiencies--complaint.

324.257. After completion of each board survey inspection, a written report of the findings with respect to the massage business' compliance or noncompliance with the provisions of sections 324.240 to 324.275 and the standards established hereunder as well as a list of deficiencies found shall be prepared. A copy of the report and the list of deficiencies found shall be sent to the massage business within thirty business days following the survey inspection. The list of deficiencies shall specifically state the statute or rule which the massage business is alleged to have violated. If the massage business acknowledges the deficiencies found by the survey inspection, the massage business shall inform the board of the time necessary for compliance and shall file a plan of correction with the board. If the massage business does not acknowledge the deficiencies, or file an acceptable plan of correction with the board or timely complete an acceptable plan of correction, the board may file a complaint with the administrative hearing commission as set forth and as provided in sections 324.240 to 324.275.

(L. 1998 H.B. 1601, et al., A.L. 1999 H.B. 343 merged with S.B. 362, A.L. 2006 S.B. 756)

Complaints against massage business or therapist, procedure.

324.260. The board may cause a complaint to be filed in the circuit court of the county in which any massage business alleged to be violating the provisions of sections 324.240 to 324.275 is located for an injunction to restrain the massage business from continuing such violation.

(L. 1998 H.B. 1601, et al., A.L. 1999 H.B. 343 merged with S.B. 362)

Refusal to issue, suspension or revocation of license of business or therapist, when--procedure--limitation of liability.

324.262. 1. The board may refuse to issue, renew or reinstate any license required by sections 324.240 to 324.275 for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any license issued pursuant to sections 324.240 to 324.275 or any person who has failed to renew or has surrendered his or her license for any one or any combination of the following causes:

(1) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of the profession regulated pursuant to sections 324.240 to 324.275, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(2) Use of fraud, deception, misrepresentation or bribery in securing any license issued pursuant to sections 324.240 to 324.275 or in obtaining permission to take any examination given or required pursuant to sections 324.240 to 324.275;

(3) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(4) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of the profession regulated by sections 324.240 to 324.275;

(5) Violation of, or assisting or enabling any person to violate, any provision of sections 324.240 to 324.275, or of any lawful rule or regulation adopted pursuant to sections 324.240 to 324.275, including providing massage therapy under subdivision (7) of section 324.240 at a massage business as defined in subdivision (5) of section 324.240 that is not licensed under this chapter;

(6) Impersonation of any person holding a license or allowing any other person to use his or her certificate or diploma from any school;

(7) Disciplinary action against the holder of a license or other right to practice the profession regulated by sections 324.240 to 324.275 granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(8) A person is finally adjudged insane or incompetent by a court of competent jurisdiction;

(9) Issuance of a license based upon a material mistake of fact;

(10) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed.

3. Any person, organization, association or corporation who reports or provides information to the division pursuant to the provisions of sections 324.240 to 324.275 and who does so in good faith and without negligence shall not be subject to an action for civil damages as a result thereof.

4. After the filing of a complaint pursuant to subsection 2 of this section, the proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding by the administrative hearing commission that one or more of the grounds for disciplinary action provided in subsection 2 of this section are met, the board may, singly or in combination, censure or place the person named in the complaint on probation or suspension or revoke the license of the person on such terms and conditions as the division deems appropriate.

(L. 1998 H.B. 1601, et al., A.L. 1999 H.B. 343 merged with S.B. 362, A.L. 2006 S.B. 756)

Administrative Regulations: §20-2197-5

20 CSR 2197-5.010 Massage Therapy Business—Survey Inspections

(1) A massage therapy business shall:

(A) Employ or permit to practice on the premises only licensed or provisionally licensed massage therapists (hereinafter referred to as licensee or licensees) to perform massage therapy as defined in section 324.240(7), RSMo;

(B) Ensure that no massage therapist practices beyond their scope and expertise nor shall a massage therapy business, direct or require a licensee to practice beyond their scope and expertise;

(C) Maintain a copy of the professional liability insurance as required in 20 CSR 2197- 3.020(4)(A);

(D) Ensure that each massage therapist wears appropriate clothing and practices high standards of personal hygiene;

(E) Display in a conspicuous place the massage therapy business license and massage therapist license with a photograph of the massage therapist taken within the last two (2) years;

(F) Maintain policies and procedures that address but are not limited to the nature and scope of services provided and orient employees or those practicing on their premises to the practice standards as it relates to public standards and client records and maintain proof of this orientation;

(G) Be responsible for maintaining client records for at least three (3) years. This includes safeguarding verbal and written confidential information of the client, unless disclosure is required by law, court order, or authorized by the client. Client records for massage therapy services not provided at a licensed massage therapy business shall be maintained by the licensed massage therapist;

(H) Shall maintain proof that the massage therapy business location or premises has current general liability insurance;

(I) Maintain documentation of compliance with all applicable building and fire codes prescribed by the state or local government. If no zoning codes are available establishments shall be equipped with and maintain fire extinguishers and smoke alarms that are in good working condition;

(J) Maintain all equipment used to perform massage therapy services on the premises in a safe and sanitary condition;

(K) Provide for safe and unobstructed human passage in the public areas of the premises;

(L) Ensure compliance with the regulations of other entities which include but are not limited to the Americans with Disabilities Act (ADA), Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA);

(M) Provide for the removal of garbage and refuse in a sanitary manner; and (N) Provide for safe storage or removal of flammable materials.

(2) All furniture in a massage therapy business must be kept clean and well maintained.

(3) Massage therapy shall be conducted in areas that are adequately lighted and ventilated and constructed so that they can be kept clean. Floors, walls, ceilings and windows must remain free of dust and other unclean substances and be in good repair at all times.

(4) The area(s) used for massage shall be used exclusively for massage and other clinical or healthcare related purposes.

(5) Each massage therapy business shall contain rest room facilities, including at least one water-flushed toilet, equipped with toilet tissue, from which the wastewater shall be discharged into a sewage system acceptable to the Environmental Protection Agency (EPA). Such facilities and all of the foregoing fixtures and components shall be kept clean, in good working condition, well lighted, and have adequate ventilation. Massage therapy businesses located in buildings housing multiple businesses under one roof such as arcades, shopping malls, terminals, and hotels may substitute centralized toilet facilities. Such central facilities shall be within three hundred feet (300') of the massage therapy business.

(6) Businesses shall be equipped with and maintain a sink for hand cleansing within a reasonable distance of the treatment room. Such sink must be kept clean and in good working condition. Massage therapists must utilize universal precautions at all times, however, a massage therapist may utilize an antibacterial waterless hand cleanser while in the confines of the massage therapy area and if leaving the area must use universal precautions before performing massage therapy on the next client.

(7) Massage therapy businesses shall be free of alive or dead flies, insects, and other vermin.

(8) No animals shall be permitted in a massage therapy treatment area at any time except service animals whose whole purpose is to provide assistance to a client.

AUTHORITY: sections 324.240, 324.250, 324.252, 324.255 and 324.260, RSMo 2000 and sections 324.245, 324.247 and 324.257, RSMo Supp. 2007.* This rule originally filed as 4 CSR 197-5.010. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-5.010, effective Aug. 28, 2006. Amended: Filed Aug. 21, 2007, effective March 30, 2008. *Original authority: 324.240, RSMo 1998, amended 1999; 324.245, RSMo 1998, amended 1999, 2003, 2006; 324.247, RSMo 1998, amended 1999, 2006; 324.250, RSMo 1998, amended 1999; 324.252, RSMo 1998; 324.255, RSMo 1998; 324.257, RSMo 1998, amended 1999, 2006; and 324.260, RSMo 1998, amended 1999.

20 CSR 2197-5.020 Issuance of an Original Business License

(1) A massage therapy business shall be defined as an address or establishment where massage is practiced unless otherwise exempted by section 324.240(7), RSMo.

(2) A massage therapist may not practice massage therapy at a site, location, or place which is not duly licensed as a massage therapy business, except at the residence or location provided by the client, at a health fair, sports event, trade show or healthcare facility.

(3) The license is valid only for the premises located at the address provided in the initial application for the massage therapy business.

(4) Massage practiced in the home shall be in an area used only for massage therapy or for clinical or other health related purposes and shall have lavatory facilities.

(5) A person applying for a business license shall be at least eighteen (18) years of age and shall submit:

(A) A completed notarized application and application fee.

(6) A survey inspection shall be completed and on file with the board prior to the issuance of a business license.

(7) The board may conduct any survey inspection, as they deem appropriate during normal business hours.

(8) Refusal to permit a survey inspection shall constitute valid grounds for denial of licensure or renewal of license.

(9) The business license shall be displayed in a conspicuous place on the premises of the licensed massage therapy business.

(10) Upon completion of each board survey inspection, a written report shall be prepared with respect to the massage therapy business's compliance or noncompliance with the provisions of sections 324.240 to 324.275, RSMo and the rules of this chapter and the deficiencies found.

(11) A copy of the survey report and the list of deficiencies found shall be sent to the massage therapy business. The list of deficiencies shall specifically state the statute or rule which the massage therapy business is alleged to have violated.

(12) Within thirty (30) days of receipt of the report the board must receive a plan of correction from the business owner or manager to include time necessary for compliance.

(13) After thirty (30) days, if the massage therapy business does not acknowledge the deficiencies, file an acceptable plan of correction with the board, or complete an acceptable plan of correction, the board may file a complaint with the Administrative Hearing Commission.

(14) The board may conduct follow-up survey inspections.

(15) A massage therapy business shall not operate or advertise using a name other than the name under which the business license was issued.

AUTHORITY: sections 324.240, 324.250, 324.252, 324.255 and 324.260, RSMo 2000 and sections 324.245, 324.247 and 324.257, RSMo Supp. 2007. * This rule originally filed as 4 CSR 197-5.020. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-5.020, effective Aug. 28, 2006. Amended: Filed Aug. 21, 2007, effective March 30, 2008. *Original authority: 324.240, RSMo 1998, amended 1999; 324.245, RSMo 1998, amended 1999, 2003, 2006; 324.247, RSMo 1998, amended 1999, 2006; 324.250, RSMo 1998, amended 1999; 324.252, RSMo 1998; 324.255, RSMo 1998; 324.257, RSMo 1998, amended 1999, 2006; and 324.260, RSMo 1998, amended 1999.

20 CSR 2197-5.030 Massage Therapy Business—Change of Name, Ownership or Location

(1) At least fifteen (15) days prior to a proposed name change, the massage therapy business owner shall notify the board of the proposed name change in writing prior to changing the business name or before revising any printing materials or advertisements.

(A) The license reflecting the name change shall replace the original license and be displayed in a conspicuous place on the premises of the licensed massage therapy business.

(2) When a massage therapy business changes location, an application for a location change must be submitted to the board along with the required fee. The business shall submit to a survey inspection by the board at the new location.

(3) When a massage therapy business is sold, or ownership or management is transferred, or the corporate legal organization status is substantially changed, the massage therapy business shall apply for a license by submitting an application, paying the required application fee, and submitting to an inspection.

(4) Pursuant to section 324.252, RSMo a business must post a temporary operation permit in a conspicuous place on the premises of the massage therapy business.

(5) Refusal to permit a survey inspection shall constitute valid grounds for discipline or denial.

(6) A licensee shall not practice massage therapy at a site, location, or place that is not licensed as a massage therapy business, except at the residence, or location provided by the client, health fair, sports event, trade show or healthcare facility. For the purpose of this rule a healthcare facility shall be defined pursuant to section 197.366, RSMo.

AUTHORITY: sections 324.240, 324.250, 324.252, 324.255 and 324.260, RSMo 2000 and sections 324.245, 324.247, 324.257 and 324.262, RSMo Supp. 2007.* This rule originally filed as 4 CSR 197-5.030. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197- 5.030, effective Aug. 28, 2006. Amended: Filed Aug. 21, 2007, effective March 30, 2008. *Original authority: 324.240, RSMo 1998, amended 1999; 324.245, RSMo 1998, amended 1999, 2003, 2006; 324.247, RSMo 1998, amended 1999, 2006; 324.250, RSMo 1998, amended 1999; 324.252, RSMo 1998; 324.255, RSMo 1998; 324.257, RSMo 1998, amended 1999, 2006; 324.260, RSMo 1998, amended 1999; and 324.262, RSMo 1999, amended 1999, 2006.

20 CSR 2197-5.040 Massage Therapy Business License Renewal

(1) A business license issued pursuant to section 324.250, RSMo shall be renewed on or before the expiration of the license by submitting the signed renewal application, renewal fee, and a statement of any changes in the information previously filed with the board in the original business license application.

(2) The massage therapy business shall be in compliance with the requirements outlined in the massage therapy business rules as evidenced by a survey inspection by the board within ninety (90) days prior to the renewal of the business license.

(3) Failure of a licensee to receive the notice and application to renew his/her license shall not excuse him/her from the requirements of section 324.250, RSMo to renew that license.

(4) The license of a massage therapy business that is not renewed by the expiration date shall lapse and become not current. A massage therapy business license that has lapsed may be renewed by completing the renewal form and paying the required renewal and late fees as defined in 20 CSR 2197- 1.040(3)(B)1. within thirty (30) days of the expiration date. A massage therapy business shall not offer massage therapy until filing the renewal form and paying the required fees.

(5) If a license is not renewed within thirty (30) days of the expiration date, the lapsed licensee shall submit an application, required fee, and submit to an inspection before a license will be reinstated.

(6) A massage therapy business with a lapsed license, as provided in this rule, may be reinstated at the sole discretion of the board upon payment of the required fee and submitting the required application.

AUTHORITY: sections 324.245, 324.257, and 324.262, RSMo Supp. 2007 and sections 324.250, 324.255, and 324.260, RSMo 2000.* This rule originally filed as 4 CSR 197-5.040. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003, effective June 30, 2004. Moved to 20 CSR 2197-5.040, effective Aug. 28, 2006. Amended: Filed Aug. 21, 2007, effective March 30, 2008. Amended: Filed June 27, 2008, effective Dec. 30, 2008.

Nebraska

Statutory Authority: §38-1709

38-1709. School or establishment; massage therapist; license required.

No person shall engage in the practice of massage therapy or the operation of a massage therapy school or establishment unless he or she obtains a license from the department for that purpose.

History.—s. 11, Laws 1955, ch. 273; s. 7, Laws 1957, ch. 297, s. 137, Laws 1988, LB 1100; s. 31, Laws 2002, LB 1021; s. 616, Laws 2007, LB 463.

Administrative Regulations: §172-82

82-001 SCOPE AND AUTHORITY: These regulations govern the credentialing of massage therapy establishments under Neb. Rev. Stat. §§38-1701 to 38-1715 and the Uniform Credentialing Act (UCA).

82-002 DEFINITIONS

1. Act means Neb. Rev. Stat. §§38-1701 to 38-1715, known as the Massage Therapy Practice Act.
2. Attest or Attestation means that the individual declares that all statements on the application are true and complete.
3. Board means the Board of Massage Therapy.
4. Business/Establishment means a person engaged in providing massage therapy services.
5. Client means a person receiving health or health-related services and includes a patient, client, resident, customer, or person with a similar designation.
6. Complete Application means an application that contains all of the information requested on the application, with attestation to its truth and completeness, and that is submitted with the required fees and all required documentation.
7. Confidential information means information protected as privileged under applicable law.
8. Credential means a license, certificate, or registration.
9. Department means the Division of Public Health of the Department of Health and Human Services.
10. Director means the Director of Public Health of the Division of Public Health or his or her designee.
11. Implement means an electrical or mechanical tool, instrument, or a similar device. Examples are brushes, electrical massagers, hot stones, shells, hand tools, and any tool that comes in contact with the client.
12. License means an authorization issued by the Department to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization.
13. Massage Therapist means a person licensed to practice Massage Therapy.
14. Massage Therapy Establishment means any duly licensed place in which a massage therapist practices his/her profession of massage therapy. This does not include:
 - a. On-site massage performed at the location of the client;
 - b. Stand-alone devices, such as chairs, which are operated by the customer; or
 - c. Establishments located within the confines of a hospital, nursing home, or other similar establishment or facility licensed or otherwise regulated by the Department of Health and Human Services.
15. NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 82.
16. Successfully Completed Self Evaluation Inspection or an On-site Inspection means received an affirmative rating on each standard specified in 172 NAC 82004 through 172 NAC 82-005 during an inspection.

82-003 MASSAGE THERAPY ESTABLISHMENT LICENSE: Any person who wishes to operate a massage therapy establishment must obtain a license.

82-003.01 Qualifications: To receive a credential to operate a massage therapy establishment, an individual must meet the following qualifications:

1. Employ a massage therapist(s) who holds an active license;
2. Have adequate space for providing massage therapy services;
3. Have restroom facilities;
4. Complete a self evaluation inspection report showing compliance with 172 NAC 82, section 004.

82-003.02 Application: To apply for a credential to operate a massage therapy establishment, a business must submit a complete application to the Department. A complete application includes all required documentation, the required fee, and a written application. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. Written Application:

- a. The full name and address of the business;
- b. The full name and address of the owner of the business;
- c. The name of each person in control of the business;
- d. The Social Security Number of the business owner if the applicant is a sole proprietorship;
- e. Telephone number including area code (optional);
- f. E-Mail Address (optional);
- g. Fax Number (optional);
- h. Signature of:

- (1) The owner or owners if the applicant is a sole proprietorship, a partnership, or a limited liability company that has only one member;
- (2) Two of its members if the applicant is a limited liability company that has more than one member;
- (3) Two of its officers if the applicant is a corporation;
- (4) The head of the governmental unit having jurisdiction over the business if the applicant is a governmental unit; or
- (5) If the applicant is not an entity described in items (1) through (4), the owner or owners or, if there is no owner, the chief executive officer or comparable official;

i. Practice Before Application: The applicant must state:

- (1) That s/he has not operated this establishment in Nebraska before submitting the application; or
- (2) If s/he has operated this establishment in Nebraska before submitting the application, the actual number of days practiced in Nebraska before submitting the application for a credential and the name and location of practice;

j. Attestation: The applicant must attest that:

- (1) S/he has read the application or has had the application read to him/her;
- (2) All statements on the application are true and complete; and
- (3) If the applicant is a sole proprietorship, that s/he is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act, for the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her USCIS documentation upon request;

2. Documentation: The applicant must submit the following documentation with the application:

- a. Employment of a duly licensed massage therapist(s);
- b. Adequate space for providing massage therapy services;
- c. Restroom facilities;
- d. A floor plan of the proposed establishment, including:
 - (1) Establishment square footage;
 - (2) Restroom(s) location; and
 - (3) Connecting buildings/living space; and

e. A copy of the completed self-evaluation inspection report showing compliance with 172 NAC 82-004; and

3. Fee: The applicant must submit the required license fee along with their application and all required documentation.

- a. Prorated Fee: When a credential will expire within 180 days after its initial issuance date and the initial credentialing fee is \$25 or more, the Department will collect \$25 or one-fourth of the initial credentialing fee, whichever is greater, for the initial credential, and the credential will be valid until the next subsequent renewal date.

82-003.03 Department Review: The Department will act within 150 days upon all completed applications for initial credentialing. If the application meets the licensing requirements the Department will issue a license. Within 90 days following issuance of the license, the Department will conduct an on-site inspection for the purpose of assuring compliance with the inspection requirements set out in 172 NAC 82-004.

82-003.04 Denial of Initial Credential: If an applicant for an initial credential to operate a business does not meet all of the requirements for the credential or if the applicant is found to have done any of the grounds listed in 172 NAC 82-010, the Department will deny issuance of a credential. To deny a credential, the Department will notify the applicant in writing of the denial and the reasons for the determination. The denial will become final 30 days after mailing the notice unless the applicant, within the 30-day period, requests a hearing in writing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure.

82-003.05 Withdrawn Applications: An applicant for a business who withdraws his/her application or whose application is rejected by the Department will be allowed the return of his/her fee, except for a \$25 administrative fee to be retained by the Department.

82-03.06 Operating a Business without a Credential: The Department may assess an administrative penalty or take such other action as provided in the statutes and regulations governing the credential when evidence exists of operating a business prior to issuance of a credential. See 172 NAC 82-013.

82-003.07 Confidentiality: Social Security Numbers obtained under this section are not public information but may be shared by the Department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to this information.

82-003.08 Address Information: Each credential holder must notify the Department of any change to the address of record.

82-003.08 License Not Transferable: A license is issued only for the premises named in the application and is not transferable or assignable. A change of owner or location terminates the license.

82-004 INSPECTIONS:

All massage therapy establishments will receive an initial and thereafter, a routine inspection. The criteria for inspection required by the Board and Department is set forth below:

1. Initial Self-Evaluation Inspection: Under 172 NAC 82-003.01, the applicant must conduct a self-evaluation inspection prior to the proposed opening date of the establishment.
2. Initial On-Site Inspection: The Board and/or Department will conduct an on-site inspection within 90 days following issuance of an initial establishment license. The inspections are limited to ascertaining whether:
 - a. All massage therapists working on the premises are properly licensed;
 - b. The equipment and sanitation requirements in 172 NAC 82-004 are met;
 - c. The physical structure requirements in 172 NAC 82-004 are met; and
 - d. The duties of the massage therapist and manager and/or owner in 172 NAC 82-004 and 82-006 are met.
3. Routine Inspection: A routine inspection will be conducted to assure compliance with 172 NAC 82-004.01 and 82-004.02. The inspection will be conducted by the Board and/or Department.
 - a. The inspection will occur at least one time every 4 years.
 - b. The inspection is limited to ascertaining whether:

- (1) All massage therapists working on the premises are properly licensed;
- (2) The equipment and sanitation requirements in 172 NAC 82-004 are met;
- (3) The physical structure requirements in 172 NAC 82-004 are met; and
- (4) The duties of the massage therapist and manager and/or owner in 172 NAC 82-004 and 82-006 are met.

82-004.01 Structure, Equipment, and Sanitation: The massage therapy establishment must have the equipment necessary to provide massage therapy. This equipment must be clean, well-maintained, and in good repair.

1. Physical Structure: A massage therapy establishment must have a clearly identifiable location; each massage therapy establishment can be free-standing or part of an existing structure. The owner must ensure that the establishment is well ventilated and kept in a clean, orderly, and sanitary condition at all times.

- a. All rooms must have adequate lighting and ventilation;
- b. Each establishment must have an area that can be screened from public view for customers requesting privacy; and
- c. Each room where massage therapy services are provided must have an EPA registered disinfectant that is proven effective against HIV-1, or Hepatitis B, or is a Tuberculocidal, and have liquid soap and water or an instant sanitizer;

2. Water: The owner must ensure that the establishment has a supply of hot and cold running water in sufficient quantities to conduct business in the establishment in a sanitary manner.

3. Safety: The owner must maintain the establishment in a safe condition. S/he must ensure that:

- a. Floors, floor coverings, walls, woodwork, ceilings, furniture, fixtures and equipment are clean and safe;
- b. Floors are free of unsafe objects and slippery or uneven surfaces;
- c. Doors, stairways, passageways, aisles, or other means of exit provide safe and adequate access;
- d. Electrical appliances or apparatus are clean and have no worn or bare wiring to avoid fires, shocks, and electrocution;
- e. Water or product spills on the floor are removed immediately and floor dried to avoid falls; and
- f. If candles are used in the establishment, the candle(s) must be on a surface where they are securely supported on a substantial noncombustible base and the candle flame is protected.

4. Restroom Facilities: A restroom must be available on the premise.

5. Massage Tables and Chairs: The owner must ensure that all tables and chairs are safe and in a sanitary condition at all times:

- a. Tables/chairs with no sheeting/pad must be disinfected between clients with an EPA-registered disinfectant that is proven effective against HIV-1, or Hepatitis B, or is a Tuberculocidal;
- b. Clean linens must be used for each client; and
- c. Sheetting/pads that come in direct contact with the client or have been soiled must be removed, disinfected, or cleaned between clients.

6. Storage: The owner must ensure that storage within the establishment meets the following requirements:

- a. Flammable and combustible chemicals are stored away from potential sources of ignition such as an open flame or an electrical device;
- b. Storage units:

- (1) Cabinets, drawers, containers used for storage of tools, equipment, instruments and towels/linens are clean; and
- (2) Tools, equipment, instruments, or towels/linens which have been used on a client are not placed in a container with clean tools, equipment, instruments, or towels/linens.

7. Towels/Linens: The owner must ensure that all towels and linens are clean and sanitary for each client and meets the following requirements:

a. Used Towel and Linen Storage:

- (1) Cloth towels and linens are deposited in a closed receptacle after use;
- (2) Used cloth towels and linens are not used again until properly laundered; and
- (3) Disposable towels are discarded in a covered waste receptacle immediately following each service.

- b. Clean Towel and Linen Storage: All clean towels are stored in a clean, enclosed, dust-proof cabinet or container until used. Pillows are not required to be stored in a cabinet or container, but must have a clean covering before contact with a client.
8. Products: The owner must ensure that the use of products in the establishment meets the following requirements:
 - a. All liquids, creams, and other products are kept in clean, closed containers;
 - b. Original product bottles and containers have an original manufacturer label, which discloses their contents;
 - c. All products used on a client must be dispensed by a spatula, scoop, spoon, squeeze bottle, pump, dropper, or similar dispenser so that the remaining product is not contaminated;
 - d. If a product is poured into another container, such as a shaker, dispenser pump container, or spray container, the container is labeled to identify the product; and
 - e. Products applied to one client cannot be removed and reused on another client.
9. Methods of Disinfection: The owner must ensure that all electrical and/or mechanical tools, instruments, implements, and equipment are disinfected before use on a client, by using one of the following two procedures:
 - a. Procedure One:
 - (1) Spray, immerse, soak, or saturate the implement until it is totally saturated with an EPA-registered disinfectant that is proven effective against HIV-1, or Hepatitis B, or is a Tuberculocidal;
 - (2) Before removing the sanitized implement(s), wash hands with liquid soap and water or antibacterial solution;
 - (3) Rinse implement;
 - (4) Prior to storing, air-dry on a sanitary surface or dry with a clean sanitized towel; and
 - (5) Store in a clean enclosed cabinet or covered container reserved for clean implements until used.
 - b. Procedure Two:
 - (1) Autoclave implements in accordance with the manufacturers instructions; and
 - (2) Autoclaves must be cleaned and serviced at the frequency recommended by the manufacturer. Foot baths/foot spas, showers, and hot tubs are disinfected with an EPA registered disinfectant that is proven effective against HIV1, or Hepatitis B, or is a Tuberculocidal and in accordance with the manufacturers instructions. Paraffin wax machines must be kept clean. Paraffin wax removed from one client must not be re-melted and used by another client.
10. Activities Not Allowed: While in the establishment, the owner and massage therapist must not engage in or allow any other person, including clients, to engage in any of the following activities:
 - a. Smoking in the massage room; and
 - b. Licensees must not use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises during the hours the establishment is open to the public.

82-004.02 Documents and Records: The owner must ensure that:

1. The license to operate the massage therapy establishment is displayed in a conspicuous location at the massage therapy establishment;
2. There is a sign containing the name of the massage therapy establishment. The sign must be in a conspicuous location at the entrance to the massage therapy establishment;
3. The license of each massage therapist who practices massage therapy in the massage therapy establishment is displayed in a conspicuous location at the massage therapy establishment; and
4. The establishment has one copy of the latest edition of the Massage Therapy Practice Act and one copy of the latest edition of 172 NAC 81 and 82.

82-005 CRITERIA FOR SUCCESSFUL COMPLETION OF A MASSAGE THERAPY ESTABLISHMENT INSPECTION

Each establishment must successfully complete an inspection to receive a license to operate. The rating system for inspections are set forth below:

82-005.01 Initial Inspection:

82-005.01A The inspector will issue a rating of "Satisfactory" on all initial inspections when the establishment receives an overall inspection rating of 100%.

82-005.01B The inspector will issue a rating of "Unsatisfactory" on all initial inspections when the establishment receives an overall inspection rating of less than 100%.

1. When an establishment receives a rating of "Unsatisfactory", the Department will forward to the establishment Owner(s), written notification that the establishment license has been placed on a probationary status until all deficiencies cited during the inspection are corrected. The establishment has 15 days from the date of the initial inspection to correct the deficiencies.

2. The inspector will conduct a re-inspection of the establishment within 15 days of receipt of verification that all corrections cited on the inspection report are corrected.

a. If the establishment meets the requirements at the time of re-inspection, the inspector will change the "Unsatisfactory" rating and enter a "Satisfactory" rating.

b. If the establishment receives an "Unsatisfactory" rating, after the re-inspection, the Department will, within 10 days of the completion of the re-inspection, give notice to the establishment that the license is suspended. The Department will send a written notice to the owner(s) by certified mail stating:

(1) The establishment license is suspended;

(2) The reasons for the establishment license suspension; and

(3) The establishment license suspension will become final 30 days after the mailing of the notice of suspension unless the Owner(s) submits a written request for a hearing within such 30 day period.

c. Upon receipt of a written request for a hearing, the Owner(s) will be given a hearing before the Department. The Owner(s) must make a written request to the Department for a hearing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, Rules of Practice and Procedure for the Department.

d. The Department's decision regarding the suspension of the license will become final 30 days after a copy of the decision is mailed to the Owner(s), unless the Owner(s) appeals the decision.

82-005.01C When an establishment license is suspended for failure of an initial inspection and if the Owner(s) wishes to operate the establishment, the applicant must reapply to the Department for a license to operate as specified in 172 NAC 82-003.

82-005.01D Failure to permit an inspection for the purposes set out in 172 NAC 82-004 and 82-005.01 is grounds for denial of an initial massage therapy establishment license or for suspension of a massage therapy establishment's existing license.

82-005.01E The inspector will record the inspection results on a form provided by the Department.

82-005.02 Routine Inspection

82-005.02A The inspector will issue a rating of "Satisfactory" on all routine inspections when the establishment receives an overall inspection rating of 100%.

82-005.02B The inspector will issue a rating of "Unsatisfactory" on all routine inspections when the establishment receives an overall inspection rating of less than 100%.

1. When an establishment receives a rating of "Unsatisfactory", the Department will forward to the establishment Owner(s)/Board of Directors, written notification that the establishment license has been placed on a probationary status until all deficiencies cited during the inspection are corrected. The establishment has 30 days from the date of the initial inspection to correct the deficiencies.

2. The inspector will conduct a re-inspection of the establishment within 15 days of receipt of verification that all corrections cited on the inspection report are corrected.
- a. If the establishment meets the requirements at the time of reinspection, the inspector will change the "Unsatisfactory" rating and enter a "Satisfactory" rating.
 - b. If the establishment receives an "Unsatisfactory" rating, after the re-inspection, the Department will, within 10 days of the completion of the re-inspection, give notice to the establishment that the license is suspended. The Department will send a written notice to the owner(s) by certified mail stating:
 - (1) The establishment license is suspended;
 - (2) The reasons for the establishment license suspension; and
 - (3) The establishment license suspension will become final 30 days after the mailing of the notice of suspension unless the Owner(s) submits a written request for a hearing within such 30 day period.
 - c. Upon receipt of a written request for a hearing, the Owner(s) will be given a hearing before the Department. The Owner(s) must make a written request to the Department for a hearing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, Rules of Practice and Procedure for the Department.
 - d. The Department's decision regarding the suspension of the license will become final 30 days after a copy of the decision is mailed to the Owner(s), unless the Owner(s) appeals the decision.

82-005.02C When an establishment license is suspended for failure of a routine inspection, the establishment must reapply to the Department for a license to operate as specified in 172 NAC 82-003.

82-005.02D Failure to permit an inspection for the purposes set out in 172 NAC 82-005.04 and 82-005.02 is grounds for denial of an initial massage therapy establishment license or for suspension of a massage therapy establishment's existing license.

82-006 DUTIES AND RESPONSIBILITIES OF OWNER: Each massage therapy establishment owner must insure that:

1. All massage therapists employed by the massage therapy establishment have a valid Nebraska license to practice massage therapy;
2. Licenses are posted in such a manner that clients can readily see the documents; and
3. The massage therapy establishment is operated in accordance with the Massage Therapy Practice Act and 172 NAC 81 and 82. This includes any massage therapy rooms that may be shared or used in conjunction with another health care professional.

82-007 CHANGE IN LICENSE FOR EXISTING ESTABLISHMENTS: Any establishment may apply for a change to its license, due to a change in Owner(s), change in name, or a change in location. Each establishment license issued is in effect solely for the Owner(s) and premises named thereon and will expire automatically upon any change of Owner(s) or change of location.

82-007.01 Change in Owner(s): The applicant must apply to the Department for and obtain another credential as specified in 172 NAC 82-003 at least 15 days prior to the change.

82-007.02 Change in Establishment Name: The applicant must submit:

1. A request for a change in the establishment name at least 15 days prior to the change; and
2. The required fee for a reissued license.

82-007.02A The Department will act within 150 days upon all completed applications and will reissue a license with the change of establishment name identified on the license.

82-007.03 Change in Location: The applicant must apply to the Department for and obtain another credential as specified in 172 NAC 82-003 at least 15 days prior to the change.

82-008 CLOSING AN ESTABLISHMENT: When any establishment is permanently closed, the holder of the establishment license must notify the Department in writing at least 15 days prior to closure.

82-009 RENEWAL OF A BUSINESS CREDENTIAL: To renew a business credential, the credentialed business must request renewal and complete the renewal requirements specified in 172 NAC 82-009.02. All massage therapy establishment credentials issued by the Department will expire on November 1st of each odd-numbered year.

82-009.01 Renewal Notice: At least 30 days before the expiration of a credential, the Department will notify the credentialed business at the last known address of record. The renewal notice will include:

1. The type of credential;
2. The credential number;
3. The expiration date; and
4. The amount of the renewal fee;

82-009.02 Renewal Procedures: The request for renewal may be submitted in person, by mail, or by Internet, and must include all required documentation and the renewal fee, which must be paid no later than the expiration date. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. Written Application:

- a. The full name and address of the business;
- b. The full name and address of the owner of the business;
- c. The name of each person in control of the business;
- d. The Social Security Number of the business if the applicant is a sole proprietorship;
- e. Telephone number including area code (optional);
- f. E-Mail Address (optional);
- g. Fax Number (optional);
- h. Attestation by the applicant that:
 - (1) S/he has read the application or have had the application read to him/her;
 - (2) All statements on the application are true and complete; and
 - (3) If the applicant is a sole proprietorship, that s/he is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act, for the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her USCIS documentation upon request;
- i. Signature of:
 - (1) The owner or owners if the applicant is a sole proprietorship, a partnership, or a limited liability company that has only one member;
 - (2) Two of its members if the applicant is a limited liability company that has more than one member;
 - (3) Two of its officers if the applicant is a corporation;
 - (4) The head of the governmental unit having jurisdiction over the business if the applicant is a governmental unit; or
 - (5) If the applicant is not an entity described in items (1)through (4), the owner or owners or, if there is no owner, the chief executive officer or comparable official; and

2. Fee: The renewal fee as specified in 172 NAC 2. The renewal fee must be paid no later than the date of the expiration of the credential.

82-009.03 Expiration of a Business License: A business credential will expire if a business fails to:

1. Meet the requirements for renewal on or before the date of expiration of the business credential; and/or

2. Renew the business credential.

82-009.03A Right to Operate: When a business credential expires, the right to operate the business terminates without further notice or hearing.

82-009.03B Re-Application for a Business License: When a business fails to renew its credential by the expiration date, a business must apply to the Department for and obtain another credential as specified in 172 NAC 82-003.

82-010 DISCIPLINARY ACTION: A credential to operate a business may have disciplinary actions taken against it in accordance with 172 NAC 82-010 on any of the following grounds:

1. Violation of the Uniform Credentialing Act or the rules and regulations adopted and promulgated under the act relating to the applicable business;
2. Committing or permitting, aiding, or abetting the commission of any unlawful act;
3. Conduct or practices detrimental to the health or safety of an individual served or employed by the business;
4. Failure to allow an agent or employee of the Department access to the business for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department; or
5. Discrimination or retaliation against an individual served or employed by the business who has submitted a complaint or information to the Department or is perceived to have submitted a complaint or information to the Department.

82-010.01 Temporary Suspension or Limitation

82-010.01A The Department may temporarily suspend or temporarily limit any credential issued by the Department without notice or a hearing if the Director determines that there is reasonable cause to believe that grounds exist under 172 NAC 82-010 for the revocation, suspension, or limitation of the credential and that the credential holder's continuation in practice or operation would constitute an imminent danger to the public health and safety. Simultaneously with the action, the Department will institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the credential. The hearing will be held no later than 15 days from the date of the temporary suspension or temporary limitation of the credential.

82-010.01B A continuance of the hearing will be granted by the Department upon the written request of the credential holder, and the continuance must not exceed 30 days unless waived by the credential holder. A temporary suspension or temporary limitation order by the Director will take effect when served upon the credential holder.

82-010.01C A temporary suspension or temporary limitation of a credential under 172 NAC 82-010.01 will not be in effect for more than 90 days unless waived by the credential holder. If a decision is not reached within 90 days, the credential will be reissued unless and until the Department reaches a decision to revoke, suspend, or limit the credential or otherwise discipline the credential holder.

82-010.02 Department Action: The Department will follow the procedures in the Uniform Credentialing Act to notify the credential holders of any disciplinary action to be imposed and the time and place of the hearing.

82-010.03 Sanctions: Upon the completion of any hearing held regarding discipline of a credential, the Director may dismiss the action or impose the following sanctions:

1. Censure;
2. Probation;
3. Limitation;
4. Civil Penalty;
5. Suspension; or
6. Revocation.

82-010.03A Additional Terms and Conditions of Discipline: If any discipline is imposed pursuant to 172 NAC 82-010.03, the Director may, in addition to any other terms and conditions of that discipline:

1. Require the credential holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both and may be a practical or clinical examination or both or any or all of the combinations of written, oral, practical, and clinical, at the option of the Director;
2. Require the credential holder to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the Director. If the Director requires the credential holder to submit to an examination, the Director will receive and consider any other report of a complete diagnostic examination given by one or more physicians or other qualified professionals of the credential holder's choice if the credential holder chooses to make available the report or reports by his/her physician or physicians or other qualified professionals; and
3. Limit the extent, scope, or type of practice of the credential holder.

82-011 VOLUNTARY SURRENDER OR LIMITATION: A credential holder may offer to voluntarily surrender or limit a credential issued by the Department. The credential holder must make the offer in writing on a form provided by the Department or a form constructed by the credential holder, which must include the following information:

1. Personal Information:
 - a. First, middle and last name;
 - b. Mailing address (street, rural route, or post office address), city, state, and zip code;
 - c. Telephone number; and
 - d. Fax number.
2. Information Regarding the Credential Being Offered for Surrender or Limitation:
 - a. List credential(s) and credential number(s) that would be surrendered or limited;
 - b. Indicate the desired time frame for offered surrender or limitation:
 - (1) Permanently;
 - (2) Indefinitely; or
 - (3) Definite period of time (specify);
 - c. Specify reason for offered surrender or limit of credential; and
 - d. Specify any terms and conditions that the credential holder wishes to have the Department consider and apply to the offer.
3. Attestation: The applicant must:
 - a. Attest that all the information on the offer is true and complete; and
 - b. Provide the applicant's signature and date.

82-011.01 The Department may accept an offer of voluntary surrender or limitation of a credential based on:

1. An offer made by the credential holder on his/her own volition;
2. An offer made with the agreement of the Attorney General or the legal counsel of the Department to resolve a pending disciplinary matter;
3. A decision by the Attorney General to negotiate a voluntary surrender or limitation in lieu of filing a petition for disciplinary action; or
4. A decision by the legal counsel of the Department to negotiate a voluntary surrender or limitation in response to a notice of disciplinary action.

82-011.02 The Department may reject an offer of voluntary surrender of a credential under circumstances which include, but are not limited to, when the credential:

1. Is under investigation;
2. Has a disciplinary action pending but a disposition has not been rendered; or
3. Has had a disciplinary action taken against it.

82-011.03 When the Department either accepts or rejects an offer of voluntary surrender or limitation, the Director will issue the decision in a written order. The order will be issued within 30 days after receipt of the offer of voluntary surrender or limitation and will specify:

1. Whether the Department accepts or rejects the offer of voluntary surrender; and
2. The terms and conditions under which the voluntary surrender is accepted or the basis for the rejection of an offer of voluntary surrender. The terms and conditions governing the acceptance of a voluntary surrender will include, but not be limited to:
 - a. Duration of the surrender;
 - b. Whether the credential holder may apply to have the credential reissued; and
 - c. Any terms and conditions for re-application.

82-011.04 A limitation may be placed on the right of the credential holder to operate a business to the extent, for the time, and under the conditions as imposed by the Director.

82-011.05 Violation of any of the terms and conditions of a voluntary surrender or limitation by the credential holder will be due cause for the refusal of renewal of the credential, for the suspension or revocation of the credential, or for refusal to restore the credential.

82-011.06 Re-application following voluntary surrender is set out in 172 NAC 82-012.

82-011.07 The voluntary surrender of a credential may be unrelated to disciplinary matters, or may be done to resolve a pending disciplinary matter, in lieu of disciplinary action, or in response to a notice of disciplinary action.

82-012 RE-APPLICATION: This section applies to businesses previously credentialed in Nebraska who seek the authority to return to practice in Nebraska with a valid Nebraska credential.

1. A business whose credential has expired, voluntarily surrendered for an indefinite period of time, or suspended or limited for disciplinary reasons may apply at any time to the Department for and obtain another credential as specified in 172 NAC 82-003.
2. A business whose credential has been voluntarily surrendered for a definite period may apply at any time to the Department for and obtain another credential as specified in 172 NAC 82-003.
3. A business whose credential has been revoked may apply only after a period of two years has elapsed from the date of revocation may apply to the Department for and obtain another credential as specified in 172 NAC 82-003.
4. An individual whose credential has been permanently voluntarily surrendered may not apply for another credential.

82-013 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists of practice without a credential to operate a business. Practice without a credential for the purpose of this regulation means practice:

1. Prior to the issuance of a credential;
2. Following the expiration of a credential; or
3. Prior to the re-application of a credential.

82-013.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without being credentialed:

1. The person admits to engaging in practice;
2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
3. Billing or payment records document the provision of service, care, or treatment by the person;
4. Service, care, or treatment records document the provision of service, care, or treatment by the person;
5. Appointment records indicate that the person was engaged in practice;
6. Water well registrations or other government records indicate that the person was engaged in practice; and

7. The person opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment. For purposes of this regulation prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.

82-013.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a credential.

To assess the penalty, the Department will:

1. Provide written notice of the assessment to the person. The notice must specify:
 - a. The total amount of the administrative penalty;
 - b. The evidence on which the administrative penalty is based;
 - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
 - d. That the Department will within 30 days following receipt of payment of the administrative penalty, remit the penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5 of the Constitution of Nebraska; and
 - e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property. The Department may also collect in such action attorney's fees and costs incurred directly in the collection of the administrative penalty.
2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

82-013.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure.

82-014 FEES: Fees referred to in these regulations are set out in 172 NAC 2, unless otherwise specified. These Amended Rules and Regulations replace Title 172, Chapter 82, Regulations Governing the Practice of Massage Therapy Establishments, effective January 3, 2005.

Approved by the Attorney General: February 18, 2010

Approved by the Governor: May 6, 2010

Filed with the Secretary of State: May 6, 2010

Effective Date: May 11, 2010

New Jersey

Statutory Authority: 45:11-76, -77, -80

45:11-76. Registration required for advertising as massage, bodywork therapist; application fee.

a. No employer shall engage in or advertise or hold itself out as offering massage and bodywork therapies unless the employer is registered with the board.

b. A written application for registration shall be made to the board on the form prescribed by the board and shall contain the following information:

(1) The name and residence of the owner or operator of the entity providing massage and bodywork therapies;

(2) The municipality and location of the owner or operator's primary place of business and the locations of all other branches of business; and

(3) Any other biographical information of the applicant as required by the board.

c. Each applicant for registration and each registrant pursuant to the provisions of this section shall pay to the board a fee for the issuance of a two-year registration in the amount established by the board in accordance with the provisions of P.L.1974, c.46 (C.45:1-3.1 et seq.).

45:11-77. Suspension, revocation of registration.

The board may suspend or revoke the registration of an employer offering massage and bodywork therapies upon proof showing by a preponderance of the evidence that the employer: a. Has made false or misleading statements of a material nature in the application for registration; or b. Failed to demonstrate that each employee of the employer who is engaged in the performance of massage and bodywork therapies is in possession of a license to practice massage and bodywork therapies.

45:11-80. Criminal history record background check for licensure as massage, bodywork therapist or employer.

An applicant for licensure as a massage and bodywork therapist or registration as an employer offering massage and bodywork therapies under P.L.1999, c.19 (C.45:11-53 et seq.) and P.L.2007, c.337 (C.45:11-68 et seq.), and any holder of a license or registration under P.L.1999, c.19 (C.45:11-53 et seq.) and P.L.2007, c.337 (C.45:11-68 et seq.) shall, consistent with section 8 of P.L.1978, c.73 (C.45:1-21) and supporting regulations by the New Jersey Board of Massage and Bodywork Therapy, be subject to a criminal history record background check, which may, consistent with that applicable law, result in a refusal to issue a license or certificate, or suspension or revocation of an existing license or certificate.

New Jersey Regulation: 13:37A-6.1

13:37A-6.1 REGISTRATION OF EMPLOYERS

a) Pursuant to N.J.S.A. 45:11-76, an individual or entity that employs another person to engage in, or an individual or entity that employs another and advertises or holds itself out as providing, massage and bodywork therapies shall register with the Board.

b) An individual or entity that employs another person to engage in, or an individual or entity that employs another person and advertises or holds itself out as providing, massage and bodywork services shall not be required to register with the Board if the individual or entity is:

- 1) A school approved by the New Jersey Department of Education, The New Jersey Department of Labor and Workforce Development or the New Jersey Commission on Higher Education; or
 - 2) A health care institution licensed by the Department of Health and Senior Services.
- c) An applicant for registration shall submit to the Board a completed application that includes:
- 1) The name and residence of the individual or the owner or operator of the entity;
 - 2) The municipality and location of the owner or operator's primary place of business and the location of any branches of the business;
 - 3) A certification attesting that the individual or entity will employ only massage and bodywork therapists licensed by the Board to provide massage and bodywork services;
 - 4) The criminal history background of the individual or the owner or operator of the entity; and 5) The registration fee required pursuant to N.J.A.C. 13:37A-7.1.

North Carolina

Statutory Authority: *§90-622, 90-629.1, 630.5, 632.10-.12, 632.14-.15, 632.18-.19*

§ 90-622. Definitions. The following definitions apply in this Article:

...

(3a) Massage and bodywork therapy establishment. Any duly licensed site or premises in which massage and bodywork therapy is practiced. This term does not include any of the following:

- a. On-site massage performed at the location of the customer.
- b. Stand-alone devices, such as chairs, that are operated by the customer.
- c. Establishments located within the confines of a hospital, nursing home, or other similar establishment or facility licensed or otherwise regulated by the Department of Health and Human Services.
- d. Massage and bodywork therapy provided by a sole practitioner.
- e. A student clinic operated by a Board-approved school or a massage and bodywork therapy program offered by community colleges in North Carolina that are accredited by the Southern Association of Colleges and Schools or massage and bodywork therapy programs offered by a degree or diploma granting college or university accredited by any accrediting agency that is recognized by the United States Department of Education and licensed by the North Carolina Community College System or The University of North Carolina Board of Governors or exempt from such licensure pursuant to G.S. 116-15(c).
- f. Chiropractic physician offices that provide massage and bodywork therapy only by massage and bodywork therapists currently licensed in North Carolina.

...

(4a) Owner. The person, sole proprietor, partnership, limited partnership, or corporation that operates the massage and bodywork therapy establishment.

...

(6) Sole practitioner. A single licensed massage and bodywork therapist offering massage or bodywork therapy services from a space the licensed massage and bodywork therapist controls and from which only the licensed massage and bodywork therapist offers and provides the services.

§ 90-629.1. Criminal history record checks of applicants for licensure to practice and for ownership or operation of an establishment.

(a) All applicants for licensure to practice massage and bodywork therapy or to operate a massage and bodywork therapy establishment shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the state and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) The cost of the criminal history record check and the fingerprinting shall be borne by the applicant.

(c) If an applicant's criminal history record check reveals one or more criminal convictions, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

- (1) The level of seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.

(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

If, after reviewing the factors, the Board determines that any of the grounds set forth in the subdivisions of G.S. 90-633(a) exist, the Board may deny licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record check

§ 90-630.5. Renewal of license to practice and license to operate massage and bodywork therapy establishment; continuing education.

- (a) The license to practice and the license to operate a massage and bodywork therapy establishment under this Article shall be renewed every two years.
- (b) The continuing education requirement for the renewal of an initial license to practice is as follows:
 - (1) If the licensure period is two years or more, each licensee shall submit to the Board evidence of the successful completion of at least 24 hours of study, as approved by the Board, since the initial licensure application date in the practice of massage and bodywork therapy.
 - (2) If the licensure period is less than two years, but more than one year, each license shall submit to the Board evidence of the successful completion of at least 12 hours of study, as approved by the Board, since the initial licensure application date in the practice of massage and bodywork therapy.
- (c) For subsequent renewals of a license to practice, each licensee shall submit to the Board evidence of the successful completion of at least 24 hours of study, as approved by the Board, since the previous licensure renewal submission date in the practice of massage and bodywork therapy.

§ 90-632.10. Massage and bodywork therapy establishment license required.

The Board shall license massage and bodywork therapy establishments in this State for the purpose of protecting the health, safety, and welfare of the public. Unless otherwise exempt from the Board licensure process, no individual, association, partnership, corporation, or other entity shall open, operate, or advertise a massage and bodywork therapy establishment in this State unless it has first been licensed by the Board. The Board shall maintain a list of licensed massage and bodywork therapy establishments operating pursuant to this Article.

§ 90-632.11. Requirements for massage and bodywork therapy establishment licensure.

(a) Any person who wishes to operate a massage and bodywork therapy establishment shall obtain a license from the Board by submitting a massage and bodywork therapy establishment licensure application accompanied by all of the following:

(1) The applicable fee set forth in G.S. 90-632.14.

(2) Proof of property damage and bodily injury liability insurance coverage in the name of the owner or, if the establishment is operated under a business name, in the name of both the owner and the business.

(3) Prior licensure and disciplinary history, including verification from all North Carolina licensing boards from which the owner holds or has held any health related professional license.

(4) Fingerprint cards submitted in accordance with G.S. 90-629.1 at the time the license application is filed and consented to a criminal history record check by the Department of Public Safety.

(5) Ownership information, including at least all of the following:

a. Type of ownership.

b. Name of owner.

c. Name of authorized representative.

d. Address of establishment.

e. Social Security number or federal tax identification number.

f. E-mail address.

g. Current phone number.

h. Hours of operation.

(6) Proof of good moral character as determined by the Board.

(7) Signature of all owners or authorized corporate representatives or both.

(8) A successfully completed self-evaluation inspection report demonstrating compliance with this section and any rules adopted pursuant to G.S. 90-632.13.

(9) Proof that establishment employs, hires, or plans to employ or hire one or more massage and bodywork therapy therapists who hold a current license from the Board.

(b) The application for licensure shall be submitted in the name of the owner or owners of the establishment. If the owner is a corporation, the application shall be submitted in the name of the corporation and shall be signed by a corporate representative.

§ 90-632.12. Operation of a massage and bodywork therapy establishment under a name different than the owner; advertisement.

(a) An owner may operate a licensed massage and bodywork therapy establishment under a name other than the name of the owner, provided such name is submitted to the Board on the application for licensure.

(b) Any advertisement by the massage and bodywork therapy establishment shall include the establishment's business name and shall comply with 21 NCAC 30 .0404. § 90-632.13. Rules for massage and bodywork therapy establishment license. The Board shall establish rules for the licensure of massage and bodywork therapy establishments. These rules shall include at least all of the following:

- (1) Requirements for adequate, safe, and sanitary facilities.
- (2) Requirements for compliance with local building code requirements, State fire safety codes, and State health inspection codes necessary to ensure the safe and effective practice of massage and bodywork therapy.
- (3) Requirements for retention of client and ownership records.

§ 90-632.14. Fees for massage and bodywork therapy establishment license.

(a) The Board may impose the following fees up to the amounts listed below for massage and bodywork therapy establishment licensure:

- | | |
|--------------------------------------|----------|
| (1) Application for license..... | \$20.00 |
| (2) Initial license fee..... | \$150.00 |
| (3) License renewal..... | \$100.00 |
| (4) Late renewal penalty..... | \$75.00 |
| (5) Duplicate license..... | \$25.00 |
| (6) Inspection of establishment..... | \$150.00 |

(b) All fees listed in subsection (a) of this section shall be paid in the form of a cashier's check, certified check, or money order made payable to the North Carolina Board of Massage and Bodywork Therapy and shall be nonrefundable.

§ 90-632.15. Grounds for suspension, revocation, or refusal of a massage and bodywork therapy establishment license; notice and hearing; judicial review.

(a) The Board may deny, suspend, revoke, discipline, or refuse to approve a massage and bodywork therapy establishment for any of the following reasons:

- (1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a massage and bodywork therapy establishment license.
- (2) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board or aiding, abetting, or assisting any other person in the violation of the provisions of this Article or rules adopted by the Board.
- (3) Failure to require that its employees or independent contractors be currently licensed by the Board.
- (4) Operating a massage and bodywork therapy establishment without a license from this Board.
- (5) Engaging in conduct that could result in harm or injury to the public.
- (6) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.

(7) Falsely holding out a massage and bodywork therapy establishment as licensed by this Board.

(8) Failure to allow authorized representatives of the Board to conduct inspections of the massage and bodywork therapy establishment or refusing to make available to the Board, following written notice to the massage and bodywork therapy establishment, the requested information pertaining to the requirements for approval set forth in this Article.

(9) Failure to notify the Board in writing within 30 days of any notification it receives from any state, local, or federal court or agency of a show cause action, probation action, or denial of licensure or approval.

(10) The applicant for or holder of a massage and bodywork therapy establishment license has pleaded guilty, entered a plea of nolo contendere, or has been found guilty of a crime involving moral turpitude by a judge or jury in any state or federal court.

(b) A refusal to issue, refusal to renew, or suspension or revocation of a massage and bodywork therapy establishment license under this section shall be made in accordance with Chapter 150B of the General Statutes. § 90-632.16. Unlicensed massage and bodywork therapy prohibited at massage and bodywork therapy establishments. A massage and bodywork therapy establishment shall not employ or contract with any person in this State to provide massage and bodywork therapy unless that person holds a current license to practice massage and bodywork therapy issued pursuant to this Article.

§ 90-632.18. Enforcement; injunctive relief against massage and bodywork therapy establishments.

The Board may utilize the enforcement and injunctive relief set forth in G.S. 90-634 and assess civil penalties and disciplinary costs as provided in G.S. 90-634.1 to address violations of G.S. 90-632.10 through G.S. 90-632.17, any rules adopted pursuant to G.S. 90-632.13, or any other laws or rules applicable to the operation of a massage and bodywork therapy establishment.

§ 90-632.19. Human trafficking public awareness sign.

The Board may require that a massage and bodywork therapy establishment prominently display on the premises in a place that is clearly conspicuous and visible to employees and the public a public awareness sign created and provided by the North Carolina Human Trafficking Commission that contains the National Human Trafficking Resource hotline information.

North Carolina Administrative Code: Title 21 Occupational Licensing Boards: Chapter 30: Board of Massage and Bodywork Therapy

21 NCAC 30 .0302 DISPLAY OF LICENSE

A licensee shall display the license in a prominent place at the licensee's primary place of business so as to be visible for inspection. Licensees providing massage and bodywork therapy outside their primary business location, or at the location of clients, shall have a ~~copy of their~~ Board issued original license available for inspection upon request. *(Proposed March 7, 2018. Proposed effective date September 1, 2018)*

SECTION .0400 - BUSINESS PRACTICES

21 NCAC 30 .0401 ADDRESS OF RECORD

Each licensee shall notify the Board in writing of the licensee's current residence street address and primary place of business. The licensee shall ~~indicate~~ provide in writing to the Board ~~his/her~~ his or her mailing address, email address, and telephone number for the purposes of receiving communication

from the Board and for listing in the registry of licensees (*Proposed March 7, 2018. Proposed effective date September 1, 2018*)

0402 TRADE NAMES

The licensee shall notify the Board in writing of all assumed name certificates filed with any county register of deeds pursuant to the requirements of G.S. 66-68.

.0403 CHANGE OF ADDRESS OR TRADE NAME

All licensees shall notify the Board in writing of each change of trade name or address of record within thirty (30) days of such change.

.0404 ADVERTISING

- (a.) Any advertisement of massage and bodywork therapy services in any advertising medium as defined herein shall include the licensee's name and license number, whether or not a trade name is used.
- (b.) Advertising medium shall be defined as any form of written, printed, broadcast or computer-based advertising, or other promotional materials, except a telephone directory listing for which no additional advertising charge is made.
- (c.) A business or establishment that employs or contracts with massage and bodywork therapists licensed by the Board may advertise on behalf of those licensees, by complying with the requirements of this Rule. As an alternative to the requirement of Paragraph (a) of this Rule, such business or establishment may indicate the listing of the service itself in advertising or other promotional materials, accompanied by the exact phrase: "Provided by North Carolina Licensed Massage and Bodywork Therapists." In this phrase, "North Carolina" may be abbreviated as "N.C."

The Following NCAC Code was proposed March 7, 2018, with a proposed effective date of September 1, 2018:

SECTION .1000 MASSAGE AND BODYWORK THERAPY ESTABLISHMENT LICENSURE

21 NCAC 30 .1001 ESTABLISHMENT LICENSE REQUIRED

- (a) Unless exempt pursuant to G.S. 90-622(3a) from the Board licensure process, no individual, association, partnership, corporation, or other entity shall open, operate, or advertise a massage and bodywork therapy establishment in this State unless it has been licensed by the Board. For purposes of the rules in this Chapter, "establishment" means "massage and bodywork therapy establishment" as defined in G.S. 90-622.
- (b) An establishment license granted by the Board shall be for a single location. An owner who intends to operate additional locations shall submit an application for licensure for each location.
- (c) Establishments already in operation on the date this Section becomes effective shall have 60 days from the effective date to submit an application for licensure to the Board.

21 NCAC 30 .1002 TERM OF LICENSE

- (a) Initial establishment license applications submitted between October 1 and December 31 shall be granted for two years, plus an additional period of up to three months. Initial establishment license applications submitted between January 1 and September 30 shall be granted for two years, minus the period following January 1.
- (b) Pursuant to G.S. 90-630.5, an establishment license shall be renewed for a term of two years, beginning on January 1 following the initial expiration date.

21 NCAC 30 .1003 EXEMPTION FROM LICENSURE

In addition to the exemptions set forth in G.S. 90-622(3a), the following are exempt from establishment licensure:

- (1) Massage and bodywork therapy provided by a sole practitioner, which is defined as a single licensed massage and bodywork therapist (hereinafter referred to as "LMBT") offering massage or bodywork therapy services from a space the LMBT controls and from which only the LMBT offers and provides the services. This category of exemption does not include the following:
 - (a) businesses such as a salon, spa or fitness center where the LMBT is an employee or independent contractor using treatment space provided by the host business;
 - (b) a space controlled by the LMBT which is also used by other LMBTs; or a group practice structure, where more than one LMBT provides services, whether under a shared business name, or the name of the LMBT owner; and
- (2) Offices of licensed medical doctors, osteopathic physicians, chiropractic physicians, dentists, physical therapists or acupuncturists, where massage and bodywork therapy is provided by LMBTs currently licensed in North Carolina.

21 NCAC 30 .1004 INITIAL APPLICATION FOR LICENSURE

A massage and bodywork therapy establishment seeking initial licensure shall submit an application on a form provided by the Board containing the information set forth in G.S. 90-632.11 and the following additional information:

- (1) Ownership information, including all of the following:
 - (a) type of ownership structure;
 - (b) names, residence addresses, phone numbers and email addresses of all persons who have an ownership interest in the establishment, including parent corporations;
- (2) Location information, including all of the following:
 - (a) Physical address of the establishment, and mailing address if different;
 - (b) Website address; and
 - (c) Business phone number.
- (3) Trade name of establishment, if different from owner's name;
- (4) List of all LMBTs hired as employees or contracted with as independent contractors to provide treatment to clients, or signed letters of intent from LMBTs with a projected start date of work pending the opening of the establishment following granting of a license to operate;
- (5) Facility plan, including floor plans with dimensions and fixtures, uses of each room, specifications on lighting, ventilation and temperature control, location of lavatories for hand washing and toilet facilities;
- (6) Equipment list, including furniture, office equipment, and equipment used for massage and bodywork therapy treatment;
- (7) Copy of deed if establishment owns its facility, or copy of lease if establishment does not own its facility;
- (8) Copies of reports from city or county inspections for fire, safety, health, and sanitation, made within the three months prior to submission of application for approval;
- (9) Copy of city or county business license, if required; and
- (10) A completed self-evaluation inspection report demonstrating compliance with this section.

21 NCAC 30 .1005 ESTABLISHMENT OPERATIONS

Licensed establishments shall comply with the following requirements:

- (1) Facility requirements:
 - (a) comply with State and local building code requirements, State fire safety codes, and State health inspection codes;
 - (b) provide for the use of clients and therapists a restroom with at least one toilet and one sink with running water. The facilities shall be equipped with toilet tissue, soap dispenser with soap or other hand cleaning materials, sanitary towels or other hand drying device such as a wall-mounted electric blow dryer, and waste receptacle. Restroom and shower facilities shall be lighted, ventilated and maintained in good repair. Establishments located in

- buildings housing multiple businesses under one roof, such as shopping malls, terminals, or hotels, may substitute centralized toilet facilities;
- (c) if equipped with a whirlpool bath, sauna, steam cabinet, or steam room, maintain clean shower facilities on the premises;
 - (d) provide treatment rooms for massage and bodywork therapy that are least 10 feet by 12 feet in size, with a minimum of three linear feet of open floor space around all sides of the massage treatment table; and
 - (e) display the Massage and Bodywork Therapy Establishment License, and the licenses of all LMBTs in a prominent place at the establishment so as to be visible for inspection.
- (2) Safety and sanitary requirements:
- (a) provide for safe and unobstructed human passage in the public areas of the premises;
 - (b) provide for removal of garbage and refuse;
 - (c) provide for safe storage or removal of flammable materials;
 - (d) exterminate all vermin, insects, termites, and rodents on the premises;
 - (e) maintain all equipment used to perform massage and bodywork therapy services on the premises in a safe and sanitary condition, including the application of cleansers and bactericidal agents to the massage table. Clean sheets, towels, or other coverings shall be used for each client and to cover the massage table for each client; and
 - (f) maintain a supply of clean drapes, towels, gowns, or sheets, for the purpose of draping each client while the client is being massaged, and launder before reuse all linens furnished for the personal use of the client.
- (3) Treatment requirements:
- (a) All massage and bodywork therapy treatments shall be administered by LMBTs licensed in North Carolina;
 - (b) The establishment is responsible for ensuring that the Standards of Professional Conduct set forth in Section .0500 of this Chapter are maintained in its facility by all owners, employees and independent contractors.
- (4) Business and ethical requirements:
- (a) notify the Board in writing of all assumed name certificates filed with any county register of deeds pursuant to the requirements of G.S. 66-68;
 - (b) notify the Board within 10 days of changes to the LMBT staff who provide massage and bodywork therapy services at the establishment, including employees and independent contractors; and
- (5) Advertising requirements:
- (a) any advertisement of massage and bodywork therapy services in any "advertising medium" as defined herein shall comply with Rule .0404 and shall include the establishment's name and license number; and
 - (b) a licensed establishment that employs or contracts with LMBTs may advertise on behalf of those licensees, by complying with the requirements of this Rule.

21 NCAC 30 .1006 CLIENT RECORDS RETENTION AND OWNERSHIP

- (a) Records shall be maintained by the establishment or the LMBT in compliance with Rules .0504 and .0505 of this Chapter.
- (b) Records stored electronically shall be maintained with a weekly back-up system;
- (c) Client records are the property of the:
 - (1) Establishment; or
 - (2) LMBT, when working as a sole practitioner.
- (d) Release of Records:
 - (1) Client records shall be released within 30 days from being requested and authorized by the client in writing or when compelled by law or regulation; and

- (2) The establishment or LMBT may charge cost for duplicating client records pursuant to G.S. 90-411

21 NCAC 30 .1007 INSPECTIONS

(a) Upon receipt of an application for a massage and bodywork therapy establishment license, employees or representatives of the Board may inspect the location to verify Rules .1004 and .1005 of this Chapter are satisfied.

(b) The Board may inspect all licensed establishments to ensure compliance with the rules in this Chapter and Article 36 of G.S. Chapter 90.

(c) During any inspection, if the posted establishment license is not current and valid, the establishment license shall be removed from the establishment and returned to the Board, and the owner whose license was not current and valid shall be notified. During any inspection, should it be determined that any license for a massage and bodywork therapist posted in the establishment is not current and valid, the massage and bodywork therapist license shall be removed from the establishment by the inspector and shall be returned to the Board by the inspector and the person whose license was not current and valid shall be notified.

21 NCAC 30 .1008 CHANGE OF TRADE NAME

When there is no change of owner or location, the owner may change the trade name of the establishment in compliance with Rules .0402 and .0403 of this Chapter. The owner shall apply for a change of name by submitting to the Board a written change of name request. A new trade name shall not be used or approved by the Board until the establishment is in compliance with this Rule. When an establishment trade name is changed without a change in owner or location, a new establishment facility inspection shall not be required

21 NCAC 30 .1009 CHANGE OF LOCATION

An establishment license shall not be transferable when there is a change in the physical location of the establishment. The new owner shall submit a new application for licensure. The Board may issue temporary operating approval to the owner for the new location for a period of 90 days if the establishment held a valid license prior to the change, and if the Board finds that the new location will qualify for licensure upon preliminary review of the application.

21 NCAC 30 .1010 CHANGE OF OWNERSHIP

(a) An establishment license shall not be transferable when there is a change in the majority ownership interest of the business. The new owner shall submit a new application for licensure. The Board may issue temporary operating approval to the new owner for a period of 90 days if the establishment held a valid license prior to the change, and if the Board finds that the new owner will qualify for licensure upon preliminary review of the application.

(b) In the case of a change of ownership that does not involve a change in the majority ownership interest in the business, or a change in the ownership structure, the owner shall notify the Board of the changes within 30 days, and submit fingerprint cards as required by G.S. 90-632.11 for new persons with ownership interests.

21 NCAC 30 .1011 INFORMING BOARD OF VIOLATIONS

(a) Establishment licensees with knowledge of violations of the rules of this Chapter or the Practice Act shall inform the Board within two business days, whether or not the violations are also reported to a law enforcement agency. This shall include the following violations:

- (1) An LMBT or other employee or contractor of the establishment who has violated the prohibition on sexual activity, as defined in Rules .0508 and .0509 of this Chapter;
- (2) An LMBT who has engaged in behavior where there is a potential for malpractice as defined in Rule .0102(6) of this Chapter; or
- (3) Any person practicing massage and bodywork therapy without a license.

(b) Establishment licensees that have discharged an LMBT for cause, related to failure to uphold the Standards of Professional Conduct set forth in Section .0500 of this Chapter shall inform the Board within 10 business days of the action.

21 NCAC 30 .1012 CONTINUING DUTY TO REPORT CERTAIN CRIMES AND CIVIL SUITS

(a) Establishment licensees with knowledge shall report to the Board any charges, convictions of, or pleas of guilty or no contest to the following criminal offenses, whether committed by themselves, employees, independent contractors or by other licensees:

- (1) felonies;
- (2) crimes that involve moral turpitude;
- (3) alcohol or drug-related offenses;
- (4) sexual-related offenses; and
- (5) assault.

(b) Establishment licensees shall report to the Board if they are named as a defendant in a civil suit arising out of a licensee's practice of massage and bodywork therapy or out of the practice of massage and bodywork therapy by any employee or independent contractor.

(c) Establishment licensees shall report a charge, conviction, plea in a criminal case, or involvement as a defendant in a civil suit, as set forth in Paragraphs (a) or (b) of this Rule, within 30 days after it occurs.

21 NCAC 30 .1013 LICENSE RENEWAL

(a) Any establishment licensee renewing a license shall comply with all requirements for licensure and shall submit the required renewal fee of one hundred dollars (\$100.00) pursuant to G.S. 90-632.14.

(b) An establishment license that has not been renewed prior to its expiration date is expired and shall submit an initial application for licensure pursuant to Rule .1004 of this Chapter.

(c) Any owner whose establishment license has expired and who engages in any massage and bodywork therapy activities governed by the Practice Act will be subject to the penalties prescribed in G.S. 90-634 and G.S. 90-634.1.

(d) Members of the armed forces whose establishment licenses are in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall be granted that same extension of time to pay the establishment license renewal fee. A copy of military orders and the extension approval by the Internal Revenue Service must be furnished to the Board to be granted the extension of time to pay the renewal fee.

21 NCAC 30 .1014 ADDRESS OF RECORD

Each licensed establishment shall notify the Board in writing of the street address of the licensee's current place of business and owner's residence or business address. The establishment shall provide to the Board the mailing address and telephone number of the owner for the purposes of receiving communication from the Board and for listing in the registry of licensed establishments.

North Dakota

Statutory Authority: 43-25-02,

§43-25-02 Definitions

...

3. "Massage establishment" means any place of business in which massage is practiced.

...

43-25-03. Massage therapists to be licensed.

A person may not:

1. Practice massage, attempt to practice massage, or teach massage techniques, for a fee or gratuity or as a free demonstration, without a license issued under this chapter;
2. Operate or conduct a massage establishment unless it meets the requirements adopted by the board;
3. Employ an unlicensed person to perform a massage; or 4. Use the title "massage therapist" or the abbreviations "L.M.T." or "M.T." or terms of similar meaning without a license issued by the board.

43-25-05.1. Powers and duties of the board.

The board has the following powers and duties:

1. The board may adopt and enforce rules as necessary to implement this chapter.
2. The board periodically shall inspect or cause to be inspected all massage establishments. The board and the board's agents may enter and inspect any massage establishment at any time during which the establishment is open for the transaction of business.

...

North Dakota Regulations: Admin. Code, Chapter 49-03-01 REQUIREMENTS FOR MASSAGE ESTABLISHMENTS

Section 49-03-01-01 Sanitation, Location, and Conditions 49-03-01-01.

1. The portion of a massage establishment in which a massage is provided, and any waiting room and hallway leading to that area, must be in a safe, clean, and sanitary condition at all times. This subsection does not apply when the massage is provided in a client's own home, or when the massage is provided as a public demonstration in a location other than the massage therapist's usual establishment.

2. If the massage establishment is also the residence of the massage therapist providing the massage, the room must be set up as a professional setting and maintained in a safe, clean, and sanitary condition when it is being used for massage purposes.
3. Any mirrors and windows in the massage establishment will be positioned or covered in a manner to maintain the privacy of the person receiving the massage at all times during the massage and while the client is dressing and undressing.
4. A therapist must provide draping and treatment in a way that ensures the personal safety, comfort, and privacy of the client.
5. The therapist is responsible for maintaining all equipment and supplies in good working order and in accordance with any manufacturer's instruction.
6. It is unlawful for a massage therapist to provide alcohol to a client in the portion of a massage establishment in which a massage is provided.
7. The establishment must have an adequate supply of hot and cold running water to conduct business in a sanitary manner. A restroom must also be available on the premises.
8. Licensees shall ensure that client records are stored so they are not readily accessible to the public.
9. No smoking may occur in the portion of the massage establishment in which a massage is provided.
10. All tools, instruments, implements, and equipment must be clean and disinfected before use on a client.
11. All linens, coverings, sheets, towels, and pillow casings must be properly cleaned before coming into contact with a client.
12. All liquids, creams, and other products must be kept in clean, closed containers. Original product bottles and containers must have an original manufacturer label disclosing contents. All products used on a client must be dispensed by a spatula, scoop, spoon, squeeze bottle, pump, dropper, or similar dispenser, so the remaining product is not contaminated. Unused products applied to one client must be disposed of and not used on another client.
13. Cabinets, drawers, and containers used for storage of tools, equipment, instruments, and towels/linens must be clean.

Ohio

Revised Code → Title [5] TOWNSHIPS → Chapter 503: GENERAL PROVISIONS

503.41 regulation and registration of massage establishments and their employees.

(A) A board of township trustees, by resolution, may regulate and require the registration of massage establishments and their employees within the unincorporated territory of the township. In accordance with sections 503.40 to 503.49 of the Revised Code, for that purpose, the board, by a majority vote of all members, may adopt, amend, administer, and enforce regulations within the unincorporated territory of the township.

(B) A board may adopt regulations and amendments under this section only after public hearing at not fewer than two regular sessions of the board. The board shall cause to be published in a newspaper of general circulation in the township, or as provided in section 7.16 of the Revised Code, notice of the public hearings, including the time, date, and place, once a week for two weeks immediately preceding the hearings. The board shall make available proposed regulations or amendments to the public at the office of the board.

(C) Regulations or amendments adopted by the board are effective thirty days after the date of adoption unless, within thirty days after the adoption of the regulations or amendments, the township fiscal officer receives a petition, signed by a number of qualified electors residing in the unincorporated area of the township equal to not less than ten per cent of the total vote cast for all candidates for governor in the area at the most recent general election at which a governor was elected, requesting the board to submit the regulations or amendments to the electors of the area for approval or rejection at the next primary or general election occurring at least ninety days after the board receives the petition. No regulation or amendment for which the referendum vote has been requested is effective unless a majority of the votes cast on the issue is in favor of the regulation or amendment. Upon certification by the board of elections that a majority of the votes cast on the issue was in favor of the regulation or amendment, the regulation or amendment takes immediate effect.

(D) The board shall make available regulations it adopts or amends to the public at the office of the board and shall cause to be published once a notice of the availability of the regulations in a newspaper of general circulation in the township within ten days after their adoption or amendment.

(E) Nothing in sections 503.40 to 503.49 of the Revised Code shall be construed to allow a board of township trustees to regulate the practice of any limited branch of medicine specified in section 4731.15 of the Revised Code or the practice of providing therapeutic massage by a licensed physician, a licensed chiropractor, a licensed podiatrist, a licensed nurse, or any other licensed health professional. As used in this division, "licensed" means licensed, certified, or registered to practice in this state.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 29, HB 48, §1, eff. 7/2/2010.

Effective Date: 03-09-1999; 12-20-2005

503.42 Permits - licenses - regulations.

If a board of township trustees has adopted a resolution under section 503.41 of the Revised Code:

(A) No person shall engage in, conduct or carry on, or permit to be engaged in, conducted or carried on in the unincorporated areas of the township, the operation of a massage establishment without first having obtained a permit from the board of township trustees as provided in section 503.43 of the Revised Code.

(B) No individual shall act as a masseur or masseuse for a massage establishment located in the unincorporated areas of the township without first having obtained a license from the board of township trustees as provided in section 503.45 of the Revised Code.

(C) No owner or operator of a massage establishment located in the unincorporated areas of the township shall knowingly do any of the following:

- (1) Employ an unlicensed masseur or masseuse;
- (2) Refuse to allow appropriate state or local authorities, including police officers, access to the massage establishment for any health or safety inspection conducted pursuant to a regulation adopted by the township under section 503.41 of the Revised Code;
- (3) Operate during the hours designated as prohibited hours of operation by the board of township trustees;
- (4) Employ any person under the age of eighteen.

(D) No person employed in a massage establishment located in the unincorporated area of the township shall knowingly do any of the following in the performance of duties at the massage establishment:

- (1) Place his or her hand upon, touch with any part of his or her body, fondle in any manner, or massage the sexual or genital area of any other person;
- (2) Perform, offer, or agree to perform any act which would require the touching of the sexual or genital area of any other person;
- (3) Touch, offer, or agree to touch the sexual or genital area of any other person with any mechanical or electrical apparatus or appliance;
- (4) Wear unclean clothing, no clothing, transparent clothing, or clothing that otherwise reveals the sexual or genital areas of the masseur or masseuse;
- (5) Uncover or allow the sexual or genital area of any other person to be uncovered while providing massages.

(E) No licensed masseur or masseuse shall accept or continue employment at a massage establishment that does not have a current, valid permit issued by the board of township trustees.

Effective Date: 06-03-1992 .

503.43 Application for permit to operate massage establishment.

If a board of township trustees has adopted a resolution under section 503.41 of the Revised Code, the application for a permit to operate a massage establishment shall be made to the board and shall include the following:

(A) An initial, nonrefundable filing fee of two hundred fifty dollars and an annual nonrefundable renewal fee of one hundred twenty-five dollars;

(B) A health and safety report of an inspection of the premises performed within thirty days of the application to determine compliance with applicable health and safety codes, which inspection appropriate state or local authorities acting pursuant to an agreement with the board shall perform;

(C) The full name and address of any person applying for a permit, including any partner or limited partner of a partnership applicant, any officer or director of a corporate applicant, and any stockholder holding more than two per cent of the stock of a corporate applicant, the date of birth and social security number of each individual, and the federal identification number of any partnership or corporation;

(D) Authorization for an investigation into the criminal record of any person applying for a permit;

(E) Any other information determined by the board to be necessary.

A permit issued under this section to a massage establishment shall expire one year after the date of issuance, except that no massage establishment shall be required to discontinue business because of the failure of the board to act on a renewal application filed in a timely manner and pending before the board on the expiration date of the establishment's permit. Each permit shall contain the name of the applicant, the address of the massage establishment, and the expiration date of the permit.

Effective Date: 06-03-1992 .

503.44 Denial or revocation of permit.

If a board of township trustees has adopted a resolution under section 503.41 of the Revised Code, it shall deny any application for a permit to operate a massage establishment or revoke a previously issued permit, for any of the following reasons:

(A) Falsification of any of the information required for the application or failure to fully complete the application;

(B) Failure to cooperate with any required health or safety inspection;

(C) Any one of the persons named on the application is under the age of eighteen;

(D) Any one of the persons named on the application has been convicted of or pleaded guilty to any violation of Chapter 2907. of the Revised Code, or violation of any municipal ordinance that is substantially equivalent to any offense contained in Chapter 2907. of the Revised Code, within five years preceding the application;

(E) Any masseur or masseuse employed at the licensed massage establishment has been convicted of or pleaded guilty to a violation of division (D) of section 503.42 of the Revised Code.

Effective Date: 06-03-1992 .

503.47 Requirements of operation.

If a board of township trustees has adopted a resolution under section 503.41 of the Revised Code, the regulations adopted for that purpose may require any of the following:

(A) A massage establishment to display its current permit in an area open to the public;

(B) Each massager to display the massager's license at all times in the areas where the licensee is providing massages;

(C) Massage establishments to undergo periodic health and safety inspections to determine continual compliance with applicable health and safety codes;

(D) Massagers to undergo periodic physical examinations performed by a licensed physician, a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife certifying that the massager continues to be free from communicable diseases;

(E) Any other requirement reasonably thought necessary by the board.

Effective Date: 03-31-2003 .

503.50 Penalties.

(A) Whoever violates division (A) or (B) of section 503.42 of the Revised Code is guilty of a misdemeanor of the first degree.

(B) Whoever violates division (C), (D), or (E) of section 503.42 of the Revised Code is guilty of a misdemeanor of the third degree.

Oregon

Statutory Authority: §687.021, .059 & .123

687.021 Practice of massage without license prohibited; operation of massage facility without permit prohibited; injunction against violation.

(1) A person may not:

(a) Engage in or purport to engage in the practice of massage without a massage therapist license issued by the State Board of Massage Therapists under ORS 687.051.

(b) Operate a massage facility or purport to operate a massage facility without a permit issued by the board under ORS 687.059, unless the person is an individual massage therapist who is working out of the individual's home.

(c) Advertise that the person engages in the practice of massage unless the person is licensed under ORS 687.051 or holds a permit under ORS 687.059.

(d) Use the word "massage" in a business name unless the person is licensed under ORS 687.051 or holds a permit under ORS 687.059.

(2) The board may exempt by rule a type of massage facility from the prohibition in subsection (1)(b) of this section if the board finds that requiring a permit for that type of facility is not necessary to regulate the practice of massage therapy or to protect the health and safety of the public.

(3) The Attorney General, the prosecuting attorney of any county or the board may maintain an action for an injunction against a person violating this section. An injunction may be issued without proof of actual damages sustained by a person. An injunction does not relieve a person from criminal prosecution for violating this section or from any other civil, criminal or disciplinary remedy. [1955 c.492 §2; 1971 c.650 §36; 1977 c.507 §2; 1979 c.89 §2; 1985 c.82 §2; 1989 c.841 §2; 1997 c.626 §3; 1999 c.537 §6; 2013 c.409 §2]

687.059 Massage facilities; fees; rules.

(1) To be issued a permit to operate a massage facility in this state, an applicant must:

(a) Submit an application to the State Board of Massage Therapists in a form and manner prescribed by the board by rule;

(b) Comply with the health, safety and infection control requirements adopted by the board under ORS 687.121;

(c) Pay the fee required under ORS 687.071 (1)(b);

(d) If the applicant is a natural person, be at least 18 years of age; and

(e) If the applicant is not a natural person, comport with the laws of this state related to business formation, including making an appropriate filing with the Secretary of State.

(2) A massage facility for which a person has been issued a permit under this section may provide massage therapy only through the use of massage therapists licensed under ORS 687.051.

(3) The board may authorize relocating a massage facility if:

- (a) The permittee submits an application in a form and manner prescribed by the board by rule;
- (b) The permittee pays the fee required under ORS 687.071 (1)(h); and
- (c) The permittee complies with any other applicable rule of the board.

(4) The board may authorize transferring a permit to operate a massage facility from one person to another person if the person to whom the permit will be transferred:

- (a) Submits an application in a form and manner prescribed by the board by rule;
- (b) Pays the fee required under ORS 687.071 (1)(i);
- (c) Makes all necessary changes to documents on file with the Secretary of State; and
- (d) Complies with any other applicable rule of the board.

(5) The board may authorize transferring the name of a massage facility to another massage facility if the permittee who operates the massage facility to which the name will be transferred:

- (a) Submits an application in a form and manner prescribed by the board by rule;
- (b) Pays the fee required under ORS 687.071 (1)(j);
- (c) Makes all necessary changes to documents on file with the Secretary of State; and
- (d) Complies with any other applicable rule of the board. [2013 c.409 §4]

687.123. Inspection of massage facility or premises

Upon complaint about a massage facility or the premises on which a massage therapist practices massage, the State Board of Massage Therapists or its authorized representative may inspect the massage facility or premises in order to determine whether the massage facility or premises meet the standards set by order of the board under ORS 687.121 (1) or (2).

History.—Laws 1989, c. 841, § 17; Laws 1999, c. 537, § 19; Laws 2013, c. 409, § 9, eff. June 13, 2013, operative Jan. 1, 2014.

Administrative Regulations: §334-010-0006, 334-020-0005, -020-0015, -020-0050, -020-0055

§334-010-0006 Facility Permits

Applicants for facility permits may be denied for reasons listed in ORS 687.081. Applicants may also be denied for a permit due to prior discipline by the Board for the unlicensed practice of massage. The Board should consider the circumstances of the violations, the duration of the conduct, if the applicant is currently in compliance with the law and orders of the Board and whether the conduct demonstrably related to the Applicants holding a facility license. [Stat. Auth.: ORS 687.121 Stats. Implemented: SB 387. July 2016 Edition of OAR Ch. 334]

334-020-0005 Facilities and Sanitation

(1) Permanent and Mobile structures:

(a) All permanent structures and mobile facilities where a LMT routinely conducts massage and bodywork must:

(A) Be established and maintained in accordance with all local, state and federal laws, rules & regulations;

(B) Obtain a facility permit to operate;

(i) notify the Board office in writing, within 30 days of relocating the facility;

(ii) keep posted and visible to the public, the facility permit with the correct location address;

(C) Facilities exempted from the permit process:

(i) clinic or facility owned or operated by a person authorized to practice a profession by a health professional regulatory board, as defined in ORS 676.160;

(ii) a career school licensed under ORS 345.010 to 345.450; and

(iii) clinics of a board approved massage therapy program.

(D) Provide a finished lavatory that (i) Is well maintained, (ii) Provides a system for sanitary disposal of waste products, (iii) Is capable of being fully closed and locked from the inside, (iv) Supplies hot and cold running water, (v) Is supplied with liquid soap and single use towels, (vi) Is supplied with toilet paper at each toilet;

(E) Dispose of refuse sewage in a manner described by local and state law; and (F) Follow applicable laws pertaining to public spas, pools, baths and showers.

(b) All treatment spaces must:

(A) Provide for client privacy, both in-house and on-site;

(B) Be designated as used only for massage at the time of services;

(C) Provide for sufficient heating, cooling and ventilation for client comfort; and

(D) Provide illumination during cleaning.

(c) The facility and treatment space must be:

- (A) Cleaned regularly and kept free of clutter, garbage or rubbish;
- (B) Maintained in a sanitary manner; and
- (C) Maintained free from flies, insects, rodents and all other types of pests.

(2) Outcall/On-site

(a) Any temporary location where the LMT conducts massage and bodywork, the LMT must provide and utilize:

- (A) Safe, sanitized and well-maintained equipment, tools and preparations;
- (B) Sanitary linen practices; and
- (C) Client privacy practices.

[Stat. Auth.: ORS 687.121 Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121 Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0012; MTB 2-1985, f. & ef. 1-23-85; MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0030; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 2-2013, f. 11-26-13, cert. ef. 1-1-14; BMT 1-2015, f. 3-12-15, cert. ef. 7-1-15. July 2016 Edition of OAR Ch. 334.]

334-020-0015 Equipment

(1) All equipment and tools used in conjunction with a treatment on a client must:

- (a) Be approved by a nationally recognized testing laboratory when applicable;
- (b) Be maintained on a regular basis; and
- (c) Be cleaned between each use.

(2) Cushions on tables and chairs, as well as bolster and pillows, must be covered with impervious material that is cleaned after every use.

(3) Topical preparations must be:

- (a) Stored in a manner that maintains the integrity of the product and prevents spoilage and contamination;
- (b) Dispensed in a manner that prevents contamination of the unused portion; and
- (c) Dispensed in a manner that prevents cross-contamination between clients.

(4) Topical preparations such as ice cubes, plasters, herbal wraps and any other similar product that comes in contact with the client must be used only once and then disposed of in a sanitary manner.

[Stat. Auth.: ORS 687.121 Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121 Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0016; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0040; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12. July 2016 Edition of OAR Ch. 334.]

334-020-0050 Linens

- (1) When linens are used they must be routinely cleaned and stored in a manner which reasonably assures the sanitary use for each client.
- (2) The use of soiled linens is prohibited.
- (3) All soiled linens must be:
 - (a) immediately placed in a receptacle that closes and prevents cross-contamination;
 - (b) handled as little as possible;
 - (c) laundered in a manner that eliminates the risk of spreading parasites, communicable diseases and infections; and
 - (d) laundered in a manner that removes all residue of topical preparations.

[Stat. Auth.: ORS 687.121 Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121 Hist.: HB 88, f. 3-16-56; Transferred from 333-035-0030; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0075; MTB 1-1990, f. & cert. ef. 4-20-90; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09. July 2016 Edition of OAR Ch. 334.]

334-020-0055 Communicable Disease Control

- (1) All therapists must always practice communicable disease prevention and control.
- (2) LMT's are required to follow the communicable disease guidelines as adopted by the Board.

[Stat. Auth.: ORS 687.121 Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121 Hist.: HB 88, f. 3-16-56; Transferred from 333-035-0032; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0080; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09. July 2016 Edition of OAR Ch. 334.]

Tennessee

Statutory Authority: 63-18-104. License required.

- (a) Persons or massage establishments engaged in massage for compensation shall be licensed by the massage licensure board.
- (b) Any person or establishment who advertises or engages in massage for compensation without a current valid license from the massage licensure board commits a Class B misdemeanor. It is unlawful to use the word "massage" or any other term that implies massage technique or method when advertising a service by a person who is not licensed under this chapter or another chapter of state law.
- (c) The practice of reflexology shall not be subject to the licensure requirements of this chapter. For the purposes of this chapter, "reflexology" means the application of specific pressures to reflex points in the hands and feet only.

[1995 Pub.Acts, c. 480, § 7, eff. Oct. 1, 1995.]

Administrative Regulations: R 0870.01-.02 & 0870.01-05

0870-01-.02 PRACTICE STANDARDS AND INSPECTION OF ESTABLISHMENTS.

- (1) It is the responsibility of establishment owners to ensure compliance with all provisions of this rule and any violation of any portion of this rule may result in disciplinary action or denial of licensure pursuant to T.C.A. § 63-18-108.
- (2) Standards for Massage Establishments, Personnel, and Equipment
- (a) Massage Establishments Standards
1. Establishment owners shall ensure and maintain an adequate waiting area for clients.
 2. Establishment owners 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 shall ensure that floors, walls, ceilings and windows are kept clean, in good repair and free of pests.
 4. Rest Rooms. Every establishment shall contain rest room facilities for use by clients and employees. Establishments located in buildings housing multiple businesses under one roof such as arcades, shopping malls, terminals, hotels, etc., may substitute centralized toilet facilities. Such centralized facilities shall be within three hundred (300) feet of the massage establishment.
 - (i) Rest room facilities shall include at least one water-flushed 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.

- (ii) Rest room facilities shall include at least one sink with hot and cold running water and shall be equipped with a soap dispenser with soap or other hand cleaning materials, clean towels or other hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle. Hand cleansing capabilities for the therapists must be located within twenty (20) feet of the treatment area.
- (iii) Rest room facilities and all of the foregoing fixtures and components shall be kept clean, in good repair and free of pests. 5. Reasonable effort for sanitation shall be maintained for temporary locations such as athletic events or public service fund raisers in temporary venues. 6. Establishment owners 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.

(b) Personnel

1. Establishment owners 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-.04.
2. Establishment owners 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.
3. Establishment licenses are not transferable and are subject to revocation or other disciplinary actions upon failure of any inspection or for refusal to allow inspection by the Board's authorized representatives.
4. Notwithstanding the above, a licensed massage establishment may change locations, pursuant to rule 0870-01-.15 (3).
5. Establishment owners 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.

(c) Equipment

1. Establishment owners shall ensure that all equipment and supplies used to perform massage services on the premises are maintained in a safe and sanitary condition.
2. If the establishment is equipped with a whirlpool bath, sauna, steam cabinet and/or steam room, establishment owners shall maintain adequate and clean shower facilities on the premises.

(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 to verify that the establishment and all licensed massage therapists providing services have their licenses conspicuously displayed on the premises as required by 0870-01-.14.

(b) The establishment license may be subject to disciplinary action, pursuant to Rule 0870- 01-.13, if the inspection reveals that the establishment does not meet the standards and requirements set by this rule or if 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. Upon timely submission of the application and fee, the Board's Director, Manager or designee shall schedule the reinspection.
5. Failure to pass a reinspection shall result in a formal complaint with the Division's investigations unit.

(e) Failure to Allow or Appear for Inspection - An establishment whose owner or operator fails to allow an inspection 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. In the event of either a failure to appear without notice or a failure to allow inspection, a subsequent scheduled inspection shall be considered a reinspection. When a reinspection is necessitated as a result of either circumstance, 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. Upon timely submission of the application and fee, the Board's Director, Manager or designee shall schedule the reinspection.
5. Failure to pass a reinspection or failure to allow or appear at reinspection shall result in a formal complaint with the Division's investigations unit.

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

Administrative History: Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed November 26, 1996; effective February 9, 1997. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed November 27, 2000; effective February 10, 2001. Amendment filed October 4, 2004; effective December 18, 2004. Amendment filed December 29, 2004; effective March 14, 2005. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Repeal and new rule filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

0870-01-.05 ESTABLISHMENT LICENSURE PROCESS.

Any massage therapy establishment, unless exempted by any provision of T.C.A. § 63-18-110, must be licensed by the Board. The process for obtaining a license is as follows:

- (1) 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. 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.
- (2) "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 pursuant to rule 0870-01-.04. Failure to comply with this provision may result in the denial or revocation of the establishment license.
- (3) Except for applicants who are corporations doing business in Tennessee, every applicant shall submit a copy of his/her birth certificate or its equivalent which indicates that the applicant is at least eighteen (18) years of age at the time of application. Applicants who are not citizens of the United States or whose birth certificates reflect that they were not born in the United States shall submit proof of their immigration status demonstrating their right to live and work in the United States.
- (4) Except for applicants who are corporations doing business in Tennessee, every applicant shall submit to the Board Administrative Office, evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original signed and dated letters, attesting to the applicant's personal character and professional ethics.
- (5) Applicants who are not licensed as massage therapists in Tennessee shall submit proof that they have completed at least two (2) hours of education in Tennessee Law relating to massage therapy. These courses must be approved by the Board.
- (6) Applicants who are corporations doing business in Tennessee shall submit a copy of their corporate charter and shall submit a statement identifying the corporation's registered agent for service of process.
- (7) An applicant shall disclose the circumstances surrounding any of the following concerning himself:
 - (a) Conviction of any criminal offense (except minor traffic offenses) of any country, state or municipality, including without limitation conviction for prostitution or any sexual misconduct offense. A conviction for prostitution or sexual misconduct offenses shall disqualify an applicant from receiving a license. A conviction for a felony under the laws of Tennessee may disqualify an applicant from receiving a license.

(b) The denial of professional licensure/certification by any other state or the discipline of licensure/certification in any state.

(c) Loss or restriction of licensure/certification.

(d) Any civil suit judgment or civil suit settlement in which the applicant was a party defendant for any actions involving malpractice, negligence, and/or fraud.

(8) An applicant shall cause to be submitted to the Board Administrative Office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

(9) An applicant shall submit the establishment application fee and state regulatory fee as provided in rule 0870-01-.06.

(10) When necessary, all required documents shall be translated into English and such translation and original documents certified as to authenticity by the issuing source. Both versions must be submitted to the Board's administrator.

(11) All applications shall be sworn to and signed by the applicant and notarized.

(12) All documents submitted for licensure purposes become the property of the State of Tennessee and will not be returned.

(13) The application form and all required documents must be dated no more than one (1) year before receipt by the Board Administrative Office.

(14) An establishment license may be denied, conditioned, restricted and/or disciplined for the same causes and pursuant to the same procedures as a massage therapist's license.

(15) Application review and licensure decisions shall be governed by rule 0870-01-.07.

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

Administrative History: Original rule filed November 26, 1996; effective February 9, 1997. Amendment filed November 12, 1999; effective January 26, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed June 15, 2004; effective August 29, 2004. Amendment filed December 29, 2004; effective March 14, 2005. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed February 2, 2007; effective April 18, 2007. Repeal and new rule filed April 9, 2012; effective July 8, 2012. The Government Operations Committee filed a stay of the rules on July 2, 2012; new effective date August 3, 2012. The Government Operations Committee filed a second stay of the rule on July 13, 2012; new effective date September 6, 2012.

Texas

Statutory Authority: § 455.052, §455.059, § 455.151, 455.155

Sec. 455.052. RULES REGARDING MASSAGE ESTABLISHMENTS.

Rules adopted under this chapter relating to a massage establishment must contain minimum standards for:

- (1) the issuance, denial, renewal, suspension, revocation, or probation of a license under this chapter;
- (2) the qualifications of professional personnel;
- (3) the supervision of professional personnel;
- (4) the equipment essential to the health and safety of massage establishment personnel and the public;
- (5) the sanitary and hygienic conditions of a massage establishment;
- (6) the provision of massage therapy or other massage services by a massage establishment;
- (7) the records kept by a massage establishment;
- (8) the organizational structure of a massage establishment, including the lines of authority and the delegation of responsibility;
- (9) fire prevention and safety in a massage establishment;
- (10) the inspection of a massage establishment; and
- (11) any other aspect of the operation of a massage establishment necessary to protect massage establishment personnel or the public.

Sec. 455.059. Inspections; Investigations

The department, the department's authorized representative, or a peace officer may enter the premises of a massage establishment or massage school at:

- (1) reasonable times to conduct an inspection incidental to the issuance of a license; and
- (2) other times that the department, the department's authorized representative, or a peace officer considers necessary to ensure compliance with this chapter and the rules adopted under this chapter.

§ 455.151. License Required

(a) Unless the person is exempt from the licensing requirement, a person may not act as a massage therapist, massage school, massage therapy instructor, or massage establishment unless the person holds an appropriate license issued under this chapter.

(b) Unless the person is exempt from the licensing requirement, a person may not represent that the person is a massage therapist, massage school, massage therapy instructor, or massage establishment unless the person holds an appropriate license under this chapter.

(c) A person may not for compensation perform or offer to perform any service with a purported health benefit that involves physical contact with a client unless the person:

- (1) holds an appropriate license issued under this chapter; or
- (2) is licensed or authorized under other law to perform the service.

(d) The department may issue one or more types of licenses not otherwise provided for by this chapter that authorize the license holder to perform a service described by Subsection (c). The commission may adopt rules governing a license issued under this subsection.

[Added by Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 1300, § 9, eff. Sept. 1, 2005; Acts 2007, 80th Leg., ch. 1399, § 2, eff. Sept. 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 5.080, eff. April 2, 2015; Acts 2015, 84th Leg., ch. 838 (S.B. 202), § 1.245, eff. Sept. 1, 2017.]

Sec. 455.155. License Exemption

(a) Section 455.151 does not apply to an establishment or person that:

- (1) holds a license, permit, certificate, or other credential issued by this state under another law; and
- (2) offers or performs massage therapy under the scope of that credential.

(b) A licensed massage therapist who practices as a solo practitioner is not required to hold a license as a massage establishment.

(c) A place of business is not required to hold a license under this chapter if:

- (1) the place of business is owned by the federal government, the state, or a political subdivision of the state;
- (2) at the place of business, a licensed massage therapist practices as a solo practitioner and:
 - (A) does not use a business name or assumed name; or
 - (B) uses a business name or an assumed name and provides the massage therapist's full legal name or license number in each advertisement and each time the business name or assumed name appears in writing;
- (3) at the place of business, an acupuncturist, athletic trainer, chiropractor, cosmetologist, midwife, nurse, occupational therapist, perfusionist, physical therapist, physician, physician assistant, podiatrist, respiratory care practitioner, or surgical assistant licensed or certified in this state employs or contracts with a licensed massage therapist to provide massage therapy as part of the person's practice; or

(4) at the place of business, a person offers to perform or performs massage therapy:
 (A) for not more than 72 hours in any six-month period; and
 (B) as part of a public or charity event, the primary purpose of which is not to provide massage therapy.

(d) A sexually oriented business may not:
 (1) hold a license under this chapter; or
 (2) operate as a massage establishment under this chapter.

Administrative Regulations: §117.80 - .85

SUBCHAPTER G. LICENSED MASSAGE ESTABLISHMENTS.

117.80. Massage Establishment Application Procedures and Licensure.

(New Section adopted effective November 1, 2017, 42 TexReg 4991)

(a) Unless otherwise exempt under the Act, a place of business that advertises or offers massage therapy or other massage services must be licensed by the department as a massage establishment as provided by this section.

(b) A sexually oriented business may not obtain a license from the department or operate as a massage establishment.

(c) Each applicant for a massage establishment must submit:

- (1) a completed application on a department approved form; and
- (2) the fee as prescribed under §117.100.

117.81. Massage Establishment Renewal Requirements

(New Section adopted effective November 1, 2017, 42 TexReg 4991)

(a) A massage establishment license is valid for a two-year period beginning on the date of issuance of the initial license and must be renewed before the expiration date.

(b) To renew a massage establishment license, a licensee must submit:

- (1) the renewal fee prescribed under §117.100;
- (2) the completed renewal application on a department-approved form; and
- (3) any other information deemed necessary by the department to determine compliance with the Act and this subchapter.

(c) The department shall issue a renewal license to a massage establishment that has met all renewal requirements.

117.82. Massage Establishments--General Requirements

(New Section adopted effective November 1, 2017, 42 TexReg 4991)

(a) A massage establishment shall employ or contract with only licensed massage therapists to perform massage therapy or other massage services. Documentation of the employment or contract relationship and verification that the licensed massage therapist is a United States citizen or a legal permanent resident with a valid work permit shall be maintained by the massage establishment and made available during an inspection or investigation. Required documentation for each person providing massage therapy or other massage services shall include:

(1) a copy of the current massage therapist license;

(2) proof of eligibility to work in the United States; and

(3) if an employee, a completed I-9 form, or if under an independent contractor or contract labor agreement, a copy of the contract signed by both the owner or operator and the licensed massage therapist.

(b) No massage establishment shall be operated until the department has approved and licensed the establishment.

(c) A massage establishment must maintain separation from rooms used wholly or in part for residential or sleeping purposes by a solid wall or by a wall with a solid door which shall remain locked during business hours.

(d) A massage establishment must display the license in a prominent location in the establishment where it is available for inspection by the public.

(e) A license issued by the department is the property of the department and must be surrendered on demand.

(f) A massage establishment is subject to inspection to verify compliance with the Act and this chapter by authorized personnel of the department at any reasonable time.

(1) Massage establishments shall be inspected periodically and as a result of a complaint. These inspections will be performed to determine compliance with the requirements of the Act and this chapter.

(2) The department inspector will contact the establishment owner, manager, or their representative upon arrival at the establishment and before proceeding with the inspection.

(3) The establishment owner, manager, or their representative shall cooperate with the inspector in the performance of the inspection.

(4) Each establishment shall be inspected at least once every two years.

(5) Upon completion of the inspection, the owner, manager, or their representative shall be advised in writing of the results. The inspection report will list violations identified during the inspection.

(g) A massage establishment may not:

(1) employ or contract with an individual who is not a United States citizen or a legal permanent resident with a valid work permit;

(2) employ a minor unless the minor's parent or legal guardian authorizes in writing the minor's employment by the establishment;

(3) allow a nude or partially nude employee to provide massage therapy or other massage services to a customer;

(4) allow any individual, including a client, student, license holder, or employee, to engage in sexual contact in the massage establishment;

(5) allow any individual, including a student, license holder, or employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual; or

(6) allow an unlicensed student to provide massage therapy or other massage services to the public beyond the department-approved internship.

(h) A massage establishment shall:

(1) properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records; and

(2) maintain a current list of all establishment employees and/or contractors at all times which includes:

(A) full name; and

(B) license number and expiration date (if licensed as a massage therapist).

(i) For purposes of this section:

(1) "Nude" means a person who is:

(A) entirely unclothed; or

(B) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts or any portion of the genitals or buttocks.

(2) "Sexual contact" includes:

(A) any touching of any part of the genitalia or anus;

(B) any touching of the breasts of a female client, unless the touching is breast massage that is specifically authorized by the client through the signed consultation document referenced in §117.91;

(C) any offer or agreement to engage in any activity described in subparagraph (A) or (B);

(D) kissing;

(E) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotions of prostitution as described in Penal Code, Chapters 21, 22, and 43, or any offer or agreement to engage in such activities;

(F) any behavior, gesture, or expression that may reasonably be interpreted as inappropriately seductive or sexual; or

(G) inappropriate sexual comments about or to a client, including sexual comments about a person's body.

117.83. Sanitation Requirements for Massage Establishments

(New Section adopted effective November 1, 2017, 42 TexReg 4991)

- (a) Each massage establishment shall be maintained in accordance with applicable state and local sanitary or health codes and regulations.
- (b) A massage establishment and all fixed equipment shall:
 - (1) be thoroughly cleaned on a routine basis;
 - (2) be rendered free from harmful organisms by the application of an accepted bactericidal agent; and
 - (3) be in good working condition at all times.
- (c) Toilet facilities shall be kept clean, sanitary, and in working order at all times. Restrooms shall not be used as storage rooms.
- (d) Each location shall provide hand washing facilities, including hot and cold running water, located near or adjacent to the toilet room or rooms. Hot air blowers or suitable holders for sanitary towels and dispensers for soap shall be provided, and be adequately supplied at all times.
- (e) All trash containers must be emptied daily and kept clean by washing or using plastic liners.
- (f) Disposable sheets, towels, or protectors which cannot be disinfected will be disposed of in a waste receptacle immediately after use.
- (g) Furniture, equipment, and other fixtures shall be of a washable material and kept clean and in good repair. Electrical equipment shall be kept sanitary and safe at all times.
- (h) Clean sheets shall be used on each client.
- (i) Soiled sheets are to be discarded. After a sheet has been used once, it shall be deposited in a closed or partially closed receptacle, container, or basket, and shall not be used again until properly washed and disinfected.
- (j) Used towels shall be washed in chlorinated hot water.
- (k) Oil must be kept in closed containers.

117.84. Massage Establishment Exemptions

(New Section adopted effective November 1, 2017, 42 TexReg 4991)

- (a) A place of business is not required to hold a massage establishment license under the Act if:
 - (1) the place of business is owned by the federal government, the state, or a political subdivision of the state;
 - (2) at the place of business, a licensed massage therapist practices as a solo practitioner and:
 - (A) does not use a business name or assumed name; or
 - (B) uses a business name or an assumed name and provides the massage therapist's full legal name or license number in each advertisement and each time the business name or assumed name appears in writing;
 - (3) at the place of business, an acupuncturist, athletic trainer, chiropractor, cosmetologist, midwife, nurse, occupational therapist, perfusionist, physical therapist, physician, physician assistant, podiatrist, respiratory care

practitioner, or surgical assistant licensed or certified in this state employs or contracts with a licensed massage therapist to provide massage therapy as part of the person's practice; or

(4) at the place of business, a person offers to perform or performs massage therapy:

(A) for not more than 72 hours in any six-month period; and

(B) as part of a public or charity event, the primary purpose of which is not to provide massage therapy.

(b) Unless the person is exempt from the licensing requirement, a person may not represent that the person is a massage establishment unless the person holds an appropriate license under this subchapter.

117.85. Massage Establishment Change of Ownership or Change of Location

(New Section adopted effective November 1, 2017, 42 TexReg 4991)

(a) No massage establishment license shall be transferred, bartered, or sold to another person or owner. The new owner of a massage establishment must apply for a license as a new applicant. A massage establishment may not operate under a new owner until a massage establishment license is issued by the department to the new owner. A license issued under this chapter is not transferable.

(b) The department may consider the addition or deletion of any person defined as an owner as a change in ownership. The massage establishment must notify the department of the change in ownership within thirty (30) days before the change in ownership to request that the department, in lieu of a full application, accept a partial application.

(c) The department may require submission of a full application for approval for a change in ownership if:

(1) the department has a reasonable basis to believe the change in ownership of the establishment may significantly affect the establishment's continued ability to meet the criteria for approval; or

(2) the establishment fails to file notice of the change of ownership within thirty (30) days of the ownership transfer.

(d) The department may require a partial application for approval for a change in ownership if the department reasonably believes the change in ownership will not significantly affect the establishment's continued ability to meet the criteria for approval.

(e) No massage establishment license shall be transferred to another location. If the location of an establishment changes, a new application for licensure must be submitted and approved before the establishment may provide massage therapy or other massage therapy services.

Washington

Washington Administrative Code 246-830-515

WAC 246-830-500

Equipment and sanitation.

- (1) A massage therapist using hydrotherapies including, but not limited to, cabinet, vapor or steam baths, whirlpool, hot tub or tub baths must have available adequate shower facilities.
- (2) All cabinets, showers, tubs, basins, massage or steam tables, hydrotherapy equipment, and all other fixed equipment used must be thoroughly cleansed using an effective bactericidal agent.
- (3) Combs, brushes, shower caps, mechanical, massage and hydrotherapy instruments, or bathing devices that come in contact with the body must be sterilized or disinfected by modern and approved methods and instruments. Devices, equipment or parts thereof having been used on one person must be sterilized or disinfected before being used on another person.
- (4) Impervious material must cover, full length and width, all massage tables or pads, pillows, bolsters, and face cradles directly under fresh sheets and linens or disposable paper sheets.
- (5) A massage therapist must provide single service materials or clean linen such as sheets, towels, gowns, pillow cases, and all other linens used in the practice of massage. Linens must be stored in a sanitary manner.
- (6) All towels and linens used for one client or patient must be laundered or cleaned before they are used on any other client or patient.
- (7) All soiled linens must be immediately placed in a covered receptacle.
- (8) Soap and clean towels must be provided by the massage therapist for use by massage therapists, clients or patients and any employees.
- (9) All equipment must be clean, well maintained and in good repair.

WAC 246-830-510

Hygiene.

To maintain a professional standard of hygiene in their practice, a massage therapist must:

- (1) Cleanse their exposed body part used for applying treatment, before and after each treatment, using a sink with hot water or a chemical germicidal product;
- (2) Maintain a barrier of unbroken skin on their exposed body part used for applying treatment during each treatment and in the case of broken skin use a finger cot, glove or chemical barrier product to cover the affected area during treatment; and

(3) Wear clothing that is clean.

Operation of a massage business.

A person who owns or operates a massage business may be subject to legal action for practice without a license under RCW [18.130.190](#) if the massage business advertises massage and the massage business employs individuals to provide massages who are not licensed under chapter [18.108](#) RCW.

WAC 246-830-565

Recordkeeping.

(1) A massage therapist providing professional services to a client or patient must document services provided. Documentation should be appropriate to the venue, the type and complexity of those services and, when applicable, in sufficient detail to support and enable anticipated continuity of care. The documentation must include:

(a) Client or patient name and contact information or name and contact information of a parent or guardian if a client or patient is a minor;

(b) Age of client or patient;

(c) Health history sufficient to ascertain if there are cautions or contraindications to safe application of massage therapy, and an update of the current health status at each session;

(d) Date massage therapy is provided and the duration of treatment;

(e) The types of techniques and modalities applied;

(f) The location or areas of the body that received massage therapy;

(g) Written consent to treat;

(h) If breast massage is performed, an additional written consent to treat per WAC [246-830-555](#), and documentation of a therapeutic rationale;

(i) If breast massage of the nipples and areolas are involved, documentation of the prescription or referral per WAC [246-830-555](#) (3)(a), or an additional written consent to treat per WAC [246-830-555](#) (3)(b);

(j) Documentation of any written consent or any modification in coverage and draping as required by WAC [246-830-560](#); and

(k) For massage therapy where the focus is on treating a health condition, the following additional information is required:

(i) Symptoms, for example, pain, loss of function, and muscle stiffness;

(ii) Evaluation and findings, for example, movement, posture, palpation assessment and findings;

(iii) Outcome measures, for example, improvement in symptoms, movement, posture, palpation, and function;

(iv) Treatment plan for future sessions; and

(l) If performing massage in the perineal area, an additional written and verbal informed consent to treat per WAC [246-830-550](#)(2).

(2) Client or patient records must be legible, permanent, and recorded within twenty-four hours of treatment. Documentation that is not recorded on the date of service must designate both the date of service and the date of the chart note entry. Corrections or additions to the client's or patient's records must be corrected by a single line drawn through the text and initialed so the original entry remains legible. In the case of computer-organized documentation, unintended entries may be identified and corrected, but must not be deleted from the record once the record is signed and completed or locked. Errors in spelling and grammar may be corrected and deleted.

(3) Correspondence relating to any referrals by other health care providers concerning the diagnosis, evaluation or treatment of the client or patient must be retained in the client or patient record.

(4) Client or patient records should clearly identify the massage therapist who is the provider of services by name and signature or electronic signature and date of service.

WAC 246-830-570

Record retention.

(1) A massage therapist who treats clients or patients eighteen years of age and older must keep client or patient records for at least three years from the date of last treatment.

(2) A massage therapist who treats clients or patients under the age of eighteen years old must keep client or patient records for at least three years after the client or patient reaches eighteen years old.

(3) A massage therapist must also comply with record retention requirements of chapter [70.02](#) RCW.

(4) All records must be secured with properly limited access in compliance with chapter [70.02](#) RCW and the Health Insurance Portability and Accountability Act (HIPAA).

(5) After the retention period, the massage therapist may dispose of the record. Disposal must be done in a secure and confidential manner in compliance with chapter [70.02](#) RCW and HIPAA and must include as appropriate:

(a) Shredding;

(b) Deleting, erasing, or reformatting electronic media; and

(c) Other readable forms of media that are defaced or rendered unusable or unreadable.

Revised Code of Washington

RCW [18.108.190](#)

Inspection of premises by law enforcement personnel.

State and local law enforcement personnel shall have the authority to inspect the premises at any time including business hours.

RCW [18.108.195](#)

Inspection of premises by secretary.

(1) For the purposes of ascertaining violations of this chapter and chapter [18.130](#) RCW, the secretary or authorized representative has the authority to inspect, within reasonable limits and in a reasonable manner, the premises of any massage or reflexology business establishment during hours such business is open. If the secretary is denied access to any premises or establishment the secretary may apply to any court of competent jurisdiction for a warrant authorizing access to such premises or establishment for such purposes. The court may, upon such application, issue a warrant for the purpose requested.

(2) This section does not require advance notice of an inspection.

RCW 18.108.210

Authority of local political subdivisions.

Nothing in this chapter limits or abridges the authority of any political subdivision to levy and collect a general and nondiscriminatory license fee levied upon all businesses, or to levy a tax based upon gross business conducted by any firm within said political subdivision.

Statutes and Regulations

Barbers and Hairdressers

Statutes and Regulations **Barbers and Hairdressers**

June 2018



DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT

***DIVISION OF CORPORATIONS, BUSINESS
AND PROFESSIONAL LICENSING***

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**CHAPTER 13.
BARBERS AND HAIRDRESSERS.**

Article

- 1. Board of Barbers and Hairdressers**
(§§ 08.13.010—08.13.050)
- 2. Examination and Licensing**
(§§ 08.13.070—08.13.195)
- 3. General Provisions** (§§ 08.13.210—08.13.220)

**ARTICLE 1.
BOARD OF BARBERS AND HAIRDRESSERS.**

Section

- 10. Creation and membership of board**
- 30. Powers and duties of the board**
- 40. Meetings and examinations**
- 50. Records of the board**

Sec. 08.13.010. Creation and membership of board. (a) There is created the Board of Barbers and Hairdressers consisting of seven members appointed by the governor.

(b) The board consists of

- (1) one person licensed as a barber under this chapter;
- (2) one person licensed to practice body piercing or licensed to practice tattooing and permanent cosmetic coloring under this chapter;
- (3) two persons licensed as hairdressers under this chapter, one of whom is also licensed as an esthetician under this chapter;
- (4) one public member;
- (5) one person licensed to practice manicuring under this chapter; and
- (6) one person licensed to practice any activity licensed under this chapter.

Sec. 08.13.030. Powers and duties of the board. (a) The board shall exercise general control over the vocations of barbering, hairdressing, manicuring, esthetics, and body piercing and the vocation of tattooing and permanent cosmetic coloring.

(b) The board shall

- (1) examine applicants and approve the issuance of licenses and permits to practice;
- (2) authorize the issuance of licenses for schools of barbering, hairdressing, manicuring, and esthetics;
- (3) develop written instructions and notices that tattooing and permanent cosmetic coloring shop owners and practitioners and body piercing shop owners and practitioners are required to give or display under AS 08.13.215 .

(c) The board may

- (1) suspend or revoke a license or permit;
- (2) on its own motion or upon receipt of a written complaint, conduct hearings and request the Department of Commerce, Community, and Economic Development or the Department of Environmental Conservation to investigate the practices of a person, shop, or school involved in the practice or teaching of barbering, hairdressing, manicuring, esthetics, body piercing, or tattooing and permanent cosmetic coloring;
- (3) adopt regulations or do any act necessary to carry out the provisions of this chapter.

Sec. 08.13.040. Meetings and examinations. The board shall meet as often as necessary to conduct its business. It shall conduct separate examinations covering the following fields of practice: barbering, hairdressing, advanced manicuring, and esthetics. Examinations shall be given at least twice in every year for each of these fields of practice for which applications for licensure or endorsements are pending. An applicant may take an examination in more than one field during the same testing session. The board may not require an applicant for licensure as a manicurist to take or pass an examination conducted by the board for the field of manicuring; however, nothing in this sentence prohibits the board from requiring a licensed manicurist to pass an examination to obtain an optional endorsement as an advanced manicurist under AS 08.13.080(f).

Sec. 08.13.050. Records of the board. The Department of Commerce, Community, and Economic Development shall keep a record of the board's proceedings related to the issuance, refusal, suspension, and revocation of each license and permit. The record shall contain the name of the person to whom a license or permit is issued, the person's place of business, the date of issuance for each license and permit, and whether it is currently valid. The record shall be open to inspection by the public at all reasonable times.

ARTICLE 2.
EXAMINATION AND LICENSING.

Section

- 70. License required**
- 80. Qualifications of applicants**
- 82. Apprenticeship**
- 90. Examinations and other requirements**
- 100. License**
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- 120. Shop license**
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- 185. Fees**
- 190. Failure to possess a license or permit**
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Sec. 08.13.070. License required. A person may not

- (1) practice barbering, hairdressing, manicuring, esthetics, body piercing, or tattooing and permanent cosmetic coloring without a license, temporary permit, temporary license, or student permit unless exempted under AS 08.13.160 (d);
- (2) practice barbering, hairdressing, manicuring, esthetics, body piercing, or tattooing and permanent cosmetic coloring except in a shop or school licensed under this chapter unless exempted under AS 08.13.160 (d) or permitted under AS 08.13.160 (e);
- (3) open or conduct a school of barbering, hairdressing, manicuring, or esthetics without a license;
- (4) teach in a school of barbering, hairdressing, manicuring, or esthetics, or supervise an apprentice in barbering, hairdressing, or esthetics without an instructor's license;
- (5) operate a shop in violation of AS 08.13.120 ;
- (6) permit an employee or other person being supervised who is not exempted under AS 08.13.160 (d) to practice barbering, hairdressing, manicuring, esthetics, body piercing, or tattooing and permanent cosmetic coloring without a license, temporary permit, temporary license, or student permit;
- (7) permit the use of the person's license, temporary permit, temporary license, or student permit by another person;
- (8) obtain or attempt to obtain a license, temporary permit, temporary license, or student permit by fraudulent means.

Sec. 08.13.080. Qualifications of applicants. (a) An applicant for an examination authorized under AS 08.13.040 must

- (1) have successfully completed all courses that a school with a curriculum in barbering approved by the board is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice barbering;
 - (2) have successfully completed all courses that a school with a curriculum in hairdressing approved by the board is required to teach to be licensed under AS 08.13.110 if applying for a license to practice hairdressing;
 - (3) have successfully completed all courses that a school with a curriculum in esthetics approved by the board is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice esthetics;
 - (4) have served an apprenticeship under AS 08.13.082;
 - (5) specify the field of practice in which the applicant intends to teach and have held a license to practice in the field for three years or have held a license in the field for one year and have completed 600 hours of student training as an instructor in the field of practice from a licensed school with a curriculum approved by the board if applying for a license as an instructor, except that a person licensed as an instructor in hairdressing may be an instructor in manicuring for courses that satisfy the requirements of (e) of this section, and the board may, by regulation, establish requirements for other manicuring instructors, including instructors who teach courses that satisfy requirements for an advanced manicurist endorsement; or
 - (6) have completed course work and, if applicable, an apprenticeship acceptable to the board.
- (b) *[Repealed, Sec. 12 ch 27 SLA 2015.]*
 - (c) *[Repealed, Sec. 12 ch 27 SLA 2015.]*
 - (d) An applicant for a license to practice body piercing or a license to practice tattooing and permanent cosmetic coloring shall
 - (1) satisfy the training requirement of AS 08.13.082 (d);

(2) by passing a written examination approved by the board, demonstrate to the board or the board's designee safety, sanitation, sterilization, and aseptic techniques that indicate that the applicant has adequate knowledge of infection control practices and requirements relating either to tattooing and permanent cosmetic coloring or to body piercing, as applicable; this demonstration may, at the option of the board, also include a practical examination in addition to the written examination; and

(3) pay the appropriate fee.

(e) An applicant for a license to practice manicuring shall

(1) submit documentation that the applicant has completed a course of 12 hours of instruction or training approved by the board that addresses health, safety, and hygiene concerns of manicuring customers and practitioners that are relevant to the practice of manicuring from a school licensed under AS 08.13.110 as a school of manicuring; documentation of completion of the course must include certification from the school that the applicant has passed a test given by the school covering the health, safety, and hygiene concerns of manicuring customers and practitioners that are relevant to the practice of manicuring; and

(2) pay the appropriate fee.

(f) An applicant for an endorsement to a license to practice manicuring or hairdressing indicating that the person is an advanced manicurist shall

(1) hold, or be approved for, a current license issued under this chapter for manicuring or hairdressing;

(2) request the endorsement;

(3) submit documentation from a licensed school of manicuring or hairdressing certifying completion of 250 hours of instruction in manicuring that meets the requirements of AS 08.13.110(e);

(4) pass an examination given by the board for advanced manicurists; and

(5) pay the appropriate fee.

Sec. 08.13.082. Apprenticeship. (a) The period of apprenticeship required to qualify an applicant for a license to practice barbering is 2,000 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than 12 months from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(b) The period of apprenticeship required to qualify an applicant for a license to practice hairdressing is 2,000 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than one year from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(c) The period of apprenticeship required to qualify an applicant for a license to practice esthetics is 350 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than six months from the date of its commencement and must be completed in not more than one year from the date of its commencement.

(d) The number of hours of training required to qualify an applicant for a license to practice either tattooing and permanent cosmetic coloring or body piercing shall be set by the board in regulations. The trainee must be at least 18 years of age when the training commences. The training required under this subsection

(1) may only be received

(A) in a licensed shop in this state under a person who has a practitioner's license under this chapter in the field in which the trainee seeks training; or

(B) outside the state from a person approved by the board at a site approved by the board;

(2) must include at least 12 hours of training in safety, sanitation, sterilization, aseptic, and other practices necessary to prevent transmission of diseases and infection;

(3) shall be completed in not more than 12 months from the date of its commencement; and

(4) shall be documented by certification from the trainer that the training was successfully completed by the trainee.

(e) *[Repealed, Sec. 12 ch 12 SLA 2017.]*

Sec. 08.13.090. Examinations and other requirements. (a) A written examination shall be given to each applicant for examination at a time and place determined by the board. The board may delegate the power of examination to a committee of the board or a board member.

(b) The written examination must cover subjects designated by the board and must test the applicant's knowledge of sanitary practices, safety of all procedures, and use of instruments, equipment, and chemicals permitted within the field of practice for which the applicant is seeking a license.

(c) The board may by regulation establish requirements for a practical examination for licensure.

Sec. 08.13.100. License. (a) The board shall authorize the issuance of a license for the practice of barbering, hairdressing, or esthetics to each qualified applicant who has passed an examination under AS 08.13.090 and meets other applicable requirements under this chapter. The board shall authorize the issuance of a license for the practice of tattooing and permanent cosmetic coloring or for body piercing to each applicant who has satisfied the requirements of AS 08.13.080(d). The board shall authorize the issuance of a license to practice manicuring to each applicant who has satisfied the requirements of AS 08.13.080(e). The board shall authorize the issuance of an endorsement to a license to practice manicuring or hairdressing indicating that the person is an advanced manicurist to each applicant who has satisfied the requirements of AS 08.13.080(f).

(b) A practitioner license must state the areas of practice (barbering, hairdressing, manicuring, esthetics, tattooing and permanent cosmetic coloring, or body piercing) that the practitioner is qualified to perform.

(c) The board may by regulation create areas of limited professional licensing in the field of esthetics. Any limitation must be stated on the license.

(d) A person who holds a current valid license from a board of barbering, hairdressing, manicuring, or esthetics in another state or who is licensed by another state to practice tattooing and permanent cosmetic coloring or to practice body piercing is entitled to a license or endorsement under this chapter without examination or a new period of training in this state. An application must include

(1) proof of a valid license issued by another licensing jurisdiction; and

(2) proof of completed training, testing, and working experience that the board finds to meet the minimum requirements of this state.

(e) A person licensed as an instructor is considered to be licensed as a practitioner and is subject to the same requirements that a practitioner is subject to, in the same area for which the person is licensed as an instructor, except that, for purposes of setting fees under AS 08.01.065, the department shall consider instructors to be an occupation separate from practitioners. An instructor license shall state the areas of practice (barbering, hairdressing, manicuring, or esthetics) in which the licensee is qualified to instruct and practice.

Sec. 08.13.110. School license. (a) The board shall adopt regulations for the licensing of schools of barbering, hairdressing, manicuring, and esthetics. The regulations must include details of the curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsibility of the owner. The curriculum required for a school of hairdressing must include the curriculum required for a school of manicuring.

(b) *[Repealed, Sec. 12 ch 27 SLA 2015.]*

(c) *[Repealed, Sec. 12 ch 27 SLA 2015.]*

(d) The board shall issue a license to a school of manicuring if the school offers a curriculum of 12 hours of instruction or training approved by the board that addresses health, safety, and hygiene concerns of manicuring customers and practitioners that are relevant to the practice of manicuring. A school of manicuring may offer instruction in addition to the 12 hours required for a license, but the board may not issue a license to a school of manicuring if the school requires its students to complete more than 12 hours of the required instruction or training in health, safety, and hygiene concerns before the school will certify that the student has completed the school's manicuring course for purposes of AS 08.13.080(e).

(e) A school of manicuring may seek approval from the board for a curriculum designed to qualify students for an advanced manicurist endorsement. The board shall establish the curriculum requirements applicable under this subsection through its authority under (a) of this section.

Sec. 08.13.120. Shop license. (a) The board shall adopt regulations for the licensing of shops. The regulations must require that a shop for tattooing and permanent cosmetic coloring or for body piercing be inspected and certified by the Department of Environmental Conservation as being in compliance with the regulations adopted under AS 44.46.020 before a shop license may be issued under this subsection. A shop owner shall be licensed to operate a shop without examination, but, unless the shop owner is a practitioner, the shop owner may not conduct business without employing a manager who is a practitioner. This subsection does not apply to a shop for the practice of barbering, hairdressing, or esthetics located in a community having a population of less than 1,000 people that is not within 25 miles of a community of more than 1,000 people.

(b) The regulations adopted under (a) of this section must include provisions under which the board may issue a temporary shop license to a person who has a license or temporary permit under this chapter to practice tattooing and permanent cosmetic coloring or to practice body piercing. The temporary shop license authorized under this subsection may only be issued to cover a site where the practitioner intends to hold a workshop or to demonstrate techniques as part of a convention or other special event, as defined by the board, that includes other practitioners of tattooing and permanent cosmetic coloring or body piercing. Each practitioner of tattooing and permanent cosmetic coloring or body piercing who holds a workshop or demonstrates techniques at a convention or special event shall have a separate temporary shop license and a license or temporary permit under this chapter to practice tattooing and permanent cosmetic coloring or body piercing. The board shall issue a temporary shop license upon receipt of an application from a practitioner demonstrating compliance with the regulations adopted under this section and payment of the appropriate fee; however, the temporary shop license may be summarily revoked, without refunding of the fee, if the Department of Environmental Conservation determines after an inspection that the cleanliness or sanitation conditions at the site covered by the temporary license pose a clear and immediate danger to the public health or safety. A licensee may appeal a summary revocation under this subsection to the superior court.

Sec. 08.13.130. Display of license or permit. (a) A practitioner shall display the practitioner's license in a conspicuous location in the practitioner's place of business. Each shop owner is responsible for the display of the licenses of employees. A person holding a student permit, temporary license, or temporary permit shall display the permit or license in a conspicuous location in the school in which the person is enrolled or the shop in which the person works. The school or shop owner is responsible for the display of a permit or license for each enrolled student, apprentice, or temporary license holder.

(b) A license issued to a manicurist by the department must state that the manicurist has successfully completed a course of instruction or training in health, safety, and hygiene concerns related to the practice of manicuring.

Sec. 08.13.140. Lapsed license. A lapsed license may be reinstated if the license has not been lapsed for a period of more than three years, or otherwise at the discretion of the board, and all renewal and delinquent fees for the period during which the license has been lapsed are paid.

Sec. 08.13.150. Disciplinary sanctions and grounds for refusal of a license or permit. The board may, in addition to the actions authorized under AS 08.01.075, refuse, suspend, or revoke a license, student permit, temporary license, or temporary permit for failure to comply with this chapter, with a regulation adopted under this chapter, with a regulation adopted by the Department of Environmental Conservation under AS 44.46.020, or with an order of the board.

Sec. 08.13.160. Application of license requirements. (a) A person holding a valid license to practice barbering under former AS 08.12 is licensed under this chapter and may continue to practice barbering under the conditions imposed by former AS 08.12 and the regulations adopted under former AS 08.12 until the license expires.

(b) A person holding a valid license under former AS 08.28 may continue to practice under the conditions imposed under former AS 08.28 and the regulations adopted under former AS 08.28 until the license expires.

(c) A person holding a valid license issued under former AS 08.12 or former AS 08.28 shall be entitled upon its expiration to a license to practice under this chapter in the field of practice for which the person was originally licensed, without meeting requirements for new licensure.

(d) The licensing and permit provisions of this chapter do not apply to

(1) a person practicing barbering, hairdressing, manicuring, or esthetics in a community having a population of less than 1,000 people that is not within 25 miles of a community of more than 1,000 people and who uses only chemicals available to the general public;

(2) a licensed health care professional;

(3) a person licensed by another licensing jurisdiction in a field of practice licensed by this chapter while demonstrating techniques or products to persons holding licenses or permits under this chapter;

(4) a person practicing tattooing and permanent cosmetic coloring or body piercing solely on the person's own body;

(5) the practice of manicuring by a student as part of instruction in a 12-hour course approved under AS 08.13.110(d).

(e) The board shall adopt regulations to permit a person licensed under this chapter to practice barbering, hairdressing, or esthetics outside a licensed shop or school for limited purposes including

(1) care of clients confined to an institution or health care facility;

(2) care of clients with limited mobility;

(3) participation in charitable events; and

(4) participation in workshops or demonstrations of techniques or products.

(f) A person licensed under this chapter to practice hairdressing is considered to be licensed to practice manicuring and limited esthetics under the same license.

Sec. 08.13.170. Temporary permits. The department shall issue a temporary permit to an applicant for licensing who holds a license to practice barbering, hairdressing, manicuring, esthetics, tattooing and permanent cosmetic coloring, or body piercing in another state. The permit is valid until the board either issues a permanent license or rejects the application. The board shall act on an application within six months.

Sec. 08.13.175. Temporary license. A person who meets the requirements of AS 08.13.080(a)(1), (2), (3), (4), or (6) is entitled to be temporarily licensed after applying for examination under this chapter if the applicant works under the direct supervision, and within the physical presence, of a person who is licensed in the area of practice for which the applicant has applied for examination. A temporary license issued under this section is valid for 120 days and is nonrenewable. A person may not receive more than one temporary license for each area of practice licensed under this chapter. An application for a temporary license must be signed by the supervising licensee and accompanied by the temporary license fee required under AS 08.13.185.

Sec. 08.13.180. Student permits. A person attending a licensed school of barbering, hairdressing, manicuring, or esthetics and a person apprenticed to a licensed instructor in a shop approved by the board or receiving training from a practitioner of tattooing and permanent cosmetic coloring or body piercing shall obtain a student permit. A student permit to practice barbering or hairdressing is valid for two years. A student permit to practice esthetics, tattooing and permanent cosmetic coloring or body piercing is valid for one year. A student permit may not be renewed, but, upon application, the board may issue a new permit to the same person or extend an expired permit to the date of the next scheduled examination. Credit earned under an expired student permit may be transferred to a new permit as determined by the board.

Sec. 08.13.183. Use of title; unlicensed use prohibited. (a) A person licensed to practice manicuring in the state may use the title "licensed nail technician."

(b) A person who uses the title "licensed nail technician" who is not licensed to practice manicuring under this chapter is guilty of a violation.

Sec. 08.13.185. Fees. (a) The Department of Commerce, Community, and Economic Development shall set fees under AS 08.01.065 for initial licenses and renewals for the following:

- (1) schools;
- (2) school owners;
- (3) instructor;
- (4) shop owner;
- (5) practitioner of barbering;
- (6) practitioner of hairdressing;
- (7) practitioner of manicuring;
- (8) practitioner of esthetics;
- (9) practitioner of tattooing and permanent cosmetic coloring;
- (10) practitioner of body piercing;
- (11) temporary shop license;
- (12) temporary permit;
- (13) temporary license;
- (14) student permit;
- (15) endorsement for advanced manicuring.

(b) The department shall set fees under AS 08.01.065 for examination and investigation.

Sec. 08.13.190. Failure to possess a license or permit. (a) A person who practices barbering, hairdressing, esthetics, tattooing and permanent cosmetic coloring or body piercing or operates a shop, or operates a school of barbering, hairdressing, or esthetics, or teaches in a school of barbering, hairdressing, or esthetics, without a license, temporary permit, temporary license, or student permit and who is not exempt under AS 08.13.120 or under AS 08.13.160(d) is guilty of a class B misdemeanor.

(b) A person who practices manicuring, operates a shop for manicuring, operates a school of manicuring, or teaches in a school of manicuring without the appropriate license, temporary permit, temporary license, or student permit and who is not exempt under AS 08.13.120 or 08.13.160(d) is guilty of a violation.

Sec. 08.13.195. Civil penalty. (a) In addition to any other provision of law, if a person violates AS 08.13.070 or 08.13.217, the board may enter an order levying a civil penalty.

(b) A civil penalty levied under this section may not exceed \$5,000 for each offense. In levying a civil penalty, the board shall set the amount of the penalty imposed under this section after taking into account appropriate factors, including the seriousness of the violation, the economic benefit resulting from the violation, the history of violations, and other matters the board considers appropriate.

(c) Before issuing an order under this section, the board shall provide the person written notice and the opportunity to request, within 30 days of issuance of notice by the board, a hearing on the record.

(d) In connection with proceedings under (a) and (b) of this section, the board may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the attorney general to bring an action to enforce a subpoena.

(e) A person aggrieved by the levy of a civil penalty under this section may file an appeal with the superior court for judicial review of the penalty under AS 44.62.560 .

(f) If a person fails to pay a civil penalty within 30 days after entry of an order under (a) of this section, or if the order is stayed pending an appeal, within 10 days after the court enters a final judgment in favor of the board of an order appealed under (e) of this section, the board shall notify the attorney general. The attorney general may commence a civil action to recover the amount of the penalty.

(g) An action to enforce an order under this section may be combined with an action for an injunction under AS 08.01.087.

ARTICLE 3. GENERAL PROVISIONS.

Section

210. Health and sanitary conditions

215. Notification requirements for tattooing and permanent cosmetic coloring and for body piercing

217. Tattooing and permanent cosmetic coloring or body piercing on a minor

220. Definitions

Sec. 08.13.210. Health and sanitary conditions. (a) Health and sanitary conditions in shops and schools of barbering, hairdressing, manicuring, esthetics, tattooing and permanent cosmetic coloring, and body piercing shall be supervised by the Department of Environmental Conservation.

(b) The Department of Environmental Conservation shall conduct an annual inspection of each shop licensed for the practice of tattooing and permanent cosmetic coloring or for the practice of body piercing to ensure that the shop meets the department's standards of cleanliness and sanitation established under AS 44.46.020. If the Department of Environmental Conservation determines that the shop is not in compliance with a regulation of the

department, the department shall report the violation to the board and take appropriate action under its own regulations.

Sec. 08.13.215. Notification requirements for tattooing and permanent cosmetic coloring and for body piercing. (a) Before performing a tattooing and permanent cosmetic coloring procedure or a body piercing procedure on a client, a practitioner shall give written educational information, approved by the board, to the client.

(b) After completing a tattooing and permanent cosmetic coloring procedure or a body piercing procedure on a client, the practitioner shall give written aftercare instructions, approved by the board, to the client. The written instructions

(1) must include advice to the client to consult a physician at the first sign of infection;

(2) must contain the name, address, and telephone number of the shop where the procedure was performed;

(3) shall be signed and dated by the client and the practitioner; the practitioner shall keep the original and provide a copy to the client.

(c) The owner of a shop for tattooing and permanent cosmetic coloring or for body piercing shall prominently display

(1) a copy of the statement provided by the board under AS 08.13.030(b) that advises the public of the health risks and possible consequences of tattooing and permanent cosmetic coloring or body piercing, as applicable;

(2) the names, addresses, and telephone numbers of the Department of Commerce, Community, and Economic Development and the Department of Environmental Conservation and a description of how a complaint about the shop or a practitioner in the shop may be filed with either entity or with the board.

Sec. 08.13.217. Tattooing and permanent cosmetic coloring or body piercing on a minor. (a) A person may not practice tattooing and permanent cosmetic coloring on a minor.

(b) A person may not practice body piercing on a minor without prior written permission from the minor's parent or legal guardian and the presence of the parent or legal guardian during the body piercing procedure. The person who performs the body piercing shall keep a copy of the written permission on file for at least three years.

(c) A person who with criminal negligence violates this section is guilty of a class B misdemeanor. In this subsection, "criminal negligence" has the meaning given in AS 11.81.900.

Sec. 08.13.220. Definitions. In this chapter,

(1) "apprentice" means a person who receives on-the-job training under direct supervision;

(2) "barbering" means shaving, trimming, or cutting, styling, curling, permanent waving, bleaching, coloring, cleansing, or chemically straightening the beard or hair of a living person for a fee and for cosmetic purposes;

(3) "board" means the Board of Barbers and Hairdressers;

(4) "body piercing" means puncturing the body of a person by aid of needles or other instruments designed to be used to puncture the body for the purpose of inserting jewelry or other objects in or through the human body, except that, for purposes of this chapter, "body piercing" does not include puncturing the external part of the human ear;

(5) "esthetics" means the use of the hands, appliances, cosmetic preparations, antiseptics, or lotions in massaging, cleansing, stimulating, or similar work on the scalp, face or neck, including skin care, make-up, and temporary removal of superfluous hair, for cosmetic purposes for a fee;

(6) "hairdressing" means performing, for a fee, the following services for cosmetic purposes:

(A) trimming or cutting the beard of a living person; and

(B) arranging, styling, dressing, curling, temporary waving, permanent waving, cutting, singeing, bleaching, coloring, cleansing, conditioning, or similar work on the hair of a living person;

(7) "instructor" means a person who teaches barbering, hairdressing, manicuring, or esthetics in a school or who supervises an apprentice in barbering, hairdressing, or esthetics;

(8) "limited esthetics" means to perform for a fee for cosmetic purposes

(A) temporary removal of superfluous hair on the face or neck, including eyebrow arching by use of wax;

or

(B) application of makeup or false eyelashes.

(9) "manicuring"

(A) means, for a fee, to

(i) cut, trim, polish, color, tint, or cleanse a natural or artificial nail;

(ii) affix material by artificial means to a natural nail for the addition to or extension of the natural nail;

(iii) cleanse, treat, or beautify the hands or feet for cosmetic purposes; or

(iv) otherwise treat the nails of the hand or foot except as provided in (B) of this paragraph;

(B) notwithstanding (A) of this paragraph, does not include

(i) massage treatment; or

(ii) cleansing, treating, or beautifying the hands or feet solely for the treatment of disease or physical or mental ailments.

(10) "practitioner" means a person licensed to practice barbering, hairdressing, manicuring, esthetics, tattooing and permanent cosmetic coloring, or body piercing under this chapter;

(11) "shampoo person" means a person who, for a fee and under the supervision of a practitioner of barbering or hairdressing, cleanses or conditions the hair of the human head with products that have no effect other than cleaning or conditioning the hair;

(12) "shop" is an establishment operated for the purpose of engaging in barbering, hairdressing, manicuring, esthetics, tattooing and permanent cosmetic coloring, or body piercing.

(13) "tattooing and permanent cosmetic coloring" means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into the dermal layer of the skin so as to form indelible marks, figures, or decorative designs for nonmedical purposes.

CHAPTER 09.
BOARD OF BARBERS AND HAIRDRESSERS.

Article

- 1. Examination Applications and Standards**
(12 AAC 09.002 – 12 AAC 09.038)
- 2. (Repealed)**
- 3. Examinations**
(12 AAC 09.056 – 12 AAC 09.075)
- 4. Licensing Requirements**
(12 AAC 09.080 – 12 AAC 09.115)
- 5. Schools and Curriculum**
(12 AAC 09.120 – 12 AAC 09.175)
- 6. Student Permits, Training, and Apprentices**
(12 AAC 09.180 – 12 AAC 09.190)
- 7. General Provisions**
(12 AAC 09.900 – 12 AAC 09.990)

ARTICLE 1.
EXAMINATION APPLICATIONS AND STANDARDS.

Section

- 02. Review of license applications**
- 03. (Repealed)**
- 04. Courtesy license**
- 05. Application for examination**
- 06. (Repealed)**
- 10. Examination dates**
- 15. (Repealed)**
- 20. Identification of applicant**
- 25. Conduct for examinations**
- 30. Station assigned and equipment**
- 35. Models**
- 38. Computation of grades**

12 AAC 09.002. REVIEW OF LICENSE APPLICATIONS. (a) An applicant who meets the requirements on the relevant checklist set out in this section has demonstrated the necessary qualifications for the license or permit applied for. An applicant who does not meet the requirements on that checklist or whose application documents do not clearly show that the applicant is qualified to receive a license or permit will not be issued a license or permit unless the board further reviews the application and determines that the applicant meets the qualifications in AS 08.13 and this chapter for that license or permit.

(b) The following checklist is established by the board for review of an application for a barber license by examination. A barber license will be issued to an applicant who

- (1) submits a completed, notarized form for application under this chapter that includes the
 - (A) applicant's name and address; and
 - (B) for each school or apprenticeship where the applicant was trained, the name and address of the school or apprenticeship, the dates of the training, and the number of hours of training completed;
- (2) submits original or certified true copies of
 - (A) student monthly records verifying that the applicant has successfully completed 1,650 hours of training in a school approved by the board;
 - (B) certification from another state's licensing agency, bearing the seal of that state, that the applicant has successfully completed 1,650 hours of training that included the minimum number of practical operations set out in 12 AAC 09.160 in a school approved by that state's licensing agency;
 - (C) student monthly records verifying that the applicant has successfully completed 2,000 hours of training in an apprenticeship program approved by the board;
 - (D) certification from another state's licensing agency, bearing the seal of that state, that the applicant has successfully completed 2,000 hours of training that included the minimum number of practical operations set out in 12 AAC 09.160 in an apprenticeship program approved by that state's licensing agency; or
 - (E) a combination of the records required in this paragraph that verify the equivalent of 2,000 apprenticeship hours or 1,650 hours of course work when evaluated using the criteria in 12 AAC 09.090(b);
- (3) pays the application fee established in 12 AAC 02.140;
- (4) pays the written and practical examination fees established in 12 AAC 02.140;
- (5) passes the written examination described in 12 AAC 09.056;

- (6) passes all subjects of the practical examination described in 12 AAC 09.056; and
 - (7) pays the initial biennial license fee in 12 AAC 02.140.
- (c) The following checklist is established by the board for review of an application for a hairdresser license by examination. A hairdresser license will be issued to an applicant who
- (1) submits the documents and fees required by (b)(1) - (4) and (7) of this section;
 - (2) passes the written examination described in 12 AAC 09.060; and
 - (3) passes all subjects of the practical examination described in 12 AAC 09.060.
- (d) The following checklist is established by the board for review of an application for an esthetics license by examination. An esthetics license will be issued to an applicant who
- (1) submits the documents and fees required by (b)(1), (3), (4), and (7) of this section;
 - (2) submits original or certified true copies of
 - (A) student monthly records verifying that the applicant has successfully completed 350 hours of training in a school approved by the board;
 - (B) a certification from another state's licensing agency, bearing the seal of that state, that the applicant has successfully completed 350 hours of training, including the minimum number of practical operations set out in 12 AAC 09.163, in a school approved by that state's licensing agency;
 - (C) student monthly records verifying that the applicant has successfully completed 350 hours of training in an apprenticeship program approved by the board; or
 - (D) a certification from another state's licensing agency, bearing the seal of that state, that the applicant has successfully completed 350 hours of training, including the minimum number of practical operations set out in 12 AAC 09.163, in an apprenticeship program approved by that state's licensing agency;
 - (3) passes the written examination described in 12 AAC 09.065; and
 - (4) passes all subjects of the practical examination described in 12 AAC 09.065.
- (e) The following checklist is established by the board for review of an application for a barber or hairdresser license by waiver of examination. A barber or hairdresser license will be issued to an applicant who
- (1) submits the documents and fees required by (b)(1), (3), and (7) of this section;
 - (2) submits a verification form completed by another state's licensing agency, bearing the seal of that state, showing that the applicant
 - (A) holds a current license to practice barbering or hairdressing in that state; and
 - (B) qualified for licensure by passing a written and practical examination;
 - (3) submits verification of training and work experience that meets the requirements in 12 AAC 09.095(a)(3) or (b).
- (f) The following checklist is established by the board for review of an application for an esthetics license by waiver of examination. An esthetics license will be issued to an applicant who submits
- (1) the documents and fees required by (b)(1), (b)(3), and (b)(7) of this section;
 - (2) a verification form completed by another state's licensing agency, bearing the seal of that state, showing that the applicant
 - (A) holds a current license to practice as an esthetician in that state; and
 - (B) qualified for licensure as an esthetician by passing a written and practical examination;
 - (3) verification of training that meets the requirements in 12 AAC 09.100.
- (g) The following checklist is established by the board for review of an application for a student permit while attending a licensed school of barbering, hairdressing, or esthetics. A student permit for an applicant attending an approved school will be issued to an applicant who submits
- (1) a completed form for application under this chapter;
 - (2) the application fee established in 12 AAC 02.140;
 - (3) the permit fee established in 12 AAC 02.140; and
 - (4) proof of enrollment in a licensed school of barbering, hairdressing, or esthetics.
- (h) The following checklist is established by the board for review of an application for a student instructor permit. A student instructor permit will be issued to an applicant who submits
- (1) a completed form for application under this chapter;
 - (2) the application fee established in 12 AAC 02.140;
 - (3) the permit fee established in 12 AAC 02.140; and
 - (4) verification of one year of practice as a barber, hairdresser, manicurist, or esthetician that meets the requirements in 12 AAC 09.115.
- (i) The following checklist is established by the board for review of an application for an instructor license by examination. An instructor license will be issued to an applicant who
- (1) submits the documents and fees required by (b)(1), (3), (4), and (7) of this section;
 - (2) submits verification of a current license to practice as a barber, hairdresser, manicurist, or esthetician in this state;
 - (3) submits verification of at least
 - (A) three years of practice as a licensed barber, hairdresser, esthetician, or manicurist in this state or another jurisdiction; or
 - (B) one year of practice as a licensed barber, hairdresser, esthetician, or manicurist in this state or another jurisdiction followed by 600 hours of student instructor training in a school approved by the board or another licensing jurisdiction;

- (4) passes the written examination described in 12 AAC 09.070; and
 - (5) passes the practical examination described in 12 AAC 09.070; a practical examination is not required for a manicurist.
- (j) The following checklist is established by the board for review of an application for an instructor license by waiver of examination. An instructor license will be issued to an applicant
- (1) who submits the documents and fees required by (b)(1), (3), and (7) of this section;
 - (2) who complies with the requirements of (i)(2) of this section; and
 - (3) whose application includes a verification form completed by another state's licensing agency, bearing the seal of that state, showing that the applicant
 - (A) holds a current license to practice as an instructor in that state; and
 - (B) qualified for licensure as an instructor by passing a written and practical examination.
- (k) The following checklist is established by the board for review of an application for a shop owner license. A shop owner license will be issued to an applicant who meets the requirements in 12 AAC 09.110(a).
- (l) Repealed 6/8/2016.
- (m) The following checklist is established by the board for review of an application for an advanced manicurist endorsement by examination. An advanced manicurist endorsement will be issued to an applicant who
- (1) submits a completed, notarized form for application under this chapter that includes
 - (A) the applicant's name and address; and
 - (B) for each school where the applicant was trained, the name and address of the school, the dates of the training, and the number of hours of training completed;
 - (2) submits original or certified true copies of
 - (A) student records verifying that the applicant has successfully completed 250 hours of training in a school approved by the board or the Alaska Commission on Postsecondary Education;
 - (B) a certification from another state's licensing agency, bearing the seal of that state, that the applicant has successfully completed 250 hours of training; or
 - (C) repealed 6/21/2018;
 - (3) pays the application fee established in 12 AAC 02.140;
 - (4) pays the written examination fees established in 12 AAC 02.140;
 - (5) submits verification of passing the written examination described in 12 AAC 09.066; and
 - (6) pays the initial biennial license fee in 12 AAC 02.140.
- (n) The following checklist is established by the board for review of an application for an advanced manicurist endorsement by waiver of examination. An advanced manicurist endorsement will be issued to an applicant who submits
- (1) the documents and fees required by (b)(1), (b)(3), and (b)(7) of this section;
 - (2) a verification form completed by another state's licensing agency, bearing the seal of that state, showing that the applicant
 - (A) holds a current license to practice as a manicurist in that state; and
 - (B) qualified for licensure as a manicurist by passing a written examination; and
 - (3) verification of training that meets the requirements in 12 AAC 09.148.
- (o) The following checklist is established by the board for review of an application for a license by examination to practice body piercing. A license to practice body piercing will be issued to an applicant who
- (1) submits the documents and fees required by (b)(1), (3), (4), and (7) of this section;
 - (2) submits a certification, on a form provided by the department, from the applicant's trainer certifying that the applicant successfully completed the training requirements of AS 08.13.082(d) and either 12 AAC 09.167(a) - (c) or 12 AAC 09.167(e);
 - (3) submits certified true copies of current cards issued by the American Red Cross, the American Heart Association, or a similar organization approved by the board, showing that the applicant successfully completed training courses in
 - (A) cardiopulmonary resuscitation (CPR); and
 - (B) blood borne pathogens; and
 - (4) passes the written examination described in 12 AAC 09.068.
- (p) The following checklist is established by the board for review of an application for a license by waiver of examination to practice body piercing. A license to practice body piercing will be issued to an applicant who submits
- (1) the documents and fees required by (b)(1), (3), and (7) of this section;
 - (2) a verification form completed by another state's licensing agency, bearing the seal of that state, showing that the applicant
 - (A) holds a current license to practice body piercing in that state; and
 - (B) qualified for licensure to practice body piercing in that state by passing a written examination;
 - (3) certified true copies of current cards issued by the American Red Cross, the American Heart Association, or a similar organization approved by the board, showing that the applicant successfully completed training courses in
 - (A) cardiopulmonary resuscitation (CPR); and
 - (B) blood borne pathogens; and
 - (4) verification of training equivalent to that described in AS 08.13.082(d) and

12 AAC 09.167(a) – (c).

(q) The following checklist is established by the board for review of an application for a license by examination to practice tattooing and permanent cosmetic coloring. A license to practice tattooing and permanent cosmetic coloring will be issued to an applicant who

- (1) submits the documents and fees required by (b)(1), (3), (4), and (7) of this section;
- (2) submits a certification, on a form provided by the department, from the applicant's trainer certifying that the applicant successfully completed the training requirements of AS 08.13.082(d) and either 12 AAC 09.169(a) and (b) or 12 AAC 09.169(d);
- (3) submits certified true copies of current cards issued by the American Red Cross, the American Heart Association, or a similar organization approved by the board, showing that the applicant successfully completed training courses in
 - (A) cardiopulmonary resuscitation (CPR); and
 - (B) blood borne pathogens; and
- (4) passes the written examination described in 12 AAC 09.068.

(r) The following checklist is established by the board for review of an application for a license by waiver of examination to practice tattooing and permanent cosmetic coloring. A license to practice tattooing and permanent cosmetic coloring will be issued to an applicant who submits

- (1) the documents and fees required by (b)(1), (3), and (7) of this section;
- (2) a verification form completed by another state's licensing agency, bearing the seal of that state, showing that the applicant
 - (A) holds a current license to practice tattooing and permanent cosmetic coloring in that state; and
 - (B) qualified for licensure to practice tattooing and permanent cosmetic coloring in that state by passing a written examination;
- (3) submits certified true copies of current cards issued by the American Red Cross, the American Heart Association, or a similar organization approved by the board, showing that the applicant successfully completed training courses in
 - (A) cardiopulmonary resuscitation (CPR); and
 - (B) blood borne pathogens; and
- (4) verification of training equivalent to that described in AS 08.13.082(d) and 12 AAC 09.169(a) and (b).

(s) The following checklist is established by the board for review of an application for a courtesy license to practice body piercing or to practice tattooing and permanent cosmetic coloring. A courtesy license to practice body piercing or to practice tattooing and permanent cosmetic coloring will be issued to an applicant who meets the requirements of AS 08.01.062(a) and who, at least 30 days before the applicant plans to begin practicing, submits

- (1) a complete, notarized application on a form provided by the department;
- (2) the applicable fees established in 12 AAC 02.140;
- (3) verification of practicing body piercing for a fee, or of practicing tattooing and permanent cosmetic coloring for a fee, for at least 12 of the 24 consecutive months immediately preceding the date of application; the proof must include one of the following or a combination of the following:
 - (A) at least two sworn affidavits from students or employees verifying the applicant's experience;
 - (B) at least one copy per month of a client release form for at least 12 of the 24 consecutive months immediately preceding the date of application;
- (4) a statement signed by the applicant's sponsor verifying that the sponsor is a practitioner of body piercing or practitioner of tattooing and permanent cosmetic coloring who holds a permanent license in this state and will sponsor the applicant; and
- (5) certified true copies of current cards issued by the American Red Cross, the American Heart Association, or a similar organization approved by the board, showing that the applicant successfully completed training courses in

- (A) cardiopulmonary resuscitation (CPR);
- (B) and blood borne pathogens.

(t) The following checklist is established by the board for review of an application for a student permit for an applicant to obtain training for hairdressing, barbering, or esthetics by a licensed instructor in an apprenticeship program in a licensed shop. A student permit to obtain training in hairdressing, barbering, or esthetics by a licensed instructor in a licensed shop will be issued to an applicant who submits

- (1) a completed application on a form provided by the department;
- (2) the student permit fee established in 12 AAC 02.140; and
- (3) a completed statement of responsibility form from the licensed instructor who will provide the training.

(u) The following checklist is established by the board for review of an application for a student permit for an applicant to obtain training for body piercing or for tattooing and permanent cosmetic coloring by a licensed practitioner in an apprenticeship program in a licensed shop. A student permit to obtain training for body piercing or for tattooing and permanent cosmetic coloring by a licensed practitioner in a licensed shop will be issued to an applicant who submits

- (1) a completed application on a form provided by the department;
- (2) the student permit fee established in 12 AAC 02.140;
- (3) a completed statement of responsibility form from the licensed practitioner who will provide the training;

(4) certified true copies of current cards issued by the American Red Cross, the American Heart Association, or a similar organization approved by the board, showing that the applicant successfully completed training courses in

(A) cardiopulmonary resuscitation (CPR);

(B) blood borne pathogens; and

(5) a copy of the current certificate of sanitary standards issued under 18 AAC 23.310 to the shop in which the training will take place.

Authority:	AS 08.01.062	AS 08.13.080	AS 08.13.100
	AS 08.13.030	AS 08.13.082	AS 08.13.120
	AS 08.13.070	AS 08.13.090	AS 08.13.180

12 AAC 09.003. TRANSITIONAL LICENSURE. Repealed 6/8/2016.

12 AAC 09.004. COURTESY LICENSE. (a) A courtesy license authorizes the licensee to practice body piercing or to practice tattooing and permanent cosmetic coloring as a guest practitioner in a shop licensed by the board. An applicant for a courtesy license to practice body piercing must have a sponsor who holds a permanent license to practice body piercing in this state. An applicant for a courtesy license to practice tattooing and permanent cosmetic coloring must have a sponsor who holds a permanent license to practice tattooing and permanent cosmetic coloring in this state.

(b) The board will issue a courtesy license to an applicant who meets the requirements of AS 08.01.062(a) and who, at least 30 days before the applicant plans to begin working, submits

(1) a completed application on a form provided by the department; a completed application must specify the dates for which the license is requested, the type of license requested, and the identity of the applicant's sponsor;

(2) the applicable fees established in 12 AAC 02.140;

(3) verification of practicing body piercing for a fee, or of practicing tattooing and permanent cosmetic coloring for a fee, for at least 12 of the 24 consecutive months immediately preceding the date of application; the proof must include one of the following or a combination of the following:

(A) at least two sworn affidavits from students or employees verifying the applicant's experience;

(B) at least one copy per month of a client release form for at least 12 of the 24 consecutive months immediately preceding the date of application;

(C) other information acceptable to the board;

(4) a statement signed by the applicant's sponsor verifying that the sponsor is a practitioner of body piercing or practitioner of tattooing and permanent cosmetic coloring who holds a permanent license in this state and will sponsor the applicant; and

(5) verification that the applicant successfully completed training equivalent to that required for completion of courses certified by the American Red Cross, the American Heart Association, or a similar organization approved by the board, and has been issued a current card, in

(A) cardiopulmonary resuscitation (CPR); and

(B) blood borne pathogens.

(c) A courtesy license to practice body piercing or to practice tattooing and permanent cosmetic coloring is valid for 30 consecutive days. A person may not be issued more than one courtesy license in a calendar year.

(d) The period during which a courtesy license is valid may not be counted towards the training requirements of 12 AAC 09.167 or 12 AAC 09.169.

(e) The board will issue a courtesy license to an applicant to practice hairdressing as a hairdresser for the purpose of working on a television, film, or stage production who meets the requirements of this chapter and AS 08.01.062, and by submitting the following:

(1) a completed application on a form provided by the department; a completed application must specify the dates for which the license is requested, the type of license requested;

(2) payment of the applicable fees established in 12 AAC 02.140;

(3) verification of a current hairdressing license from another state or jurisdiction.

(f) A courtesy license to practice hairdressing is valid for the duration of the production, not to exceed 12 months. If the license is required for a period longer than 12 months, the licensee must apply for a new and separate license.

Authority:	AS 08.01.062	AS 08.13.030	AS 08.13.070
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12 AAC 09.005. APPLICATION FOR EXAMINATION. (a) A completed, notarized application for examination as a barber, hairdresser, advanced manicurist, esthetician, practitioner of body piercing, practitioner of tattooing and permanent cosmetic coloring, or instructor must be received by the division assigned occupational licensing functions at least 30 days before the next examination date and must

(1) be on the form provided by the department;

(2) include documents that verify that the applicant meets the requirements of AS 08.13.080; and

(3) include the applicable fees established in 12 AAC 02.140.

(b) Only an application that is complete 30 days before an examination will be considered for that examination. An applicant whose application is not complete by that time must wait until the next administration of the examination.

(c) An applicant scheduled to take an examination who is unable to appear may postpone the examination by notifying the department before the examination and submitting the exam postponement fee required in 12 AAC 02.105(8).

(d) An applicant who fails an examination or fails to appear for an examination and who desires to be rescheduled for a future examination must apply in accordance with (a)(1) and (3) of this section no later than 30 days prior to the date of the examination that the applicant wishes to take.

(e) Except as provided in 12 AAC 09.075(g), an application is considered abandoned if the applicant has not taken an examination within one year after the date of initial application.

Authority: AS 08.13.030 AS 08.13.040 AS 08.13.080

12 AAC 09.006. TRANSITIONAL PROVISIONS FOR LICENSEES AND ENDORSEMENT HOLDERS.
Repealed 6/21/2018.

12 AAC 09.010. EXAMINATION DATES. The department will publish notice of the date and place of each administration of the examination at least 45 days before the examination.

Authority: AS 08.13.030

12 AAC 09.015. REEXAMINATION. Repealed 9/30/87.

12 AAC 09.020. IDENTIFICATION OF APPLICANT. (a) The department or its designee at the examination site will assign each applicant for examination a number by which the applicant is identified during the examination.

(b) Except for the purpose of receiving an identification number as described in (a) of this section, an applicant may not reveal the applicant's identity to an examiner until grading has been completed by the examiners.

(c) An applicant may not make a reference orally or in writing to an examiner about any school of barbering, hairdressing, manicuring, esthetics, body piercing, or tattooing and permanent cosmetic coloring, instructor, or present licenses held until grading has been completed by the examiners.

(d) Equipment, supplies, apparel, or items that are to be turned in to the board may not identify the applicant except by the number assigned by the department or its designee.

Authority: AS 08.13.030 AS 08.13.090

12 AAC 09.025. CONDUCT FOR EXAMINATIONS. (a) No applicant may leave the practical examination site or the written examination site while the examination is being conducted without permission of an examiner.

(b) Any attempt by a school owner, instructor, or any person to communicate with or help an applicant in any way while taking the examination, or any attempt by an applicant to secure information from another applicant will disqualify the applicant from completing the examination.

(c) An applicant scheduled to take an examination who is not present at the official start of the examination will not be allowed to take that examination but will be rescheduled by the board.

Authority: AS 08.13.080 AS 08.13.090

12 AAC 09.030. STATION ASSIGNED AND EQUIPMENT. (a) Each applicant will be assigned a station equipped with a chair in which he or she will perform the required practical operations. Any change in station assignment must be approved by an examiner.

(b) An applicant must furnish the tools and supplies for the practical examination as designated by the board.

Authority: AS 08.13.030 AS 08.13.090

12 AAC 09.035. MODELS. (a) An applicant shall secure his or her own model for the practical examination.

(b) An applicant shall provide the board with a statement of release of liability of the state and the applicant as executed by the model on a form provided by the department.

(c) An applicant shall provide the board with his or her model's name, age (if under 18 years of age), address and telephone number.

(d) A model for the practical examination must be at least 15 years of age.

(e) A model for the practical examination may not be a licensed barber, hairdresser, or esthetician, or a student or shop apprentice.

(f) A model for the practical examination who is under 18 years of age must obtain the signature of a parent or legal guardian on the statement of release required in (b) of this section.

Authority: AS 08.13.030 AS 08.13.090

12 AAC 09.038. COMPUTATION OF GRADES. An applicant's final grade for each subject of the practical section of the examination is computed by totaling the number of points given to him or her by each examiner and dividing that total by the number of examiners grading the applicant.

Authority: AS 08.13.030 AS 08.13.090

**ARTICLE 2.
BARBER EXAMINATION.**

Repealed 2/28/88

**ARTICLE 3.
EXAMINATIONS.**

Section

- 56. Content and grading criteria for barber examination**
- 60. Content and grading criteria for hairdresser examination**
- 62. (Repealed)**
- 65. Content and grading criteria for esthetician examination**
- 66. Content and grading criteria for advanced manicurist endorsement**
- 68. Body piercing and tattooing and permanent cosmetic coloring examinations**
- 70. Content and grading criteria for instructor examination**
- 72. (Repealed)**
- 75. Reexamination**

12 AAC 09.056. CONTENT AND GRADING CRITERIA FOR BARBER EXAMINATION. (a) The examination for a barber license consists of the following sections:

- (1) a written examination entitled the *National Barber-Stylist Test*, sponsored by the National Interstate Council of State Boards of Cosmetology; and
- (2) a practical examination with a maximum grade of 100 points in each of the following subjects:
 - (A) permanent waving;
 - (B) virgin tint;
 - (C) bleach touch-up and highlighting;
 - (D) haircutting, hair styling, and drying (not including finger waves, pin curls, and rollers); and
 - (E) shaving.
- (b) Sanitation, comfort, and protection of the model are included in the grading of each subject of the practical examination.
- (c) A passing grade on the written examination is 75 percent or above.
- (d) A passing grade on each subject of the practical examination listed in (a)(2) of this section is 75 points or more.
- (e) No foreign language interpreters are allowed in the written or practical examination room.

Authority: AS 08.13.030 AS 08.13.090

12 AAC 09.060. CONTENT AND GRADING CRITERIA FOR HAIRDRESSER EXAMINATION. (a) The examination for a hairdresser license consists of the following sections:

- (1) a written examination entitled the *National Hair Design Test*, sponsored by the National Interstate Council of State Boards of Cosmetology; and
- (2) a practical examination with a maximum grade of 100 points in each of the following subjects:
 - (A) permanent waving;
 - (B) virgin tint;
 - (C) bleach touch-up and highlighting;
 - (D) haircutting (not including clipper cut), blower drying, and curling with a hot curling iron; and
 - (E) hair styling (including finger waves, pin curls, and rollers).
- (b) Sanitation, comfort, and protection of the model are included in the grading of each subject of the practical examination.
- (c) A passing grade on the written examination is 75 percent or above.
- (d) A passing grade on each subject of the practical examination listed in (a)(2) of this section is 75 points or more.
- (e) No foreign language interpreters are allowed in the written or practical examination room.

Authority: AS 08.13.030 AS 08.13.090

12 AAC 09.062. CONTENT AND GRADING CRITERIA FOR HAIRDRESSING EXAMINATION. Repealed 2/28/88.

12 AAC 09.065. CONTENT AND GRADING CRITERIA FOR ESTHETICIAN EXAMINATION. (a) The examination for an esthetician consists of the following sections:

(1) a written examination entitled the *National Esthetician Test*, sponsored by the National Interstate Council of State Boards of Cosmetology; and

(2) a practical examination with a maximum grade of 100 points as may be given by an examiner in each of the following subjects:

- (A) facial massage;
- (B) skin and eye care;
- (C) makeup;
- (D) waxing and hair removal.

(b) Sanitation, comfort and protection of model will be included in the grading of each subject of the practical examination.

(c) A grade of at least 75 percent on the written examination section and a grade of at least 75 percent on each subject of the practical examination section is a passing grade.

(d) No foreign language interpreters are allowed in the written or practical examination room.

Authority: AS 08.13.030 AS 08.13.090

12 AAC 09.066. CONTENT AND GRADING CRITERIA FOR ADVANCED MANICURIST ENDORSEMENT. (a) The examination for an endorsement as an advanced manicurist is the written examination entitled the *Nail Technology Examination*, sponsored by the National Interstate Council of State Boards of Cosmetology.

(b) A grade of 75 percent or higher on the examination listed in (a) of this section is a passing grade.

(c) Foreign language interpreters are not allowed in the examination room.

Authority: AS 08.13.030 AS 08.13.040 AS 08.13.090

12 AAC 09.068. BODY PIERCING AND TATTOOING AND PERMANENT COSMETIC COLORING EXAMINATIONS. (a) The examination for a license to practice body piercing or to practice tattooing and permanent cosmetic coloring is a written examination prepared and administered by the board covering the subjects listed in AS 08.13.080(d)(2).

(b) A grade of 75 percent or higher on the examinations listed in (a) of this section is a passing grade.

(c) Foreign language interpreters are not allowed in the examination room.

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.090

12 AAC 09.070. CONTENT AND GRADING CRITERIA FOR INSTRUCTOR EXAMINATION. (a) The instructor examination consists of a written examination and a practical examination.

(b) The written examination for an instructor license is the *National Teachers Test*, sponsored by the National Interstate Council of State Boards of Cosmetology.

(c) The practical examination, with a maximum grade of 100 points, is a 30-minute demonstration of a practical and theoretical lesson plan. From the category identified by the applicant, the board will choose at random the specific skill to be demonstrated. The categories, and specific skills within each category, are as follows:

- (1) barbering;
 - (A) haircutting;
 - (B) hair styling and drying;
 - (C) permanent waving;
 - (D) haircoloring;
 - (E) shaving;
 - (F) scalp treatment;
- (2) hairdressing;
 - (A) haircutting;
 - (B) hair styling and drying;
 - (C) permanent waving;
 - (D) virgin tint;
 - (E) bleach touch-up and highlighting;
 - (F) chemical hair relaxing;
 - (G) scalp treatment;
- (3) esthetics;
 - (A) facial massage;
 - (B) skin and eye care;

- (C) makeup;
- (D) waxing and hair removal.
- (d) A passing grade on the written examination is 75 percent or above. A passing grade on the practical examination is 75 points or more.
- (e) No foreign language interpreters are allowed in the examination room.

Authority: AS 08.13.030 AS 08.13.090

12 AAC 09.072. CONTENT AND GRADING CRITERIA FOR COSMETOLOGY INSTRUCTOR EXAMINATION. Repealed 5/20/88.

12 AAC 09.075. REEXAMINATION. (a) An applicant who fails the entire examination, or one section of the examination may be reexamined at a future examination, subject to the limitations of (f) of this section.

(b) Except as provided in (g) of this section, an applicant who fails one or more subjects of the practical section of the examination may be reexamined in only a failed subject.

(c) Except as provided in (g) of this section, an applicant who fails the written section of the examination, but passes the practical section of the examination, may be reexamined in only the failed section.

(d) An applicant who fails the practical section of the instructor examination may be reexamined in the entire section.

(e) To be scheduled for reexamination, an applicant shall comply with 12 AAC 09.005(d) and (f) of this section, if applicable.

(f) At least 30 days before the next scheduled examination date, an applicant who fails the written section of the examination or any required subject of the practical section of the examination three times or more shall provide documentation to the board of successful completion of remedial training before the applicant will be scheduled for reexamination. An applicant applying under this subsection to retake the practical section of the examination shall provide documentation to the board of successful completion of 50 hours of training in each practical examination subject failed. An applicant applying under this subsection to retake the written section of the examination shall provide documentation to the board of successful completion of at least 50 hours of theoretical training. The applicant shall complete the remedial training in a school approved by the board or an apprenticeship program approved by the board and shall hold a valid student permit during the training as required in AS 08.13.180.

(g) An applicant who does not pass all required subjects of all sections of the examination within three years after the date the examination was first administered to the applicant shall retake and pass all required subjects of all sections, including the subjects and sections previously passed, to qualify for licensure. If the applicant does not retake the failed sections of the examination at least one time each year during the three years after the date the examination was first administered, the applicant's application will be considered abandoned and the applicant is required to reapply for the applicable examination under this chapter.

(h) In this section, "applicant" means an individual who has applied to take the examination for

- (1) licensure as a barber, hairdresser, esthetician, or instructor; or
- (2) endorsement as an advanced manicurist.

Authority: AS 08.13.030 AS 08.13.040 AS 08.13.090

**ARTICLE 4.
LICENSING REQUIREMENTS.**

Section

- 80. (Repealed)**
- 82. Body piercing license by examination**
- 84. Body piercing license by waiver**
- 85. (Repealed)**
- 86. Tattoo and permanent cosmetic coloring license by examination**
- 88. Tattoo and permanent cosmetic coloring license by waiver**
- 90. Barber or hairdresser license by examination**
- 95. Barber or hairdresser license by waiver**
- 97. Credit for hours of course work and training**
- 100. Esthetician license by examination**
- 105. Esthetician license by waiver**
- 106. Instructor license requirements**
- 107. Temporary permits**
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12 AAC 09.080. BARBER LICENSE BY EXAMINATION. Repealed 2/28/88.

12 AAC 09.082. BODY PIERCING LICENSE BY EXAMINATION. An application for a license by examination to practice body piercing must be submitted in accordance with 12 AAC 09.005. The application must include verification that the applicant has

- (1) successfully completed at least 1,000 hours of training that meets the requirements of AS 08.13.082(d) and 12 AAC 09.167(a) – (c);
- (2) successfully completed training equivalent to that required for completion of courses certified by the American Red Cross, the American Heart Association, or a similar organization approved by the board, and has been issued a current card, in
 - (A) cardiopulmonary resuscitation (CPR); and
 - (B) blood borne pathogens; and
- (3) passed the written examination described in 12 AAC 09.068.

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.100
AS 08.13.070 AS 08.13.082

12 AAC 09.084. BODY PIERCING LICENSE BY WAIVER. An applicant for a license by waiver of examination to practice body piercing shall apply on a form provided by the department. The application must include

- (1) payment of the applicable fees established in 12 AAC 02.140;
- (2) verification that the applicant
 - (A) holds a current license to practice body piercing in another state; and
 - (B) is qualified for licensure to practice body piercing in that state by passing a written examination;
- (3) verification that the applicant has successfully completed training equivalent to that required for completion of courses certified by the American Red Cross, the American Heart Association, or a similar organization approved by the board, and has been issued a current card, in
 - (A) cardiopulmonary resuscitation (CPR); and
 - (B) blood borne pathogens; and
- (4) verification that the applicant has completed training equivalent to that described in AS 08.13.082(d) and 12 AAC 09.167(a) – (c).

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.100
AS 08.13.070 AS 08.13.082

12 AAC 09.085. BARBER LICENSE BY WAIVER. Repealed 2/28/88.

12 AAC 09.086. TATTOOING AND PERMANENT COSMETIC COLORING LICENSE BY EXAMINATION. An application for a license by examination to practice tattooing and permanent cosmetic coloring must be submitted in accordance with 12 AAC 09.005. The application must include verification that the applicant has

- (1) successfully completed at least 1,000 hours of training that meets the requirements of AS 08.13.082(d) and 12 AAC 09.169(a) – (c);
- (2) successfully completed training equivalent to that required for completion of courses certified by the American Red Cross, the American Heart Association, or a similar organization approved by the board, and has been issued a current card, in
 - (A) cardiopulmonary resuscitation (CPR); and
 - (B) blood borne pathogens; and
- (3) passed the written examination described in 12 AAC 09.068.

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.100
AS 08.13.070 AS 08.13.082

12 AAC 09.088. TATTOOING AND PERMANENT COSMETIC COLORING LICENSE BY WAIVER. An applicant for a license by waiver of examination to practice tattooing and permanent cosmetic coloring shall apply on a form provided by the department. The application must include

- (1) payment of the applicable fees established in 12 AAC 02.140;
- (2) verification that the applicant
 - (A) holds a current license to practice tattooing and permanent cosmetic coloring in another state; and
 - (B) is qualified for licensure to practice tattooing and permanent cosmetic coloring in that state by passing a written examination;

(3) verification that the applicant has successfully completed training equivalent to that required for completion of courses certified by the American Red Cross, the American Heart Association, or a similar organization approved by the board, and has been issued a current card, in

(A) cardiopulmonary resuscitation (CPR); and

(B) blood borne pathogens; and

(4) verification that the applicant has completed training equivalent to that described in AS 08.13.082(d) and 12 AAC 09.169(a) – (c).

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.100
AS 08.13.070 AS 08.13.082

12 AAC 09.090. BARBER OR HAIRDRESSER LICENSE BY EXAMINATION. (a) An application for a barber or hairdresser license by examination must be submitted in accordance with 12 AAC 09.005, with verification of

(1) 1,650 hours of course work in a school approved by the board or another licensing jurisdiction;

(2) 2,000 hours of training in an apprenticeship program as required by AS 08.13.082; or

(3) a combination of course work and apprenticeship approved by the board under (b) of this section or approved by another licensing jurisdiction.

(b) When evaluating a combination of course work and apprenticeship, the board will, in its discretion, use the following criteria to determine equivalent hours of course work and apprenticeship:

(1) one course work hour equals 1.212 of an apprenticeship hour; and

(2) one apprenticeship hour equals .825 of a course work hour.

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.082

12 AAC 09.095. BARBER OR HAIRDRESSER LICENSE BY WAIVER. (a) An applicant for a barber or hairdresser license by waiver of examination shall apply on a form provided by the department. The application must include

(1) payment of the fees established in 12 AAC 02.140;

(2) verification of a current license to practice barbering or hairdressing issued by another state;

(3) verification of completed training and work experience equivalent to

(A) 1,650 hours of training in a school approved by the board or another licensing jurisdiction;

(B) 2,000 hours of an apprenticeship program approved by the board or by another licensing jurisdiction;

(C) at least one year of full-time work experience as a licensed barber or hairdresser, averaging no less than 32 hours per week, and a minimum of 1,500 hours of training in an approved school or an apprenticeship program approved by the board or by another licensing jurisdiction; or

(D) at least two years of full-time work experience as a licensed barber or hairdresser, averaging no less than 32 hours per week, and a minimum of 1,000 hours of training in an approved school or an apprenticeship program approved by the board or by another licensing jurisdiction; and

(4) documents verifying that a state in which the applicant was licensed as a barber or hairdresser required the applicant to pass a practical and written examination to qualify for licensure.

(b) An applicant unable to satisfy the requirements of (a)(3) of this section due to lack of equivalency may obtain the needed hours of training and experience through attendance at an approved school or participation in an apprenticeship.

(c) Repealed 5/20/88.

Authority: AS 08.13.030 AS 08.13.082 AS 08.13.100

12 AAC 09.097. CREDIT FOR HOURS OF COURSE WORK AND TRAINING. An applicant may use the same hours of course work and training to qualify for a license as a barber and a license as a hairdresser. To be acceptable, the hours of course work and training must meet the requirements set out in this chapter for the applicable license.

Authority: AS 08.13.030 AS 08.13.080

12 AAC 09.100. ESTHETICIAN LICENSE BY EXAMINATION. An application for an esthetician license by examination must be submitted in accordance with 12 AAC 09.005, with verification of at least 350 hours of esthetics training in an approved school or apprenticeship program, or in a combination of training and apprenticeship approved by the board or by another licensing jurisdiction.

Authority: AS 08.13.030 AS 08.13.082 AS 08.13.090
AS 08.13.080

12 AAC 09.105. ESTHETICIAN LICENSE BY WAIVER. An applicant for an esthetician license by waiver of examination must apply on a form provided by the department. The application must include

- (1) payment of the applicable fees established in 12 AAC 02.140;
- (2) verification of a current license to practice as an esthetician issued by another state;
- (3) verification of training equivalent to that described in 12 AAC 09.100; and
- (4) documents verifying that a state in which the applicant was licensed as an esthetician required the applicant to pass a practical and written examination to qualify for licensure.

Authority: AS 08.13.030 AS 08.13.100

12 AAC 09.106. INSTRUCTOR LICENSE REQUIREMENTS. (a) A barber, hairdresser, manicurist, or esthetician who applies for an instructor license must comply with the requirements of this section before teaching in a school or instructing an apprentice in the practice or instruction of barbering, hairdressing, manicuring, or esthetics.

(b) A person licensed as an instructor is limited to instructing only in those fields in which the instructor holds a valid Alaska practitioner license.

(c) An application for an instructor license by examination must be submitted in accordance with 12 AAC 09.005, and must include verification of

- (1) a current barber, hairdresser, manicurist, or esthetician practitioner license in this state; and
- (2) either

(A) at least three years of practice as a licensed barber, hairdresser, manicurist, or esthetician in this state or in another licensing jurisdiction; or

(B) one year of practice as a licensed barber, hairdresser, manicurist, or esthetician in this state or another licensing jurisdiction followed by 600 hours of student-instructor training in a school approved by the board or approved by another licensing jurisdiction.

(d) An applicant for an instructor license by waiver of examination shall apply on a form provided by the department. The application must include

- (1) payment of the fees established in 12 AAC 02.140;

(2) verification of a current barber, hairdresser, manicurist, or esthetician instructor license issued by another licensing jurisdiction;

- (3) verification of a current barber, hairdresser, manicurist, or esthetician practitioner license in this state; and

(4) documents verifying that a state in which the applicant was licensed as an instructor required the applicant to pass a practical and written examination to qualify for licensure;

- (5) verification of either

(A) at least three years of practice as a licensed barber, hairdresser, manicurist, or esthetician in this state or in another licensing jurisdiction; or

(B) one year of practice as a licensed barber, hairdresser, manicurist, or esthetician in this state or another licensing jurisdiction followed by 600 hours of student-instructor training in a school approved by the board or approved by another licensing jurisdiction.

(e) Repealed 6/8/2016.

(f) An applicant for an advanced manicurist instructor license must apply on a form provided by the department. The application must include

(1) verification of one year of work experience as a manicurist or hairdresser that includes at least 32 hours per week;

- (2) proof of passing the

(A) written examination for an advanced manicurist endorsement; and

(B) instructor's written examination; and

- (3) payment of the applicable fees established in 12 AAC 02.140.

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.100
AS 08.13.070

12 AAC 09.107. TEMPORARY PERMITS. (a) A request for a temporary permit must be made on an application for licensure form provided by the department. The application must include

(1) verification of a current license to practice barbering, hairdressing, manicuring, esthetics, body piercing, or tattooing and permanent cosmetic coloring issued by another state; and

- (2) the application fee, license fee, and temporary permit fee specified in 12 AAC 02.140.

(b) In accordance with AS 08.13.170, a temporary permit is valid until the board acts on the application for a permanent license which it must do within six months.

Authority: AS 08.13.030 AS 08.13.170

12 AAC 09.108. ADVANCED MANICURIST ENDORSEMENT BY EXAMINATION. An application for an endorsement as an advanced manicurist by examination must be submitted in accordance with 12 AAC 09.005, with verification of at least 250 hours of advanced manicuring training in a school approved by the board or by another licensing jurisdiction.

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.090
AS 08.13.040

12 AAC 09.109. ADVANCED MANICURIST ENDORSEMENT BY WAIVER. An applicant for an endorsement as an advanced manicurist by waiver of examination must apply on a form provided by the department. The application must include

- (1) payment of the applicable fees established in 12 AAC 02.140;
- (2) verification of a current license to practice as a manicurist issued by another state;
- (3) verification of training equivalent to that described in 12 AAC 09.148; and
- (4) documents verifying that a state in which the applicant was licensed as manicurist required the applicant to pass a written examination to qualify for licensure.

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.100
AS 08.13.040

12 AAC 09.110. SHOP OWNER LICENSE. (a) An applicant for a shop owner license shall submit a completed application on a form provided by the department. A complete application must include

- (1) payment of the fees established in 12 AAC 02.140;
- (2) name of the owner or lessee;
- (3) business name of the shop;
- (4) mailing and street address of the shop;
- (5) if the shop owner is not a licensed practitioner, the name and license number of the practitioner who is employed as manager of the shop;
- (6) a listing of all other shops the applicant owns which includes the business name, mailing address, and street address of each; and
- (7) documentation that within the 90 days before until the 90 days after the date the application was submitted to the department, the applicant was found to be in compliance with state environmental sanitation regulations in 18 AAC 23 or the health regulations of the municipality as a designee of the Department of Environmental Conservation and in which the shop is located; the applicant must obtain that documentation from the Department of Environmental Conservation or the municipality, except that an applicant whose shop is located within a shop already inspected under this paragraph may submit a copy of that inspection report or designate that a copy of the report is already on file with the department; if the application is for a shop where body piercing or tattooing and permanent cosmetic coloring will be practiced, the shop must be inspected and certified by the Department of Environmental Conservation as in compliance with the state environmental sanitation regulations in 18 AAC 23.

(b) A shop owner license is not transferable to another person. In the event of sale, lease, or transfer of ownership of a shop, the buyer, lessee, or transferee must apply for and be issued a new shop owner license, under this section, before conducting business.

(c) A violation of 18 AAC 23 is grounds for the suspension or revocation of a license or permit under AS 08.13.030(c).

(d) A shop owner or manager of a shop shall permit any member of the board or department representative to inspect the shop at any time during working hours.

(e) A shop owner shall provide a suitable area, accessible to all employees and apprentices, for posting announcements and public notices from the board or the department.

(f) A shop owner shall have a separate shop owner license for each shop owned.

(g) If the Department of Environmental Conservation finds that a shop is not in compliance with the environmental sanitation and health regulations required under (a)(7) of this section, the board will suspend the shop owner license until the shop owner submits documentation that the shop is in compliance with the requirements of (a)(7) of this section.

(h) A shop owner that intends to move the shop to a new location must meet the requirements of (a)(7) of this section and submit written notification of the new address before conducting business in the new location.

(i) A shop owner that is currently licensed by the board that intends to add to the shop a tattooing and cosmetic coloring or body piercing procedure, must meet the requirements of (a)(7) of this section and AS 08.13.215 before that procedure may be conducted in the shop.

(j) The shop owner or manager of the shop shall designate a licensed practitioner to conduct the business of the shop when the shop owner or manager of the shop is absent from the shop.

Authority: AS 08.13.030 AS 08.13.210 AS 08.13.215
AS 08.13.120

12 AAC 09.111. MOBILE SHOPS. The board may issue a shop owner license to an applicant with a mobile unit for practicing barbering, hairdressing, manicuring, or esthetics who submits

- (1) the physical location where the unit will be parked when not in service;
- (2) a statement detailing the type of services to be provided;
- (3) the name and residence of the unit's owner;
- (4) the documentation required under 12 AAC 09.110(7); and

(5) payment of the applicable fees established in 12 AAC 02.140.

Authority: AS 08.13.030 AS 08.13.160 AS 08.13.210
AS 08.13.120

12 AAC 09.112. TEMPORARY SHOP LICENSE. (a) The board will issue a temporary shop license to a person who

(1) holds a current license or temporary permit in this state to practice body piercing or tattooing and permanent cosmetic coloring;

(2) intends to hold a workshop or to demonstrate techniques as part of a convention or other special event that includes other practitioners of body piercing or tattooing and permanent cosmetic coloring; and

(3) meets the requirements of this section.

(b) An applicant for a temporary shop license under this section shall submit

(1) a completed application on a form provided by the department; a completed application must identify the convention or other special event, its location, and the dates for which the temporary shop license is being requested;

(2) an affidavit verifying that the applicant has applied for a Department of Environmental Conservation certificate of sanitary standards issued under 18 AAC 23.310; and

(3) the temporary shop license fee established under 12 AAC 02.140.

(c) An application for a temporary shop license must be received in the department's Juneau office at least 30 days before the convention or other special event is scheduled to begin.

(d) A temporary shop license is valid only for the dates and locations of the convention or other special event described in the application, and for the practitioner to whom it was issued.

(e) A temporary shop license must be posted in a conspicuous location on site at the convention or other special event.

(f) In this section and AS 08.13.120(b), "convention or other special event" means a convention, industry trade show, or similar event that includes practitioners of body piercing or practitioners of tattooing and permanent cosmetic coloring and at which the license applicant intends to demonstrate to the other practitioners products or techniques related to body piercing or tattooing and permanent cosmetic coloring.

Authority: AS 08.13.030 AS 08.13.120 AS 08.13.130

Editor's note: The department's Juneau office's mailing address is State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, P.O. Box 110806, Juneau, AK 99811-0806, and the physical address is 333 Willoughby Avenue, Juneau, Alaska.

12 AAC 09.115. VERIFICATIONS. Verification of licensed work experience or training of an applicant required under this chapter must be certified or notarized documentation supplied to the board by

(1) another jurisdiction's licensing board;

(2) a licensed school or shop;

(3) a licensed instructor;

(4) a licensed hairdresser, esthetician, barber, body piercing practitioner, or tattooing and permanent cosmetic coloring practitioner who sponsored an apprentice and maintained the required records under 12 AAC 09.190; or

(5) an individual who has direct personal knowledge of the applicant's work experience hours.

Authority: AS 08.13.030 AS 08.13.080

ARTICLE 5. SCHOOLS AND CURRICULUM.

Section

120. (Repealed)

125. Requirements for school license; renewal requirements

127. License requirements for school offered by a college or university

130. School records

135. Transfer of hours and reenrollment

140. Instructor-student ratio

143. Manicuring school curriculum

144. (Repealed)

145. (Repealed)

146. Equipment for schools teaching advanced manicuring

148. Advanced manicurist endorsement curriculum

150. (Repealed)

155. Equipment for barbering or hairdressing schools

160. Barber and hairdresser school curriculum

- 162. Equipment for esthetics schools
- 163. Esthetics school curriculum
- 165. Instructor curriculum
- 167. Body piercing training requirements
- 169. Tattooing and permanent cosmetic coloring training requirements
- 170. Theory syllabus and criteria for grading of examinations
- 173. Out-of-state training in body piercing and tattooing and permanent cosmetic coloring
- 175. Sanitation

12 AAC 09.120. SCHOOL OWNER LICENSE. Repealed 2/28/88.

12 AAC 09.125. REQUIREMENTS FOR SCHOOL LICENSE; RENEWAL REQUIREMENTS. (a) Except for a school licensed under 12 AAC 09.127, in order to obtain a school license, a person, an association, a firm, or a corporation proposing to open a school of barbering, hairdressing, manicuring, or esthetics must apply to the board for a school license on a form provided by the department. The application must include

- (1) the fees established in 12 AAC 02.140;
- (2) the name of the school owner;
- (3) the names of all parties having a financial interest in the school;
- (4) an exact description of the floor plan and location of the school;
- (5) a completed certification of compliance form provided by the department reflecting that the provisions of 18 AAC 23 that set requirements regarding health and sanitary conditions in shops and schools, or the equivalent requirements of a municipality as a designee of the Department of Environmental Conservation and in which the shop is located, have been met; and

(6) verification from the Alaska Commission on Postsecondary Education that the applicant is

- (A) authorized to operate a postsecondary educational institution in the state as described in AS 14.48.070 if the board approves the application for a school under this chapter; or
- (B) exempt under AS 14.48.030 from the requirements for an authorization to operate under AS 14.48.070.

(b) Except as provided in (j) and (l) of this section, in order to be approved by the board, a school must be a minimum of 1,000 square feet, including at least 15 square feet of instructional areas for each student. Minimum required instructional areas are

- (1) one classroom for theoretical instruction;
- (2) one practical-operation instructional area with student stations arranged to facilitate work to be performed; and
- (3) one dispensary with at least one sink with hot and cold water.

(c) For the purpose of determining minimum instructional areas, noninstructional areas of a school are lavatories, closets, hallways, reception areas, offices, stock room and other similar rooms or structures.

(d) School premises are subject to inspection and approval by at least one board member.

(e) A school license is not transferable to another person. In the event of sale, lease, or transfer of ownership of a school, the seller, lessor, or transferor shall notify the board in writing of the transaction within 30 days after the sale, lease, or transfer. The notice must include the name and address of the buyer, lessee, or transferee. The buyer, lessee, or transferee must apply for and be issued a new school license under this section before conducting business.

(f) If the operation of a school is moved to a new location, the school owner shall notify the board in writing of the move within 30 days after the move. A school moved to a new location is subject to inspection in accordance with this section.

(g) A school must provide a suitable area, accessible to all students, for posting announcements and public notices from the board or the department.

(h) A branch or extension of a licensed barber or hairdresser school must be in compliance with (b) - (d) of this section and with 12 AAC 09.155 and 12 AAC 09.175. A branch or extension of a licensed manicuring or esthetics school is required to be in compliance with (b) - (d) of this section and with 12 AAC 09.162 and 12 AAC 09.175.

(i) Repealed 6/8/2016.

(j) In order to be approved by the board, a school offering the 250-hour advanced manicurist curriculum described in 12 AAC 09.148 must be a minimum of 600 square feet, including at least 15 square feet of instructional area for each student.

(k) An applicant for renewal of a school license must certify on the renewal application that the applicant still meets the requirements of (a)(6)(A) or (B) of this section.

(l) In order to be approved by the board, a school offering the 12-hour manicurist curriculum described in 12 AAC 09.143 must be a minimum of 300 square feet, including at least 7 square feet of instructional area for each student.

Authority: AS 08.13.030 AS 08.13.110 AS 08.13.210
AS 08.13.070 AS 08.13.180

12 AAC 09.127. LICENSE REQUIREMENTS FOR SCHOOL OFFERED BY A COLLEGE OR UNIVERSITY. (a) A college or university proposing to open a school of barbering, hairdressing, manicuring, or

esthetics must apply to the board for a school license on a form provided by the department. The application must include

- (1) the fees established in 12 AAC 02.140;
- (2) the name and location of the school;
- (3) the name of the school administrator;
- (4) a detailed description of the content and structure of the training to be provided by the school.

(b) In order to be approved by the board, the school offered by a college or university must meet the following requirements:

(1) training must be conducted by persons who hold a valid instructor license, issued by the board, in the type of training being provided;

(2) practical training must be conducted in a shop licensed under AS 08.13.120 and 12 AAC 09.110, except that practical training may be conducted at a university or college, if the practical training involves a mannequin or a subject who is a student registered in the college or university's barbering, hairdressing, manicuring, or esthetics program;

(3) the licensed shop must meet the equipment requirements of 12 AAC 09.146, 12 AAC 09.155, and 12 AAC 09.162, as applicable for the type of training provided;

(4) the theoretical and practical training must meet the requirements of 12 AAC 09.143, 12 AAC 09.148, 12 AAC 09.160, and 12 AAC 09.163 as applicable for the type of training provided.

(c) The school administrator must register each student with the department as required by 12 AAC 09.130(a).

(d) The college or university shall enter into a memorandum of agreement with each shop licensed under AS 08.13.120 and 12 AAC 09.110 at which practical training is to be conducted. The memorandum of agreement must set out the contractual relationship between the parties and document the willingness of each party to comply with the requirements of the applicable statutes and regulations. The college or university shall submit a copy of each memorandum of agreement to the department.

(e) The college or university official administering a school of barbering, hairdressing, manicuring, or esthetics shall permit any member of the board to inspect the school at any time during working hours.

Authority: AS 08.13.030 AS 08.13.110 AS 08.13.210
AS 08.13.070 AS 08.13.180

12 AAC 09.130. SCHOOL RECORDS. (a) A school owner on behalf of the student shall register each student with the department on forms provided by the department, including an application for a student permit; the completed forms must include

- (1) the personal identification information requested on the forms;
- (2) the date of the student's enrollment; and
- (3) the original signatures of the student and an official of the school.

(b) The completed forms required by (a) of this section must be filed with the department within 30 days after the enrollment date. No more than 300 hours of the training required by 12 AAC 09.090, 12 AAC 09.100, or 12 AAC 09.106 will be credited for student attendance before the date the student permit application is filed with the department.

(c) Not later than the 15th day after the calendar quarter, on a form provided by the department, a school shall submit a report on each student enrolled. This report must include

- (1) the exact number of hours of theoretical and practical training completed by the student during the previous quarter; and
- (2) the exact number and type of operations completed by the student during the previous quarter.

(d) The quarterly report must maintain continuity from month-to-month, from the date of enrollment to the date of termination or completion of the course of instruction regardless of attendance by the student.

(e) Not later than 20 working days after termination of instruction of a student, a school owner shall notify the department, on a form provided by the department, of the termination. The termination report must include the date of the student's enrollment, the date of termination, the total number and types of operations performed by the student, and the total number of hours and types of training received by the student. The termination report is subject to audit and may be utilized to establish credit hours for transfer and reenrollment under 12 AAC 09.135.

(f) Not later than five working days after completion by a student of a course of study, the school owner shall submit to the board an affidavit showing the total number of operations, and the total number of hours of training and theoretical instruction completed by the student, and the date of completion of the course. This affidavit will serve as certification by the school that the student meets eligibility requirements necessary for examination for licensure.

(g) A student will be considered terminated on the date the school receives written notice from the student of withdrawal or transfer or upon the 31st day of continuous unexcused absence from the school. The school owner shall notify the department of any student in this category, as required by (e) of this section.

(h) A school must provide at least one time clock for the recording of student attendance and must maintain daily records for the purpose of complying with this section. All records required by this subsection must be maintained in an orderly manner and must be available for inspection during hours the school is open for instruction.

- (i) A school may not credit a student for more than 10 hours of training in any one day.
- (j) A school shall provide a certificate, diploma, or other affidavit of completion of a course to each student successfully completing a course of instruction.
- (k) After written notice to the student and the department, a school owner may request that the department hold all hours for a student that has failed to pay all fees and tuition currently due to the school for the student's course of training until the fees and tuition have been paid. Hours being held by the department for nonpayment to the school may not be used for transfer or to qualify for state board examinations until the school informs the department in writing that the hours are to be taken off of hold status.
- (l) A student who is terminated under (e) and (g) of this section and re-enrolls in the same school or enrolls in another licensed school of barbering, hairdressing, or esthetics, must reregister with the department and meet the requirements of this section.

Authority: AS 08.13.030 AS 08.13.110 AS 08.13.180

12 AAC 09.135. TRANSFER OF HOURS AND REENROLLMENT. (a) A school shall accept credit hours of instruction and training of a student transferring from another licensed school in Alaska, or in another licensing jurisdiction, upon presentation of a certified or notarized copy of the records maintained by the board or the other licensing jurisdiction, unless the student has interrupted his schooling for a continuous period of two years or more before the request for transfer of credit hours.

(b) A student requesting reenrollment to a school whose schooling has been interrupted for a continuous period of two years or more will not be allowed credit for hours of instruction received prior to the date of interruption.

Authority: AS 08.13.030 AS 08.13.110

12 AAC 09.140. INSTRUCTOR-STUDENT RATIO. (a) A school must employ and actively utilize the services of only licensed instructors and must maintain at least one full-time licensed instructor for every 25 or fewer enrolled students.

(b) Licensed instructors in the ratio prescribed in (a) of this section must be on the school premises during all hours the school is open for instruction.

(c) A student instructor enrolled in a school may not be utilized to fulfill the instructor to student ratio requirements of this section.

Authority: AS 08.13.030 AS 08.13.110 AS 08.13.190

12 AAC 09.143. MANICURING SCHOOL CURRICULUM. (a) A student who is enrolled in a course of manicuring must complete a curriculum that consists of at least 12 hours of instruction or training that includes the following subjects for the minimum number of hours specified:

- (1) bacteria: one hour;
- (2) infectious agents and infection: two hours;
- (3) sanitation: three hours;
- (4) harmful products and protection: two hours;
- (5) anatomy and physiology: two hours;
- (6) nail disorders: two hours.

(b) The curriculum set out in (a) of this section shall be taught from a board approved textbook.

(c) A licensed instructor from a school approved by the board may teach the curriculum in (a) of this section in a location outside of the licensed school upon written notification to the board.

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.110

12 AAC 09.144. MANICURING SCHOOL CURRICULUM. Repealed 6/8/2016.

12 AAC 09.145. EQUIPMENT FOR BARBER SCHOOLS. Repealed 2/28/88.

12 AAC 09.146. EQUIPMENT FOR SCHOOLS TEACHING ADVANCED MANICURING. (a) In addition to meeting the requirements of 12 AAC 09.125(b), the classroom for theoretical instruction of the practice of advanced manicuring must be equipped with seating capacity for all students attending the class, and with equipment including

- (1) one blackboard;
- (2) a chart or charts of the skin, hair, muscles, nerves, bones, and circulatory system; and
- (3) a book or books on general anatomy, physiology, and hygiene.

(b) The school shall provide each student with at least one board-approved textbook covering the subjects listed in 12 AAC 09.148.

(c) The practical instructional area must have available the following equipment:

- (1) a cabinet for instruments and linens;
- (2) a towel container for soiled linens;

- (3) a smock;
 - (4) terrycloth or disposable towels;
 - (5) manicuring materials including orange wood sticks, finger bowls, steel pushers, emery boards, metal nail files, cuticle nippers, callus removers, moisturizing lotion, antibacterial soap, finger nail clippers, plastic spatulas, septic powder, cotton balls, cuticle cream, cuticle oil, cuticle solvent, supply trays, polish, tweezers, nail brushes, and chamois buffers;
 - (6) a manicuring table with adjustable lamp and two chairs;
 - (7) pedicure tubs;
 - (8) a manicure ventilation system;
 - (9) a paraffin wax machine;
 - (10) artificial nail supplies, including acetone, acrylic powder and liquid, dappen dishes, nail forms and tips, natural bristle brushes, fine and heavy grit files, small scissors, buffing blocks, primer, safety glasses and mask, adhesive, glue, three-way buffers, nail oil, professional electric nail file, and silk wraps;
 - (11) rubber or latex gloves;
 - (12) chemical agents and labeled containers for sanitary purposes.
- (d) For every six or fewer students working at one time, the practical instructional area must have a wash basin with running hot and cold water.

Authority: AS 08.13.030 AS 08.13.110

12 AAC 09.148. ADVANCED MANICURIST ENDORSEMENT CURRICULUM. (a) An applicant for an endorsement as an advanced manicurist must complete a curriculum that consists of at least 250 hours of instruction or training in manicuring that includes the following subjects for the minimum number of hours specified:

- (1) sanitation and safety measures: 45 hours, including instruction in
 - (A) bacteriology; and
 - (B) sanitation, including
 - (i) chemical agents; and
 - (ii) sanitizing methods and procedures;
 - (C) federal Occupational Safety and Health Administration (OSHA) safety standards; and
 - (D) infectious agents and infection;
 - (2) anatomy and physiology of the arms, hands, and feet: 45 hours, including instruction in
 - (A) nail shapes, structures, and growth, including
 - (i) nail irregularities; and
 - (ii) nail diseases;
 - (B) bones, muscles, and nerves of the arm and hand;
 - (C) skin histology and functions; and
 - (D) blood circulation, including
 - (i) blood vessels; and
 - (ii) blood supply of the arm, hand, and foot;
 - (3) manicuring and pedicuring: 155 hours, including instruction in
 - (A) preparation;
 - (B) equipment and implements;
 - (C) supplies;
 - (D) procedures, including
 - (i) basic manicure;
 - (ii) oil manicure;
 - (iii) nail analysis; and
 - (iv) hand and arm massage;
 - (E) pedicure;
 - (F) artificial nails, including
 - (i) sculpturing and liquid and powder brush-ons;
 - (ii) artificial nail tips;
 - (iii) nail wraps and repairs;
 - (iv) maintenance; and
 - (v) use of professional electric nail file;
 - (G) polish application; and
 - (H) specific needs;
 - (4) state law: five hours.
- (b) The curriculum in (a) of this section must incorporate the following:
- (1) communication skills;
 - (2) professional ethics;
 - (3) sales skills;
 - (4) decorum;
 - (5) record keeping;
 - (6) client service record cards.

(c) A student is responsible for participating in the routine maintenance of the sanitary conditions necessary to conduct business. However, credit may not be given for time spent laundering towels, washing floors, walls, windows, or lavatories, or similar work.

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.110

12 AAC 09.150. BARBER SCHOOL CURRICULUM. Repealed 2/28/88.

12 AAC 09.155. EQUIPMENT FOR BARBERING OR HAIRDRESSING SCHOOLS. (a) In addition to the requirements of 12 AAC 09.125(b), the classroom for theoretical instruction of the practice of barbering or hairdressing must be equipped with seating capacity for all students attending the classroom, and with equipment including

(1) one blackboard;
(2) a chart or charts of the skin, hair, muscles, nerves, bones and circulatory system of the head, neck, and face; and

(3) a book or books on general anatomy, physiology, and hygiene.

(b) The school shall provide each student with at least one board-approved textbook covering all practical operations in 12 AAC 09.160.

(c) The practical instructional area must have available the following equipment:

- (1) a cabinet for instruments and linens;
- (2) a towel container for soiled towels;
- (3) a cape with sanex strips;
- (4) towels;
- (5) shampoos, tonics, creams, conditioners, and setting lotions;
- (6) rollers;
- (7) clips, and bobby and hair pins;
- (8) combs;
- (9) brushes;
- (10) a dressing table, dresserette, or styling bar with mirror;
- (11) a styling chair;
- (12) a portable hair dryer or blower dryer;
- (13) a curling iron;
- (14) an injector razor with blades;
- (15) scissors;
- (16) permanent-waving solutions, rods and applicators;
- (17) chemical straightening solutions;
- (18) bleaches, tints, rinses, and highlighting solutions;
- (19) disposable rubber gloves;
- (20) thinning shears;
- (21) electric clippers;
- (22) a mannequin;
- (23) repealed 4/23/98;
- (24) for a barbering school, a hot lather machine;
- (25) repealed 6/8/2016;
- (26) waxing materials;
- (27) tweezers;
- (28) manicuring materials.

(d) For every 6 or fewer students working at one time, the practical instructional area must have available at least

- (1) one shampoo bowl with running hot and cold water; and
- (2) one standard chair-style hair-dryer unit with hood.

Authority: AS 08.13.030 AS 08.13.110

12 AAC 09.160. BARBER AND HAIRDRESSER SCHOOL CURRICULUM. (a) A student who is enrolled in a course of barbering or hairdressing must complete a curriculum that consists of at least 1,650 hours of theoretical and practical training. A school shall teach a minimum of 185 hours of theoretical instruction, including five hours in state law, consisting of the provisions of AS 08.13, this chapter, and the Department of Environmental Conservation regulations contained in 18 AAC 23, and the following minimum number of practical operations, during the 1,650 hours of training:

MINIMUM NUMBER OF PRACTICAL OPERATIONS,	MINIMUM NUMBER OF PRACTICAL OPERATIONS,
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SUBJECT	HAIRDRESSERS	BARBERS
(1) wet hair styling and drying, including hair analysis, shampooing, finger waving, pin curling, and comb outs	180	30
(2) thermal hair styling and drying, including hair analysis, straightening, waving, curling with hot combs and hot curling irons, and blower styling	180	180
(3) permanent waving, including hair analysis and chemical waving	80	50
(4) chemical straightening including hair analysis and the use of sodium hydroxide and other base solutions	10	10
(5) haircutting, including hair analysis and the use of the razor, scissors, electric clippers, and thinning shears, for wet and dry cutting	250	400
(6) haircoloring and bleaching, including hair analysis, predisposition tests, safety precautions, formula mixing, tinting, bleaching, and the use of dye removers, but not including color rinses	75	75
(7) scalp and hair treatments, including hair and scalp analysis, brushing, electric and manual scalp manipulation, and other hair treatments	10	10
(8) beard trimming	5	5
(9) beard shaving	0	50
(10) eyebrow arching and hair removal, including the use of wax, manual or electric tweezers, and depilatories for the removal of superfluous hair	15	0
(11) makeup, including skin analysis, complete and corrective makeup, and the application of false eyelashes	15	0
(12) repealed 6/8/2016		
(13) manicure	15	0

(b) A student is responsible for participating in the routine maintenance of the sanitary conditions necessary to conduct business. However, credit may not be given for time spent laundering towels, washing floors, walls, windows, or lavatories, or similar work.

(c) Repealed 8/10/2012.

(d) Repealed 6/8/2016.

(e) A student or apprentice who is enrolled in a school or apprenticeship program may complete up to 25 percent of the required theoretical instruction hours in (a) of this section through a distance education course online provided by Milady, PivotPoint, or a similar organization approved by the board. Verification of successful completion of this training must be mailed directly to the department from the school or instructor.

(f) In addition to meeting the requirements of (a) of this section, the curriculum required for a hairdresser must include the manicuring curriculum set out in 12 AAC 09.143.

Authority: AS 08.13.030 AS 08.13.110

12 AAC 09.162. EQUIPMENT FOR ESTHETICS SCHOOLS. (a) In addition to the requirements of 12 AAC 09.125(b), the classroom for instruction in the theory of the practice of esthetics must be equipped with adequate seating for all students attending the class, and must include

- (1) one blackboard;

(2) a chart or charts of the skin, hair, muscles, nerves, bones, and circulatory system of the head, neck, and face;

(3) a book or books on general anatomy, physiology and hygiene; and

(4) at least one board-approved textbook, for each student, covering all practical operations listed in 12 AAC 09.163, provided by the school.

(b) The practical instruction area must include the following equipment:

(1) a cabinet for instruments and linens;

(2) a towel container for soiled towels;

(3) a cape with sanex strips;

(4) towels;

(5) a dressing table, dresserette, or styling bar with a mirror;

(6) repealed 4/21/2010;

(7) wax materials;

(8) tweezers;

(9) facial masks;

(10) an adequate reclining chair or massage table with paper liners; and

(11) electrical equipment, including the use of all electrical modalities and electrical apparatus, including dermal lights for facials and skin-care purposes.

(c) For every six or fewer students working at one time, the practical instructional area must have a wash basin with running hot and cold water.

Authority: AS 08.13.030

AS 08.13.110

12 AAC 09.163. ESTHETICS SCHOOL CURRICULUM. (a) A student who enrolls in a course of esthetics must complete a curriculum that consists of at least 350 hours of theoretical and practical training. A school shall teach a minimum of 40 hours of theoretical instruction, including five hours in state law and the following minimum number of practical operations during the 350 hours of training:

SUBJECT	MINIMUM NUMBER OF PRACTICAL OPERATIONS
(1) manual, including skin analysis, cleansing, manipulations, packs and masks	60
(2) electrical, including the use of all electrical modalities and electrical apparatus, including dermal lights for facials and skin-care purposes	40
(3) eyebrow arching and hair removal, including the use of wax, manual or electric tweezers and depilatories for the removal of superfluous hair	50
(4) makeup, including skin analysis, complete and corrective makeup, and the application of false eyelashes	50

(b) A student or apprentice who is enrolled in a school or apprenticeship program may complete up to 25 percent of the required theoretical instruction hours in (a) of this section through a distance education course online provided by Milady, PivotPoint, or a similar organization approved by the board. Verification of successful completion of this training must be mailed directly to the department from the school or instructor.

Authority: AS 08.13.020

AS 08.13.110

12 AAC 09.165. INSTRUCTOR CURRICULUM. (a) The curriculum for a student enrolled in a course of instructor training must consist of at least 600 hours of training in teaching barbering, hairdressing, manicuring, or esthetics. A school shall teach the following minimum hours of instruction.

SUBJECT	MINIMUM HOURS OF INSTRUCTION
(1) Statutes and Regulations of the board	25
(2) Preparatory theoretical instruction, including teaching techniques,	

- lesson planning, methods of instruction, evaluation of instruction, student recordkeeping, state recordkeeping, and school operation 75
- (3) Supervision of desk, booking appointments, and assigning students for clinic services 25
- (4) Clinic floor supervision under direct supervision of licensed instructor 50
- (5) The remaining 425 hours must be completed as scheduled by the school but must include
 - (A) presentation of theoretical subjects in a classroom situation 50
 - (B) presentation of practical subjects in a classroom situation; and 50
 - (C) supervision of clinic floor 325
- (b) A school shall employ text and reference books in a student-instructor teaching program.
- (c) A student is responsible for participating in the routine maintenance of the sanitary conditions necessary to conduct business. However, credit may not be given for time spent laundering towels, washing floors, walls, windows, or lavatories, or similar work.
- (d) A student who is enrolled in a school may complete up to 25 percent of the required hours in (a) of this section through a distance education course online provided by Milady, PivotPoint, or a similar organization approved by the board. Verification of successful completion of this training must be mailed directly to the department from the school or instructor.

Authority: AS 08.13.030 AS 08.13.110

12 AAC 09.167. BODY PIERCING TRAINING REQUIREMENTS. (a) A student who is receiving training in body piercing must complete a curriculum that consists of at least 1,000 hours of theoretical and practical training. The training must include a minimum of 270 hours of theory instruction and a minimum of 150 practical operations.

- (b) The 150 practical operations required under (a) of this section must include
 - (1) 50 practical operations observed by the student;
 - (2) 50 practical operations in which the student participated; and
 - (3) 50 practical operations performed by the student under supervision, but without assistance.
- (c) The 270 hours of theory instruction required in (a) of this section must include the following:

SUBJECT	MINIMUM NUMBER OF HOURS
(1) safety, sanitation, sterilization, and aseptic	100
(2) anatomy and physiology:	30
(3) skin and skin disorders	10
(4) aftercare techniques	100
(5) equipment and supplies	20
(6) Alaska statutes and regulations	10

(d) In addition to the requirements of (a) – (c) of this section, an applicant must successfully complete training equivalent to that required for completion of courses certified by the American Red Cross, the American Heart Association, or a similar organization approved by the board, in

- (1) cardiopulmonary resuscitation (CPR); and
- (2) blood borne pathogens.

(e) An applicant for a body piercing license under AS 08.13.082(d)(1)(B) based on training received in another state shall submit, on a form provided by the department, verification of completed training equivalent to that required under (a) – (c) of this section. The applicant may establish compliance with the requirements of (c)(6) of this section by submitting to the department an affidavit from the applicant that states that the applicant has studied the Alaska statutes and regulations regarding body piercing for at least the minimum number of hours required.

(f) An applicant for a body piercing license under (e) of this section who does not have enough hours to satisfy the requirements equivalent to those of (a) – (c) of this section may obtain the remaining hours of training needed in a licensed shop in this state under a licensed practitioner of body piercing. The applicant must obtain a student permit under 12 AAC 09.180 and board approval of the proposed training program under 12 AAC 09.190 before the training begins.

(g) A student or apprentice who is enrolled in a school or apprenticeship program may complete up to 25 percent of the required theory instruction hours in (c) of this section through a distance education course online provided by Milady, PivotPoint, or a similar organization approved by the board. Verification of successful completion of this training must be mailed directly to the department from the school or instructor.

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.082

12 AAC 09.169. TATTOOING AND PERMANENT COSMETIC COLORING TRAINING REQUIREMENTS. (a) A student who is receiving training in tattooing and permanent cosmetic coloring must complete a curriculum that consists of at least 1,000 hours of training. The training must include a minimum of 270 hours of theory instruction and a minimum of 150 hours of practical operations during which the trainer must be physically present in the shop.

(b) The 270 hours of theory instruction required under (a) of this section must include the following:

SUBJECT	MINIMUM NUMBER OF HOURS
(1) safety, sanitation, sterilization, and aseptic	100
(2) anatomy and physiology	30
(3) skin and skin disorders	10
(4) aftercare techniques	100
(5) equipment and supplies	20
(6) Alaska statutes and regulations	10

(c) The 150 hours of practical operations required in (a) of this section must include

- (1) 50 practical operations observed by the student;
- (2) 50 practical operations in which the student participated; and
- (3) 50 practical operations performed by the student under supervision, but without assistance.

(d) In addition to the requirements of (a) – (c) of this section, an applicant must successfully complete training equivalent to that required for completion of courses certified by the American Red Cross, the American Heart Association, or a similar organization approved by the board, in

- (1) cardiopulmonary resuscitation (CPR); and
- (2) blood borne pathogens.

(e) An applicant for a tattooing and permanent cosmetic coloring license under AS 08.13.082(d)(1)(B) based on training received in another state shall submit, on a form provided by the department, verification of completed training equivalent to that required under (a) – (c) of this section. The applicant may establish compliance with the requirements of (b)(6) of this section by submitting to the department an affidavit from the applicant that states that the applicant has studied the Alaska statutes and regulations regarding tattooing and permanent cosmetic coloring for at least the minimum number of hours required.

(f) An applicant for a tattooing and permanent cosmetic coloring license under (e) of this section who does not have enough hours to satisfy the requirements equivalent to those of (a) – (c) of this section may obtain the remaining hours of training needed in a licensed shop in this state under a licensed practitioner of tattooing and permanent cosmetic coloring. The applicant must obtain a student permit under 12 AAC 09.180 and board approval of the proposed training program under 12 AAC 09.190 before the training begins.

(g) A student or apprentice who is enrolled in a school or apprenticeship program may complete up to 25 percent of the required theory instruction hours in (b) of this section through a distance education course online provided by Milady, PivotPoint, or a similar organization approved by the board. Verification of successful completion of this training must be mailed directly to the department from the school or instructor.

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.082

12 AAC 09.170. THEORY SYLLABUS AND CRITERIA FOR GRADING OF EXAMINATIONS. (a) The board will, in its discretion, provide a theory syllabus to licensed schools of barbering, hairdressing, manicuring, and

esthetics, outlining topics to be taught by the school and listing suggested textbooks to be used for instruction in the practice of barbering, hairdressing, manicuring, and esthetics.

(b) The board will provide its criteria for grading of examinations to each school of barbering, hairdressing, manicuring, and esthetics and to each candidate scheduled to take the examination before the date of an examination.

Authority: AS 08.13.030 AS 08.13.110

12 AAC 09.173. OUT-OF-STATE TRAINING IN BODY PIERCING AND TATTOOING AND PERMANENT COSMETIC COLORING. (a) The board will approve training in body piercing received outside of this state under AS 08.13.082(d)(1)(B) if the board determines that the training is equivalent to the training requirements of 12 AAC 09.167(a) - (c) and provided by a person knowledgeable in the applicable techniques.

(b) The board will approve training in tattooing and permanent cosmetic coloring received outside of this state under AS 08.13.082(d)(1)(B) if the board determines that the training is equivalent to that described in 12 AAC 09.169(a) - (c) and provided by a person knowledgeable in the applicable techniques.

Authority: AS 08.13.030 AS 08.13.080 AS 08.13.082

12 AAC 09.175. SANITATION. A violation of 18 AAC 23 is grounds for the suspension or revocation of a license or permit under AS 08.13.030(c)(2).

Authority: AS 08.13.030 AS 08.13.210

ARTICLE 6. STUDENT PERMITS, TRAINING, AND APPRENTICES.

Section

180. Student permits

185. Trainees in body piercing, or tattooing and permanent cosmetic coloring

190. Apprentices of barbering, hairdressing, and esthetics

12 AAC 09.180. STUDENT PERMITS. (a) The board will issue a student permit to an applicant who meets the requirements of AS 08.13.180 and submits a completed application on a form provided by the department; the completed application must include

- (1) the personal identification information requested on the form;
- (2) payment of the fees established in 12 AAC 02.140; and
- (3) proof of

(A) enrollment in a licensed school of barbering, hairdressing, or esthetics, as specified in 12 AAC 09.130;

(B) acceptance as an apprentice to a practitioner in a shop approved by the board; or

(C) receiving training from a practitioner of tattooing and permanent cosmetic coloring or body piercing.

(b) The board will issue a student-instructor permit, valid for two years from date of issuance, upon receipt of the applicant's

(1) proof of enrollment in a student-instructor program in a licensed school of barbering, hairdressing, manicuring, or esthetics as specified in 12 AAC 09.130; and

(2) proof of a current license to practice as a barber, hairdresser, esthetician, or as a manicurist with an endorsement as an advanced manicurist.

(c) The board will, in its discretion, extend a student permit beyond the original expiration date of the permit, up to the date of the next scheduled examination, if a request for an extension is made by the permit holder explaining the need for the extension.

(d) Repealed 8/10/2012.

(e) A student may claim hours under (a)(2)(A) of this section as a student or under (a)(2)(B) of this section as an apprentice. The board will not accept hours for a student enrolled in school training and an apprentice program at the same time.

(f) Unless the student's permit is extended under (c) of this section, a student whose permit has expired under this section and re-enrolls in the same school or enrolls in another licensed school of barbering, hairdressing, manicuring, or esthetics, must reregister with the department and meet the requirements of this section.

Authority: AS 08.13.030 AS 08.13.180 AS 08.13.190

12 AAC 09.185. TRAINEES IN BODY PIERCING, OR TATTOOING AND PERMANENT COSMETIC COLORING. (a) A currently licensed practitioner of body piercing or tattooing and permanent cosmetic coloring who has held a practitioner's license in this state for at least one year before the training begins may provide training

in body piercing or tattooing and permanent cosmetic coloring to no more than two trainees simultaneously in a shop licensed by the board under 12 AAC 09.110.

(b) The trainer must

- (1) provide a time clock in the shop for the recording of the trainee's attendance;
- (2) maintain daily records of the trainee's hours of attendance; and
- (3) maintain all records in an orderly manner and make records available for inspection by a member of the board during the hours the shop is open.

(c) A trainer may not credit a trainee for more than 10 hours of training in any one day.

(d) A trainee may not perform work in a shop unless the trainer responsible for the trainee's training is on the premises.

(e) A trainer must submit a report on each trainee under the trainer's supervision, on a form provided by the department, no later than the 15th day after the calendar quarter. The report must include

(1) for tattooing and permanent cosmetic coloring, the exact number of hours of theoretical and practical operations completed by the trainee during the previous quarter;

(2) for body piercing, the exact number of hours of theoretical and the exact number and type of practical operations completed by the trainee during the previous quarter.

(f) The quarterly report must maintain continuity from month-to-month from the date the training begins to the date of termination or completion of the course of training regardless of attendance by the trainee.

(g) The trainer must submit a certificate of student training form for tattooing and permanent cosmetic coloring or body piercing within 20 days of termination of the training, documenting the theoretical and practical operations completed by the trainee during the incomplete training period.

(h) Upon completion of a course of training under this section, the trainee is eligible to take the appropriate examination in the license categories of tattooing and permanent cosmetic coloring or body piercing. The trainer shall submit a certificate of student training form no later than 30 days after the completion of training, documenting the theory hours and practical operations.

(i) A trainee whose training has been interrupted for a continuous period of two years or more will not be allowed credit for the hours of training received before the date the training was interrupted.

(j) A trainee may have no more than three trainers at a time. Each trainer must submit a statement of responsibility for the trainee. Approved trainers will be listed and reflected on the trainees permit. Any of the approved trainers may submit completion or termination certificates, documenting the theoretical and practical operations completed by the trainee during the incomplete training period in accordance with (g) and (h) of this section.

(k) A trainee permit is portable to shops licensed by the board under 12 AAC 09.110. The requirements of this section must be met at all times.

Authority: AS 08.13.030 AS 08.13.182

12 AAC 09.190. APPRENTICES OF BARBERING, HAIRDRESSING, AND ESTHETICS. (a) A currently licensed barber, hairdresser, or esthetician instructor in a shop that is licensed by the board under 12 AAC 09.110 may sponsor an apprentice in the instruction of barbering, hairdressing, or esthetics if

(1) the instructor submits a completed application on a form provided by the department; the completed application must include

- (A) the personal identification information requested on the form;
- (B) a curriculum to the board and must provide for

(i) verification that the shop where the training will be provided meets the requirements of 12 AAC 09.155 if the apprenticeship training is for barbering or hairdressing, and 12 AAC 09.162 if the apprenticeship training is for esthetics;

(ii) instruction of the minimum hours of theoretical and practical training specified in 12 AAC 09.160 if the apprenticeship training is for barbering or hairdressing, or 12 AAC 09.163 if the apprenticeship training is for esthetics;

(iii) a period of apprenticeship that meets the requirements of AS 08.13.082; and

(iv) the issuance of an affidavit of completion to each apprentice successfully completing the apprenticeship; and

(2) the apprentice holds a student permit issued under 12 AAC 09.180(a).

(b) An instructor may sponsor no more than two apprentices. The instructor must ensure that each apprentice sponsored by that instructor has that apprentice's own work station in the shop where the training will be provided.

(c) An instructor may not sponsor a student-instructor.

(d) An instructor must provide training and instruction to the same extent required of a school of barbering, hairdressing, or esthetics.

(e) An instructor must provide a time clock in the shop for the recording of the apprentice's attendance. An instructor must maintain daily records of an apprentice's number of hours of instructional coursework and number of practical operations.

(f) An instructor may not credit an apprentice for more than 10 hours of training in any one day.

(g) All records required to be maintained by an instructor under this section must be maintained in an orderly, alphabetical, or numerical filing system and must be made available for inspection by any member of the board upon reasonable notice.

(h) An apprentice may not perform work in a shop unless the licensed barber, hairdresser, or esthetician instructor responsible for the apprentice's training is on the premises.

(i) Not later than the 15th day after the calendar quarter, on a form provided by the department, an instructor shall submit a report on each apprentice enrolled. The quarterly report must

(1) include the exact number of hours of theoretical and practical training completed by the apprentice during the previous quarter;

(2) include the exact number and type of operations completed by the apprentice during the previous quarter; and

(3) maintain continuity from month-to-month, from the date of enrollment to the date of termination or completion of the course of instruction regardless of attendance by the apprentice.

(j) Not later than 20 working days after termination of instruction of an apprentice, the instructor shall notify the department, on a form provided by the department, of the termination. The termination report must include the date of the apprentice's enrollment, the date of termination, the total number and types of operations performed by the apprentice, and the total number of hours and types of training received by the apprentice. The termination report is subject to audit and may be utilized to establish credit hours for transfer and reenrollment under 12 AAC 09.135.

(k) Not later than five working days after completion by an apprentice of a course of training, the instructor in a shop shall submit to the board an affidavit showing the total number of operations, and the total number of hours of training and theoretical instruction completed by the apprentice, and the date of completion of the training. This affidavit will serve as certification by the instructor that the apprentice meets eligibility requirements necessary for examination for licensure.

(l) Upon completion of a course of instruction under this section, an apprentice is eligible to take the appropriate examination in the license category of barbering, hairdressing, or esthetics. The instructor shall notify the board of an apprentice completing the course of instruction not later than 30 days after the completion by submitting records of apprenticeship in accordance with this section.

(m) An apprentice who interrupts the apprentice's training for a continuous period of two years will not be allowed credit for apprenticeship instruction and training received before the interruption.

(n) The board will not give credit for apprenticeship work completed before the apprentice has a valid student permit.

(o) For an apprentice who has completed an apprenticeship and has passed the licensing examination, the student permit expires 30 days after the student is notified in writing of passage of the examination. After passing the examination, an apprentice may, under the supervision of a licensed instructor, continue to practice under the student permit until the student permit expires under this subsection or a valid practitioner license is issued, whichever occurs first.

Authority: AS 08.13.030 AS 08.13.082

ARTICLE 7. GENERAL PROVISIONS.

Section

900. Examiners

905. Location of shops in private residence

910. Duties of instructors and student-instructors

920. Practice outside a licensed shop or school

930. Reinstatement of lapsed licenses

940. Education information and aftercare instructions for body piercing and tattooing and permanent cosmetic coloring; notification requirements

950. Temporary display of posting confirming current license or permit

990. Definitions

12 AAC 09.900. EXAMINERS. (a) For the purpose of conducting practical sections of the examinations, the department may approve a person who has been licensed in the state as a barber, hairdresser, or esthetician for at least two years to assist the board as an examiner.

(b) A person approved as an examiner under (a) of this section may not be

(1) a licensed practitioner of a shop sponsoring an apprentice taking the examination;

(2) the owner of a barber, hairdressing or esthetics school located in the state; or

(3) a licensed instructor in a barber, hairdressing or esthetics school located in the state.

Authority: AS 08.13.030 AS 08.13.090

12 AAC 09.905. LOCATION OF SHOPS IN PRIVATE RESIDENCE. (a) No shop may be opened and maintained in a private residence unless the shop is located in a separate room apart from living quarters.

(b) Application for a shop license must be made according to the provisions of 12 AAC 09.110(a) and is subject to the provisions of 12 AAC 09.110(b) and (c).

Authority: AS 08.13.030 AS 08.13.120 AS 08.13.210

12 AAC 09.910. DUTIES OF INSTRUCTORS AND STUDENT-INSTRUCTORS. (a) An instructor or student-instructor may not, in connection with duties instructing at a licensed school, practice barbering, hairdressing, manicuring, or esthetics on members of the public, except if the work pertains directly to the instruction of students.

(b) A student-instructor may not be permitted to instruct without a licensed instructor on the school premises.

Authority: AS 08.13.030 AS 08.13.070

12 AAC 09.920. PRACTICE OUTSIDE A LICENSED SHOP OR SCHOOL. (a) A licensee who provides services outside of a licensed shop or school for a purpose listed in AS 08.13.160(e)(1) - (4) shall display his or her current license at the location where the services are provided.

(b) Barbering, hairdressing, manicuring, or esthetics services that are provided at charitable events under AS 08.13.160(e) are limited to those for which adequate health and sanitary conditions can be provided.

(c) A licensee who participates in a workshop or demonstration of techniques or products outside a licensed shop or school may not teach barbering, hairdressing, manicuring, or esthetics to persons who are not licensed or do not hold a permit in this state or another jurisdiction.

Authority: AS 08.13.030 AS 08.13.082 AS 08.13.160

12 AAC 09.930. REINSTATEMENT OF A LAPSED LICENSE. (a) A license issued under AS 08.13 and this chapter that has not been lapsed for more than three years will be reinstated if the applicant

- (1) submits a completed application; and
- (2) pays the applicable fees required under AS 08.13.140 and 12 AAC 02.140.

(b) The board will reinstate a license issued under AS 08.13 and this chapter that has been lapsed for more than three years if the applicant

- (1) submits a completed application and supporting documents to show that the applicant was previously licensed in this state;
- (2) pays the applicable fees required under AS 08.13.140 and 12 AAC 02.140; and
- (3) successfully passes the written and practical examinations for the license sought.

(c) In addition to the requirements of (a) and (b) of this section, an applicant for reinstatement of a license to practice body piercing or to practice tattooing and permanent cosmetic coloring must submit verification that the applicant has successfully completed training equivalent to that required for completion of courses certified by the American Red Cross, the American Heart Association, or a similar organization approved by the board, and has been issued a current card, in

- (1) cardiopulmonary resuscitation (CPR); and
- (2) blood-borne pathogens.

Authority: AS 08.13.030 AS 08.13.140

12 AAC 09.940. EDUCATION INFORMATION AND AFTERCARE INSTRUCTIONS FOR BODY PIERCING AND TATTOOING AND PERMANENT COSMETIC COLORING; NOTIFICATION REQUIREMENTS. (a) The *Educational Information and Aftercare Instructions for Tattoos*, Including Eyebrows section of the Educational Information and Aftercare Instructions (March 2003), prepared by the board, are adopted by reference as the minimum standards of aftercare instruction and educational information to be given to a client by a licensed practitioner of tattooing.

(b) The *Educational Information and Aftercare Instructions for Permanent Cosmetic Coloring* section of the Educational Information and Aftercare Instructions (March 2003), prepared by the board, are adopted by reference as the minimum standards of aftercare instruction and educational information to be given to a client by a licensed practitioner of permanent cosmetic coloring.

(c) The *Educational Information and Aftercare Instructions for Body Piercing* section of the Educational Information and Aftercare Instructions (March 2003), prepared by the board, are adopted by reference as the minimum standards of aftercare instruction and educational information to be given to a client by a licensed practitioner of body piercing.

(d) The *Information Regarding Potential Health Risks and Other Information* section of the Educational Information and Aftercare Instructions (March 2003), prepared by the board, is adopted by reference as the statement provided by the board under AS 08.13.030(b) that the owner of a shop for tattooing and permanent cosmetic coloring or for body piercing shall prominently display in the shop as required under AS 08.13.215(c)(1).

Authority: AS 08.13.030 AS 08.13.215

Editor's note: A copy of the *Educational Information and Aftercare Instructions*, adopted by reference in 12 AAC 09.940, may be obtained from the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Board of Barbers and Hairdressers, P.O. Box 110806, Juneau, AK 99811-0806; phone: (907) 465-2547.

12 AAC 09.950. TEMPORARY DISPLAY OF POSTING CONFIRMING CURRENT LICENSE OR PERMIT. To meet the requirements of AS 08.13.130, until a person's original current license or permit is received by that person, the person shall display a copy of the department's Internet website posting confirming the person's current license or permit in a conspicuous location as required for the original license or permit under AS 08.13.130.

Authority: AS 08.13.030 AS 08.13.130

Editor's note: The current posting confirming licensure and permits of persons licensed and permitted by the Board of Barbers and Hairdressers can be found at the Internet website of the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing at www.commerce.state.ak.us/occ/OccSearch/main.cfm.

12 AAC 09.990. DEFINITIONS. (a) In this chapter,

- (1) "board" means the Board of Barbers and Hairdressers;
- (2) Repealed 7/23/2000;
- (3) "department" means the Department of Commerce, Community, and Economic Development;
- (4) "jurisdiction" means a licensing board or administrative agency of another state, territory, or country responsible for issuing licenses and maintaining licensing records for barbers, hairdressers, manicurists, or estheticians;
- (5) "theoretical instruction" means instruction by lecture, classroom participation, or examination;
- (6) "practical instruction, practical operation, or practical training" means the demonstration of or the actual performance of barbering, hairdressing, manicuring, esthetics, body piercing, or tattooing and permanent cosmetic coloring by a student, apprentice, or practitioner;
- (7) "manicurist" includes an individual licensed in any jurisdiction as a nail technician;
- (8) "client release form" means a client's written consent, on a form provided by a practitioner, for the practitioner to perform the requested body piercing or tattooing and permanent cosmetic coloring procedure;
- (9) "college or university" means the University of Alaska or a college or university accredited by a national or regional educational accrediting organization;
- (10) "working day" means a day other than Saturday, Sunday, or a state holiday.

(b) For the purposes of AS 08.13.220(5), "for a fee" does not include remuneration received by a person employed or working under contract to provide make up services for a television, film, or stage production.

Authority: AS 08.13.030 AS 08.13.220

Statutes and Regulations

Pharmacy

Statutes and Regulations **Pharmacy**

July 2018



DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT

***DIVISION OF CORPORATIONS, BUSINESS
AND PROFESSIONAL LICENSING***

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CHAPTER 80. PHARMACISTS AND PHARMACIES.

Article

1. **The Board of Pharmacy (§§ 08.80.003 - 08.80.105)**
2. **Licensing and Registration (§§ 08.80.110 - 08.80.261)**
3. **Duties of Licensed Pharmacists (§§ 08.80.295 - 08.80.330)**
4. **Unlawful Acts (§§ 08.80.390 - 08.80.460)**
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ARTICLE 1. THE BOARD OF PHARMACY.

Section

03. **Practice of pharmacy as a profession**
05. **Statement of purpose**
10. **Creation and membership of board; officers**
30. **Powers and duties of the board**
45. **Nonprescription drugs**
50. **Applicability of Administrative Procedure Act**
60. **Meetings of the board**
70. **Quorum**
80. **Expenses of members**
105. **Removal of board members**

Sec. 08.80.003. PRACTICE OF PHARMACY AS A PROFESSION. The practice of pharmacy is declared to be a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest that only qualified persons be permitted to engage in the practice of pharmacy, and to ensure the quality of drugs and related devices distributed in the state.

Sec. 08.80.005. STATEMENT OF PURPOSE. It is the purpose of this chapter to promote, preserve, and protect the public health, safety, and welfare by and through the effective control and regulation of the practice of pharmacy.

Sec. 08.80.010. CREATION AND MEMBERSHIP OF BOARD; OFFICERS. (a) There is created the Board of Pharmacy, composed of seven members, five of whom shall be pharmacists licensed in the state who have been actively engaged in the practice of pharmacy in the state for a period of three years immediately preceding their appointment. Two shall be persons with no direct financial interest in the health care industry. Whenever possible, the board shall include at least one member from each judicial district.

(b) An officer elected by the board serves a term of one year and may not serve more than four consecutive full terms in a specific office.

Sec. 08.80.030. POWERS AND DUTIES OF THE BOARD. (a) The board is responsible for the control and regulation of the practice of pharmacy.

(b) In order to fulfill its responsibilities, the board has the powers necessary for implementation and enforcement of this chapter, including the power to

- (1) elect a president and secretary from its membership and adopt rules for the conduct of its business;
- (2) license by examination or by license transfer the applicants who are qualified to engage in the practice of pharmacy;
- (3) assist the department in inspections and investigations for violations of this chapter, or of any other state or federal statute relating to the practice of pharmacy;
- (4) adopt regulations to carry out the purposes of this chapter;
- (5) establish and enforce compliance with professional standards and rules of conduct for pharmacists engaged in the practice of pharmacy;
- (6) determine standards for recognition and approval of degree programs of schools and colleges of pharmacy whose graduates shall be eligible for licensure in this state, including the specification and enforcement of requirements for practical training, including internships;
- (7) establish for pharmacists and pharmacies minimum specifications for the physical facilities, technical equipment, personnel, and procedures for the storage, compounding, and dispensing of drugs or related devices, and for the monitoring of drug therapy;
- (8) enforce the provisions of this chapter relating to the conduct or competence of pharmacists practicing in the state, and the suspension, revocation, or restriction of licenses to engage in the practice of pharmacy;
- (9) license and regulate the training, qualifications, and employment of pharmacy interns and pharmacy technicians;
- (10) issue licenses to persons engaged in the manufacture and distribution of drugs and related devices;
- (11) establish and maintain a controlled substance prescription database as provided in AS 17.30.200;

(12) establish standards for the independent administration by a pharmacist of vaccines and related emergency medications under AS 08.80.168, including the completion of an immunization training program approved by the board;

(13) establish standards for the independent dispensing by a pharmacist of an opioid overdose drug under AS 17.20.085, including the completion of an opioid overdose training program approved by the board;

(14) require that a licensed pharmacist register with the controlled substance prescription database under AS 17.30.200(o).

Sec. 08.80.045. NONPRESCRIPTION DRUGS. (a) Except as provided in (b) of this section the board may not regulate the sale of patent or nonprescription drugs that are prepackaged for use by the consumer, are in their original, unbroken packaging, and are labeled in accordance with requirements of the federal government.

(b) The board may regulate the sale and distribution of patent or nonprescription drugs under AS 44.62.250 when the regulation is required by an emergency to protect the public health and safety.

Sec. 08.80.050. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT. The board shall comply with the Administrative Procedure Act (AS 44.62).

Sec. 08.80.060. MEETINGS OF THE BOARD. The board shall meet at least three times each year at the call of the president for the transaction of business properly before it. The president shall also call the board into session when requested in writing by at least two members. Meetings may be held telephonically.

Sec. 08.80.070. QUORUM. Four members constitute a quorum for the transaction of business. However, when the board meets for the purpose of examining applications for licensure, three members of the board constitute a quorum.

Sec. 08.80.080. EXPENSES OF MEMBERS. Members of the board are entitled to reimbursement for actual travel expenses incidental to the discharge of their duties and, while in the performance of their duties, are entitled to the per diem expenses allowed by law.

Sec. 08.80.105. REMOVAL OF BOARD MEMBERS. A member of the board may be removed from office by the governor for cause.

ARTICLE 2. LICENSING AND REGISTRATION.

Section

- 110. Qualifications for licensure by examination
- 116. Internship and other training programs
- 120. Grading and content of examination
- 145. Reciprocity; license transfer
- 147. Renewal of licensure
- 150. Temporary license
- 155. Emergency permit
- 157. Licensing of facilities
- 158. Registration of pharmacies located outside of state
- 160. Fees
- 165. Continuing education requirements
- 168. Administration of vaccines and related emergency medications
- 261. Disciplinary sanctions

Sec. 08.80.110. QUALIFICATIONS FOR LICENSURE BY EXAMINATION. An applicant for licensure as a pharmacist shall

- (1) be fluent in the reading, writing, and speaking of the English language;
- (2) furnish the board with at least two affidavits from reputable citizens that the applicant has known for at least one year attesting to the applicant's good moral character;
- (3) be a graduate of a college in a degree program approved by the board;
- (4) pass an examination or examinations given by the board or acceptable to the board under the score transfer process administered by the National Association of Boards of Pharmacy;
- (5) have completed internship training or another program that has been approved by the board or demonstrated to the board's satisfaction that the applicant has experience in the practice of pharmacy that meets or exceeds the minimum internship requirements of the board.

Sec. 08.80.116. INTERNSHIP AND OTHER TRAINING PROGRAMS. (a) An applicant for licensure by examination shall obtain practical experience in the practice of pharmacy concurrent with or after college attendance, or both, under terms and conditions the board shall determine.

(b) The board shall establish licensure requirements for interns and standards for internship or other training programs that are necessary to qualify an applicant for the licensure examination and shall also determine the qualifications of preceptors used in practical experience programs.

Sec. 08.80.120. GRADING AND CONTENT OF EXAMINATION. The examination or examinations shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ, cooperate, and contract with an organization or consultant in the preparation and grading of an examination, but shall retain sole discretion and responsibility for determining which applicants have successfully passed the examinations.

Sec. 08.80.145. RECIPROcity; LICENSE TRANSFER. If another jurisdiction allows licensure in that jurisdiction of a pharmacist licensed in this state under conditions similar to those in this section, the board may license as a pharmacist in this state a person licensed as a pharmacist in the other jurisdiction if the person

- (1) submits a written application to the board on a form required by the board;
- (2) is at least 18 years of age;
- (3) is of good moral character;
- (4) possesses at the time of the request for licensure as a pharmacist in this state the qualifications necessary to be eligible for licensure in this state;
- (5) has engaged in the practice of pharmacy for at least one year or has met the internship requirements of this state within the one-year period immediately before applying for a license under this section;
- (6) presents proof satisfactory to the board that the person is currently licensed as a pharmacist in the other jurisdiction and does not currently have a pharmacist license suspended, revoked, or otherwise restricted except for failure to apply for renewal or failure to obtain the required continuing education credits;
- (7) has passed an examination approved by the board that tests the person's knowledge of Alaska laws relating to pharmacies and pharmacists and the regulations adopted under those laws; and
- (8) pays all required fees.

Sec. 08.80.147. RENEWAL OF LICENSURE. If a pharmacist fails to apply for renewal of a license within five years from the expiration of the license, the person must pass an examination for license renewal, except that a person who has continually practiced pharmacy in another state under a license issued by the authority of that state may renew an expired license in this state upon fulfillment of the requirements that may be established by the board.

Sec. 08.80.150. TEMPORARY LICENSE. The board shall adopt regulations regarding the issuance of a temporary license to practice pharmacy.

Sec. 08.80.155. EMERGENCY PERMIT. The board shall adopt regulations regarding the issuance of an emergency permit to practice pharmacy.

Sec. 08.80.157. LICENSING OF FACILITIES. (a) A facility engaged in the practice of pharmacy or in the manufacture, production, or wholesale distribution of drugs or devices, and a pharmacy where drugs or devices are dispensed, shall be licensed by the board, and shall renew the license at intervals determined by the board. If operations are conducted at more than one location, each location shall be licensed by the board.

(b) The board may by regulation determine the licensure classifications of facilities and establish minimum standards for the facilities.

(c) The board shall establish by regulation the criteria that a facility must meet to qualify for licensure in each classification. The board may issue licenses with varying restrictions to facilities when the board considers it necessary to protect the public interest.

(d) The board may deny or refuse to renew a license if it determines that the granting or renewing of the license would not be in the public interest.

(e) Licenses issued by the board are not transferable or assignable.

(f) The board shall specify by regulation the minimum standards for responsibility of a facility or pharmacy that has employees or personnel engaged in the practice of pharmacy or engaged in the manufacture, wholesale distribution, production, or use of drugs or devices in the conduct of its business.

(g) A licensed facility shall report to the board

- (1) permanent closing;
- (2) change of ownership, management, location, or pharmacist-in-charge of a pharmacy;
- (3) theft or loss of drugs or devices as defined by regulations of the board;
- (4) conviction of an employee of violation of a state or federal drug law;
- (5) disasters, accidents, theft, destruction, or loss relating to records required to be maintained by state or federal law;
- (6) occurrences of significant adverse drug reactions as defined by regulations of the board;
- (7) other matters and occurrences the board may require by regulation.

(h) The board may suspend, revoke, deny, or refuse to renew the license of a facility or pharmacy on the following grounds:

- (1) the finding by the board of violations of a federal, state, or local law relating to the practice of pharmacy, drug samples, wholesale or retail drug or device distribution, or distribution of controlled substances;
 - (2) a felony conviction under federal, state, or local law of an owner of the facility or pharmacy or of an employee of the facility or pharmacy;
 - (3) the furnishing of false or fraudulent material in an application made in connection with drug or device manufacturing or distribution;
 - (4) suspension or revocation by federal, state, or local government of a license currently or previously held by the applicant for the manufacture or distribution of drugs or devices, including controlled substances;
 - (5) obtaining remuneration by fraud, misrepresentation, or deception;
 - (6) dealing with drugs or devices that are known or should have been known to be stolen drugs or devices;
 - (7) dispensing or distributing drugs or devices directly to patients by a wholesale drug distributor other than a pharmacy;
 - (8) violation of this chapter or a regulation adopted under this chapter.
- (i) The board's regulations under (b) - (d) and (f) of this section may not establish more stringent licensing requirements for the facilities governed by AS 08.80.390 than are set out in AS 08.80.390.
 - (j) This section does not apply to the offices of physicians, osteopaths, podiatrists, physician assistants, advanced nurse practitioners, dentists, veterinarians, dispensing opticians, or optometrists.

Sec. 08.80.158. REGISTRATION OF PHARMACIES LOCATED OUTSIDE OF STATE. (a) A pharmacy located outside of the state that regularly ships, mails, or delivers prescription drugs to consumers in the state shall register with the board.

- (b) A pharmacy registering with the board under (a) of this section shall furnish to the board annually
 - (1) the location, names, and titles of all principal corporate officers and of all pharmacists who are dispensing prescription drugs to residents of the state;
 - (2) a copy of a current valid license, permit, or registration to conduct operations in the jurisdiction in which it is located, and a copy of the most recent report resulting from an inspection of the pharmacy by the regulatory or licensing agency of the jurisdiction in which the pharmacy is located;
 - (3) a sworn statement indicating that the pharmacy complies with all lawful directions and requests for information from the regulatory or licensing authority of the jurisdiction in which the pharmacy is licensed; and
 - (4) proof satisfactory to the board that the pharmacy maintains its records of prescription drugs dispensed to persons in the state so that the records are readily retrievable from the records of other prescription drugs dispensed by the pharmacy.
- (c) A pharmacy subject to this section shall, during its regular hours of operations, provide a toll-free telephone service to facilitate communication between persons in the state and a pharmacist at the pharmacy who has access to records concerning the dispensing of prescription drugs to persons in the state. The toll-free number and the hours that the service is available shall be disclosed on a label affixed to each container of drugs dispensed to persons in the state. The telephone service shall be available at least 40 hours a week and at least six days a week.
- (d) The board may, after a hearing, deny, revoke, or suspend the registration of a pharmacy located outside of the state and subject to this section if the pharmacy fails to comply with the requirements of this section, AS 17.20.080 - AS 17.20.135, or AS 17.30.020 - 17.30.080, or if the license, permit, or registration of the pharmacy is denied, revoked, or suspended by the licensing or regulatory agency of the jurisdiction in which the pharmacy is located.
- (e) A pharmacy located outside of the state that is subject to this section but is not registered with the board under this section may not ship, mail, or deliver prescription drugs into the state and may not advertise its services in the state.
- (f) A pharmacy subject to this section shall appoint a registered agent in the state who is empowered to accept, on behalf of the pharmacy, process, notice, and demand required or permitted by law to be served upon the pharmacy. If the pharmacy fails to appoint an agent under this subsection, if the registered agent cannot with reasonable diligence be found at the registered office, or if the registration of the pharmacy is suspended or revoked, the commissioner of commerce and economic development is an agent upon whom process, notice, or demand may be served. Service is made upon the commissioner in the same manner as provided for corporations under AS 10.06.175(b), except that for the purposes of AS 10.06.175(b)(2)(A), the address shall be the last registered address of the pharmacy as shown by the records of the board.
- (g) The board shall by regulation define "regularly" for this section.

Sec. 08.80.160. FEES. The Department of Commerce, Community, and Economic Development shall set fees under AS 08.01.065 for the following:

- (1) examination;
- (2) reexamination;
- (3) investigation for licensing by license transfer;
- (4) pharmacist license;
- (5) temporary license;
- (6) pharmacy technician license;
- (7) pharmacy intern license;
- (8) emergency permit;

- (9) license amendment or replacement;
- (10) registration or licensure of a facility classified under AS 08.80.157(b).

Sec. 08.80.165. CONTINUING EDUCATION REQUIREMENTS. The board shall establish requirements for continuing education in pharmacy that must be satisfied before a license issued under this chapter may be renewed.

Sec. 08.80.168. ADMINISTRATION OF VACCINES AND RELATED EMERGENCY MEDICATIONS.

(a) A pharmacist may independently administer a vaccine and related emergency medication if the pharmacist has completed an immunization training program approved by the board and otherwise complies with the standards established by the board under AS 08.80.030(b).

(b) In this section,

- (1) "opioid overdose drug" has the meaning given in AS 17.20.085;
- (2) "related emergency medication" includes an epinephrine injection or other medication for the treatment of a severe allergic reaction to a vaccine.

(c) A pharmacist may independently dispense an opioid overdose drug if the pharmacist has completed an opioid overdose drug training program approved by the board and otherwise complies with the standards established by the board under AS 08.80.030(b).

Sec. 08.80.261. DISCIPLINARY SANCTIONS. (a) The board may deny a license to an applicant or, after a hearing, impose a disciplinary sanction authorized under AS 08.01.075 on a person licensed under this chapter when the board finds that the applicant or licensee, as applicable,

- (1) secured or attempted to secure a license through deceit, fraud, or intentional misrepresentation;
- (2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;
- (3) advertised professional services in a false or misleading manner;
- (4) has been convicted of a felony or has been convicted of another crime that affects the applicant's or licensee's ability to practice competently and safely;
- (5) intentionally or negligently engaged in or permitted the performance of patient care by persons under the applicant's or licensee's supervision that does not conform to minimum professional standards regardless of whether actual injury to the patient occurred;
- (6) failed to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board;
- (7) is incapable of engaging in the practice of pharmacy with reasonable skill, competence, and safety for the public because of
 - (A) professional incompetence;
 - (B) failure to keep informed of or use current professional theories or practices;
 - (C) addiction or severe dependency on alcohol or a drug that impairs the applicant's or licensee's ability to practice safely;
 - (D) physical or mental disability; or
 - (E) other factors determined by the board;
- (8) engaged in conduct involving moral turpitude or gross immorality;
- (9) made a controlled substance available to a person except upon prescription issued by a person licensed to prescribe controlled substances;
- (10) was convicted of selling federal legend drugs without the prescription of a person licensed to prescribe federal legend drugs;
- (11) violated state or federal laws or regulations pertaining to drugs or pharmacies;
- (12) failed to report relevant information to the board about a pharmacist or pharmacy intern that the applicant or licensee knew or suspected was incapable of engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public;
- (13) aided another person to engage in the practice of pharmacy or to use the title of "pharmacist" or "pharmacy intern" without a license; or
- (14) engaged in unprofessional conduct, as defined in regulations of the board.

(b) The board may place under seal all drugs that are owned by or in the possession, custody, or control of a licensee at the time a license is suspended or revoked or at the time the board refuses to renew a license. Except for perishable items, the drugs may not be disposed of until the licensee has exhausted administrative and judicial remedies relating to the licensing action. Perishable items may be sold upon order of the court with the proceeds to be deposited with the court. The board shall notify the Department of Health and Social Services about drugs placed under seal under this subsection.

ARTICLE 3. DUTIES OF LICENSED PHARMACISTS.

Section

- 294. Information about equivalent generic drugs
- 295. Substitution of equivalent drug products
- 297. Prescription prices available to consumer
- 315. Confidentiality of records
- 330. Licensed pharmacist appointed as “pharmacist-in-charge”
- 345. Prescription for an opioid; voluntary request for lesser quantity

Sec. 08.80.294. INFORMATION ABOUT EQUIVALENT GENERIC DRUGS. (a) In addition to other information that may be required under state or federal laws or regulations, a pharmacist, when dispensing a brand-name prescription drug order, shall include the generic drug name that is an equivalent drug product for the drug dispensed.

(b) The generic drug name required under (a) of this section shall be placed directly on the container’s label near the brand name.

Sec. 08.80.295. SUBSTITUTION OF EQUIVALENT DRUG PRODUCTS. (a) Unless the prescription indicates that it is to be dispensed only as written, the pharmacist may, with the consent of the patient, substitute an equivalent drug product.

(b) A pharmacist who substitutes an equivalent drug product in compliance with this section and applicable regulations incurs no greater liability in filling the prescription than would be incurred in filling the prescription by dispensing the prescribed name brand product.

Sec. 08.80.297. PRESCRIPTION PRICES AVAILABLE TO CONSUMER. A pharmacist shall disclose the price of filling any prescription when requested by the consumer.

Sec. 08.80.315. CONFIDENTIALITY OF RECORDS. Information maintained by a pharmacist in the patient’s records or that is communicated to the patient as part of patient counseling is confidential and may be released only to

- (1) the patient or as the patient directs;
- (2) a practitioner or pharmacist when, in the pharmacist’s professional judgment, release is necessary to protect the patient’s health and well-being; and
- (3) other persons or governmental agencies authorized by law to receive confidential information.

Sec. 08.80.330. LICENSED PHARMACIST APPOINTED AS “PHARMACIST-IN-CHARGE”. (a) Each pharmacy shall have a pharmacist-in-charge. Whenever an applicable law or regulation requires or prohibits action by a pharmacy, responsibility shall be that of the owner and the pharmacist-in-charge, whether the owner is a sole proprietor, partnership, association, corporation, or otherwise. The pharmacist-in-charge shall ensure compliance with all laws and regulations governing the operation of the pharmacy. A licensed pharmacist appointed as pharmacist-in-charge of a pharmacy shall immediately advise the board of that appointment.

(b) A license may not be issued to a pharmacy unless there is a licensed registered pharmacist-in-charge whose name appears on the face of the license.

Sec. 08.80.345. PRESCRIPTION FOR AN OPIOID; VOLUNTARY REQUEST FOR LESSER QUANTITY. (a) A pharmacist filling a prescription for an opioid that is a schedule II or III controlled substance under federal law may, at the request of the individual for whom the prescription is written, dispense the prescribed opioid in a lesser quantity than prescribed.

(b) Nothing in this section shall be construed to prevent substitution of an equivalent drug under AS 08.80.295.

ARTICLE 4. UNLAWFUL ACTS.

Section

- 390. Pharmacists required in hospitals and clinics
- 400. Other licensees not affected
- 410. Use of term “pharmacist” prohibited
- 420. Certain advertising prohibited
- 430. Use of pharmacy symbols prohibited
- 450. Disciplinary action
- 460. Penalties

Sec. 08.80.390. PHARMACISTS REQUIRED IN HOSPITALS AND CLINICS. (a) A hospital, clinic, nursing home, infirmary, or related facility that dispenses drugs for outpatient treatment shall have a licensed

pharmacist in charge of the dispensary, except that prescriptions may be compounded and dispensed by or under the supervision of the prescribing physician.

(b) The board shall issue a license to a hospital drug room, nursing home drug room, or related facility that dispenses drugs from bulk supply for inpatient treatment, providing the facility employs a licensed pharmacist on a continual or consultant basis.

Sec. 08.80.400. OTHER LICENSEES NOT AFFECTED. This chapter does not affect the practice of medicine by a licensed medical doctor and does not limit a licensed medical doctor, osteopath, podiatrist, physician assistant, advanced practice registered nurse, dentist, veterinarian, dispensing optician, or optometrist in supplying a patient with any medicinal preparation or article within the scope of the person's license.

Sec. 08.80.410. USE OF TERM "PHARMACIST" PROHIBITED. A person may not assume or use the title "pharmacist," or any variation of the title, or hold out to be a pharmacist, without being licensed.

Sec. 08.80.420. CERTAIN ADVERTISING PROHIBITED. (a) A person may not use or exhibit the title "pharmacist," "assistant pharmacist," or "druggist," or the descriptive term "pharmacy," "drug store," "drug sundries," or other similar title or term containing the word "drug," in any business premises, or in an advertisement through the media of press, or publication, or by radio or television, unless the business has a licensed pharmacist in regular and continuous employment.

(b) *Repealed 1980.*

Sec. 08.80.430. USE OF PHARMACY SYMBOLS PROHIBITED. A person may not display in a place of business the characteristic pharmacy symbol of "Rx" in any form unless the business has a pharmacist licensed under this chapter.

Sec. 08.80.450. DISCIPLINARY ACTION. The board may consider a complaint based upon the alleged violation of any provision of this chapter, and may by a majority vote of a quorum dismiss the complaint, reprimand a licensee, or take other punitive action as the nature of the facts warrant. Orders issued by the board shall be in writing, signed by a majority and filed with the secretary of the board. The accused shall receive an authenticated copy of the order.

Sec. 08.80.460. PENALTIES. (a) A person who violates a provision of this chapter is guilty of a class B misdemeanor.

(b) A person who violates the provisions of AS 08.80.295 is punishable by a civil fine in an amount established by the board in a schedule or schedules establishing the amount of civil fine for a particular violation. The schedule or schedules shall be adopted by the board by regulation. Any civil fine imposed under this section may be appealed in the manner provided for appeals in the Administrative Procedure Act (AS 44.62).

ARTICLE 5. GENERAL PROVISIONS.

Section

470. Construction

475. Federal facilities not affected

480. Definitions

490. Short title

Sec. 08.80.470. CONSTRUCTION. Nothing in this chapter amends, modifies, repeals or otherwise changes any provision of AS 11.71, AS 17.30, or AS 17.20 (the Alaska Food, Drug and Cosmetic Act).

Sec. 08.80.475. FEDERAL FACILITIES NOT AFFECTED. This chapter does not apply to the safe storage, preservation, dispensing, or control of drugs in a federally operated hospital or institution.

Sec. 08.80.480. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion, or other means;

(2) "board" means the Board of Pharmacy;

(3) "compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device (A) as the result of a practitioner's prescription drug order or initiative based on the relationship of the practitioner, patient, and pharmacist in the course of professional practice or (B) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing; "compounding" also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns;

(4) "controlled substance" has the meaning given in AS 11.71.900;

(5) "deliver" or "delivery" means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for consideration;

- (6) “device” means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including a component part or accessory, that is required under federal law to bear the label “Caution: Federal or state law requires dispensing by or on the order of a physician”;
- (7) “dispense” or “dispensing” means the preparation and delivery of a drug or device to a patient or patient’s agent under a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to, or use by, a patient;
- (8) “distribute” means the delivery of a drug or device other than by administering or dispensing;
- (9) “drug” means an article recognized as a drug in an official compendium, or supplement to an official compendium; an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal; an article other than food, intended to affect the structure or function of the body of man or animal; and an article intended for use as a component of an article specified in this paragraph but does not include devices or their components, parts, or accessories;
- (10) “drug regimen review” includes evaluation of the prescription drug order and patient record for
- (A) known allergies;
 - (B) rational therapy-contraindications;
 - (C) reasonable dose and route of administration;
 - (D) reasonable directions for use;
 - (E) duplication of therapy;
 - (F) drug-drug, drug-food, and drug-disease interactions;
 - (G) adverse drug reactions; and
 - (H) proper utilization, including over- or under-utilization, and optimum therapeutic outcomes;
- (11) “equivalent drug product” means a drug product that has the same established name, active ingredients, strength or concentration, dosage form, and route of administration and that is formulated to contain the same amount of active ingredients in the same dosage form and to meet the same compendia or other applicable standards for strength, quality, purity, and identity, but that may differ in characteristics such as shape, scoring configuration, packaging, excipients including colors, flavors, preservatives, and expiration time;
- (12) “intern” means an individual who is
- (A) currently licensed by this state to engage in the practice of pharmacy while under the personal supervision of a pharmacist and is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist; or
 - (B) a graduate from a college of pharmacy who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;
- (13) “labeling” means the process of preparing and affixing a label to a drug container, exclusive, however, of the labeling by a manufacturer, packer, or distributor or a nonprescription drug or commercially packed legend drug or device;
- (14) “legend drug” means a prescription drug;
- (15) “manufacturing” means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from a substance of natural origin or independently by means of chemical or biological synthesis, and includes packaging or repackaging of a substance or labeling or relabeling of its container, and the promotion and marketing of drugs or devices; “manufacturing” also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons;
- (16) “nonprescription drug” means a nonnarcotic medicine or drug that may be sold without a prescription and that is prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of the state and the federal government;
- (17) “outpatient dispensing” means dispensing drugs for administration outside of the hospital pharmacy’s control;
- (18) “owner” means the owner of a place of business for wholesaling, retailing, compounding, or dispensing drugs, medicines, or poisons;
- (19) “patient counseling” means the communication by the pharmacist of information, as defined in the regulations of the board, to the patient or care giver in order to improve therapy by ensuring proper use of drugs and devices;
- (20) “person” has the meaning given in AS 01.10.060 and also includes a governmental agency;
- (21) “pharmaceutical care” is the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient’s symptoms, or arresting or slowing of a disease process as defined in regulations of the board;
- (22) “pharmacist” means an individual currently licensed by this state to engage in the practice of pharmacy;
- (23) “pharmacist-in-charge” means a pharmacist who accepts responsibility for operation of a pharmacy in a manner that complies with laws and regulations applicable to the practice of pharmacy and the distribution of drugs and who is personally in charge of the pharmacy and the pharmacy’s personnel;
- (24) “pharmacy” means a place in this state where drugs are dispensed and pharmaceutical care is provided and a place outside of this state that is subject to licensure or registration under AS 08.80.157(b);
- (25) “pharmacy located outside of the state” means a pharmacy that prepares or mixes prescription drugs outside of the state, regardless of the location at which those drugs may be shipped, mailed, or delivered to the consumer;

(26) “pharmacy technician” means a supportive staff member who works under the immediate supervision of a pharmacist;

(27) “practice of pharmacy” means the interpretation, evaluation, and dispensing of prescription drug orders in the patient’s best interest; participation in drug and device selection, drug administration, drug regimen reviews, and drug or drug-related research; provision of patient counseling and the provision of those acts or services necessary to provide pharmaceutical care; the administration of vaccines and related emergency medication; the independent dispensing of opioid overdose drugs; the responsibility for compounding and labeling of drugs and devices except labeling by a manufacturer, repackager, or distributor of nonprescription drugs and commercially packaged legend drugs and devices; proper and safe storage of drugs and devices; and maintenance of proper records for them;

(28) “practitioner” means an individual currently licensed, registered, or otherwise authorized by the jurisdiction in which the individual practices to prescribe and administer drugs in the course of professional practice;

(29) “preceptor” means an individual who is currently licensed by the board, meets the qualifications as a preceptor under the regulations of the board, and participates in the instructional training of pharmacy interns;

(30) “prescription drug” means a drug that, under federal law, before being dispensed or delivered, is required to be labeled with either of the following statements: (A) “Caution: Federal law prohibits dispensing without prescription”; (B) “Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian”; or a drug that is required by an applicable federal or state law or regulation to be dispensed only under a prescription drug order or is restricted to use by practitioners only;

(31) “prescription drug order” means a lawful order of a practitioner for a drug or device for a specific patient;

(32) “prospective drug use review” means a review of the patient’s drug therapy and prescription drug order, as defined in the regulations of the board, before dispensing the drug as part of a drug regimen review;

(33) “significant adverse drug reaction” means a drug-related incident that may result in serious harm, injury, or death to the patient;

(34) “substitution” means to dispense without the prescriber’s expressed authorization, an equivalent drug product in place of the prescribed drug;

(35) “wholesale” means sale by a manufacturer, wholesale dealer, distributor, or jobber to a person who sells, or intends to sell, directly to the user:

(36) “wholesale drug distributor” means anyone engaged in wholesale distribution of drugs, including but not limited to manufacturers; repackagers; own-label distributors; private label distributors; jobbers; brokers; warehouses, including manufacturers’ and distributors’ warehouses; chain drug warehouses; wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions.

Sec. 08.80.490. Short title. This chapter may be known as the Pharmacy Act.

**CHAPTER 52.
BOARD OF PHARMACY.**

Article

- 1. Licensing, Registration, and Permit Requirements
(12 AAC 52.010 – 12 AAC 52.140)**
- 2. Personnel (12 AAC 52.200 – 12 AAC 52.250)**
- 3. License Renewal and Continuing Education Requirements
(12 AAC 52.300 – 12 AAC 52.350)**
- 4. Guidelines for Pharmacies and Pharmacists
(12 AAC 52.400 – 12 AAC 52.445)**
- 5. Pharmacy Practice Standards
(12 AAC 52.450 – 12 AAC 52.590)**
- 6. Wholesale Drug Distributors and Facilities
(12 AAC 52.610 – 12 AAC 52.695)**
- 7. Institutional Pharmacies
(12 AAC 52.700 – 12 AAC 52.730)**
- 8. Drug Rooms and Facilities Without a Pharmacy
(12 AAC 52.800 – 12 AAC 52.850)**
- 9. Controlled Substance Prescription Database
(12 AAC 52.855 – 12 AAC 52.895)**
- 10. Disciplinary Guidelines
(12 AAC 52.900 – 12 AAC 52.980)**
- 11. General Provisions
(12 AAC 52.990 – 12 AAC 52.995)**

**ARTICLE 1.
LICENSING, REGISTRATION, AND PERMIT REQUIREMENTS.**

Section

- 10. Classifications of licensure**
- 20. Facility license**
- 30. Change of pharmacy location or name**
- 40. Change of pharmacy ownership**
- 50. Closed pharmacies**
- 60. Fire or other disaster**
- 70. Application for pharmacist license by examination**
- 75. Good moral character**
- 80. Internship requirements for a pharmacist license**
- 90. Examination requirements and registration**
- 92. Approval to sit for examination**
- 95. Application for pharmacist license by reciprocity**
- 100. Temporary pharmacist license**
- 110. Emergency pharmacist permit**
- 120. Review of pharmacist intern license application**
- 130. Registration of pharmacies located outside of the state**
- 140. Pharmacy technician license**

12 AAC 52.010. CLASSIFICATIONS OF LICENSURE. (a) The board will issue the following categories of licenses or permits to a qualified individual:

- (1) pharmacist license;
 - (2) temporary pharmacist license;
 - (3) emergency permit to practice pharmacy;
 - (4) pharmacist intern license;
 - (5) pharmacy technician license.
- (b) The board will issue the following categories of licenses or registrations to a qualified facility:
- (1) pharmacy license;
 - (2) repealed 2/26/2000;
 - (3) wholesale drug distributor license;
 - (4) drug room license;
 - (5) registration of a pharmacy located outside of the state;
 - (6) remote pharmacy license.

Authority: AS 08.80.005 AS 08.80.150 AS 08.80.158

AS 08.80.030
AS 08.80.116

AS 08.80.155
AS 08.80.157

AS 08.80.390

12 AAC 52.020. FACILITY LICENSE. (a) An applicant for a facility license shall submit

- (1) the fees required in 12 AAC 02.310;
 - (2) a completed application on a form provided by the department;
 - (3) within 14 days after commencement of business, a completed self-inspection of the premises questionnaire on a form provided by the department; and
 - (4) the name of the pharmacy or pharmacist that will provide consultant pharmacist services as required in AS 08.80.390, if applicable.
- (b) Repealed 1/17/2007.
- (c) An application for a remote or other pharmacy license must include the name of the pharmacist designated to be the pharmacist-in-charge as required in AS 08.80.330 and 12 AAC 52.200.
- (d) An application for a pharmacy license must include the name and specific location of each remote pharmacy that will be under that pharmacy's control.
- (e) An application for a remote pharmacy license must include the name and, if it has been issued, the license number of the pharmacy that is the central pharmacy.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.330
AS 08.80.030

12 AAC 52.030. CHANGE OF PHARMACY LOCATION OR NAME. (a) The pharmacist-in-charge of a pharmacy that has changed its name or physical address shall apply for a new and separate pharmacy license. The applicant shall

- (1) submit a new, completed application for a pharmacy license; and
 - (2) pay the duplicate license fee required in 12 AAC 02.105;
 - (3) repealed 1/17/2007.
- (b) Within 14 days after commencement of business under the new license, the pharmacist-in-charge of a pharmacy that has changed its physical address shall complete a self-inspection questionnaire on a form provided by the department.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.330
AS 08.80.030

12 AAC 52.040. CHANGE OF PHARMACY OWNERSHIP. (a) Repealed 1/17/2007.

(b) A new owner of a pharmacy shall apply for a new and separate facility license in accordance with 12 AAC 52.020.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.157

12 AAC 52.050. CLOSED PHARMACIES. (a) When a pharmacy ceases operations, the pharmacist-in-charge of that pharmacy shall

- (1) submit to the board a written notice of the cessation of pharmacy operations; the written notice must be submitted within 10 days after the cessation of operations and include
 - (A) the date the pharmacy ceased operations;
 - (B) a statement signed by the pharmacist-in-charge attesting that an inventory of all controlled substances on hand has been conducted; and
 - (C) a statement signed by the pharmacist-in-charge attesting to the manner of disposition for all prescription drugs possessed by the pharmacy;
 - (2) arrange for the transfer of prescription drug orders or computer prescription records to another pharmacy to facilitate continuous patient care; and
 - (3) provide for the maintenance and availability of prescription drug orders or hard copies of computer prescription records in accordance with 12 AAC 52.450(a) that are not transferred to another pharmacy;
 - (4) repealed 1/17/2007.
- (b) In the absence of a pharmacist-in-charge, the owner of the pharmacy shall meet all requirements of this section.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.330
AS 08.80.030

12 AAC 52.060. FIRE OR OTHER DISASTER. (a) If a pharmacy has a fire or other disaster, the pharmacist-in-charge of the pharmacy shall

- (1) within 10 days, report to the board the date of a fire or any disaster that may affect the strength, purity, or labeling of drugs, devices, or other materials used in the practice of the pharmacy;

(2) provide the board with a copy of a completed DEA Form 106, "Report of Theft or Loss of Controlled Substances," reporting the loss or destruction of controlled substances or DEA order forms; if the extent of the loss of controlled substances cannot be determined, the pharmacist-in-charge shall submit to the board a complete inventory of all remaining controlled substances and a statement, signed by the pharmacist-in-charge, attesting to the accuracy of the inventory; and

(3) notify the board in writing within 10 days after any change in the pharmacy's address, including a move to a temporary location or a return to the pharmacy's permanent location.

(b) If a pharmacy maintains a temporary location for more than 90 days, the pharmacist-in-charge of the pharmacy shall apply for a new and separate facility license as required in 12 AAC 52.030.

(c) A pharmacy may not dispense any drug that has been exposed to excessive heat, smoke, or other conditions that may have caused deterioration.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.330
AS 08.80.030

12 AAC 52.070. APPLICATION FOR PHARMACIST LICENSE BY EXAMINATION. (a) The board will issue a pharmacist license by examination to an applicant who meets the requirements of AS 08.80.110, 08.80.116, and this section.

(b) An applicant for licensure under this section must submit to the department

(1) a complete, notarized application on a form provided by the department; the application form must include a statement from the applicant attesting to the applicant's fluency in reading, writing, and speaking the English language;

(2) the applicable fees established in 12 AAC 02.310;

(3) on a form provided by the department, a signed authorization for the release of records relating to the applicant's qualifications for licensure;

(4) either

(A) an official transcript, sent directly to the department from the applicant's college of pharmacy, that establishes that the applicant has received a professional degree from a college of pharmacy accredited by the ACPE; or

(B) a certified copy of

(i) the original pharmacy school diploma issued to the applicant; and

(ii) a Foreign Pharmacy Graduate Examination Committee certificate issued to the applicant by the National Association of Boards of Pharmacy, sent directly to the department from the National Association of Boards of Pharmacy;

(5) two affidavits from reputable citizens that the applicant has known for at least one year attesting to the applicant's good moral character;

(6) verification that the applicant has completed 1,500 hours of internship or experience in the practice of pharmacy that meet the requirements of 12 AAC 52.080, sent directly to the department from the agency where the hours of internship or experience were completed;

(7) verification that the applicant has passed the examinations required in 12 AAC 52.090, sent directly to the department by the National Association of Boards of Pharmacy.

Authority: AS 08.80.005 AS 08.80.110 AS 08.80.116
AS 08.80.030

Editor's note: Information about accredited colleges of pharmacy may be obtained from the Accreditation Council for Pharmacy Education, 20 North Clark Street, Suite 2500, Chicago, IL 60602-5109. Information about Foreign Pharmacy Graduate Examination Committee certification and colleges recognized by that committee may be obtained from the National Association of Boards of Pharmacy, Foreign Pharmacy Graduate Examination Committee, 1600 Feehanville Drive, Mount Prospect, IL 60056.

12 AAC 52.075. GOOD MORAL CHARACTER. As used in AS 08.80, "good moral character" includes not having been convicted of a felony or another crime that affects the applicant's ability to practice pharmacy competently and safely.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.110

12 AAC 52.080. INTERNSHIP REQUIREMENTS FOR A PHARMACIST LICENSE. (a) An applicant for a pharmacist license shall submit an affidavit signed by the applicant, on a form provided by the department, documenting completion of 1,500 hours of internship or experience in the practice of pharmacy.

(b) The board will accept as internship experience only internship hours completed under the direct supervision of a pharmacist licensed under AS 08.80 or the pharmacy licensing laws of another state.

(c) Repealed 4/16/2016.

(d) An internship program in a nontraditional site, such as an industry sponsored program, must be approved by the board before the board will give any internship credit for the program.

Authority: AS 08.80.005 AS 08.80.110 AS 08.80.116
AS 08.80.030

12 AAC 52.090. EXAMINATION REQUIREMENTS AND REGISTRATION. (a) In addition to the requirements in AS 08.80.110, an applicant for a pharmacist license shall pass the

(1) North American Pharmacy licensing examination (NAPLEX) administered by the National Association of Boards of Pharmacy with a NAPLEX scaled score of 75 or above; and

(2) Alaska pharmacy jurisprudence examination with a scaled score of 75 or above.

(b) An applicant for a temporary pharmacist license shall pass the Alaska pharmacy jurisprudence examination with a scaled score of 75 or above.

(c) An applicant for a pharmacist license that has passed the NAPLEX examination in another licensing jurisdiction shall make arrangements for the National Association of Boards of Pharmacy to send verification of examination scores directly to the department.

(d) An applicant for licensure by examination must submit an application under 12 AAC 52.070 and be approved under 12 AAC 52.092 before sitting for examination under this section.

(e) An applicant who has failed the Alaska pharmacy jurisprudence examination specified in (f) of this section may not retake the examination for at least 30 days.

(f) The Multistate Pharmacy Jurisprudence Examination administered by the national Association of Boards of Pharmacy (NABP) is the examination adopted by the board as the Alaska pharmacy jurisprudence examination. An applicant shall satisfy all other license requirements within one year after passing the Alaska pharmacy jurisprudence examination or retake the examination.

(g) An applicant applying for a pharmacy license by examination shall make application within one year of successfully passing the NAPLEX. An applicant applying more than one year after passing the NAPLEX shall retake the NAPLEX or apply for a pharmacy license under AS 08.80.145.

Authority: AS 08.01.065 AS 08.80.110 AS 08.80.150
AS 08.80.005 AS 08.80.120 AS 08.80.160
AS 08.80.030

12 AAC 52.092. APPROVAL TO SIT FOR EXAMINATION. (a) An applicant for licensure by examination under 12 AAC 52.070 who has submitted documents that meet the requirements on the checklist set out in (b) of this section may be approved to sit for the North American Pharmacy Licensing Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE) required under 12 AAC 52.090. An applicant whose application documents do not meet the requirements set out in (b) of this section will not be approved to sit for the NAPLEX or MPJE unless the board further reviews the application and determines that the applicant meets the requirements of AS 08.80.110, 08.80.116, and 12 AAC 52.070.

(b) The following checklist is established by the board for review by staff to determine if an applicant for a pharmacist license by examination may sit for examination. Except as provided in (a) of this section, an applicant for licensure by examination will be approved to sit for the NAPLEX and the MPJE if the applicant submits to the department

(1) a complete, notarized application on a form provided by the department; the application form must include a statement from the applicant attesting to the applicant's fluency in reading, writing, and speaking the English language;

(2) the applicable fees established in 12 AAC 02.310;

(3) on a form provided by the department, a signed authorization for the release of records relating to the applicant's qualifications for licensure;

(4) either

(A) an official transcript, sent directly to the department from the applicant's college of pharmacy, that establishes that the applicant has received a professional degree from a college of pharmacy accredited by the ACPE; or

(B) a certified copy of

(i) the original pharmacy school diploma issued to the applicant; and

(ii) a Foreign Pharmacy Graduate Examination Committee certificate issued to the applicant by the National Association of Boards of Pharmacy, sent directly to the department from the National Association of Boards of Pharmacy;

(5) two affidavits from reputable citizens that the applicant has known for at least one year attesting to the applicant's good moral character.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.110

12 AAC 52.095. APPLICATION FOR PHARMACIST LICENSE BY RECIPROCITY. (a) The board will issue a pharmacist license by reciprocity to an applicant who meets the requirements of AS 08.80.145 and this section.

(b) An applicant for licensure under this section must show that the licensing jurisdiction where the applicant is licensed as a pharmacist allows licensure in that jurisdiction of a pharmacist licensed in this state under conditions similar to those in AS 08.80.145. A licensing jurisdiction that is a member of the National Association of Boards of Pharmacy meets the licensing jurisdiction reciprocity requirements of AS 08.80.145.

(c) An applicant for licensure under this section must submit to the department

(1) a complete, notarized application on a form provided by the department;

(2) the applicable fees established in 12 AAC 02.310;

(3) on a form provided by the department, a signed authorization for the release of records related to the applicant's qualifications for licensure;

(4) either

(A) an official transcript, sent directly to the department from the applicant's college of pharmacy, that establishes that the applicant has received a professional degree from a college of pharmacy accredited by the ACPE; or

(B) a certified copy of

(i) the original pharmacy school diploma issued to the applicant; and

(ii) a Foreign Pharmacy Graduate Examination Committee certificate issued to the applicant by the National Association of Boards of Pharmacy sent directly to the department from the National Association of Boards of Pharmacy;

(5) two affidavits from reputable citizens that the applicant has known for at least one year attesting to the applicant's good moral character;

(6) either

(A) verification that, within the one-year period immediately preceding application for a license in this state, the applicant completed 1,500 hours of internship or experience in the practice of pharmacy that meet the requirements of 12 AAC 52.080; the verification must be sent directly to the department from the agency where the hours of internship or experience were completed; or

(B) verification that the applicant has engaged in the practice of pharmacy for at least one year in another licensing jurisdiction;

(7) verification that the applicant has passed the examinations required in 12 AAC 52.090, sent directly to the department by the National Association of Boards of Pharmacy;

(8) verification that the applicant is currently licensed as a pharmacist in another licensing jurisdiction and the applicant's license in the other jurisdiction is not suspended, revoked, or otherwise restricted except for failure to apply for renewal or failure to obtain the required continuing education requirements;

(9) if the licensing jurisdiction in which the applicant is licensed as a pharmacist is a member of the National Association of Boards of Pharmacy, a copy of the applicant's Official Application for Transfer of Pharmaceutic Licensure, sent directly to the department from the National Association of Boards of Pharmacy;

(10) verification of the present status of the applicant's license in each licensing jurisdiction where the applicant holds, or has ever held, a license as a pharmacist.

(d) An applicant for licensure under this section who has not taken the Multistate Pharmacy Jurisprudence Examination (MPJE) required under 12 AAC 52.090 is approved to sit for that examination if the applicant has submitted the documents required under (c)(1) – (6) and (8) – (10) of this section.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.145

12 AAC 52.100. TEMPORARY PHARMACIST LICENSE. (a) The board will issue a temporary pharmacist license to an applicant for licensure if the applicant

(1) submits a completed application for licensure;

(2) provides certified evidence of meeting the requirements in AS 08.80.110, AS 08.80.145, and this chapter;

(3) repealed 2/26/2000;

(4) provides for the National Association of Boards of Pharmacy (NABP) to notify the board that the applicant has submitted a preliminary application to NABP for license transfer;

(5) pays the application fee, pharmacist license fee, and temporary license fee required in 12 AAC 02.310;

(6) passes the Alaska pharmacy jurisprudence examination with a scaled score of 75 or above;

(7) has not been convicted of a felony or another crime that affects the applicant's ability to practice pharmacy competently and safely; and

(8) submits a verification of a current license in good standing to practice in another state or other jurisdiction with licensing requirements at least equivalent to those of this state.

(b) An applicant whose application for permanent licensure as a pharmacist has been denied by the board is not eligible to receive a temporary license.

(c) A temporary license is valid for 90 days. For good cause shown to the board's satisfaction, the board will extend the temporary license for an additional period not to exceed 60 days.

(d) A temporary license is not renewable.

(e) An individual may not receive more than one temporary license.

Authority: AS 08.80.005 AS 08.80.145 AS 08.80.150
AS 08.80.030

12 AAC 52.110. EMERGENCY PHARMACIST PERMIT. (a) If the board determines that an emergency exists, the board will issue an emergency pharmacist permit for the purpose of providing coverage in a pharmacy that is temporarily without the services of a pharmacist due to death, illness, or other emergency circumstances, to an applicant who

- (1) submits a completed application for a pharmacist license;
- (2) pays the emergency permit fee required in 12 AAC 02.310;
- (3) submits a certified true copy of a current pharmacist license in good standing in another state;
- (4) passes the Alaska pharmacy jurisprudence examination with a scaled score of 75 or above; and
- (5) has not been convicted of a felony or another crime that affects the applicant's ability to practice pharmacy competently and safely.

(b) An emergency permit is valid for 60 days or until the emergency circumstances no longer exist, whichever is shorter.

(c) An applicant may not receive more than one emergency permit. An emergency permit is not renewable.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.155

12 AAC 52.120. REVIEW OF PHARMACIST INTERN LICENSE APPLICATION. (a) An applicant who meets the requirements on the checklist set out in (b) of this section has demonstrated the necessary qualifications for a pharmacist intern license. An applicant who does not meet the requirements on the checklist or whose application documents do not clearly show that the applicant is qualified to receive a pharmacist intern license will not be issued a license unless the board further reviews the application and determines that the applicant meets the qualifications in AS 08.80 and this chapter for that license.

(b) The following checklist is established by the board for review by staff of an application for a pharmacist intern license. A pharmacist intern license will be issued to an applicant who

- (1) applies on a form provided by the department;
- (2) pays the application fee and the pharmacist intern license fee established in 12 AAC 02.310;
- (3) has
 - (A) enrolled in a college of pharmacy accredited by the ACPE; or
 - (B) graduated from a college of pharmacy recognized by and earned certification from the Foreign Pharmacy Graduate Examination Committee of the National Association of Boards of Pharmacy;
- (4) certifies that the applicant has not been convicted of a felony or another crime that affects the applicant's ability to practice as a pharmacy intern competently and safely;
- (5) submits a Declaration of Sponsorship of Pharmacy Intern form completed by the applicant's sponsor pharmacist at each work location for which the applicant is to work;
- (6) submits a completed authorization of release of records on a form provided by the department and signed by the applicant;
- (7) submits a completed Alaska Jurisprudence Intern Practice Questionnaire prepared by the board covering the provisions of AS 08.80 and this chapter and 21 U.S.C. 801-847 (Controlled Substances Act); and
- (8) submits two affidavits from reputable citizens that the applicant has known for at least one year attesting to the applicant's good moral character.

(c) A pharmacist intern license is valid for two years and may be renewed. An applicant for renewal of a pharmacist intern license must meet the requirements of (b)(1) - (2) and (5) of this section.

(d) An individual must be licensed as a pharmacist intern before beginning an internship in the state. The pharmacist intern license is valid for only those work locations for which the individual previously submitted sponsorship declarations in accordance with (b)(5) of this section. Before the individual may work at an additional work location, the individual must

- (1) submit a sponsorship declaration for that location in accordance with (b)(5) of this section; and
- (2) have a revised license issued to the individual.

Authority: AS 08.80.005 AS 08.80.110 AS 08.80.116
AS 08.80.030

12 AAC 52.130. REGISTRATION OF PHARMACIES LOCATED OUTSIDE OF THE STATE. (a) An applicant who meets the requirements on the checklist set out in (b) of this section has demonstrated the necessary qualifications for an out-of-state pharmacy registration. An applicant who does not meet the requirements on the checklist or whose application documents do not clearly show that the applicant is qualified to receive an out-of-state pharmacy registration will not be issued a registration unless the board further reviews the application and determines that the applicant meets the qualifications in AS 08.80 and this chapter for that registration.

(b) The following checklist is established by the board for review by staff of an application for an out-of-state pharmacy registration. An out-of-state pharmacy registration will be issued to an applicant who

- (1) applies on an application provided by the department that includes
 - (A) the company name and owner name;

- (B) the pharmacy name;
 - (C) the location of the facility;
 - (D) a mailing address and telephone number;
 - (E) a toll free number accessible by patients in this state;
 - (F) the federal employer identification number;
 - (G) the names of all partners or corporate officers;
 - (H) the name, address, and telephone number for pharmacist-in-charge;
 - (I) the names of all pharmacists working in the facility;
 - (J) completion of the professional fitness section of the application; and
 - (K) the name of the appointed registered agent;
- (2) pays the application fee and the out-of-state pharmacy registration fee established in 12 AAC 02.310;
 - (3) submits a certified true copy of a current, valid facility license or registration from the jurisdiction where the pharmacy is located; and
 - (4) submits an inspection report or self-inspection report completed within the last two years.
- (c) A pharmacy located outside of the state that ships, mails, or delivers prescription drugs into the state more than twice during a 12-month period shall register with the board.
- (d) In AS 08.80.158(b)(4), "proof satisfactory" means a sworn statement that the pharmacy maintains its records of prescription drugs dispensed to persons in the state so that the records are readily retrievable from the records of other prescription drugs dispensed by the pharmacy, with either a written description or a copy of the pharmacy's policies and procedures.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.158

12 AAC 52.140. PHARMACY TECHNICIAN LICENSE. (a) An applicant who meets the requirements on the checklist set out in (b) of this section has demonstrated the necessary qualifications for a pharmacy technician license. An applicant who does not meet the requirements on the checklist or whose responses on the form for application do not clearly show that the applicant is qualified to receive a pharmacy technician license will not be issued a license unless the board reviews the application and determines that the applicant meets the qualifications in this section for a pharmacy technician license.

(b) The following checklist is established by the board for review of an application for a pharmacy technician license; a pharmacy technician license will be issued to an applicant who

- (1) submits a completed form for application, including
 - (A) the applicant's name, mailing address, and telephone number; and
 - (B) the applicant's date of birth that shows the applicant is at least 18 years old;
 - (2) certifies that the applicant has not been convicted of a felony or another crime that affects the applicant's ability to perform the duties of a pharmacy technician safely and competently;
 - (3) certifies that the applicant has earned a high school diploma or its equivalent and provides the name of the issuing institution and the date the diploma or its equivalent was issued;
 - (4) certifies that the applicant is fluent in the reading, writing, and speaking of the English language; and
 - (5) pays the application fee and the pharmacy technician license fee established in 12 AAC 02.310.
- (c) A pharmacy technician license expires on June 30 of even-numbered years and may be renewed.

Authority: AS 08.80.005 AS 08.80.030

ARTICLE 2. PERSONNEL.

Section

- 200. Pharmacist-in-charge**
- 210. Pharmacist duties**
- 220. Pharmacist interns**
- 230. Pharmacy technicians**
- 240. Pharmacist collaborative practice authority**
- 250. Job shadowing in pharmacy**

12 AAC 52.200. PHARMACIST-IN-CHARGE. (a) Before the board will issue a license to a pharmacy, the owner of the pharmacy must designate a pharmacist who practices in that pharmacy location as the pharmacist-in-charge of the pharmacy in accordance with AS 08.80.330. For a remote pharmacy, the owner of the central pharmacy must designate a pharmacist in the central pharmacy as the pharmacist-in-charge of the remote pharmacy. The board will indicate the name of the pharmacist-in-charge on the face of the pharmacy license.

- (b) The responsibilities of the pharmacist-in-charge include
- (1) compliance with all laws and regulations governing the activities of the pharmacy;
 - (2) training of all pharmacy personnel;
 - (3) establishing policies and procedures for pharmacy operations;

- (4) maintaining required records;
- (5) storage of all materials, including drugs and chemicals;
- (6) establishing and maintaining effective controls against theft or diversion of prescription drugs; and
- (7) on request, reporting to the board the names of all pharmacists employed by the pharmacy.

(c) A pharmacist designated to replace the pharmacist-in-charge of a pharmacy shall notify the board within 10 days of that designation, by submitting a completed change of pharmacist-in-charge form provided by the department and paying the applicable fees established in 12 AAC 02.105(3).

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.330
AS 08.80.030 AS 08.80.160

12 AAC 52.210. PHARMACIST DUTIES. Except as provided in 12 AAC 52.220, the following duties may be performed only by a pharmacist:

- (1) receiving an oral prescription drug order;
- (2) consulting with a prescriber regarding a patient or prescription;
- (3) interpreting a prescription drug order;
- (4) determining the product required for a prescription;
- (5) interpreting data in a patient medication record system;
- (6) making a final check on all aspects of a completed prescription and assuming the responsibility for a filled prescription, including the accuracy of the drug prescribed and of the prescribed drug's strength, labeling, and proper container; and
- (7) consulting with a patient or a patient's agent regarding a prescription or information contained in the patient medication record system.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.330

12 AAC 52.220. PHARMACIST INTERNS. (a) A pharmacist intern may not represent that the pharmacist intern is a pharmacist. Only a person licensed by the board as a pharmacist intern may take, use, or exhibit the title of pharmacist intern or any other similar term.

(b) Except as provided in (c) of this section, a pharmacist intern may perform any duty of a pharmacist under the direct supervision of a pharmacist.

(c) A pharmacist intern may not sign or initial any document that is required to be signed or initialed by a pharmacist unless the supervising pharmacist also signs or initials the document.

(d) A pharmacist intern shall file with the board a report of work experience on a form provided by the department within 30 days of completion or termination of an internship in the practice of pharmacy required under 12 AAC 52.080.

- (e) A pharmacist supervising a pharmacist intern
- (1) must be licensed as a pharmacist and be in good standing with the board;
 - (2) shall provide direct supervision to an intern during professional activities throughout the entire period of the internship;
 - (3) shall physically review prescription drug orders and the dispensed product before delivery of a product to the patient or the patient's agent;
 - (4) is responsible for the work of the pharmacist intern;
 - (5) may supervise more than one pharmacist intern; more than one pharmacist intern may not dispense simultaneously under the direct supervision of the same supervising pharmacist.

Authority: AS 08.80.005 AS 08.80.110 AS 08.80.410
AS 08.80.030 AS 08.80.116

12 AAC 52.230. PHARMACY TECHNICIANS. (a) The following persons must be licensed as a pharmacy technician:

(1) any individual who assists in performing manipulative, nondiscretionary functions associated with the practice of pharmacy; and

(2) a supportive staff member assigned to work in the dispensing area of a pharmacy, including a cashier or a bookkeeper.

(b) A pharmacy technician shall work under the direct supervision of a person who is licensed as a pharmacist.

(c) A pharmacy technician may not perform any of the duties listed in 12 AAC 52.210.

(d) An individual working as a pharmacy technician shall wear an identification badge that shows the individual's name and identifies the individual as a pharmacy technician.

(e) Before an individual may regularly perform the tasks of a pharmacy technician, the individual shall complete training required by the pharmacist-in-charge. Duties performed by the pharmacy technician must be consistent with the training the pharmacy technician has received.

(f) If a pharmacy technician will assist in the preparation of sterile pharmaceuticals, including parenteral medications, the pharmacy technician must have completed a minimum of 40 hours of on-the-job training in the

preparation, sterilization, aseptic technique, and admixture of parenteral and other sterile pharmaceuticals before the pharmacy technician may regularly perform those tasks.

Authority: AS 08.80.030 AS 08.80.480

12 AAC 52.240. PHARMACIST COLLABORATIVE PRACTICE AUTHORITY. (a) A pharmacist planning to exercise collaborative practice authority in the pharmacist's practice by initiating or modifying drug therapy in accordance with a written protocol established and approved for the pharmacist's practice by a practitioner authorized to prescribe drugs under AS 08 must submit the completed written protocol to the board and be approved by the board before implementation.

(b) A written protocol must include

(1) an agreement in which practitioners authorized to prescribe legend drugs in this state authorize pharmacists licensed in this state to administer or dispense in accordance with that written protocol;

(2) a statement identifying the practitioners authorized to prescribe and the pharmacists who are party to the agreement;

(3) the time period during which the written protocol will be in effect, not to exceed two years;

(4) the types of collaborative authority decisions that the pharmacists are authorized to make, including

(A) types of diseases, drugs, or drug categories involved and the type of collaborative authority authorized in each case; and

(B) procedures, decision criteria, or plans the pharmacists are to follow when making therapeutic decisions, particularly when modification or initiation of drug therapy is involved;

(5) activities the pharmacists are to follow in the course of exercising collaborative authority, including documentation of decisions made, and a plan for communication and feedback to the authorizing practitioners concerning specific decisions made;

(6) a list of the specific types of patients eligible to receive services under the written protocol;

(7) a plan for the authorizing practitioners to review the decisions made by the pharmacists at least once every three months; and

(8) a plan for providing the authorizing practitioners with each patient record created under the written protocol.

(c) To enter into a written protocol under this section, practitioners authorized to prescribe must be in active practice, and the authority granted must be within the scope of the practitioners' practice.

(d) Unless the board is satisfied that the pharmacist has been adequately trained in the procedures outlined in the written protocol, the board will specify and require completion of additional training that covers those procedures before issuing approval of the protocol.

(e) Documentation related to the written protocol must be maintained for at least two years.

(f) The written protocol may be terminated upon written notice by the authorizing practitioners or pharmacists. The pharmacists shall notify the board in writing within 30 days after a written protocol is terminated.

(g) Any modification to the written protocol must be approved by the board as required by this section for a new written protocol.

(h) This section does not apply to participation, by a pharmacist practicing in an institutional facility, in drug therapy protocols and guidelines approved by the institutional facility's pharmacy and therapeutics committee or by another medical staff governing body of that institutional facility, if records related to the drug therapy protocols and guidelines are maintained and made available to the board upon request.

(i) A signed copy of the approved collaborative practice application and protocols must remain at the pharmacy location at all times.

Authority: AS 08.80.030 AS 08.80.480

12 AAC 52.250. JOB SHADOWING IN PHARMACY. (a) A pharmacist-in-charge or job shadowing preceptor of a pharmacy may allow job shadowing by a student in the pharmacy only as specified in this section.

(b) Before a student begins a job shadowing program under this section, the pharmacist-in-charge or job shadowing preceptor shall complete that portion of the job shadowing documentation form prescribed by the board, which includes the names of the pharmacy, the participating student, and the pharmacist-in-charge or job shadowing preceptor. The student and the pharmacist-in-charge or preceptor shall sign the form. The parent or guardian of the student shall also sign the form if the student is less than 18 years of age.

(c) The pharmacist-in-charge or, if applicable, the job shadowing preceptor shall familiarize the student with the confidentiality requirements of 45 C.F.R., Parts 160 and 164 (HIPAA) and ensure compliance with this section and the relevant sections of AS 08.80 and this chapter.

(d) A pharmacist-in-charge or job shadowing preceptor may not allow

(1) a student in a job shadowing program to

(A) receive any remuneration or other compensation;

(B) perform job shadowing for more than 50 hours;

(C) perform any functions reserved for licensed, certified, or registered pharmacy personnel;

(2) a ratio of job shadowing student to pharmacist-in-charge or job shadowing preceptor other than one to one.

(e) After completion of the job shadowing program by a student, the pharmacist-in-charge or job shadowing preceptor shall complete that portion of the job shadowing documentation form prescribed by the board where the pharmacist-in-charge or job shadowing preceptor provides the date and time in hours student was present and job shadowing in the pharmacy, any patient counseling observations, problems that may have occurred during job shadowing. The job shadowing documentation form must be kept in the pharmacy record for at least two years after the job shadowing program has been completed by that student.

(f) In this section,

(1) "job shadowing" means for educational purposes and through observation only, the observation by a student of the functions and duties of a pharmacy and pharmacy staff with the intended purpose of giving the student an opportunity to observe career possibilities available in the field of pharmacy;

(2) "job shadowing preceptor" means a licensed pharmacist, other than the pharmacist-in-charge, designated by the pharmacist-in-charge to supervise a student while that student is job shadowing;

(3) "student" means a person currently enrolled in a high school or post-secondary education program.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.330

Editor's note: The job shadowing documentation form required by 12 AAC 52.250 may be obtained from the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Board of Pharmacy, State Office Building, 9th Floor, 333 Willoughby Avenue, P.O. Box 110806, Juneau, AK 99811-0806; phone: (907) 465-2589; or the division's website at <http://www.commerce.state.ak.us/occ/ppha.htm>.

ARTICLE 3. LICENSE RENEWAL AND CONTINUING EDUCATION REQUIREMENTS.

Section

- 300. License renewal**
- 310. Reinstatement of an expired pharmacist or pharmacy technician license**
- 320. Continuing education requirements for pharmacists**
- 325. Continuing education requirements for pharmacy technicians**
- 330. Alternative continuing education schedule**
- 340. Approved programs**
- 350. Audit of records by the board**

12 AAC 52.300. LICENSE RENEWAL. (a) Pharmacy, wholesale drug distributor, and drug room licenses expire on June 30 of even-numbered years.

(b) An applicant for renewal of a pharmacy, wholesale drug distributor, or drug room license shall submit

- (1) a completed renewal application;
- (2) the license renewal fees required in 12 AAC 02.310; and
- (3) a completed self-inspection of the premises questionnaire on a form provided by the department.

(c) An applicant for renewal of a pharmacist or pharmacy technician license shall submit on or before the license expiration date

- (1) a completed renewal application;
- (2) the license renewal fees required in 12 AAC 02.310;
- (3) documentation that the applicant has met all continuing education requirements of 12 AAC 52.320 – 12 AAC 52.350; and
- (4) if seeking renewal for a licensing period that begins on or after July 1, 2006, a completed jurisprudence questionnaire prepared by the board, covering the provisions of AS 08.80 and this chapter.

Authority: AS 08.01.100 AS 08.80.030 AS 08.80.157
AS 08.80.005 AS 08.80.147 AS 08.80.165

12 AAC 52.310. REINSTATEMENT OF AN EXPIRED PHARMACIST OR PHARMACY TECHNICIAN LICENSE. (a) If a pharmacist's or pharmacy technician's license has expired for any reason, that pharmacist or pharmacy technician may not practice pharmacy until the license is reinstated by the board.

(b) The board will reinstate a pharmacist or pharmacy technician license that has been expired less than two years if the applicant submits

- (1) a completed renewal application;
- (2) any applicable license renewal fees required in 12 AAC 02.310;
- (3) documentation that the applicant has met all continuing education requirements of 12 AAC 52.320 – 12 AAC 52.350; and

(4) for a licensing period that begins on or after July 1, 2006, a completed jurisprudence questionnaire prepared by the board, covering the provisions of AS 08.80 and this chapter.

(c) The board will reinstate a pharmacist license that has been expired two years or more if the applicant

- (1) submits a completed application for reinstatement on a form provided by the department;
- (2) pays any applicable license renewal fees required in 12 AAC 02.310 for the entire period the license has been expired;
- (3) repealed 5/5/2000;
- (4) submits evidence of completion of all continuing education requirements in 12 AAC 52.320 - 12 AAC 52.350 that would have been required to maintain a current license for the entire period the license has been expired;
- (5) qualifies by
 - (A) retaking and passing the examinations required in 12 AAC 52.090(a); or
 - (B) providing verification that the applicant has continually practiced pharmacy in another state under a license issued by the authority of that state for the period that the license has been expired, and by meeting the requirements of 12 AAC 52.090(a)(2); for purposes of AS 08.80.147 and this subparagraph, an applicant has continually practiced pharmacy if the pharmacist has actively practiced pharmacy in the other state for at least six months during each year that the license in this state was lapsed; and
- (6) submits a verification issued directly to the board by each licensing jurisdiction where the applicant holds, or has ever held, a license as a pharmacist during the time period in which the applicant's license was lapsed in this state that the applicant's license in the other jurisdiction were not suspended, revoked, or otherwise restricted except for failure to apply for renewal or failure to obtain the required continuing education requirements.
- (d) Repealed 8/1/2014.
- (e) A pharmacy technician license that has been expired for two years or more will not be reinstated.

Authority: AS 08.01.100 AS 08.80.030 AS 08.80.165
 AS 08.80.005 AS 08.80.147

12 AAC 52.320. CONTINUING EDUCATION REQUIREMENTS FOR PHARMACISTS. (a) Except as provided in (c) of this section, an applicant for renewal of a pharmacist license shall certify having completed 30 contact hours of continuing education accepted by the board under 12 AAC 52.340(a) during the concluding license period.

(b) This section does not prevent the board from imposing additional continuing education requirements under its disciplinary powers.

(c) An individual who is applying for renewal of a pharmacist license for the first time shall certify having completed one half of the continuing education requirements in (a) of this section for each complete 12 month period that the applicant was licensed during the concluding license period.

(d) An applicant for reinstatement of a pharmacist license that has expired shall certify that the applicant completed the continuing education requirements in (a) of this section before applying for reinstatement.

(e) A pharmacist administering a vaccine or related emergency medication under 12 AAC 52.992 shall certify having completed one hour of Accreditation Council for Pharmacy Education (ACPE) approved continuing education specific to immunizations or vaccines as part of the 30 contact hours of continuing education required under (a) of this section.

Authority: AS 08.80.005 AS 08.80.147 AS 08.80.165
 AS 08.80.030

12 AAC 52.325. CONTINUING EDUCATION REQUIREMENTS FOR PHARMACY TECHNICIANS.

(a) Except as provided in (c) of this section, an applicant for renewal of a pharmacy technician license shall certify that, during the concluding licensing period, the applicant

- (1) completed 10 contact hours of continuing education accepted by the board under 12 AAC 52.340; or
- (2) obtained initial certification as a pharmacy technician by the Pharmacy Technician Certification Board (PTCB).

(b) This section does not prevent the board from imposing additional continuing education requirements under its disciplinary powers.

(c) Instead of complying with the continuing education requirements in (a) of this section, an applicant for renewal of a pharmacy technician license for the first time may

- (1) verify in an affidavit, on an application for renewal, that the applicant has read the state statutes and regulations compiled by the board; and
- (2) submit an affidavit, signed by the pharmacist-in-charge, verifying the applicant's pharmacy technician training in accordance with 12 AAC 52.230.

(d) An applicant for reinstatement of a pharmacy technician license that has expired shall certify that the applicant completed the continuing education requirements in (a) of this section before applying for reinstatement.

Authority: AS 08.01.100 AS 08.80.030 AS 08.80.165
 AS 08.80.005

Editor's note: Information regarding certification with the Pharmacy Technician Certification Board described in 12 AAC 52.325 may be obtained from the Pharmacy Technician Certification Board, 1100 15th Street, NW, Suite 703, Washington, DC 20005-1707, phone: (202) 429-4120 or at PTCB's website at www.ptcb.org. The Alaska

Pharmacists Association, 203 West 15th Avenue, #100, Anchorage, AK 99501, phone: (907) 563-8880, email: akphrmcy@alaska.net also provides certification information.

12 AAC 52.330. ALTERNATIVE CONTINUING EDUCATION SCHEDULE. An individual licensed under AS 08.80 may apply to the board for an alternative schedule of continuing education if the individual's failure to meet the continuing education requirements in 12 AAC 52.320 is due to illness or other extenuating circumstances.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.165

12 AAC 52.340 APPROVED PROGRAMS. (a) The following programs will be accepted by the board as continuing education for pharmacists and pharmacy technicians under 12 AAC 52.320 and 12 AAC 52.325:

(1) any program presented by a provider accredited by the ACPE;
(2) cardiopulmonary resuscitation(CPR) courses presented by the American Red Cross or the American Heart Association that lead to CPR certification; the board will accept no more than one contact hour of continuing education credit in a 24 month period for completion of a CPR course.

(b) The following programs will be accepted by the board as continuing education under 12 AAC 52.325, when the subject contributes directly to the professional competency of a pharmacy technician and is directly related to pharmacy principles and practice:

(1) any program presented or approved by the Alaska Pharmacists Association;
(2) any program presented or approved by the Pharmacy Technician Certification Board (PTCB) or the National Pharmacy Technician Association (NPTA).

(c) An individual who presents an approved continuing education program may receive credit for the time spent during the actual presentation of the program. An individual may not receive credit for the same presentation more than once during a licensing period.

Authority: AS 08.80.005 AS 08.80.147 AS 08.80.165
AS 08.80.030

12 AAC 52.350. AUDIT OF RECORDS BY THE BOARD. (a) The board will randomly audit renewal applications for verification of reported continuing education contact hours. To conduct an audit under this section, the board will access and evaluate continuing pharmacy education data reported to the ACPE-NABP CPE Monitor Service during the time period audited.

(b) Upon written request, a pharmacist or pharmacy technician shall provide the board with a copy of each certificate of completion for the continuing education units not reported to the ACPE-NABP CPE Monitor Service during the time period audited by the board.

(c) If the board disallows any continuing education contact units reported on behalf of or by a pharmacist or pharmacy technician, the pharmacist or pharmacy technician shall

(1) complete the number of disallowed contact hours in an approved program and report the completion to the board no later than 90 days after the date the board sends notification of the disallowed contact hours; and
(2) provide the board with copies of certificates of completion for all continuing education units
(A) not reported to the ACPE-NABP CPE Monitor Service; and
(B) completed for the next two licensing periods.

(d) A pharmacist or pharmacy technician who submits to the board a false or fraudulent record relating to the pharmacist's or pharmacy technician's satisfaction of a continuing education requirement under 12 AAC 52.320 or 12 AAC 52.325 is subject to disciplinary action by the board.

(e) In this section,

(1) "ACPE-NABP CPE Monitor Service" means the electronic tracking service of the ACPE and the National Association of Boards of Pharmacy for monitoring continuing pharmacy education that pharmacists and pharmacy technicians receive from participating providers;

(2) "certificate of completion" means a certificate or other document that
(A) is presented to a participant upon successful completion of a continuing education program that is not reported to the ACPE-NABP CPE Monitor Service; and

(B) contains the following information:

- (i) the name of the participant;
- (ii) the title and date of the program;
- (iii) the name of the accredited provider;
- (iv) the number of contact hours or continuing education units awarded;
- (v) a dated, certifying signature of the accredited provider;
- (vi) for a pharmacist renewal, the assigned ACPE universal program number.

Authority: AS 08.80.005 AS 08.80.165 AS 08.80.261
AS 08.80.030

ARTICLE 4.
GUIDELINES FOR PHARMACIES AND PHARMACISTS.

Section

- 400. General guidelines for pharmacies**
- 410. Care of drug stocks and devices**
- 420. Security**
- 423. Remote pharmacy license**
- 425. Telepharmacy system for a remote pharmacy**
- 430. Guidelines relating to sterile pharmaceuticals**
- 440. Guidelines relating to compounding practices**
- 443. Approval for shared pharmacy services by pharmacy**
- 444. Approval for shared pharmacy services by pharmacist**
- 445. Shared pharmacy services**

12 AAC 52.400. GENERAL GUIDELINES FOR PHARMACIES. A person that is required to be licensed by AS 08.80 and who has a license under AS 08.80 and this chapter shall adhere to the guidelines on facilities, reference material, equipment, supplies, and other guidelines established by the board in the pamphlet titled, “*Facility Standards for Pharmacies*,” dated November 2016, and incorporated by reference in this section.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.157

Editor’s note: The pamphlet incorporated by reference in 12 AAC 52.400, “*Facility Standards for Pharmacies*” may be obtained from the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Board of Pharmacy, State Office Building, 9th Floor, 333 Willoughby Avenue, Juneau, Alaska 99801; phone (907) 465-2589.

12 AAC 52.410. CARE OF DRUG STOCKS AND DEVICES. (a) A drug or device that has exceeded its expiration date shall be removed from stock and quarantined until properly disposed of in accordance with 12 AAC 52.560.

(b) A pharmacist may not dispense a drug or device beyond the expiration date on the drug or device.

(c) All drugs and devices on shelves or display for sale shall be protected against contamination, deterioration, and adulteration.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.157

12 AAC 52.420. SECURITY. (a) Each pharmacist, while on duty, is responsible for the security of the pharmacy, including effective control against theft or diversion of drugs.

(b) The pharmacist-in-charge is responsible for compliance with all prescription department security requirements.

(c) All drugs, devices, and other items or products that are restricted to sale by or under the direct supervision of a pharmacist shall be kept in the prescription department.

(d) The prescription department shall be secured to prevent unauthorized access when a pharmacist is not available to provide direct supervision.

(e) A pharmacy with service hours differing from the remainder of the business establishment must have a telephone number that is separate from the remainder of the business establishment.

(f) Prescriptions shall be stored in the prescription department and may be removed only under the direct supervision of a pharmacist and for immediate delivery to the patient, the patient’s agent, or the person delivering the prescription to the patient or the patient’s agent.

(g) A pharmacist shall provide adequate security for prescription records to prevent unauthorized access to confidential health information.

(h) In this section, “prescription department” means the area of the pharmacy where prescription drugs are stored.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.315
AS 08.80.030

12 AAC 52.423. REMOTE PHARMACY LICENSE. (a) A central pharmacy that wishes to provide pharmacy services through a remote pharmacy in the state using a telepharmacy system as provided in 12 AAC 52.425 must apply to the board for a license. The central pharmacy applying under this section must submit to the department

- (1) a complete, notarized application on a form provided by the department;
- (2) the applicable fees established in 12AAC 02.310; and
- (3) comply with the requirements of 12 AAC 52.020.

(b) The board will approve an application to provide pharmacy services through a remote pharmacy if the central pharmacy establishes that

(1) it is able to comply with the requirements of 12 AAC 52.425; and

(2) there is no access to a non-remote pharmacy within ten road miles of the proposed remote pharmacy site unless the non-remote pharmacy is prevented by federal law from providing pharmacy services to all the individuals within the ten road miles.

(c) An applicant for renewal of a remote pharmacy license must comply with the requirements of 12 AAC 52.300. A remote pharmacy license may not be renewed if a non-remote pharmacy opens for business within ten road miles of the remote pharmacy site unless the non-remote pharmacy is prevented by federal law from providing pharmacy services to all the individuals within the ten road miles.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.157

12 AAC 52.425. TELEPHARMACY SYSTEM FOR A REMOTE PHARMACY. (a) Only a central pharmacy located in this state may provide pharmacy services to a remote pharmacy through a telepharmacy system. A telepharmacy system must be conducted under the direct supervision of a pharmacist. The pharmacist-in-charge of a central pharmacy may supervise one or more remote pharmacies.

(b) Before a central pharmacy may provide pharmacy services to a remote pharmacy, the telepharmacy system between the central pharmacy and remote pharmacy must be tested by the supervising pharmacist of the central pharmacy and found to operate properly. The supervising pharmacist of the central pharmacy shall make the results of the test available to the board upon request. The computer link and video link with sound of the telepharmacy system must include at least one of the following:

(1) still image capture;

(2) real time link;

(3) store and forward.

(c) A remote pharmacy must be

(1) staffed by a pharmacist, pharmacy technician, or pharmacy intern; and

(2) operated under the direct supervision of a pharmacist.

(d) A remote pharmacy must be secured to prevent unauthorized access at all times when a pharmacist is not available to provide direct supervision to that location.

(e) Drugs may be shipped to a remote pharmacy only from the central pharmacy. Drugs must be shipped in a sealed container with an itemized list of the product contained. The itemized list of drugs shipped must be kept on file at both the central pharmacy and the remote pharmacy for at least two years from the date that the drugs are shipped. Itemized records of drugs shipped or received must be verified by the supervising pharmacist at both the central pharmacy and the remote pharmacy.

(f) A remote pharmacy must keep a record of all prescriptions filled at that location. The central pharmacy must also maintain a record of the prescriptions filled at the remote pharmacy. The records must distinguish prescriptions filled at the remote pharmacy from those filled at the central pharmacy and at other remote pharmacy locations.

(g) The prescription label of a prescription drug distributed by a remote pharmacy must meet the requirements of 12 AAC 52.480.

(h) Under a telepharmacy system a prescription drug is considered as being dispensed by the central pharmacy and distributed by the remote pharmacy. A prescription drug may not be distributed by a remote pharmacy until a pharmacist at the central pharmacy has verified the finished prescription product through the telepharmacy system.

(i) A pharmacist must conduct a physical inventory at each remote pharmacy location at least annually. The record of the inventory must be

(1) kept both at the central pharmacy and the remote pharmacy; and

(2) distinguishable from the inventory of the central pharmacy and other remote pharmacies.

(j) The pharmacist-in-charge of the central pharmacy must ensure that the remote pharmacy is in compliance with all laws, including regulations, governing the activities of the pharmacy.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.157

12 AAC 52.430. GUIDELINES RELATING TO STERILE PHARMACEUTICALS. A pharmacy or pharmacist that prepares or dispenses sterile pharmaceuticals shall adhere to the guidelines established by the board in the pamphlet titled, "*Sterile Pharmaceuticals*," dated February 2008, and incorporated by reference in this section.

Authority: AS 08.80.030 AS 08.80.157

Editor's note: The pamphlet incorporated by reference in 12 AAC 52.430, "*Sterile Pharmaceuticals*" may be obtained from the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Board of Pharmacy, State Office Building, 9th Floor, 333 Willoughby Avenue, Juneau, Alaska 99801; phone (907) 465-2589.

12 AAC 52.440. GUIDELINES RELATING TO COMPOUNDING PRACTICES. A pharmacy or pharmacist that compounds drugs shall adhere to the guidelines established by the board in the pamphlet titled, "*Compounding Practices*," dated February 2008, and incorporated by reference in this section

Authority: AS 08.80.030 AS 08.80.157

Editor's note: The pamphlet incorporated by reference in 12 AAC 52.440, "*Compounding Practices*" may be obtained from the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Board of Pharmacy, State Office Building, 9th Floor, 333 Willoughby Avenue, Juneau, Alaska 99801; phone (907) 465-2589.

12 AAC 52.443. APPROVAL FOR SHARED PHARMACY SERVICES BY PHARMACY. (a) A requesting pharmacy in this state that seeks to participate in shared pharmacy services must apply to the board for approval on a form provided by the department.

(b) The board will approve an application by a requesting pharmacy to participate in shared pharmacy services if the pharmacy establishes

(1) that the pharmacy has a current in-state pharmacy license issued under AS 08.80.157 and this chapter;

(2) that the pharmacy is able to comply with the requirements of 12 AAC 52.445;

(3) that the pharmacy either

(A) is owned by the same owner as the filling pharmacy with which pharmacy services are to be shared; or

(B) has a written contract or agreement with the filling pharmacy or filling pharmacist that outlines the pharmacy services to be provided and the obligation of each pharmacy or pharmacist to comply with federal and state pharmacy statutes and regulations; and

(4) that the participants in shared pharmacy services share a common electronic file or other appropriate technology that allows access to the information needed to provide shared pharmacy services in compliance with the requirements of AS 08.80 and this chapter.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.157

12 AAC 52.444. APPROVAL FOR SHARED PHARMACY SERVICES BY PHARMACIST. (a) A requesting pharmacist in this state that seeks to participate in shared pharmacy services must apply to the board for approval on a form provided by the department.

(b) The board will approve an application by a requesting pharmacist to participate in shared pharmacy services if the requesting pharmacist establishes

(1) that the pharmacist

(A) has a current in-state pharmacy license issued under AS 08.80 and this chapter;

(B) has a written contract or agreement with the filling pharmacy or filling pharmacist that outlines the pharmacy services to be provided and the obligations of each pharmacy or pharmacist to comply with federal and state pharmacy statutes and regulations; and

(C) is able to comply with the requirements of 12 AAC 52.445; and

(2) that the participants in shared pharmacy services share a common electronic file or other appropriate technology that allows access to the information needed to provide shared pharmacy services in compliance with the requirements of AS 08.80 and this chapter.

Authority: AS 08.80.005 AS 08.80.030

12 AAC 52.445. SHARED PHARMACY SERVICES. (a) A pharmacy participating in shared pharmacy services, or a pharmacist acting independently of a pharmacy and participating in shared pharmacy services, shall use an identifier on the prescription container that identifies prescriptions to be filled at a filling pharmacy or by the filling pharmacist. The requesting pharmacy or requesting pharmacist shall notify the patient or the patient's agent that the patient's prescription order may be processed or filled by another pharmacy or pharmacist, and shall identify the filling pharmacy or filling pharmacist. If the requesting pharmacy is part of a network of pharmacies under common ownership, and the prescription order may be processed or filled at any of the pharmacies in the network, the requesting pharmacy shall notify the patient of this. Notice under this subsection may be provided through an initial written notice to the patient or the patient's agent, or through the use of a sign prominently displayed in the requesting pharmacy or in the public portion of the office of the requesting pharmacist.

(b) Except as provided in (c) of this section, if a filling pharmacy or filling pharmacist delivers a prescription medication directly to the patient or the patient's agent, the filling pharmacy or filling pharmacist shall provide, on the prescription container or on a separate sheet delivered with the prescription container,

(1) the local telephone number and, if applicable, the toll-free telephone number of the filling pharmacy or filling pharmacist; and

(2) a statement that conveys to the patient or patient's agent the following information: "Written information about this prescription has been provided for you; please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at [insert the filling pharmacist or filling pharmacy's telephone numbers]."

(c) The requirements of (b) of this section do not apply to prescription medication delivered to patients in facilities where a licensed health care professional is responsible for administering the prescription medication to the patient.

(d) A pharmacy participating in shared pharmacy services, or a pharmacist acting independently of a pharmacy and participating in shared pharmacy services, shall

(1) maintain manual or electronic records identifying, individually for each order processed, filled, or dispensed, the name, initials, or identification code of each pharmacist responsible for the final verification of dispensing; those records must include descriptions of actions taken in interpretation of the order, order entry verification, drug utilization review, drug compatibility and drug allergy review, final order verification, therapeutic intervention, and refill authorization functions performed at that pharmacy or by that pharmacist;

(2) report to the board as soon as practical the results of any license disciplinary action taken by a regulatory agency in another licensing jurisdiction involving a pharmacy or pharmacist participating in shared pharmacy services;

(3) maintain a mechanism for tracking the order during each step of the processing and filling procedures performed at the pharmacy or by that pharmacist;

(4) provide for adequate security to protect the confidentiality and integrity of patient information;

(5) provide for inspection of any required record or information no later than 72 hours after any request by the board or its designee.

(e) Each pharmacy participating in shared pharmacy services, if a

(1) requesting pharmacy, shall have a current in-state pharmacy license issued under AS 08.80.157 and this chapter;

(2) filling pharmacy, shall either

(A) have a current in-state pharmacy license issued under AS 08.80.157 and this chapter; or

(B) be registered as an out-of-state pharmacy under AS 08.80.158 and this chapter.

(f) Each participant in shared pharmacy services shall jointly develop, implement, review, revise, and comply with joint policies and procedures for shared pharmacy services. Each participant is required to maintain only those portions of the joint policies and procedures that relate to that participant's operations. The policies and procedures must

(1) outline the responsibilities of each participant;

(2) include a list that contains

(A) each pharmacy participating in shared pharmacy services, and each pharmacist acting independently of a pharmacy and participating in shared pharmacy services;

(B) the name, address, and telephone number of each of those participants; and

(C) the license numbers for all licenses held by each of those participants; and

(3) address

(A) patient notification that meets the requirements of this section;

(B) the adequate protection of the confidentiality and integrity of patient information;

(C) dispensing prescription orders when the filled order is not received or the patient comes in before the order is received;

(D) the maintenance of manual or electronic records that meet the requirements of this section;

(E) compliance with federal and state laws; and

(F) the operation of a continuous quality improvement program for shared pharmacy services, designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

(g) Nothing in this section prevents an individual pharmacist licensed in this state who is employed by or working under a contract with a pharmacy, or prevents a licensed pharmacy intern or pharmacy technician working under the supervision of that licensed pharmacist, from accessing the electronic database of that pharmacy from inside or outside the pharmacy and processing a prescription order in compliance with AS 08.80 and this chapter if

(1) the pharmacy has established controls to protect the privacy and security of confidential records; and

(2) the pharmacist, pharmacy intern, or pharmacy technician does not duplicate, download, or remove data from the pharmacy's electronic database.

(h) A pharmacist working independently outside of the state may participate in shared pharmacy services with an institutional pharmacy in this state if the pharmacist holds

(1) a current license as a pharmacist issued under AS 08.80 and this chapter; and

(2) a current license to practice as a pharmacist issued by the licensing jurisdiction where the pharmacist is working.

(i) The pharmacist-in-charge of the requesting pharmacy must ensure compliance with the applicable requirements of AS 08.80 and this section.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.158
AS 08.80.030

**ARTICLE 5.
PHARMACY PRACTICE STANDARDS.**

Section

- 450. Prescription drug order records**
- 460. Prescription drug order information**
- 470. Refills**
- 480. Labeling**
- 490. Prescriptions by electronic transmission**
- 500. Transfer of a prescription drug order**
- 510. Substitution**
- 520. Customized patient medication package (patient med-pak)**
- 530. Return or exchange of drugs**
- 540. Notification of theft or significant loss**
- 550. Advertising**
- 560. Destruction and disposal of drugs**
- 570. Drug regimen review**
- 580. Data processing systems**
- 585. Mandatory patient counseling**
- 590. Prepackaging of drugs**

12 AAC 52.450. PRESCRIPTION DRUG ORDER RECORDS. (a) A pharmacy shall maintain prescription drug orders for a period of two years from the date of filling or the date of the last dispensed refill. The prescription drug orders shall be maintained in a manner that ensures they will remain legible for the required two-year period.

(b) To comply with (a) of this section, a pharmacy shall maintain the prescription drug orders by

- (1) keeping the original hard copy prescription drug order presented by a patient;
- (2) keeping a plain paper version of the prescription drug order received by facsimile or digital electronic transmittal;
- (3) keeping a prescription drug order put into writing either manually or electronically by the pharmacist; or
- (4) electronically storing and maintaining the prescription drug order in a readily retrievable format.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.157

12 AAC 52.460. PRESCRIPTION DRUG ORDER INFORMATION. (a) Before a pharmacist may fill a prescription drug order, the pharmacist shall obtain the following information:

- (1) name of the patient or, if the prescription drug order is for an animal, species of the animal and name of the owner;
- (2) address of the patient unless the prescription drug order is for a noncontrolled substance and the address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as a patient medication record;
- (3) name and, if the prescription drug order is for a controlled substance, the address and DEA registration number of the prescribing practitioner;
- (4) name and strength of the drug prescribed;
- (5) quantity prescribed;
- (6) directions for use;
- (7) date of issue;
- (8) refills authorized, if any;
- (9) if a written or hard copy prescription drug order, the prescribing practitioner's handwritten, digital, electronic, or stamped signature;
- (10) if a prescription drug order is received by the pharmacy as a facsimile, the prescribing practitioner's handwritten, digital, electronic, or stamped signature, or authorized agent's signature; and
- (11) if the prescription drug order is signed by an authorized agent, the name of the prescribing practitioner.

(b) At the time of dispensing, a pharmacist shall add the following information to the prescription drug order:

- (1) unique identification number of the prescription drug order;
- (2) initials or identification code of the dispensing pharmacist;
- (3) quantity dispensed, if different from the quantity prescribed;
- (4) date of dispensing, if different from the date of issue;
- (5) if the drug was prescribed by generic name or if an equivalent drug product other than the one prescribed was dispensed, for the drug product actually dispensed, at least one of the following:
 - (A) the name of the manufacturer or distributor;
 - (B) the national drug code number;
 - (C) the short name code; or
 - (D) the trade name.

(c) After oral consultation with the prescribing practitioner, a pharmacist may add the following information to schedule II controlled substance prescriptions:

- (1) date of issue of the prescription;
- (2) address of the patient;
- (3) strength of the drug prescribed;
- (4) drug dosage form;
- (5) drug quantity prescribed;
- (6) directions for use;
- (7) DEA registration number.

(d) After oral consultation with the prescribing practitioner, a pharmacist may modify the types of information described in (c)(2) – (7) of this section. However, any modification to the information concerning drug quantity must be limited to strength of the drug prescribed and may not result in an increase in the original total dosage prescribed.

(e) A pharmacist may not change the name of non-generic drugs, the name of the patient, or the signature of the practitioner.

Authority: AS 08.80.005 AS 08.80.030

12 AAC 52.470. REFILLS. (a) A pharmacist may dispense a refill of a prescription drug order only in accordance with the prescribing practitioner’s authorization as indicated on the prescription drug order. If there are no refill instructions on the prescription drug order, or if all refills authorized on the original prescription drug order have been dispensed, a pharmacist shall obtain authorization from the prescribing practitioner before dispensing a refill.

(b) A pharmacist may not dispense a refill of a prescription drug order for a noncontrolled substance after one year from the date of issue of the original prescription drug order.

(c) Each time a prescription drug order is dispensed, the pharmacist shall record the refill electronically or on the back of the prescription drug order by listing the date of dispensing, the written initials or identification code of the dispensing pharmacist, and the amount dispensed if different from the quantity on the original prescription drug order.

(d) If an original prescription drug order is prescribed as a 30-day supply, the pharmacist may dispense up to a 100-day supply on refills if the

- (1) total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the prescription, including refills;
- (2) drug is not a federal or state scheduled controlled substance; and
- (3) the pharmacist is exercising professional judgment.

(e) To indicate that an increased supply may not be dispensed under this section, a prescriber may indicate "no change to quantity", or words of similar meaning, on the prescription drug order.

(f) Nothing in this section requires a health care service plan, health insurer, workers’ compensation insurance plan, pharmacy benefits manager, or any other person or entity, including a state program or state employer, to provide coverage for a drug in a manner inconsistent with a beneficiary’s plan benefit.

Authority: AS 08.80.005 AS 08.80.030

12 AAC 52.480. LABELING. One or more labels containing the following information shall be affixed to every container in which a prescription drug order is dispensed:

- (1) name, address, and phone number of the dispensing pharmacy;
- (2) unique identification number of the prescription drug order;
- (3) date the prescription drug order is dispensed;
- (4) initials of the dispensing pharmacist;
- (5) name of the prescribing practitioner;
- (6) name of the patient or, if the drug was prescribed for an animal, the species of animal and the name of the owner;
- (7) directions for use;
- (8) quantity dispensed;
- (9) appropriate ancillary instructions or cautions;
- (10) if the prescription drug order is for a schedule II-V controlled substance, the statement, “Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed”;
- (11) the name and strength of the actual drug product dispensed, unless otherwise directed by the prescribing practitioner; and
- (12) the accepted generic drug name and strength of the drug dispensed; if the drug product dispensed has multiple ingredients, the pharmacist shall provide this information in writing to the patient or the patient’s agent.

Authority: AS 08.80.005 AS 08.80.295 AS 08.80.480
AS 08.80.030

12 AAC 52.490. PRESCRIPTIONS BY ELECTRONIC TRANSMISSION. (a) Legend drug and controlled substance prescriptions may be transmitted electronically under this section, consistent with state and federal laws.

A pharmacist may dispense a prescription transmitted electronically under this section only if the prescribing practitioner includes the following information on the prescription before it is transmitted:

- (1) name, address, and telephone number of the prescribing practitioner;
 - (2) electronic signature or manual signature of the prescribing practitioner;
 - (3) the information required in 12 AAC 52.460(a)(1) - (8); and
 - (4) any other information required by federal law.
- (b) A pharmacist may dispense a prescription that has been received electronically.
- (c) The system for electronic transmission of prescriptions must address the following:
- (1) patient's choice of pharmacy; the system may not restrict the patient's choice of pharmacy;
 - (2) security of the system; the system must have security and system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of prescription information; the system must include
 - (A) documented formal procedures for selecting and executing security safeguards;
 - (B) physical safeguards to protect computer systems and other applicable equipment from an unauthorized access, modification, or manipulation of the information;
 - (C) processes to protect, control, and audit access to confidential patient information; and
 - (D) processes to prevent unauthorized access to the prescription information when transmitted electronically;
 - (3) confidentiality of patient information; the system must maintain the confidentiality of patient information consistent with state and federal laws;
 - (4) authentication; to be valid prescriptions transmitted by an authorized prescriber or the prescribing practitioner's authorized agent from computer to a facsimile machine or from computer to computer must use an electronic signature; the prescribing practitioner's system must authenticate the sender's authority and credentials to transmit a prescription to a pharmacy and
 - (A) the prescribing practitioner's system must provide an audit record of all prescriptions electronically transmitted that documents for retrieval all actions and persons who have acted on a prescription, including authorized delegation of transmission;
 - (B) the right of the board to access the prescribing practitioner's electronically transmitted prescriptions for purposes of investigations;
 - (5) a prescribing practitioner's system that utilizes intermediaries in the electronic communication of prescriptions to pharmacies is responsible to ensure that the contracts with the intermediaries require security measures that are equal to or better than those provided by this section and prohibit the modification of a record of a prescription after it has been transmitted by the prescribing practitioner to the pharmacist;
 - (6) if a paper copy prescription that is generated by the pharmacist or pharmacy technician from the electronic prescription system is printed, an electronic signature may be substituted for a manual signature;
 - (7) the system must maintain the integrity and confidentiality of patient information transmitted electronically for its system as required by this chapter, other state law, and federal law.
- (d) In this section,
- (1) "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a prescription and executed or adopted by an authorized person with the intent to sign the prescription;
 - (2) "electronic transmission of prescriptions" means the communication from an authorized prescribing practitioner or the prescribing practitioner's authorized agent to a pharmacy of the patient's choice, by computer, by the transmission of an exact visual image of a prescription by facsimile, or by other electronic means other than electronic voice communication, of original prescription information or prescription refill information for a legend drug or controlled substance consistent with this section, other state law, and federal law;
 - (3) "security" means a system to maintain the confidentiality and integrity of prescription information, including
 - (A) documented formal procedures for selecting and executing security safeguards;
 - (B) physical safeguards to protect computer systems and other pertinent equipment from unauthorized access, modification, or manipulation of the information;
 - (C) processes to protect, control and audit access to confidential patient information; and
 - (D) processes for its system to prevent unauthorized access to the prescription information when transmitted electronically.

Authority: AS 08.80.005 AS 08.80.030

12 AAC 52.500. TRANSFER OF A PRESCRIPTION DRUG ORDER. (a) For the purpose of dispensing a refill of a prescription drug order, original prescription drug order information may be transferred between pharmacies if the requirements of 12 AAC 52.460 and this section are met.

(b) Original prescription drug order information for controlled substances listed in schedules III, IV, or V may be transferred only by the pharmacy that originally received the prescription drug order from the prescribing practitioner. The transfer must be communicated directly between two licensed pharmacists.

(c) Original prescription drug order information for noncontrolled substances may be transferred verbally, electronically, or by means of facsimile between pharmacies without limitation up to the number of originally authorized refills.

(d) A pharmacy transferring a prescription drug order or receiving a transferred prescription drug order must meet the following requirements:

(1) if transferred verbally, the transfer shall be communicated directly between two licensed pharmacists;
(2) both the original and the transferred prescription drug order must meet the requirements of 12 AAC 52.450(a);

(3) the pharmacist transferring the prescription drug order information shall record the following information:
(A) the name, address, and if a controlled substance, the DEA registration number of the pharmacy receiving the prescription drug order information;

(B) the name of the pharmacist receiving the prescription drug order information;

(C) the name of the pharmacist transferring the prescription drug order information; and

(D) the date of the transfer;

(4) the pharmacist receiving the transferred prescription drug order information shall record the following information:

(A) the original date of issue and date of dispensing, if different from the date of issue;

(B) the original prescription drug order number and the number of refills authorized on the original prescription drug order;

(C) the number of valid refills remaining and the date of the last refill;

(D) the name, address, and if a controlled substance, the DEA registration number of the pharmacy transferring the prescription drug order information; and

(E) the name of the pharmacist transferring the prescription drug order information; and

(5) when a prescription drug order is transferred, the transferring pharmacy may not issue any further refills.

(e) A pharmacy using an automated data processing system shall meet the same requirements for a manual prescription drug order transfer listed in (d) of this section.

(f) If two or more pharmacies use a common electronic database for prescription record keeping, prescription drug orders may be refilled at any of the pharmacies using the common electronic database if provisions are made

(1) for an audit trail that documents the location of each filling; and

(2) to ensure that the number of authorized refills is not exceeded.

Authority: AS 08.80.005 AS 08.80.030

12 AAC 52.510. SUBSTITUTION. (a) A pharmacist may dispense an equivalent drug product instead of the prescribed drug if

(1) the prescribing practitioner does not indicate on the prescription drug order that a specific brand must be dispensed, using language such as "brand medically necessary", "dispense as written", "do not substitute", or other similar wording;

(2) the patient is notified and consents to the substitution;

(3) the equivalent drug product costs the patient less than the prescribed drug product; and

(4) for the drug product actually dispensed, the pharmacy record contains one of the following:

(A) the drug product's manufacturer or distributor;

(B) national drug code number;

(C) short name code; or

(D) trade name.

(b) The determination of the drug product to be dispensed for a prescription drug order is a professional responsibility of the pharmacist. A pharmacist may not dispense any product that in the pharmacist's professional opinion is not an equivalent drug product as the term "equivalent drug product" is defined in AS 08.80.480.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.295

12 AAC 52.520. CUSTOMIZED PATIENT MEDICATION PACKAGE (PATIENT MED-PAK). (a) Instead of dispensing one or more prescribed drug products in separate containers, a pharmacist may, with the written consent of the patient, patient's caregiver, or prescribing practitioner, provide a customized patient medication package or patient med-pak.

(b) A patient med-pak is a series of containers prepared by a pharmacist for a specific patient containing one or more prescribed solid oral dosage forms and designed or labeled to indicate the day and time, or period of time, when the contents within each container are to be taken.

(c) The pharmacist shall prepare a label for a patient med-pak that includes

(1) the name of the patient;

(2) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for the drug products in the patient med-pak;

(3) the name, strength, physical description or identification, and total quantity of each drug product in the patient med-pak;

- (4) the directions for use and cautionary statements, if any, contained in the prescription drug order for each drug product in the patient med-pak;
 - (5) any other information, statements, or warnings required or appropriate for any of the drug products in the patient med-pak;
 - (6) the name of the prescribing practitioner of each drug product in the patient med-pak;
 - (7) the date of preparation of the patient med-pak and the expiration date assigned to the patient med-pak; the expiration date may not be more than 60 days from the date of preparation of the patient med-pak;
 - (8) the name, address, and telephone number of the pharmacy; and
 - (9) the initials of the dispensing pharmacist.
- (d) If the patient med-pak allows for the removal or separation of the intact containers from the patient med-pak, the pharmacist shall label each individual container of the patient med-pak to identify each of the drug products contained in the patient med-pak.
- (e) When preparing a patient med-pak, the dispensing pharmacist shall take into account any applicable compendium requirements or guidelines and the physical and chemical compatibility of the dosage forms placed within each container in the med-pak and any therapeutic incompatibilities that may attend the simultaneous administration of the drugs.
- (f) In addition to any individual prescription filing requirements, the pharmacist shall make and file a record of each patient med-pak. Each record must contain
- (1) the name and address of the patient;
 - (2) a unique identification number for the patient med-pak itself and a separate, unique, identification number for each of the prescription drug orders for each drug product contained in the patient med-pak;
 - (3) information identifying or describing the design, characteristics, or specifications of the patient med-pak that is sufficient to prepare an identical patient med-pak for the patient;
 - (4) the date of preparation of the patient med-pak and the expiration date assigned;
 - (5) any special labeling instructions; and
 - (6) the name or initials of the pharmacist who prepared the patient med-pak.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.480

12 AAC 52.530. RETURN OR EXCHANGE OF DRUGS. (a) Except as provided in (b) of this section, a pharmacy or pharmacist may not accept a drug for return or exchange after the drug has been taken from the premises where the drug was sold, distributed, or dispensed.

- (b) A pharmacy serving an institutional facility may accept for return or reuse unit dose packages or full or partial multiple dose medication cards if
- (1) the pharmacist can readily determine that there has been no entry or attempt at entry to the unit dose package or blister card;
 - (2) in the pharmacist's professional judgment, the unit dose package or multiple dose medication card meets the standards of the United States Pharmacopoeia (1995 revision) for storage conditions, including temperature, light sensitivity, and chemical and physical stability;
 - (3) the drug has not come into the physical possession of the person for whom it was prescribed, and control of the drug is known to the pharmacist to have been the responsibility of a person or persons licensed to prescribe, dispense, or administer drugs; and
 - (4) the drug labeling or packaging has not been altered or defaced, and the identity of the drug, its strength, lot number, and expiration date are retrievable.

Authority: AS 08.80.005 AS 08.80.030

Editor's note: A copy of the United States Pharmacopoeia may be obtained from the United States Pharmacopoeial Convention, Inc., P.O. Box 560, Williston, VT 05495.

12 AAC 52.540. NOTIFICATION OF THEFT OR SIGNIFICANT LOSS. If a pharmacy is required under 21 U.S.C. 801 - 904 (Controlled Substances Act) to complete DEA Form 106, "Report of Theft or Loss of Controlled Substances," the pharmacist-in-charge shall also send a copy of the completed form to the board.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.157

12 AAC 52.550. ADVERTISING. A pharmacy may advertise prescription drug prices if the advertisement contains all of the following information:

- (1) proprietary, trade, or generic name of the drug product;
- (2) name of the manufacturer or distributor of the drug product;
- (3) dosage form and strength of the drug product;
- (4) price charged for a specific quantity of the drug product; and
- (5) the hours that pharmaceutical services are available from the advertiser.

Authority: AS 08.80.005 AS 08.80.030

12 AAC 52.560. DESTRUCTION AND DISPOSAL OF DRUGS. (a) A licensed pharmacist may destroy noncontrolled prescription drugs if the drugs are destroyed in a manner that makes the drugs unfit for human consumption.

(b) A drug that is a controlled substance shall be disposed of in accordance with federal statutes and regulations.

Authority: AS 08.80.005 AS 08.80.030

12 AAC 52.570. DRUG REGIMEN REVIEW. (a) A pharmacist shall perform a drug regimen review, as defined in AS 08.80.480, for each prescription drug order.

(b) If a pharmacist identifies any of the items listed in AS 08.80.480 during the drug regimen review, the pharmacist shall avoid or resolve the problem by consulting with the prescribing practitioner, if necessary.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.480

12 AAC 52.580. DATA PROCESSING SYSTEMS. A pharmacy may use an automated data processing system to maintain the records required in AS 08.80 and this chapter if the system

(1) is capable of on-line retrieval of all information required in 12 AAC 52.460, 12 AAC 52.470, and 21 C.F.R. 1306.22, as amended as of February 6, 1997;

(2) is capable of producing an audit trail printout for all dispensing of any specified strength and dosage form of a drug; and

(3) has adequate safeguards to prevent loss of data and reasonable security to prevent unauthorized access to, modification of, or manipulation of patient records.

Authority: AS 08.80.005 AS 08.80.030

12 AAC 52.585. MANDATORY PATIENT COUNSELING. (a) Before dispensing a prescription for the first time for a new patient of the pharmacy, a prescription for a new medication for an existing patient of the pharmacy, or a change in the dose, strength, route of administration, or directions for use of an existing prescription previously dispensed for an existing patient of the pharmacy, the pharmacist or pharmacy intern providing prescription services shall personally counsel each patient or the patient's agent on matters considered significant in the pharmacist's professional judgment. The counseling may include

(1) the name and description of the prescribed drug;

(2) the dosage and the dosage form;

(3) the method and route of administration;

(4) the duration of the prescribed drug therapy;

(5) any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;

(6) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;

(7) patient techniques for self-monitoring of the drug therapy;

(8) proper storage;

(9) prescription refill information; and

(10) the action to be taken in the event of a missed dose.

(b) A pharmacist shall counsel the patient or the patient's agent face-to-face. If face-to-face counseling is not possible, a pharmacist shall make a reasonable effort to provide the counseling by use of a telephone, two-way radio, or in writing. In place of a pharmacist's own written information regarding a prescribed drug, the pharmacist may use abstracts of the Patient United States Pharmacopoeia Drug Information or comparable information.

(c) This section does not apply to a pharmacist who dispenses drugs for inpatient use in a hospital or other institution if the drug is to be administered by a nurse or other appropriate health care provider.

(d) This section does not require a pharmacist to provide patient counseling when a patient or the patient's caregiver refuses the counseling.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.480

12 AAC 52.590. PREPACKAGING OF DRUGS. For the purpose of supplying drugs to a prescribing practitioner, drugs shall be prepackaged in child-resistant containers under the direct supervision of a pharmacist and bear a label that contains

(1) the name, address, and telephone number of the pharmacy;

(2) the name, strength, and quantity of the drug;

(3) the lot number and expiration date of the drug, if not already contained on the unit-of-use or drug packaging;

(4) cautionary information required for patient safety and information; and

(5) the initials of the pharmacist.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.480

ARTICLE 6.
WHOLESALE DRUG DISTRIBUTORS AND FACILITIES.

Section

- 610. Wholesale drug distributor license**
- 620. Wholesale drug facilities**
- 625. Personnel requirements; grounds for denial or other disciplinary action**
- 630. Drug storage**
- 640. Written policies and procedures**
- 645. Examination of drug shipments**
- 650. Records and inventories**
- 660. Returned, damaged, and outdated drugs**
- 670. Drug recalls**
- 680. Inspections**
- 685. Prohibition against direct distribution**
- 690. Salvage and reprocessing**
- 695. Provisions not applicable**

12 AAC 52.610. WHOLESALE DRUG DISTRIBUTOR LICENSE. (a) An applicant for a wholesale drug distributor license shall

- (1) apply on the form provided by the department;
- (2) pay the fees required in 12 AAC 02.310;
- (3) provide a list of the names and résumés of officers, directors, or primary stockholders responsible for the wholesale drug facility;
- (4) provide the name and the résumé of the person who will manage the wholesale distribution of drugs and the wholesale drug facility;
- (5) submit a completed self-inspection of the premises questionnaire on a form provided by the department; and
- (6) submit completed fingerprint cards of the facility manager for evaluation and investigation by the Department of Public Safety.

(b) An applicant for a wholesale drug distributor license that will be distributing controlled substances shall

- (1) meet the requirements of (a) of this section; and
- (2) be registered with the DEA.

(c) Within 30 days of a change in facility manager, the new facility manager must

- (1) submit the completed change of pharmacy manager form provided by the department;
- (2) submit the applicable fees established in 12 AAC 02.105(3); and
- (3) meet the requirements of (a)(4) and (6) of this section.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030

12 AAC 52.620. WHOLESALE DRUG FACILITIES. (a) A wholesale drug facility in which drugs are stored, repacked, or sold to persons, businesses, or government agencies that may legally purchase drugs must

- (1) have storage areas that ensure proper lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;
- (2) be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations;
- (3) be equipped with an alarm system to detect entry into the wholesale drug facility after business hours;
- (4) meet all applicable federal, state, and local building standards;
- (5) be secure from unauthorized entry from outside the facility, including having exterior lighting along the outside perimeter of the facility;
- (6) restrict entry into areas inside the facility where drugs are stored; entry must be open to authorized personnel only;
- (7) have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in a secondary container that has been opened or the seal of which has been broken;
- (8) be maintained in a clean and orderly condition; and
- (9) be free from infestation by insects, rodents, birds, or vermin of any kind.

(b) A wholesale drug facility must develop internal security policies, including protection of computer records, to provide reasonable protection against theft or diversion of drugs by personnel.

(c) A wholesale drug facility may not be located in a residence.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030

12 AAC 52.625. PERSONNEL REQUIREMENTS; GROUNDS FOR DENIAL OR OTHER DISCIPLINARY ACTION. (a) A wholesale drug distributor shall maintain a roster of all officers, directors, and

managers responsible for wholesale drug distribution, storage, and handling. The roster shall include a description of each person's duties and a summary of the person's experience.

(b) The board will not approve an application for a wholesale drug distributor license unless the designated manager in charge of the drug facility documents having a basic knowledge of federal and state laws related to the wholesale distribution of drugs.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030 AS 08.80.261

12 AAC 52.630. DRUG STORAGE. (a) A wholesale drug distributor shall ensure that all drugs are stored at appropriate temperatures in accordance with label requirements or official United States Pharmacopoeia (USP), 1995 revision, compendium requirements, to help ensure that the identity, strength, quality, and purity of the products are not affected. If a temperature requirement is not listed for a drug, the drug may be stored at controlled room temperature as defined in the USP.

(b) A wholesale drug distributor shall ensure that a separate quarantine storage area is provided for drugs that are deteriorated, outdated, damaged, misbranded, adulterated, or are in a secondary container that has been opened or the seal of which has been broken.

(c) A wholesale drug distributor shall ensure that appropriate manual, electromechanical, or electronic temperature and humidity recording equipment or handwritten logs are used to document how drugs have been stored.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030

Editor's notes: A copy of the United States Pharmacopoeia may be obtained from the United States Pharmacopoeial Convention, Inc., P.O. Box 560, Williston, VT 05495.

12 AAC 52.640. WRITTEN POLICIES AND PROCEDURES. A wholesale drug distributor shall prepare and follow a written procedure to

(1) handle crisis situations that affect the security or operation of the wholesale drugs facility, including fire, flood, earthquake or other natural disasters, and situations of local, state, or national emergency;

(2) identify, record, report to the board, and correct any error found in an inventory;

(3) ensure that any outdated drug or any drug with an expiration date that, in the wholesale drug distributor's view, does not allow sufficient time for repacking or resale, is segregated from other stock, is documented as a drug that has a characteristic described in this paragraph and is prepared for timely return to the manufacturer or is destroyed;

(4) ensure that the wholesale drug distributor exercises control over the shipping and receiving of all drugs within the wholesale drug distribution operation;

(5) ensure the proper handling and disposal of returned drugs;

(6) ensure that the oldest approved stock of a drug is distributed first and that any deviation from this requirement is only temporary;

(7) ensure the proper handling of a drug recall and a replacement of a drug in accordance with 12 AAC 52.670.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030

12 AAC 52.645. EXAMINATION OF DRUG SHIPMENTS. (a) A wholesale drug distributor shall ensure that upon receipt of a drug shipment, each outside shipping container is visually examined for identity and damage in order to reduce the acceptance of drugs that are contaminated or unfit for distribution.

(b) A wholesale drug distributor shall ensure that each outgoing shipment of drugs is inspected for identity of the contents and the integrity of the shipping container in order to ensure that the drugs to be shipped were not damaged in storage, held under improper conditions, or likely to receive damage in shipment.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030

12 AAC 52.650. RECORDS AND INVENTORIES. (a) A wholesale drug distributor shall establish and maintain records and inventories of all transactions regarding the receipt, distribution, or disposition of a drug. The records must include the following information:

(1) the source of the drug, including the name and principal address of the seller or transferor and the address of the location from which the drug was shipped;

(2) the identity and quantity of the drug received, distributed, or disposed of; and

(3) the date of receipt and of distribution or other disposition.

(b) The records and inventories required by this section must be made available at a central location for inspection within two working days after a request by an authorized inspector. The records and inventories required by this section must be kept for a period of two years after disposition of the drug.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030

12 AAC 52.660. RETURNED, DAMAGED, AND OUTDATED DRUGS. (a) A wholesale drug distributor shall ensure that a drug that is outdated, damaged, deteriorated, misbranded, or adulterated is quarantined and physically separated from other drugs until it is either destroyed or returned to the supplier.

(b) A wholesale drug distributor shall ensure that a drug that has a secondary container that has been opened or used is identified as such, and is quarantined and physically separated from other drugs until the drug is either destroyed or returned to the supplier.

(c) A wholesale drug distributor shall ensure that if the conditions under which a drug has been returned, shipped, or stored cast doubt on the drug's safety, identity, strength, quality, or purity, the drug is destroyed or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030

12 AAC 52.670. DRUG RECALLS. A wholesale drug distributor shall prepare and follow a written policy for handling the recall of a drug due to

- (1) a voluntary action on the part of the manufacturer;
 - (2) an order of the Food and Drug Administration, or of any other federal, state, or local government agency;
- or
- (3) the replacement of an existing drug with an improved drug or new package design.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030

12 AAC 52.680. INSPECTIONS. A wholesale drug distributor shall permit an authorized inspector or law enforcement official, who shows proper identification, to enter and inspect that distributor's facilities and delivery vehicles at reasonable times and in a reasonable manner, and to inspect that distributor's records and written operating procedures.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030

12 AAC 52.685. PROHIBITIONS AGAINST DIRECT DISTRIBUTION. A wholesale drug distributor may not distribute a drug or preparation directly to a consumer or patient.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.261
AS 08.80.030

12 AAC 52.690. SALVAGE AND REPROCESSING. A wholesale drug distributor is subject to the provisions of all applicable federal and state statutes and regulations and local ordinances that relate to drug salvaging or reprocessing, including 21 C.F.R. Parts 207, 210, and 211, as amended as of February 6, 1997.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030

12 AAC 52.695. PROVISIONS NOT APPLICATIONS. The following activities do not constitute wholesale distribution of prescription drugs for which a wholesale drug distributor license is required by 12 AAC 52.610 – 12 AAC 52.690:

- (1) intracompany sales, defined as any transaction or transfer between any division, subsidiary, parent, and an affiliated or related company under the common ownership and control of a corporate entity;
- (2) the purchase or acquisition, by a hospital or other health care entity that is a member of a group purchasing organization, of a drug, for its own use, from the group purchasing organization or from another hospital or health care entity that is a member of the group purchasing organization;
- (3) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in 26 U.S.C. 501(c)(3) (Internal Revenue Code of 1954), as amended as of February 6, 1997, to a nonprofit affiliate of the organization to the extent otherwise permitted by the law;
- (4) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; for purposes of this paragraph, "common control" means the

power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, by voting rights, by contract, or otherwise;

(5) any of the following transfers of a drug, if the gross dollar value of the transfer does not exceed five percent of the total prescription drug sales revenue of either the transferor or transferee during any 12-consecutive-month period:

(A) the sale of a drug by a retail pharmacy to another retail pharmacy or to a practitioner, or the offer by a retail pharmacy to sell a drug to another retail pharmacy or to a practitioner;

(B) the purchase of a drug by a retail pharmacy or by a practitioner from another retail pharmacy, or the offer by a retail pharmacy or by a practitioner to purchase a drug from another retail pharmacy;

(C) the trade of a drug by a retail pharmacy with another retail pharmacy, or the offer by a retail pharmacy to trade a drug with another retail pharmacy;

(6) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug, under a prescription;

(7) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(8) the sale, purchase, or trade of blood and blood components intended for transfusion.

Authority: AS 08.80.005 AS 08.80.030 AS 08.80.157

ARTICLE 7. INSTITUTIONAL PHARMACIES.

Section

700. (Repealed)

710. Absence of a pharmacist from an institutional pharmacy

720. Emergency room outpatient medications

730. Drug distribution and control

12 AAC 52.700. INSTITUTIONAL PHARMACIES. Repealed 2/26/2000.

12 AAC 52.710. ABSENCE OF A PHARMACIST FROM AN INSTITUTIONAL PHARMACY. (a) When an institutional pharmacy will be unattended by a pharmacist, the pharmacist-in-charge shall arrange in advance for providing drugs for use within the institutional facility.

(b) When an institutional pharmacy is closed and a drug is required to treat a patient's immediate need and is not available from the drug stock outside of the pharmacy, a person designated by the pharmacist-in-charge and licensed to handle drugs may obtain the drug from the institutional pharmacy. The pharmacist-in-charge is responsible

(1) to record on a suitable form the removal of any drug from the institutional pharmacy by the person designated; the record must show the

(A) patient's name and room number;

(B) name, strength, and amount of the drug;

(C) date and time of removal; and

(D) initials or signature of the person designated who removed the drug from the pharmacy;

(2) when the pharmacy reopens or as soon as is practical to check the stock container or similar unit dose package of the drug removed; and

(3) to ensure that the quantity of drugs that were removed is only the quantity necessary to sustain the patient until the pharmacy reopens.

(c) If an institutional pharmacy is open and the pharmacist is absent from the pharmacy, but present in the institutional facility, a pharmacy technician may continue to prepare and process drug prescriptions. However, drugs may not be dispensed until the pharmacist has verified the finished prescription product.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.390
AS 08.80.030

12 AAC 52.720. EMERGENCY ROOM OUTPATIENT MEDICATIONS. (a) The pharmacist-in-charge of an institutional pharmacy, in cooperation with the appropriate committee of the institutional facility's medical staff, shall prepare a list of prescription drugs that may be delivered to outpatients receiving emergency treatment and shall determine appropriate quantities for unit-of-use packaging and prepackaging of the prescription drug.

(b) A licensed health care provider on emergency room staff may deliver the medications identified on the list of prescription drugs prepared under (a) of this section to a patient receiving emergency outpatient treatment if

(1) the drug is ordered by an authorized prescribing practitioner either in writing or verbally; a verbal order must be transcribed into writing on the patient's record;

(2) the medication is prepackaged in a child-resistant container under the direct supervision of a pharmacist;

(3) the medication bears a label that contains the

(A) name, address, and telephone number of the institutional facility;

- (B) name, strength, and quantity of the drug;
- (C) cautionary information required for patient safety and information;
- (D) lot number and expiration date if not already contained on the unit-of-use packaging or prepackaging;

and

- (E) initials of the pharmacist;

(4) no more than one prepackaged container of a drug is delivered to a patient unless more than one package is required to sustain the patient until a retail pharmacist is on duty in the community; however, the amount of the controlled substance delivered may not exceed a 72 hour supply; and

(5) labeling of the container is completed by the licensed health care provider before the container is presented to the patient; the container label must include the

- (A) name of the patient;
- (B) directions for use by the patient;
- (C) date of delivery;
- (D) identifying number unique to the patient;
- (E) name of the prescribing practitioner; and
- (F) initials of the licensed health care provider delivering the prepackaged medication.

(c) Prepackaged medications shall be kept in a secure place within the emergency room.

(d) Following delivery of the prepackaged medication to the patient, the licensed health care provider shall document the quantity issued and initial the patient record containing the prescribing practitioner's order.

(e) This section does not apply to the administration of a single dose to a patient.

(f) In this section, "licensed health care provider" means a physician, physician assistant, or mobile intensive care paramedic licensed under AS 08.64; a dentist licensed under AS 08.36; or a nurse licensed under AS 08.68.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.390
AS 08.80.030

12 AAC 52.730. DRUG DISTRIBUTION AND CONTROL. (a) The pharmacist-in-charge of an institutional pharmacy is responsible for the storage, preparation, distribution, and control of the institutional facility's drug supply and for ensuring that these activities are carried out in conformance with established policies, procedures, and accepted standards.

(b) The pharmacist-in-charge of an institutional pharmacy shall establish written procedures for the distribution and control of drugs and for the provision of pharmacy service. The procedures must be consistent with 12 AAC 52.710 and 12 AAC 52.720. The pharmacist-in-charge shall make an annual updated copy of the policies and procedures available for inspection by the board.

(c) Persons employed at an institutional pharmacy who are licensed under AS 08.80 and this chapter shall provide drug information to the staff and practitioners of the institutional facility.

(d) Persons employed at an institutional pharmacy who are licensed under AS 08.80 and this chapter may assist in the planning of and participate in the institutional facility's education and staff development programs relating to drugs.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.390
AS 08.80.030

ARTICLE 8. DRUG ROOMS AND FACILITIES WITHOUT A PHARMACY.

Section

- 800. Drug room license**
- 810. Pharmacist required**
- 820. Responsibilities of the consultant pharmacist**
- 830. Emergency drug kits**
- 840. First dose kits**
- 850. Emergency distribution**

12 AAC 52.800. DRUG ROOM LICENSE. (a) An institutional facility that does not maintain a pharmacy but prepares and administers prescription drugs from bulk supplies for patients receiving treatment within the facility must be licensed by the board as a drug room under 12 AAC 52.010 and 12 AAC 52.020.

(b) An institutional facility that does not maintain a pharmacy but stores and administers prescription drugs that are labeled and dispensed for specific patients by a pharmacy does not require a drug room or pharmacy license.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030 AS 08.80.390

12 AAC 52.810. PHARMACIST REQUIRED. An institutional facility described in 12 AAC 52.800(a) must continuously employ a pharmacist or have a written agreement with a pharmacy or pharmacist to provide consultant pharmacist services.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.390
AS 08.80.030

12 AAC 52.820. RESPONSIBILITIES OF THE CONSULTANT PHARMACIST. A pharmacist who, under 12 AAC 52.810, provides consultant pharmacy services shall

- (1) provide evaluations and recommendations concerning drug distribution, control, and use;
- (2) complete on-site reviews to ensure that drug handling and use procedures conform to AS 08.80, this chapter, and recognized standards of practice;
- (3) provide drug information to facility staff and physicians;
- (4) plan and participate in the facility's staff development program relating to drug distribution, control, and use;
- (5) assist in establishing policies and procedures to control the distribution and administration of drugs; and
- (6) document pharmacy services that are provided and maintain the documentation for a period of at least two years.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030 AS 08.80.390

12 AAC 52.830. EMERGENCY DRUG KITS. (a) An institutional facility described in 12 AAC 52.800(b) may have a limited supply of drugs provided by a pharmacist licensed under this chapter and AS 08.80 in emergency drug kits on-site. An emergency drug kit is for use by personnel authorized to administer the drugs to patients receiving treatment within the institutional facility.

(b) The pharmacist who provides or supplies drugs in emergency drug kits shall cooperate with the prescribing practitioners on staff at the institutional facility to determine the identity and quantity of the drugs to be included in the emergency drug kits.

(c) An emergency drug kit must

- (1) only contain drugs that are not available from any other source in sufficient time to prevent risk of harm to patients;
- (2) only contain drugs that are provided and sealed by a pharmacist;
- (3) be stored in a secured area to prevent unauthorized access;
- (4) be labeled on the exterior to indicate it is for use only in emergencies as described in this section; and
- (5) have a list of the kit's contents posted on or near the kit.

(d) Drugs may be removed from an emergency drug kit only under a valid order from a prescribing practitioner.

(e) When the supplying pharmacist is notified that an emergency drug kit has been opened, the supplying pharmacist shall restock the kit within a reasonable time, not to exceed seven days.

(f) The supplying pharmacist shall label the exterior of an emergency drug kit to indicate the expiration date of the kit's contents. The expiration date of an emergency drug kit is the earliest expiration date of any drug supplied in the kit. When an emergency drug kit expires, the supplying pharmacist shall replace any expired drugs in the kit.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030 AS 08.80.390

12 AAC 52.840. FIRST DOSE KITS. (a) In addition to the emergency drug kit described in 12 AAC 52.830, an institutional facility described in 12 AAC 52.800 may maintain a first dose kit for the initiation of nonemergency drug therapy to a patient receiving treatment within the institutional facility if the necessary drug is not available from a pharmacy in time to prevent risk of harm to a patient.

(b) The dispensing or consultant pharmacy for the institutional facility and the medical staff of the institutional facility are responsible for the proper storage, security, and accountability of the first dose kit.

(c) The staff of the dispensing or consultant pharmacy for the institutional facility shall determine jointly with the medical staff of the institutional facility the content and quantity of drugs to be included in the first dose kit.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.390
AS 08.80.030

12 AAC 52.850. EMERGENCY DISTRIBUTION. In an emergency, if a drug is not otherwise available, a drug room may distribute the drug from bulk supplies to a practitioner or a pharmacist for use by a patient outside the facility, under a prescription, until the drug can be otherwise obtained.

Authority: AS 08.80.005 AS 08.80.157 AS 08.80.480
AS 08.80.030 AS 08.80.390

ARTICLE 9.
CONTROLLED SUBSTANCE PRESCRIPTION DATABASE.

Section

- 855. Registration with the prescription drug monitoring program controlled substance prescription database**
- 860. Access to and conditions for use of the prescription drug monitoring program database**
- 865. Reporting and reviewing PDMP information**
- 870. Waiver of electronic submission requirement by pharmacist or practitioner**
- 875. Solicited requests for information from non-registered persons**
- 880. Reports**
- 885. Purged database records**
- 890. Grounds for discipline**
- 895. Correcting information in database**

12 AAC 52.855. REGISTRATION WITH THE PRESCRIPTION DRUG MONITORING PROGRAM CONTROLLED SUBSTANCE PRESCRIPTION DATABASE. (a) A licensed pharmacist shall register with the prescription drug monitoring program's controlled substance prescription database (PDMP) before dispensing a schedule II, III, or IV controlled substance under federal law.

(b) Before dispensing, prescribing, or administering a schedule II, III, or IV controlled substance under federal law, a pharmacist or practitioner required to register with the PDMP must

- (1) register online on the PDMP website; and
- (2) pay the fee established in 12 AAC 02.107.

(c) After completing the registration requirements, a pharmacist or practitioner required to register with the PDMP will be issued a user account, login name, and password by the department.

(d) A pharmacist or practitioner required to register with the PDMP must access information in the PDMP using the user account, login name, and password issued by the department.

(e) A pharmacist or practitioner required to register with the PDMP may access information in the PDMP using another registrant's credentials only as authorized by a contract executed by the department for the purposes of AS 47.05.270.

Authority: AS 08.80.005 AS 08.80.030 AS 17.30.200

12 AAC 52.860. ACCESS TO AND CONDITIONS FOR USE OF THE PRESCRIPTION DRUG MONITORING PROGRAM DATABASE. (a) Access to the PDMP is limited as described in AS 17.30.200(d).

(b) For the purposes in AS 17.30.200(d)(1) of an inquiry under a search warrant, subpoena, or order issued by an administrative law judge or a court,

(1) "personnel of the board" means employees of the Department of Commerce, Community, and Economic Development assigned to the Board of Pharmacy; and

(2) "personnel of another board or agency" means an employee of this state who is assigned to a board or agency that requires a practitioner to register with the PDMP.

(c) For the purposes of AS 17.30.200(d)(2), "authorized board personnel or contractors" means:

(1) employees of the Department of Commerce, Community, and Economic Development assigned to the Board of Pharmacy and providing PDMP data storage or data management services; or

(2) employees of a contractor with this state who are providing PDMP data storage or data management services.

(d) For the purposes of AS 17.30.200(d)(3) and (4), a licensed practitioner or licensed or registered pharmacist authorizing an agent or employee to access the PDMP is responsible for maintaining and terminating the agent or employee's access to the PDMP.

(e) For the purposes of AS 17.30.200(d)(8) and (10), "authorized employee of the Department of Health and Social Services" means an employee of the Department of Health and Social Services (DHSS) for whom that department's commissioner or commissioner's official designee has requested access in writing to the board before the release of information.

Authority: AS 08.80.005 AS 08.80.030 AS 17.30.200

12 AAC 52.865. REPORTING AND REVIEWING PDMP INFORMATION. (a) Unless excused from reporting under AS 17.30.200(u), a pharmacist must submit information required under AS 17.30.200(b), if the pharmacist-in-charge is not present.

(b) Unless excused from reporting under AS 17.30.200(u), a pharmacist or practitioner required to submit information under AS 17.30.200(b) must submit the information to the PDMP daily as of the previous submission date.

(c) The time computation under 12 AAC 02.920(b) applies to a submission of information under AS 17.30.200(b) and this section.

(d) For the purposes of AS 17.30.200(b)(1), "other appropriate identifier" and for the purposes of AS 17.30.200(b)(8), "other appropriate identifying information" mean the state-issued license number of the prescribing practitioner and state-issued license number of the dispensing pharmacist or practitioner.

(e) Not later than 72 hours after discovering an error in information submitted under AS 17.30.200(b), a pharmacist or practitioner required to submit the information under AS 17.30.200(b) must submit information correcting the error to the PDMP administrator. The time computation under 12 AAC 02.920(b) applies to a submission of information correcting an error in information submitted under AS 17.30.200(b).

(f) Unless excused from reporting under AS 17.30.200(u), or a waiver is granted under 12 AAC 52.870, a pharmacist or practitioner required to submit information under AS 17.30.200(b) must submit the information to the PDMP electronically through the website provided by the board.

(g) Unless excused from reviewing the PDMP under AS 17.30.200(k)(4)(A) – (B), a practitioner, but not a pharmacist, must review the information in the PDMP to check a patient's prescription records before dispensing, prescribing, or administering a schedule II or III controlled substance under federal law.

Authority: AS 08.80.005 AS 08.80.030 AS 17.30.200

12 AAC 52.870. WAIVER OF ELECTRONIC SUBMISSION REQUIREMENT BY PHARMACIST OR PRACTITIONER. (a) The department shall waive the electronic submission requirements of 12 AAC 52.865(f) for good cause. The pharmacist or practitioner requesting the waiver is responsible for establishing the basis for the requested waiver under this section.

(b) To establish good cause for purposes of this section, a pharmacist or practitioner must submit an application and sworn statement showing that

(1) a natural disaster or other emergency beyond the control of the pharmacist or practitioner prevents the pharmacist or practitioner from complying with 12 AAC 52.865(f);

(2) the pharmacist or practitioner will only dispense controlled substances as part of a controlled research project approved by an accredited institution of higher education or under the supervision of a government agency;

(3) the pharmacist's or practitioner's business is located in an area that lacks access to the telecommunication services needed to comply with 12 AAC 52.865(f); or

(4) the pharmacist or practitioner will suffer financial hardship if required to acquire the technology necessary to comply with 12 AAC 52.865(f).

(c) The department may not grant a waiver under this section unless the pharmacist or practitioner first agrees in writing that, if the waiver is granted, the pharmacist or practitioner will satisfy the reporting requirements of AS 17.30.200(b) by submitting the required information by United States mail to the board on at least a daily basis using a form approved by the board.

(d) A request for a waiver under this section must be in writing using an application form provided by the board and sent to the board.

(e) The department's grant or denial of a waiver request constitutes a final agency action unless, no later than 30 days after the department issues notice of the grant or denial, the pharmacist or practitioner files a written notice of appeal with the board.

(f) A waiver granted under this section expires at the end of the year in which it is granted.

(g) A pharmacist or practitioner must inform the board within 30 days if the basis for the waiver of electronic reporting no longer exists.

Authority: AS 08.80.005 AS 08.80.030 AS 17.30.200

12 AAC 52.875. SOLICITED REQUESTS FOR INFORMATION FROM NON-REGISTERED PERSONS. (a) A patient authorized under AS 17.30.200(d)(6) to receive information from the controlled substance prescription database, the patient's authorized agent, or in the case of a unemancipated minor unable to give consent for medical services under AS 25.20.025(a), the minor's parent or legal guardian, may request profile information from the controlled substance prescription database concerning the patient if the person requesting the information

(1) submits the request on a form provided by the board;

(2) pays a \$10 fee; and

(3) does one of the following:

(A) if a patient, presents to the department, in person, government-issued photographic identification confirming the patient's identity as the same person on whom profile information is sought;

(B) if a patient, submits a signed and notarized request

(i) verifying that the patient is the same person on whom profile information is sought; and

(ii) providing the patient's full name, address, and date of birth;

(C) presents a valid power of attorney concerning the patient, or presents

(i) verification that the person requesting the information is the parent, legal guardian, or legal administrator of a minor, incapacitated person, or deceased person on whom profile information is sought; and

(ii) if the person is a parent or legal guardian of a patient who is a minor, verification that the patient is not an emancipated minor legally able to consent to medical treatment under AS 25.20.025.

(b) Profile information may be

- (1) disseminated in person; or
- (2) mailed certified mail, return receipt requested, no later than five days after the date that the department receives a request that meets the requirements of this section.

Authority: AS 08.80.005 AS 08.80.030 AS 17.30.200

12 AAC 52.880. REPORTS. (a) The board will maintain a register for patient profile requests solicited under 12 AAC 52.875. The register includes the following information:

- (1) the date on which the request was received;
- (2) the name of the patient and the patient's date of birth;
- (3) the name, title, and address of the individual requesting the profile;
- (4) the date on which the information was disseminated, mailed, or sent by facsimile transmission.

(b) The register and the information in it are confidential and may only be accessed subject to the restrictions set out in AS 17.30.200(d) and 12 AAC 52.855 - 12 AAC 52.890.

Authority: AS 08.80.005 AS 08.80.030 AS 17.30.200

12 AAC 52.885. PURGED DATABASE RECORDS. The following information will be purged from the PDMP database after two years have elapsed from the date the prescription was dispensed:

- (1) the name of the prescribing practitioner and the practitioner's federal Drug Enforcement Administration registration number or other appropriate identifier;
- (2) the date of the prescription;
- (3) the date the prescription was filled and the method of payment;
- (4) the name, address, and date of birth of the person for whom the prescription was written;
- (5) the name and national drug code of the controlled substance;
- (6) the quantity and strength of the controlled substance dispensed;
- (7) the name of the drug outlet dispensing the controlled substance; and
- (8) the name of the pharmacist or practitioner dispensing the controlled substance and other appropriate identifying information.

Authority: AS 08.80.005 AS 08.80.030 AS 17.30.200

12 AAC 52.890. GROUNDS FOR DISCIPLINE. A violation of 12 AAC 52.855 – 12 AAC 52.885 by a pharmacist is grounds for the imposition of disciplinary sanctions under AS 08.01.075 and AS 08.80.261. A violation of 12 AAC 52.855 – 12 AAC 52.885 by a practitioner not licensed by this board shall be reported to the practitioner's licensing board.

Authority: AS 08.80.005 AS 08.80.030 AS 17.30.200

12 AAC 52.895. CORRECTING INFORMATION IN DATABASE. (a) To request a correction under AS 17.30.200(k)(2) to information in the controlled substance prescription database concerning a person, that person must submit to the board

- (1) on a form or in a format prescribed by the board,
 - (A) a description of the information asserted to be incorrect, and the correction requested;
 - (B) the mailing and physical address and telephone number of the requester; and
 - (C) a signed, sworn statement attesting to the truth of the corrected information;
 - (2) documentation to support the correction requested; and
 - (3) proof of the requester's identity.
- (b) If the board determines that it
- (1) has sufficient information to make a determination, the board will
 - (A) notify the requester that the request is granted; or
 - (B) issue a written denial of the request, if the board determines that the information for which a correction was requested is accurate and complete; in the denial, the board will notify the requester that the requester may request, in accordance with (c) of this section, an administrative hearing to contest the denial;
 - (2) lacks sufficient information to grant or deny the request, the board
 - (A) will request additional information from the requester; and
 - (B) will not act on the request until after the additional information is received.

(c) If the board receives, no later than 30 days after it issues a denial under (b)(1)(B) of this section, a written request for an administrative hearing, the board will conduct an administrative hearing of the denial through the Office of Administrative Hearings in accordance with AS 44.62 (Administrative Procedure Act) and AS 44.64. If the board does not receive a request, the denial is a final administrative decision for purposes of judicial review.

Authority: AS 08.80.005 AS 08.80.050 AS 17.30.020
AS 08.80.030

**ARTICLE 10.
DISCIPLINARY GUIDELINES.**

Section

- 900. Purpose of disciplinary guidelines**
- 910. Violations**
- 920. Disciplinary guidelines**
- 930. Terms of probation**
- 940. Use of alcohol or controlled substances**
- 950. Probation terms for professional incompetence**
- 960. Mental or physical disabilities**
- 970. Reinstatement of a suspended license**
- 980. Reinstatement of a revoked license**

12 AAC 52.900. PURPOSE OF DISCIPLINARY GUIDELINES. The disciplinary guidelines in 12 AAC 52.900 - 12 AAC 52.980 are established to ensure the board's disciplinary policies are known and are administered consistently and fairly.

Authority: AS 08.80.005 AS 08.80.261 AS 08.80.450
AS 08.80.030

12 AAC 52.910. VIOLATIONS. (a) A person who is licensed under AS 08.80 and this chapter who, after a hearing under AS 44.62 (Administrative Procedure Act), is found to have violated a provision of AS 08.80 or this chapter is subject to the disciplinary penalties listed in AS 08.01.075, including public notice of the violation and penalty in appropriate publications.

(b) Nothing in the guidelines set out in 12 AAC 52.920 prohibits the board from imposing greater or lesser penalties than those described in 12 AAC 52.920 or restricting the practice of a licensee depending upon the circumstances of a particular case.

Authority: AS 08.80.005 AS 08.80.261 AS 08.80.450
AS 08.80.030

12 AAC 52.920. DISCIPLINARY GUIDELINES. (a) In addition to acts specified in AS 08.80 or elsewhere in this chapter, each of the following constitutes engaging in unprofessional conduct and is a basis for the imposition of disciplinary sanctions under AS 08.01.075:

- (1) knowingly dispensing a drug under a forged, altered, or fraudulent prescription drug order;
- (2) dispensing drugs to an individual or individuals in quantities, dosages, or for periods of time that grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature; this paragraph does not apply to prescriptions dispensed to persons with intractable pain or to a narcotic drug dependent person in accordance with the requirements of 21 C.F.R. 1306.07, as amended as of February 6, 1997;
- (3) delivering or offering to deliver a prescription drug in violation of AS 08.80 or this chapter;
- (4) acquiring, possessing, or attempting to possess prescription drugs in violation of AS 08.80, AS 11.71, or this chapter;
- (5) distributing prescription drugs to a practitioner or a pharmacy not in the course of professional practice or in violation of AS 08.80 or this chapter;
- (6) refusing or failing to keep, maintain, or furnish any record, notification, or information required in AS 08.80 or this chapter;
- (7) refusing entry into a pharmacy for an inspection authorized by AS 08.80 or this chapter;
- (8) making a false or fraudulent claim to a third party for reimbursement for pharmacy services;
- (9) operating a pharmacy in an unsanitary manner;
- (10) making a false or fraudulent claim concerning a drug;
- (11) refilling a prescription drug order for a period of time in excess of one year from the date of issue of that prescription drug order;
- (12) violating the provisions of a board order or memorandum of agreement;
- (13) failing to provide information or providing false or fraudulent information on an application, notification, or other document required in AS 08.80 or this chapter;
- (14) for the following licensees, failing to establish or maintain effective controls against the diversion or loss of prescription drugs or prescription drug records, or failing to ensure that prescription drugs are dispensed in compliance with state and federal laws and regulations:
 - (A) a pharmacist-in-charge of a pharmacy;
 - (B) a sole proprietor or individual owner of a pharmacy;
 - (C) a partner in the ownership of a pharmacy; or
 - (D) a managing officer of a corporation, association, or joint-stock company owning a pharmacy;
- (15) failing to use reasonable knowledge, skills, or judgment in the practice of pharmacy;

(16) knowingly delegating a function, task, or responsibility that is part of the practice of pharmacy to a person who is not licensed to perform that function, task, or responsibility when the delegation is contrary to AS 08.80 or this chapter or the delegation involves a substantial harm or risk to a patient;

(17) failing to exercise adequate supervision over a person who is authorized to practice only under the supervision of a pharmacist;

(18) violating AS 08.80.315 dealing with the confidentiality of records;

(19) discriminating on the basis of race, religious creed, color, national origin, ancestry, or sex in the provision of a service that is part of the practice of pharmacy;

(20) offering, giving, soliciting, or receiving compensation for referral of a patient;

(21) violating AS 08.80.261(a)(3); or

(22) violating AS 17.30.200 or a regulation adopted under AS 08.80.030 or AS 17.30.200 dealing with the PDMP.

(b) The board will, in its discretion, revoke a license if the licensee

(1) commits a violation that is a second offense;

(2) violates the terms of probation from a previous offense;

(3) violates AS 08.80.261(a)(1) or (4);

(4) intentionally or negligently engages in conduct that results in a significant risk to the health or safety of a patient or injury to a patient;

(5) is professionally incompetent if the incompetence results in risk of injury to a patient.

(c) The board will, in its discretion, suspend a license for up to two years followed by probation of not less than two years if the licensee

(1) wilfully or repeatedly violates AS 08.80 or this chapter; or

(2) is professionally incompetent if the incompetence results in the public health, safety, or welfare being placed at risk.

(d) The board will review, on an individual basis, the need for revocation or limitation of a license of a licensee who practices or attempts to practice while afflicted with a physical or mental illness, deterioration, or disability that interferes with the individual's practice of pharmacy.

Authority:	AS 08.01.075	AS 08.80.261	AS 08.80.460
	AS 08.80.005	AS 08.80.315	AS 17.30.200
	AS 08.80.030		

12 AAC 52.930. TERMS OF PROBATION. The board will, in its, discretion, subject a licensee who is placed on probation to one or more of the following terms of probation, and to other relevant terms of probation, including those in 12 AAC 52.940 - 12 AAC 52.960:

(1) obey all laws pertaining to the practice of pharmacy in this state;

(2) fully comply with the probation program established by the board and cooperate with representatives of the board;

(3) notify the board in writing of the dates of departure and return if the licensee leaves the state to reside or practice pharmacy outside the state;

(4) report in person at meetings of the board or to its designated representatives during the period of probation, as directed by the board;

(5) submit written reports and verification of actions as required by the board during the period of probation;

(6) if employed in the practice of pharmacy at any time during the period of probation, have the employer submit to the board verification that the employer understands the conditions of probation;

(7) be employed as a pharmacist only in a setting in which full supervision is provided and not personally act as a supervisor.

Authority:	AS 08.01.075	AS 08.80.030	AS 08.80.261
	AS 08.80.005		

12 AAC 52.940. USE OF ALCOHOL OR CONTROLLED SUBSTANCES. (a) In addition to one or more of the terms of probation set out in 12 AAC 52.930, a licensee placed on probation for the habitual abuse of alcohol or illegal use of controlled substances may also be subject to one or more of the following:

(1) physical and mental health examinations as determined by the board to evaluate the licensee's ability to perform the professional duties of a pharmacist;

(2) as determined by the board, participation until completion in an ongoing program of rehabilitative counseling, Alcoholics Anonymous, Narcotics Anonymous, or an impaired practitioner group that includes progress reports from the care provider when requested by the board;

(3) abstaining from the personal use of alcohol or controlled substances in any form except when lawfully prescribed by a practitioner licensed to practice in Alaska;

(4) submitting to tests and samples required for the detection of alcohol or controlled substances at the request of the board or the board's representative.

(b) Access to a controlled substance in the work setting will, in the board's discretion, be restricted.

Authority: AS 08.01.075 AS 08.80.030 AS 08.80.261
AS 08.80.005

12 AAC 52.950. PROBATION TERMS FOR PROFESSIONAL INCOMPETENCE. In addition to one or more of the terms of probation set out in 12 AAC 52.930, a licensee placed on probation after being found professionally incompetent may be subject to one or more of the following terms of probation:

- (1) successful completion of an appropriate course or courses in pharmacy, as determined by the board, before the end of the probationary period; or
- (2) participation in 15 contact hours of appropriate continuing education in pharmacy.

Authority: AS 08.01.075 AS 08.80.030 AS 08.80.261
AS 08.80.005

12 AAC 52.960. MENTAL OR PHYSICAL DISABILITIES. In addition to one or more of the terms of probation set out in 12 AAC 52.930, a licensee placed on probation for practicing or attempting to practice pharmacy while afflicted with a physical or mental illness, deterioration, or disability that interferes with the licensee's performance of pharmacy may be subject to a physical or mental health examination to evaluate the licensee's ability to perform the professional duties of a pharmacist and if medically determined to be necessary may be required to participate in and complete a recommended treatment program that includes written progress reports from the care provider when requested by the board.

Authority: AS 08.01.075 AS 08.80.261 AS 08.80.450
AS 08.80.030

12 AAC 52.970. REINSTATEMENT OF A SUSPENDED LICENSE. The board may reinstate a suspended license only if the requirements of the suspension order have been met.

Authority: AS 08.01.075 AS 08.80.030 AS 08.80.261
AS 08.80.005

12 AAC 52.980. REINSTATEMENT OF A REVOKED LICENSE. (a) One year after revocation of a license, a licensee may apply to the board in writing for reinstatement of the license.

(b) The applicant for reinstatement shall appear before the board.

(c) The board will, in its discretion, impose restrictions upon the pharmacist or pharmacy when reinstating a license.

Authority: AS 08.01.075 AS 08.80.030 AS 08.80.261
AS 08.80.005

ARTICLE 11. GENERAL PROVISIONS.

Section

990. Display of license certificate

991. Disciplinary decision or conviction reporting requirement

992. Independent administration of vaccines and related emergency medications

994. Independent dispensing of opioid overdose drugs by pharmacists

995. Definitions

12 AAC 52.990. DISPLAY OF LICENSE CERTIFICATE. A licensee shall conspicuously display, in the practice site, the licensee's current license certificate. Pending receipt of the current license certificate from the department, the licensee shall display the department's Internet web site posting confirming licensure. The current license certificate, or web site posting confirming licensure, of a licensee practicing in an institutional facility may be displayed in a central location.

Authority: AS 08.80.005 AS 08.80.030

Editor's note: The current posting confirming licensure can be found at the Internet web site of the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing: www.commerce.state.ak.us/occ/search3.htm.

12 AAC 52.991. DISCIPLINARY DECISION OR CONVICTION REPORTING REQUIREMENT. (a) A licensee shall report in writing to the board any disciplinary decision or conviction, including conviction of a felony

or conviction of another crime that affects the applicant's or licensee's ability to practice competently and safely, issued against the licensee not later than 30 days after the date of the disciplinary decision or conviction.

(b) A licensed or registered facility shall report in writing to the board any disciplinary decision, including suspension or revocation by federal, state, or local government of a license currently or previously held by the applicant or facility for the manufacture or distribution of drugs or devices, including controlled substances, or any felony conviction under federal, state, or local law of an owner of the facility or of an employee of the facility.

Authority: AS 08.01.075 AS 08.80.030 AS 08.80.315
AS 08.80.005 AS 08.80.261 AS 08.80.460

12 AAC 52.992. INDEPENDENT ADMINISTRATION OF VACCINES AND RELATED EMERGENCY MEDICATIONS. (a) Before a pharmacist may independently administer a human vaccine or related emergency medication to a patient who does not have immunization contraindications as listed by the CDC, FDA, or manufacturer's package insert, or to a patient under a prescription drug order from a prescriber, the pharmacist

(1) must successfully complete a course accredited by the Accreditation Council for Pharmacy Education (ACPE) or a comparable course for pediatric, adolescent, and adult immunization practices that includes instruction on

- (A) basic immunology, vaccine, and immunization protection;
- (B) diseases that may be prevented by vaccination or immunization;
- (C) current CDC immunization schedules;
- (D) vaccine storage and management;
- (E) informed consent;
- (F) physiology and techniques for administration of immunizations;
- (G) pre-immunization and post-immunization assessment and counseling;
- (H) immunization reporting and records management; and
- (I) identifying, responding to, documenting, and reporting adverse responses;

(2) must maintain certification and keep documentation in adult and pediatric cardiopulmonary resuscitation (CPR) and automated external defibrillator (AED) training;

(3) who has not administered a vaccine during the past 10 years must complete a course as described in (1) of this subsection before administering a vaccine; and

(4) must adhere to 12 AAC 52.320, including continuing education requirements under 12 AAC 52.320(e).

(b) A pharmacy from which a pharmacist administers a human vaccine or related emergency medication under this section

(1) must stock the following emergency medications in an emergency medication kit that is separate from the regular dispensing inventory, and that is carried by the pharmacist if providing off-site immunizations:

- (A) oral and injectable diphenhydramine; and
- (B) adult and pediatric auto-inject epinephrine devices, or injectable epinephrine;

(2) must maintain a policy and procedure manual detailing the immunization practices that must be followed; the manual must

(A) designate either the pharmacist-in-charge or an assigned vaccine coordinator who will be responsible for maintaining the policy and procedures manual;

(B) document that the policy and procedures manual has been reviewed and updated annually;

(C) address how vaccine related adverse reactions are to be reported to the CDC's and FDA's Vaccine Adverse Event Reporting System (VAERS);

(D) address proper vaccine storage, handling, and maintenance, including maintaining manufacturer-recommended temperatures during transportation of vaccines;

(E) address proper disposal of used or contaminated supplies;

(F) contain a written emergency protocol for handling accidental needlesticks and adverse reactions, including the administration of related emergency medications; and

(G) detail how records must be kept;

(3) must have access to the latest edition of the CDC's *Epidemiology and Prevention of Vaccine-Preventable Diseases* as a reference; and

(4) must display each pharmacist's certification of completing the immunization course described in (a)(1) of this section.

(c) Before administering an immunization or related emergency medication, a pharmacy intern must

(1) have completed an ACPE-accredited immunization course or other comparable course that meets the requirements of (a)(1) of this section;

(2) maintain certification and keep documentation in adult and pediatric cardiopulmonary resuscitation (CPR) and automated external defibrillator (AED) training; and

(3) be under the direct supervision of a pharmacist who has met the requirements of this chapter.

(d) A pharmacist administering a vaccine must provide the patient or the patient's agent the current vaccine information statement (VIS) issued by the CDC for each vaccine administered.

(e) A pharmacist or intern independently administering a vaccine must comply with 7 AAC 27.650.

(f) For purposes of this section, a pharmacist independently administers a human vaccine or related emergency medication if

(1) the pharmacist meets the requirements of this chapter and is the prescriber and administrator of the vaccine; or

(2) a pharmacist intern meeting the requirements of this chapter administers the vaccine, and the pharmacist supervising the pharmacist intern is the prescriber.

(g) Failure to comply with this section constitutes unprofessional conduct and is a basis for the imposition of disciplinary sanctions under AS 08.01.075.

(h) In this section,

(1) "CDC" means the United States Department of Health and Human Services, Centers for Disease Control and Prevention;

(2) "FDA" means the United States Food and Drug Administration.

Authority: AS 08.01.075 AS 08.80.168 AS 08.80.480
AS 08.80.030 AS 08.80.261

12 AAC 52.994. INDEPENDENT DISPENSING OF OPIOID OVERDOSE DRUGS BY PHARMACISTS.

(a) A pharmacist may independently dispense an opioid overdose drug approved for use as an opioid overdose drug by the United States Food and Drug Administration. Before a pharmacist independently dispenses an opioid overdose drug to a recipient, the pharmacist shall

(1) in accordance with 12 AAC 52.340, complete a single training session that consists of one hour of continuing education specific to the use of an opioid overdose drug;

(2) question the recipient to determine if there are any known contraindications to opioid overdose drug usage for the potential user; and

(3) provide the recipient information about opioid overdose prevention, recognition, and response to opioid overdose drugs.

(b) A pharmacist may

(1) supply an opioid overdose drug as

(A) an intramuscular injection;

(B) an intranasal spray;

(C) an auto-injector; or

(D) any other product forms approved by the United States Food and Drug Administration; and

(2) recommend other optional items when appropriate, including

(A) alcohol pads;

(B) rescue breathing masks; or

(C) rubber gloves.

(c) When dispensing an opioid overdose drug

(1) the pharmacist shall

(A) label the drug in accordance with 12 AAC 52.480;

(B) ensure that the label includes appropriate directions; the label may not consist of the sole direction "use as directed";

(C) ensure that the label includes directions to call 911 or other available emergency services; and

(D) document the drug as a prescription in the medication record of the recipient in accordance with 12 AAC 52.450;

(2) the pharmacist may

(A) in accordance with 12 AAC 52.585, provide the recipient with counseling and information on the drug furnished, including

(i) dosing;

(ii) administration;

(iii) effectiveness;

(iv) adverse effects;

(v) storage conditions;

(vi) shelf life; and

(vii) safety;

(B) offer the recipient information or referrals to appropriate resources including information about addiction treatment, recovery services, or medication disposal resources, if the recipient indicates interest in that information.

(d) Nothing in this section restricts the ability of a pharmacist to furnish an opioid overdose drug by means of an authorized practitioner prescription under 12 AAC 52.460 or 12 AAC 52.490.

(e) In this section,

(1) "opioid overdose drug"

(A) has the meaning given in AS 08.80.168;

(B) includes naloxone hydrochloride;

(2) "recipient" means the person to whom an opioid overdose drug is furnished.

Authority: AS 08.80.030 AS 08.80.168 AS 08.80.480

12 AAC 52.995. DEFINITIONS. (a) In this chapter, unless the context requires otherwise,

- (1) "ACPE" means Accreditation Council for Pharmacy Education;
- (2) "approved program" means a continuing education activity that is a live program, home study, or other mediated instruction delivered by an approved or accredited provider;
- (3) "approved provider" means an individual, institution, organization, association, corporation, or agency offering an approved program under 12 AAC 52.340 and is not an accredited provider;
- (4) "authorized inspector" means a member of the board or an investigator with the division assigned occupational licensing functions in the department;
- (5) "blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing;
- (6) "blood component" means that part of blood separated by physical or mechanical means;
- (7) "board" means the Alaska Board of Pharmacy;
- (8) "care provider" means a person or organization that by the nature of experience and training is qualified, in the opinion of the board, to provide substance abuse counseling, rehabilitation, or related services to the public through established and recognized treatment programs;
- (9) "consultant pharmacist" means a licensed pharmacist retained by written agreement with an institutional facility to consult on a routine basis with an institutional facility about the practice of pharmacy as it relates to that facility;
- (10) "contact hour" means a unit of measure of educational credit that is equivalent to approximately 50 minutes of participation in an organized learning experience; a continuing education unit or "CEU" is equivalent to ten contact hours;
- (11) "DEA" means the United States Drug Enforcement Administration;
- (12) "department" means the Department of Commerce, Community, and Economic Development;
- (13) "direct supervision" means supervision that insures adequate safety controls either by personal supervision or through a telepharmacy system;
- (14) "home study" and "other mediated instruction" mean continuing education activities that are not conducted as live programs, including audio tapes, video tapes, television, computer assisted instruction, journal articles, or monographs;
- (15) "institutional facility" means a
 - (A) hospital;
 - (B) long-term care facility, including a nursing home, convalescent home, or other related facility;
 - (C) mental health facility;
 - (D) rehabilitation center;
 - (E) psychiatric center;
 - (F) developmental disability center;
 - (G) drug abuse treatment center;
 - (H) family planning clinic;
 - (I) penal institution;
 - (J) hospice; or
 - (K) public health facility;
- (16) "institutional pharmacy" means a pharmacy located in an institutional facility;
- (17) "licensee" means a person who is licensed under AS 08.80 and this chapter;
- (18) "live program" means an on-site continuing education activity, including a lecture, symposium, live teleconference, or workshop;
- (19) "sterile pharmaceutical" means a drug dosage form free from living microorganisms (aseptic);
- (20) "wholesale distribution" means distribution of prescription drugs to a person other than a consumer or patient, but does not include an activity described in 12 AAC 52.695;
- (21) "central pharmacy" means a pharmacy providing remote pharmacy services through a telepharmacy system;
- (22) "personal supervision" means supervision that includes visual or physical proximity to ensure adequate safety controls;
- (23) "pharmacy" includes a central pharmacy and a remote pharmacy;
- (24) "remote pharmacy" means a facility that provides pharmacy services, including the storage and distribution of prescription drugs, drug regimen review, and patient counseling through a telepharmacy system;
- (25) "still image capture" means a specific image captured electronically from a video or other image capture device;
- (26) "store and forward" means a video or still image record that is saved electronically for future review;
- (27) "telepharmacy system" means a system under the direct supervision of a licensed pharmacist that monitors the dispensing and distribution of prescription drugs and provides for related drug use review and patient counseling services through a computer link and a video link with sound;
- (28) "accredited provider" means an individual, institution, organization, association, corporation, or agency that is recognized by the ACPE as able to provide quality continuing education programs;
- (29) "filling pharmacist" means a pharmacist participating in shared pharmacy services that processes or fills a prescription order for a patient;

(30) "filling pharmacy" means a pharmacy participating in shared pharmacy services that processes or fills a prescription order for a patient;

(31) "requesting pharmacist" means a pharmacist participating in shared pharmacy services that forwards a prescription order to another participating pharmacy or pharmacist to be processed or filled;

(32) "requesting pharmacy" means a pharmacy participating in shared pharmacy services that forwards a prescription order to another participating pharmacy to be processed or filled;

(33) "shared pharmacy services" means a system allowing the processing by a participating pharmacist or a pharmacy of a request from another participating pharmacist or pharmacy to process or fill a prescription drug order, including dispensing, drug utilization review, claims adjudication, refill authorizations, therapeutic interventions, and institutional order review;

(34) "dispenser" means a practitioner who delivers a controlled substance to an ultimate user or research subject under the lawful order of a practitioner; in this paragraph, "delivers" includes the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for delivery;

(35) "profile" means a compilation of data concerning a patient, a dispenser, a practitioner, or a controlled substance;

(36) "PDMP" means the prescription drug monitoring program's controlled substance prescription database.

(b) In AS 08.80.315(3), "other persons or governmental agencies" include investigators for the department who are assigned to conduct investigations under AS 08.

(c) In AS 08.80.030(b)(7), "monitoring of drug therapy" means a review of the drug therapy regimen of patients by a pharmacist for the purpose of evaluating and rendering advice to the prescribing practitioner regarding adjustment of the regimen. "Monitoring of drug therapy" includes

(1) collecting and reviewing records of patient drug use histories;

(2) measuring and reviewing routine patient vital signs, including pulse, temperature, blood pressure, and respiration; and

(3) ordering and evaluating the results of laboratory tests relating to drug therapy, including blood chemistries and cell counts, drug levels in blood, urine, tissue, or other body fluids, and culture and sensitivity tests that are performed in accordance with a written protocol approved under 12 AAC 52.240.

(d) In AS 17.30.200 and 12 AAC 52.855 – 12 AAC 52.895, "practitioner" has the meaning given in AS 11.71.900.

Authority:	AS 08.80.005	AS 08.80.157	AS 17.30.200
	As 08.80.030	AS 11.71.900	AS 17.30.900

**CHAPTER 30.
CONTROLLED SUBSTANCES.**

Article

- 1. Regulation of Manufacture, Distribution, Prescription, and Dispensing of Controlled Substances (§§ 17.30.020 – 17.30.090)**
- 2. Enforcement and Forfeiture (§§ 17.30.100 – 17.30.126)**
- 3. Education and Research (§§ 17.30.140)**
- 4. Information (§§ 17.30.150, 17.30.155)**
- 5. Controlled Substance Prescription Database (§§ 17.30.200)**
- 6. General Provisions (§§ 17.30.900)**

**ARTICLE 1.
REGULATION OF MANUFACTURE, DISTRIBUTION,
PRESCRIPTION, AND DISPENSING OF CONTROLLED SUBSTANCES.**

Section

- 20. Registration requirements; inspections**
- 60. Records of registrants**
- 70. Order forms; prescriptions**
- 80. Unlawful administration, prescriptions, and dispensation of controlled substances**
- 90. Sale or purchase of certain listed chemicals**

Sec. 17.30.020. Registration requirements; inspections. (a) A person who manufactures, distributes, dispenses, or conducts research with a controlled substance in the state or who proposes to manufacture, distribute, or dispense a controlled substance in the state, shall comply with the registration requirements of 21 U.S.C. 811 - 830 (Controlled Substances Act), and the regulations adopted under those sections.

(b) A person registered under federal law to manufacture, distribute, dispense, or conduct research with controlled substances in the state may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by the person's registration and in conformity with the other provisions of this chapter.

(c) [Repealed, § 22 ch 146 SLA 1986.]

(d) [Repealed, § 22 ch 146 SLA 1986.]

(e) [Repealed, § 22 ch 146 SLA 1986.]

(f) A peace officer may enter a registrant's premises at reasonable times and in a reasonable manner to inspect the premises and records required to be maintained under federal law. An inspection may not extend to financial data, pricing data, or sales data, other than shipment data, unless the owner, operator, or agent in charge of the premises consents

(g) Upon request from a peace officer, a person who manufactures, distributes, dispenses, or conducts research with a controlled substance in the state shall provide evidence of current registration under 21 U.S.C. 811 - 830 (Controlled Substances Act) and the regulations adopted under those sections.

Sec. 17.30.060. Records of registrants. A person registered under federal law to manufacture, distribute, dispense, or conduct research with controlled substances in the state shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law.

Sec. 17.30.070. Order forms; prescriptions. (a) A controlled substance may be distributed by one registrant to another registrant only if the distribution is in accordance with federal requirements for order forms.

(b) A controlled substance may not be dispensed by a practitioner other than in accordance with federal requirements regarding prescriptions for controlled substances.

(c) If the classification of a controlled substance in a schedule set out in AS 11.71.140 - 11.71.190 is different from its corresponding classification under federal law, the requirements of (a) and (b) of this section are determined by the classification of the substance under federal law.

Sec. 17.30.080. Unlawful administration, prescription, and dispensation of controlled substances. (a) A controlled substance classified under federal law or in a schedule set out in AS 11.71.140 - 11.71.190 may not be administered, prescribed, dispensed, or distributed other than for a medical purpose.

(b) A person who violates (a) of this section, or who otherwise manufactures, distributes, dispenses, or conducts research with a controlled substance in the state without fully complying with 21 U.S.C. 811 - 830 (Controlled Substances Act), and regulations adopted under those sections, is guilty of misconduct involving a controlled substance under AS 11.71.010 - 11.71.060 in the degree appropriate to the circumstances as described in those sections. Upon filing a complaint, information, presentment, or indictment charging a medical assistance provider with misconduct involving a controlled substance under AS 11.71.140 - 11.71.190, the attorney general shall, in writing, notify the commissioner of health and social services of the filing.

(c) Upon receiving a notice from the attorney general under (b) of this section, the commissioner of health and social services shall immediately undertake a review of all unpaid claims or requests for reimbursements attributable to services claimed to have been provided by the person charged.

(d) In this section,

(1) "claims" has the meaning given in AS 47.05.290;

(2) "medical assistance provider" has the meaning given in AS 47.05.290;

(3) "medical purpose" means a purpose that is solely medical as opposed to any other purpose, that is reasonably necessary for treatment of a person's illness, injury, or physical or mental health, and that is provided by a practitioner while acting within the usual course of professional practice or research and in accordance with a standard of care generally recognized and accepted within the medical profession in the United States;

(4) "practitioner" has the meaning given in AS 11.71.900.

Sec. 17.30.090. Sale or purchase of certain listed chemicals. (a) A seller, retailer, or vendor may not sell for personal use and a person may not purchase for personal use ephedrine base, pseudoephedrine base, or phenylpropanolamine base, as those terms are used in P.L. 109-177, 120 Stat. 192, unless that sale or purchase complies with and meets the requirements of P.L. 109-177, 120 Stat. 192, with regard to amounts, identification required, storage, access and availability, and logbooks. A seller, retailer, or vendor shall maintain the logbook for the period required under P.L. 109-177, 120 Stat. 192, and shall allow law enforcement officers access to the logbook. Each seller, retailer, and vendor shall provide training to the seller's, retailer's, or vendor's employees and agents in the requirements of this section. The Department of Public Safety shall provide assistance and information to sellers, retailers, and vendors to meet the requirements of this section.

(b) A seller, retailer, or vendor may not sell to a person under 16 years of age and a person under 16 years of age may not purchase a product or substance identified in (a) of this section.

(c) Nothing in this section limits the authority of a seller, retailer, or vendor regulated by this section to report to a law enforcement agency or officer suspicious purchases of a chemical, product, or substance. A seller, retailer, or vendor is not liable in a civil action for release of information to a law enforcement agency concerning matters related to this section.

(d) A seller, retailer, or vendor does not violate this section if the seller, retailer, or vendor proves by a preponderance of the evidence that the seller, retailer, or vendor

(1) exercised the degree of care of a reasonable employer to ensure compliance with (a) - (c) of this section; and

(2) determined that the employees and agents of the seller, retailer, or vendor had been notified of the requirements of this section by

(A) securing each employee's or agent's written acknowledgment of notification of those requirements; or

(B) making another appropriate determination.

(e) A person who violates this section shall forfeit and pay to the state a civil penalty of not more than \$10,000 for each violation.

ARTICLE 2. ENFORCEMENT AND FORFEITURE.

Section

100. Powers of the department of Public Safety

110. Items subject to forfeiture

112. Proceedings resulting in forfeiture

114. Seizure and custody of property

116. Procedure for forfeiture action

118. Petition for release of seized items

120. Petition for sale of seized item

122. State disposal of forfeited property

124. Remittance of claimant

126. Forfeiture of controlled substances

Sec. 17.30.100. Powers of the Department of Public Safety. (a) The commissioner of public safety shall enforce this chapter and shall cooperate with other state and federal agencies in the discharge of their responsibilities pertaining to illicit traffic in controlled substances and in suppressing the abuse of controlled substances. Under this section, the powers of the commissioner of public safety include but are not limited to the following:

(1) arranging for the exchange of information among government officials concerning illicit traffic in and abuse of controlled substances;

(2) coordinating training programs pertaining to controlled substances at both local and state levels;

(3) cooperating with the Drug Enforcement Administration of the United States Department of Justice by establishing a centralized unit to accept, catalog, file, and collect statistics, including records of persons who have violated the provisions of this chapter or AS 11.71 in the state and making the information available for federal, state, and local law enforcement purposes; and

(4) instituting in the superior court, actions for injunctions against continued manufacture, distribution, dispensation, or research with a controlled substance in the state by a person who violates 21 U.S.C. 811—830 (Controlled Substances Act) or the regulations adopted under those sections.

(b) The commissioner of public safety may not furnish the name or identity of a patient or research subject whose identity could not be obtained under AS 17.30.155.

(c) The Department of Public Safety, in accordance with AS 37.07 (the Executive Budget Act), may apply for and accept money necessary to exchange information concerning narcotics trafficking between the states, or otherwise related to the enforcement of AS 11.71 or AS 11.73.

(d) The Department of Public Safety or a local law enforcement agency may accept from the United States Attorney General property, including money, that is forfeited under 21 U.S.C. 881 (the Controlled Substances Act). The Department of Public Safety and local law enforcement agencies shall, in accordance with 21 U.S.C. 881 (e) and regulations and policies adopted under that section, use property and the proceeds of property obtained under this subsection in the enforcement of this chapter, AS 11.71, and municipal ordinances substantially similar to this chapter and AS 11.71.

Sec. 17.30.110. Items subject to forfeiture. The following may be forfeited to the state:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;

(3) property which is used or intended for use as a container for property described in (1) or (2) of this section;

(4) a conveyance, including but not limited to aircraft, vehicles or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71; and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71.

Sec. 17.30.112. Proceedings resulting in forfeiture. (a) Property listing in AS 17.30.110 may be forfeited to the state either upon conviction of the defendant of a violation of this chapter or AS 11.71, or upon judgment of a court in a separate civil proceeding in rem. The court may order a forfeiture in the in rem pro proceeding if it finds that an item specified in AS 17.30.110 was used during or in aid of a violation of this chapter or AS 11.71.

(b) It is not a defense in an in rem proceeding brought under this section that a criminal proceeding has resulted in a conviction or conviction of a lesser offense for a violation of this chapter or AS 11.71.

(c) When forfeiting property under (a) of this section, a court may award to a municipal law enforcement agency that participated in the arrest or conviction of the defendant, the seizure of property, or the identification of property for seizure, (1) the property if the property is worth \$5,000 or less and is not money or some other thing that is divisible, (2) up to 75 percent of the property or the value of the property if the property is worth more than \$5,000 or is money or some other thing that is divisible. In determining the percentage a municipal law enforcement agency may receive under this subsection, the court shall consider the municipal law enforcement agency's total involvement in the case relative to the involvement of the state.

Sec. 17.30.114. Seizure and custody of property. (a) Property listed in AS 17.30.110 may be seized by a peace officer upon an order issued by a court having jurisdiction over the property upon under AS 17.30.110. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or a search under a valid search warrant;

(2) the property subject to seizure has been the subject of an earlier judgment in favor of the state in a criminal proceeding or civil proceeding in rem under this chapter or AS 11.71; or

(3) there is probable cause that the property was used, is being used, or is intended for use, in violation of this chapter or AS 11.71 and the property is easily movable; property seized under this paragraph may not be held for more than 48 hours without a court order obtained to continue its detention.

(b) Property taken or detained under (a) of this section shall be held in the custody of either the commissioner of public safety or a municipal law enforcement agency authorized by the commissioner of public safety to retain custody of property listed in AS 17.30.110 subject only to the orders and decrees of the court having jurisdiction over any forfeiture proceedings. If property is seized under this chapter, the commissioner of public safety or an authorized municipal law enforcement agency may

- (1) place the property under seal;
- (2) remove the property to a place designated by the court; or
- (3) take custody of the property and remove it to an appropriate location for disposition in accordance with law; or
- (4) with court approval, transfer the property to another state or federal law enforcement agency for forfeiture proceedings by that agency; the court having jurisdiction shall grant the approval under this paragraph if the property

(A) will be retained within the jurisdiction of the court by the agency to which the property is being transferred; or

(B) is

- (i) not needed as evidence; or
- (ii) needed as evidence, and the property is fungible or the property's evidentiary value can otherwise be preserved without retaining the property within the jurisdiction of the court.

(c) Within 10 days after a seizure under AS 17.30.110-17.30.126, the commissioner of public safety shall make an inventory of any property seized, including controlled substances, and shall appraise the value of any items seized other than controlled substances.

Sec. 17.30.116. Procedure for forfeiture action. (a) Within 20 days after a seizure under AS 17.30.110-17.30.126, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at \$500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

(b) Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

(c) Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges against the claimant under this chapter or AS 11.71.

Sec. 17.30.118. Petition for release of seized items. (a) A claimant under AS 17.30.116(b) may at any time petition for release of a seized item as follows:

- (1) to a court in which a warrant for seizure has been issued;
- (2) to a court in which a criminal or civil action alleging forfeiture of the item has been filed; or
- (3) before an action is filed, or if no seizure warrant was issued, to a court, in the judicial district in which the violation took place.

(b) An item may not be released by the court under (a) of this section unless the claimant gives adequate assurance that the item will remain subject to the court's jurisdiction and

- (1) the court finds that the release is in the best interests of the state; or
- (2) the claimant provides a bond or other valid and equivalent security equal to twice the assessed value of the item.

Sec. 17.30.120. Petition for sale of seized item. A claimant may petition the court for sale of an item before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interests of the state and the preservation and maintenance of the item seized. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action.

Sec. 17.30.122. State disposal of forfeited property. Property forfeited under AS 17.30.110—17.30.126 other than controlled substances and firearms shall be disposed of by the commissioner of administration in accordance with applicable law. Firearms shall be disposed of as provided in AS 18.65.340. As to property other than firearms or controlled substances, the commissioner of administration may

- (1) destroy property harmful to the public;
- (2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

- (3) take custody of the property and authorize its use in the enforcement of this chapter or AS 11.71, or transfer it to another agency of the state or a political subdivision of the state for a use in furtherance of the administration of justice;
- (4) take custody of the property and remove it for disposition in accordance with law;
- (5) forward it to the Drug Enforcement Administration of the United States Department of Justice for disposition; or
- (6) transfer ownership of an aircraft to the Alaska Wing, Civil Air Patrol.

Sec. 17.30.124. Remittance to claimant. (a) Upon a showing that a claimant is entitled to remittance under AS 17.30.110-17.30.126, the court shall order that

- (1) if the claimant is entitled to the item, it shall be delivered to the claimant immediately;
- (2) if the claimant is entitled to remittance of some value less than the total value of the item, the claimant is entitled, at the claimant's choice, to receive either the value of the claimant's interest or, upon receipt of payment of the difference in value by the claimant, the entire item.

(b) An offender who used an item subject to remission in violation of this chapter or AS 11.71 shall be assessed a fine which may not be less than the cost of any lien payment or remittance made by the state plus the reasonable costs of the seizure.

Sec. 17.30.126. Forfeiture of controlled substances. (a) A controlled substance manufactured, possessed, transferred, sold, or offered for sale in violation of this chapter or AS 11.71 is contraband and must be seized and summarily forfeited to the state. The commissioner of public safety or the commissioner's designee, including a municipal law enforcement agency authorized under AS 17.30.114(b) of this section to retain custody of controlled substances, is responsible for the disposal of controlled substances which have been forfeited. The controlled substances shall be disposed of in accordance with procedures and requirements prescribed by the commissioner.

(b) Plants from which controlled substances may be derived and which have been planted or cultivated in violation of this chapter or AS 11.71, or which are grown in the wild, may be seized and summarily forfeited to the state.

ARTICLE 3. EDUCATION AND RESEARCH.

Section

140. Education and research

Sec. 17.30.140. Education and research. (a) The commissioner of health and social services shall provide for educational programs designed to prevent and deter the abuse of controlled substances. In connection with these programs, the commissioner may

- (1) assist the regulated industry and interested groups and organizations in contributing to the reduction of abuse of controlled substances;
- (2) promote better recognition of the problems surrounding abuse of controlled substances within the regulated industry and among interested groups and organizations;
- (3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;
- (4) evaluate procedures, projects and techniques conducted or proposed as part of educational programs on abuse of controlled substances;
- (5) disseminate the results of research on abuse of controlled substances to promote a better public understanding of the problems which exist and their solutions; and
- (6) with the cooperation of the Department of Law, assist in the education and training of state and local law enforcement officials in their efforts to prevent illicit traffic in and abuse of controlled substances.

(b) The commissioner of health and social services shall encourage research on controlled substances and may

- (1) establish methods to assess the effects of controlled substances and identify and characterize those with potential for abuse;
- (2) make studies and undertake research to
 - (A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;
 - (B) determine patterns of abuse of controlled substances and their social effects; and
 - (C) improve methods for preventing, predicting, and understanding the abuse of controlled substances;
- (3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for conducting research, demonstrations, or special projects which bear directly on abuse of controlled substances and for related research and educational activities.

**ARTICLE 4.
INFORMATION.**

Section

150. Reliance on Drug Enforcement Administration

155. Confidentiality of certain information

Sec. 17.30.150. Reliance on Drug Enforcement Administration. Results, information, and evidence received from the Drug Enforcement Administration of the United States Department of Justice relating to the enforcement functions of this chapter, including results of inspections conducted by it, may be relied on and acted on by the Department of Public Safety in the exercise of its enforcement functions under this chapter.

Sec. 17.30.155. Confidentiality of certain information. A practitioner engaged in medical practice or research may not disclose the name or identity of a patient or research subject that the practitioner is required to keep confidential unless ordered by a court to disclose it within the context of a criminal investigation or proceeding.

**ARTICLE 5.
CONTROLLED SUBSTANCE PRESCRIPTION DATABASE.**

Section

200. Controlled substance prescription database

Sec. 17.30.200. Controlled substance prescription database. (a) The controlled substance prescription database is established in the Board of Pharmacy. The purpose of the database is to contain data as described in this section regarding every prescription for a schedule II, III, or IV controlled substance under federal law dispensed in the state to a person other than under the circumstances described in (u) of this section.

(b) The pharmacist-in-charge of each licensed or registered pharmacy, regarding each schedule II, III, or IV controlled substance under federal law dispensed by a pharmacist under the supervision of the pharmacist-in-charge, and each practitioner who directly dispenses a schedule II, III, or IV controlled substance under federal law other than those dispensed or administered under the circumstances described in (u) of this section, shall submit to the board, by a procedure and in a format established by the board, the following information for inclusion in the database on at least a daily basis:

(1) the name of the prescribing practitioner and the practitioner's federal Drug Enforcement Administration registration number or other appropriate identifier;

(2) the date of the prescription;

(3) the date the prescription was filled and the method of payment; this paragraph does not authorize the board to include individual credit card or other account numbers in the database;

(4) the name, address, and date of birth of the person for whom the prescription was written;

(5) the name and national drug code of the controlled substance;

(6) the quantity and strength of the controlled substance dispensed;

(7) the name of the drug outlet dispensing the controlled substance; and

(8) the name of the pharmacist or practitioner dispensing the controlled substance and other appropriate identifying information.

(c) The board shall maintain the database in an electronic file or by other means established by the board to facilitate use of the database for identification of

(1) prescribing practices and patterns of prescribing and dispensing controlled substances;

(2) practitioners who prescribe controlled substances in an unprofessional or unlawful manner;

(3) individuals who receive prescriptions for controlled substances from licensed practitioners and who subsequently obtain dispensed controlled substances from a drug outlet in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance; and

(4) individuals who present forged or otherwise false or altered prescriptions for controlled substances to a pharmacy.

(d) The database and the information contained within the database are confidential, are not public records, are not subject to public disclosure, and may not be shared with the federal government. The board shall undertake to ensure the security and confidentiality of the database and the information contained within the database. The board may allow access to the database only to the following persons, and in accordance with the limitations provided and regulations of the board:

(1) personnel of the board regarding inquiries concerning licensees or registrants of the board or personnel of another board or agency concerning a practitioner under a search warrant, subpoena, or order issued by an administrative law judge or a court;

(2) authorized board personnel or contractors as required for operational and review purposes;

(3) a licensed practitioner having authority to prescribe controlled substances or an agent or employee of the practitioner whom the practitioner has authorized to access the database on the practitioner's behalf, to the extent the

information relates specifically to a current patient of the practitioner to whom the practitioner is prescribing or considering prescribing a controlled substance; the agent or employee must be licensed or registered under AS 08;

(4) a licensed or registered pharmacist having authority to dispense controlled substances or an agent or employee of the pharmacist whom the pharmacist has authorized to access the database on the pharmacist's behalf, to the extent the information relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing a controlled substance; the agent or employee must be licensed or registered under AS 08;

(5) federal, state, and local law enforcement authorities may receive printouts of information contained in the database under a search warrant or order issued by a court establishing probable cause for the access and use of the information;

(6) an individual who is the recipient of a controlled substance prescription entered into the database may receive information contained in the database concerning the individual on providing evidence satisfactory to the board that the individual requesting the information is in fact the person about whom the data entry was made and on payment of a fee set by the board under AS 37.10.050 that does not exceed \$10;

(7) a licensed pharmacist employed by the Department of Health and Social Services who is responsible for administering prescription drug coverage for the medical assistance program under AS 47.07, to the extent that the information relates specifically to prescription drug coverage under the program;

(8) a licensed pharmacist, licensed practitioner, or authorized employee of the Department of Health and Social Services responsible for utilization review of prescription drugs for the medical assistance program under AS 47.07, to the extent that the information relates specifically to utilization review of prescription drugs provided to recipients of medical assistance;

(9) the state medical examiner, to the extent that the information relates specifically to investigating the cause and manner of a person's death;

(10) an authorized employee of the Department of Health and Social Services may receive information from the database that does not disclose the identity of a patient, prescriber, dispenser, or dispenser location, for the purpose of identifying and monitoring public health issues in the state; however, the information provided under this paragraph may include the region of the state in which a patient, prescriber, and dispenser are located and the specialty of the prescriber; and

(11) a practitioner, pharmacist, or clinical staff employed by an Alaska tribal health organization, including commissioned corps officers of the United States Public Health Service employed under a memorandum of agreement; in this paragraph, "Alaska tribal health organization" has the meaning given to "tribal health program" in 25 U.S.C. 1603.

(e) The failure of a pharmacist-in-charge or a pharmacist to register or submit information to the database as required under this section is grounds for the board to take disciplinary action against the license or registration of the pharmacy or pharmacist. The failure of a practitioner to register or review the database as required under this section is grounds for the practitioner's licensing board to take disciplinary action against the practitioner.

(f) The board may enter into agreements with (1) dispensers in this state that are not regulated by the state to submit information to and access information in the database, and (2) practitioners in this state to access information in the database, subject to this section and the regulations of the board. The board shall prohibit a dispenser that is not regulated by the state from accessing the database if the dispenser has accessed information in the database contrary to the limitations of this section, discloses information in the database contrary to the limitations of this section, or allows unauthorized persons access to the database.

(g) The board shall promptly notify the president of the senate and the speaker of the house of representatives if, at any time after September 7, 2008, the federal government fails to pay all or part of the costs of the controlled substance prescription database.

(h) An individual who has submitted information to the database in accordance with this section may not be held civilly liable for having submitted the information. Dispensers or practitioners may not be held civilly liable for damages for accessing or failing to access the information in the database.

(i) A person who has reason to believe that prescription information from the database has been illegally or improperly accessed shall notify an appropriate law enforcement agency.

(j) The board shall notify any person whose prescription information from the database is illegally or improperly accessed.

(k) In the regulations adopted under this section, the board shall provide

(1) that prescription information in the database be purged from the database after two years have elapsed from the date the prescription was dispensed;

(2) a method for an individual to challenge information in the database about the individual that the person believes is incorrect or was incorrectly entered by a dispenser;

(3) a procedure and time frame for registration with the database;

(4) that a practitioner review the information in the database to check a patient's prescription records before dispensing, prescribing, or administering a schedule II or III controlled substance under federal law to the patient; the regulations must provide that a practitioner is not required to review the information in the database before dispensing, prescribing, or administering

(A) a controlled substance to a person who is receiving treatment

(i) in an inpatient setting;

(ii) at the scene of an emergency or in an ambulance; in this sub-subparagraph, "ambulance" has the meaning given in AS 18.08.200;

- (iii) in an emergency room;
 - (iv) immediately before, during, or within the first 48 hours after surgery or a medical procedure;
 - (v) in a hospice or nursing home that has an in-house pharmacy; or
- (B) a nonrefillable prescription of a controlled substance in a quantity intended to last for not more than three days.
- (l) A person
- (1) with authority to access the database under (d) of this section who knowingly
 - (A) accesses information in the database beyond the scope of the person's authority commits a class A misdemeanor;
 - (B) accesses information in the database and recklessly discloses that information to a person not entitled to access or to receive the information commits a class C felony;
 - (C) allows another person who is not authorized to access the database to access the database commits a class C felony;
 - (2) without authority to access the database under (d) of this section who knowingly accesses the database or knowingly receives information that the person is not authorized to receive under (d) of this section from another person commits a class C felony.
- (m) To assist in fulfilling the program responsibilities, performance measures shall be reported to the legislature annually. Performance measures
- (1) may include outcomes detailed in the federal prescription drug monitoring program grant regarding efforts to
 - (A) reduce the rate of inappropriate use of prescription drugs by reporting education efforts conducted by the Board of Pharmacy;
 - (B) reduce the quantity of pharmaceutical controlled substances obtained by individuals attempting to engage in fraud and deceit;
 - (C) increase coordination among prescription drug monitoring program partners;
 - (D) involve stakeholders in the planning process;
 - (2) shall include information related to the
 - (A) security of the database; and
 - (B) reductions, if any, in the inappropriate use or prescription of controlled substances resulting from the use of the database.
- (n) In this section,
- (1) "board" means the Board of Pharmacy;
 - (2) "database" means the controlled substance prescription database established in this section;
 - (3) "knowingly" has the meaning given in AS 11.81.900;
 - (4) "pharmacist-in-charge" has the meaning given in AS 08.80.480;
 - (5) "opioid" includes the opium and opiate substances and opium and opiate derivatives listed in AS 11.71.140 and 11.71.160.
- (o) A pharmacist who dispenses or a practitioner who prescribes, administers, or directly dispenses a schedule II, III, or IV controlled substance under federal law shall register with the database by a procedure and in a format established by the board.
- (p) The board shall promptly notify the State Medical Board, the Board of Nursing, the Board of Dental Examiners, the Board of Examiners in Optometry, and the Board of Veterinary Examiners when a practitioner registers with the database under (o) of this section.
- (q) The board is authorized to provide unsolicited notification to a pharmacist, practitioner's licensing board, or practitioner if a patient has received one or more prescriptions for controlled substances in quantities or with a frequency inconsistent with generally recognized standards of safe practice. An unsolicited notification to a practitioner's licensing board under this section
- (1) must be provided to the practitioner;
 - (2) is confidential;
 - (3) may not disclose information that is confidential under this section;
 - (4) may be in a summary form sufficient to provide notice of the basis for the unsolicited notification.
- (r) The board shall update the database on at least a daily basis with the information submitted to the board under (b) of this section.
- (s) The Department of Commerce, Community, and Economic Development shall
- (1) assist the board and provide necessary staff and equipment to implement this section; and
 - (2) establish fees for registration with the database by a pharmacist or practitioner required to register under (o) of this section so that the total amount of fees collected by the department equals the total operational costs of the database minus all federal funds acquired for the operational costs of the database; in setting the fee levels, the department shall
 - (A) set the fees for registration with the database so that the fees are the same for all practitioners and pharmacists required to register; and
 - (B) consult with the board to establish the fees under this paragraph.
- (t) Notwithstanding (q) of this section, the board may issue to a practitioner periodic unsolicited reports that detail and compare the practitioner's opioid prescribing practice with other practitioners of the same occupation and similar specialty. A report issued under this subsection is confidential and the board shall issue the report only to a

practitioner. The board may adopt regulations to implement this subsection. The regulations may address the types of controlled substances to be included in an unsolicited report, the quantities dispensed, the medication strength, and other factors determined by the board.

(u) A practitioner or a pharmacist is not required to comply with the requirements of (a) and (b) of this section if a controlled substance is

- (1) administered to a patient at
 - (A) a health care facility; or
 - (B) a correctional facility;
- (2) dispensed to a patient for an outpatient supply of 24 hours or less at a hospital
 - (A) inpatient pharmacy; or
 - (B) emergency department.

ARTICLE 6. GENERAL PROVISIONS.

Section

900. Definitions

Sec. 17.30.900. Definitions. (a) Unless the context clearly requires otherwise, the definitions set out in AS 11.71.900 apply to this chapter.

(b) [Repealed, 22 ch 146 SLA 1986.]

FACILITY STANDARDS FOR PHARMACIES
November 2016

General Requirements.

- (a) Each pharmacy is of sufficient size to allow for the safe and proper storage of prescription drugs and for the safe and proper compounding and/or preparation of prescription drug orders.
- (b) There is a minimum of three linear feet by a minimum of 18 inches in depth of counter working space for each pharmacist or intern compounding or filling prescriptions at the same time.
- (c) The prescription department and all areas where drugs are stored are well lighted, well ventilated, dry, and maintained in a clean and orderly condition. Walls, floors, ceilings, and windows are clean and in general good repair and order.
- (d) Each pharmacy has a sink with hot and cold running water within the pharmacy and maintained in a sanitary condition.
- (e) There are refrigeration facilities with a thermometer in the prescription department for the proper storage of drugs requiring refrigeration. Temperatures in the refrigerator are maintained within United States Pharmacopeia standards.
- (f) The temperature of the pharmacy is maintained within a range compatible with the proper storage of drugs.

Equipment and Supplies.

- (a) All pharmacies have in their possession the equipment and supplies necessary to compound, dispense, label, administer and distribute drugs and devices. The equipment is in good repair and is available in sufficient quantity to meet the needs of the practice of pharmacy conducted therein.
- (b) All equipment is kept in a clean and orderly manner. Equipment used in the compounding or preparation of prescription drug orders (counting, weighing, measuring, mixing, stirring, and molding equipment) is clean and in good repair.

Library. A reference library is maintained which includes the following:

- (1) A current copy (hard-copy or electronic media access) of the Alaska Pharmacy Statutes and Regulations.
- (2) At least one current or updated reference (hard-copy or electronic media access) from each of the following categories:
 - (A) Patient information – examples are;
 - (i) USP Dispensing Information; or
 - (ii) Patient Drug Facts; or
 - (iii) reference text or information leaflets which provide patient information.
 - (B) General information – examples are;
 - (i) Facts and Comparisons; or
 - (ii) USP Dispensing Information, Volume I (Drug Information for the Healthcare Provider);
or
 - (iii) Remington's Pharmaceutical Sciences.
 - (C) Clinical Information – examples are;
 - (i) AHFS Drug Information; or
 - (ii) Micromedex; or
 - (iii) Clinical Pharmacology; or

(iv) reference material pertinent to the practice setting.

(3) The telephone number of the nearest poison control center is readily available.

This pamphlet is prepared by the Alaska Board of Pharmacy to establish guidelines on facilities, reference materials, equipment, supplies and other matters. Professional conduct by a licensee includes adherence to these guidelines. See 12 AAC 52.400.

STERILE PHARMACEUTICALS
February 2008

Scope and Purpose.

The purpose of this pamphlet is to provide standards for the preparation, labeling, and distribution of sterile products by pharmacies, pursuant to or in anticipation of a prescription drug order. These standards are intended to apply to all sterile products, notwithstanding the location of the patient (eg. home, hospital, extended care facility, hospice, practitioner's office).

Definitions.

- (a) "Biological Safety Cabinet" – a containment unit suitable for the preparation of low to moderate risk agents where there is a need for protection of the product, personnel and environment, according to National Sanitation Foundation (NSF) Standard 49.
- (b) "Class 100 Environment" – an atmospheric environment which contains less than 100 particles 0.5 microns in diameter per cubic foot of air, according to Federal Standard 209D.
- (c) "Cytotoxic" – a pharmaceutical that has the capability of killing living cells.
- (d) "Parenteral" – a sterile preparation of drugs for injection through one or more layers of the skin.
- (e) "Sterile Pharmaceutical" – dosage form free from living micro-organisms (aseptic).

Policy and Procedure Manual.

- (a) A policy and procedure manual is prepared and maintained for the compounding, dispensing, and delivery of sterile pharmaceutical drug orders. The manual is reviewed and revised as necessary on an annual basis by the pharmacist-in-charge and is available for inspection at the pharmacy.
- (b) The manual includes policies and procedures, as applicable, for:
 - (1) Clinical services;
 - (2) Sterile product handling, preparation, dating, storage and disposal;
 - (3) Major and minor spills of cytotoxic agents;
 - (4) Disposal of unused supplies and medications;
 - (5) Drug destruction and returns;
 - (6) Drug dispensing;
 - (7) Drug labeling;
 - (8) Duties and qualifications for professional and nonprofessional staff;
 - (9) Equipment use and maintenance;
 - (10) Handling of infectious waste pertaining to drug administration;
 - (11) Infusion devices and drug delivery systems;
 - (12) Training and orientation of professional and non-professional staff commensurate with the services provided;
 - (13) Dispensing of investigational medications;
 - (14) Quality control and quality assurance;
 - (15) Recall procedures;
 - (16) Infection control;
 - (17) Suspected contamination of sterile products;
 - (18) Orientation of employees to sterile technique;
 - (19) Sanitation;
 - (20) Security; and
 - (21) Transportation.

Physical Requirements.

- (a) The pharmacy designates an area for the preparation of sterile products that is functionally separate from areas for the preparation of non-sterile products and is constructed to minimize traffic and airflow disturbances. It is used only for the preparation of these specialty products. It is of sufficient size to accommodate a laminar airflow hood and to provide for the proper storage of drugs and supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation, and security.

- (b) The pharmacy preparing parenteral products has:
- (1) Appropriate environmental control devices capable of maintaining at least a Class 100 environment condition in the workspace where critical objects are exposed and critical activities are performed; furthermore, these devices are capable of maintaining Class 100 environments during normal activity;
 - (2) When cytotoxic drug products are prepared, appropriate environmental control also includes appropriate biological safety cabinets;
 - (3) Sink with hot and cold running water which is convenient to the compounding area for the purpose of hand washing prior to compounding;
 - (4) The designated area shall have hard cleanable surfaces, walls, floors and ceilings;
 - (5) Appropriate disposal containers for used needles, syringes, etc. and if applicable, for cytotoxic waste from the preparation of chemotherapy agents and infectious wastes from patient's homes;
 - (6) Refrigerator/freezer with thermometer;
 - (7) Temperature controlled delivery container, if appropriate;
 - (8) Infusion devices, if appropriate;
 - (9) Supplies adequate to maintain an environment suitable for the aseptic preparation of sterile products.
- (c) Laminar flow hood certification (or clean room certification, if applicable) are conducted at least every six months by an independent contractor according to Federal Standard 209B or National Sanitation Foundation 49 for operational efficiency. These reports are maintained for at least two years. In addition, prefilters are replaced on a regular basis and the replacement date documented.
- (d) The pharmacy has current reference materials related to sterile products. These reference materials will contain information on stability, incompatibilities, preparation guidelines, and the handling of chemotherapy drug products.

Personnel.

- (a) All personnel participating in the preparation and/or dispensing of compounded sterile pharmaceuticals are trained in this specialized function, including the principles of aseptic technique. All duties and responsibilities of personnel are consistent with their training and experience.
- (b) Pharmacies providing parenteral products to non-hospitalized patients have a pharmacist accessible twenty-four hours per day to respond to patient's and other health professional's questions and needs.

Drug Distribution and Control.

- (a) In addition to labeling required for all dispensed prescription drug orders, the labeled container of a sterile pharmaceutical bears the expiration date of the preparation based upon published data.
- (b) Delivery Service. The pharmacist-in-charge assures the environmental control of all products shipped. Therefore, any compounded sterile pharmaceutical is shipped or delivered to a patient in appropriate temperature controlled (as defined by United States Pharmacopeia Standards) delivery containers and stored appropriately in the patient's home or outpatient location.
- (c) Disposal of Infectious/Hazardous Waste. The pharmacist-in-charge is responsible for assuring there is a system for the disposal of cytotoxic waste and infectious waste in a manner so as not to endanger the public health.
- (d) Emergency Kit. When sterile pharmaceuticals are provided to home care patients, the pharmacy may supply the licensed nurse with emergency drugs, if the prescribing practitioner has authorized the use of these drugs by a protocol for use in an emergency situation (e.g. anaphylactic shock).

Cytotoxic Drugs.

The following additional requirements are necessary for those pharmacies that prepare cytotoxic drugs to assure the protection of the personnel involved:

- (a) All cytotoxic drugs are compounded within a vertical flow, Class II, Biological Safety Cabinet. Policy and procedures are developed for the cleaning of the laminar airflow hood between compounding cytotoxic drugs and other parenteral products, if applicable.
- (b) Protective apparel is worn by personnel compounding cytotoxic drugs. This includes disposable gloves and gowns with tight cuffs.
- (c) Appropriate safety and containment techniques for compounding cytotoxic drugs are used in conjunction with the aseptic techniques required for preparing sterile products.
- (d) Disposal of cytotoxic waste complies with all applicable local, state, and federal requirements.
- (e) Written procedures for handling both major and minor spills of cytotoxic agents are developed and included in the policy and procedure manual.
- (f) Prepared doses of cytotoxic drugs are dispensed, labeled with proper precautions, and shipped in a manner to minimize the risk of accidental rupture of the primary container.

Patient Training.

If appropriate, the Pharmacist demonstrates or documents the patient's training and competency in managing the type of therapy provided by the Pharmacist to the patient in the home environment. A pharmacist is involved in the patient training process in any area that relates to drug compounding, labeling, storage, stability, or incompatibility. The Pharmacist is responsible for seeing the patient's competency in the above areas is reassessed on an ongoing basis.

Quality Control and Quality Assurance Procedures.

- (a) Quality Control. There is a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities. Procedures are in place to assure the pharmacy is capable of consistently preparing pharmaceuticals which are sterile and stable. Quality control procedures include, but are not limited to, the following:
 - (1) recall procedures;
 - (2) storage and dating;
 - (3) documentation of appropriate functioning of refrigerator, freezer, and other equipment;
 - (4) documentation of aseptic environmental control device certification and the regular replacement of prefilters;
 - (5) a process to evaluate and confirm the quality of the prepared pharmaceutical product; and
 - (6) if bulk compounding of parenteral solutions is performed utilizing non-sterile chemicals, extensive end product testing is documented prior to the release of the product from quarantine. This process includes appropriate tests for particulate matter and pyrogens.
- (b) Quality Assurance.
 - (1) There is a documented, ongoing quality assurance program for monitoring and evaluating personnel performance and patient outcomes to assure efficient drug delivery, patient safety, and positive patient outcomes.
 - (2) There is documentation of quality assurance audits at regular, planned intervals which may include infection control, sterile technique, delivery systems/times, order transcription accuracy, drug administration systems, adverse drug reactions, and drug therapy appropriateness.
 - (3) A plan for corrective action of problems identified by quality assurance audits is developed which includes procedures for the documentation of identified problems and action taken.

- (4) A periodic evaluation of the effectiveness of the quality assurance activities is completed and documented.

This pamphlet is prepared by the Alaska Board of Pharmacy to establish guidelines for a pharmacy or pharmacist that prepares or dispenses sterile pharmaceuticals. Professional conduct by a licensee includes adherence to these guidelines. See 12 AAC 52.430.

GOOD COMPOUNDING PRACTICES
February 2008

- (a) A pharmacist may compound drugs in limited quantities before receiving a valid prescription drug order if the pharmacist has a historical basis of valid prescription drug orders generated solely within an established relationship between the pharmacist, a patient, and a prescribing practitioner for the amount of drugs compounded. Compounding drugs in an amount above that for which there is a historical basis is considered manufacturing.
- (b) Compounding includes the preparation
 - (1) according to a prescription drug order of drugs or devices that are not commercially available;
 - (2) of commercially available products from bulk when the prescribing practitioner has prescribed the compounded product on a per prescription basis and the patient has been made aware that the compounded product will be prepared by the pharmacist.
- (c) When a compounded product is to be substituted for a commercially available product, both the patient and the prescribing practitioner must authorize the use of the compounded product. The pharmacist shall document these authorizations on the prescription drug order or in the computerized patient medication record. The prescribing practitioner's authorization is in addition to signing to permit substitution on a prescription drug order or advising verbally that substitution is permitted. The reconstitution of commercially available products according to the manufacturer's guidelines is permissible without notice to the prescribing practitioner.
- (d) A pharmacist may not offer compounded drug products to prescribing practitioners, pharmacists, or pharmacies for resale except in the course of professional practice for a prescribing practitioner to administer to an individual patient. The distribution of inordinate amounts of compounded products without a relationship between the pharmacist and the prescribing practitioner and patient is considered manufacturing.
- (e) A pharmacist may receive, store, and use drug substances for compounding prescriptions that meet official compendia requirements. A pharmacist shall use the pharmacist's professional judgment to receive, store, and use drug substances for compounding prescriptions not found in official compendia.

PERSONNEL

A pharmacist engaging in compounding shall maintain proficiency through current awareness and training. Continuing education should include training in the art and science of compounding and the rules and regulations of compounding.

COMPOUNDING FACILITIES

- (a) A pharmacy engaging in compounding shall have a specifically designated and adequate area for the orderly compounding of prescriptions that is maintained in a good state of repair and for the placement of materials and equipment. There is a minimum of three linear feet by a minimum of 18 inches in depth of counter working space for each pharmacist or intern compounding or filling prescriptions at the same time.
- (b) Bulk medications and other chemicals or materials used in the compounding of medications must be stored in adequately labeled containers in a clean, dry, and temperature controlled area or, if required, under proper refrigeration.
- (c) Adequate lighting and ventilation must be provided in all drug compounding areas. Potable water must be supplied under continuous positive pressure in a plumbing system free of defects that could contribute contamination to any compounded drug product. Adequate washing facilities, easily accessible to the compounding area of the pharmacy must be provided. The facilities must include hot and cold water, soap or detergent, and air-driers or single use towels.
- (d) The area used for the compounding of drugs must be maintained in a clean and sanitary condition. It must be free of infestation by insects, rodents, and other vermin. Trash must be held and disposed of in a timely and sanitary manner. Sewage and other refuse must be disposed of in a safe and sanitary manner.
- (e) If drug products with special precautions for contamination, such as penicillin, are involved in a compounding procedure, appropriate measures, including either the dedication of equipment or meticulous

cleaning of contaminated equipment prior to its use for the preparation of other drugs, must be used in order to prevent cross-contamination.

RECORDS AND REPORTS

- (a) A pharmacist shall keep records of all compounded products for two years. The records must be readily available for authorized inspection at the pharmacy.
- (b) A pharmacist shall ensure that there are formulas maintained electronically or manually. A formula must include ingredients, amounts, methodology and equipment, if needed, and special information regarding sterile compounding.
- (c) A pharmacy engaging in compounding must have written procedures for the compounding of drugs to assure that the finished products have the identity, strength, quality, and purity they are represented to possess. The procedures must include a listing of the components, their amounts in weight or volume, the order of component mixing, and a description of the compounding process. The procedures must list all equipment and utensils and the container or closure system relevant to the sterility and stability of the intended use of the drug. The procedures must be followed in the execution of the drug compounding procedure.
- (d) A pharmacist shall accurately weigh, measure, or subdivide as appropriate the components for drug product compounding. The compounding pharmacist shall check these operations at each stage of the compounding process to ensure that each weight or measure is correct as stated in the written compounding procedures. If a component is transferred from the original container to another container, the new container must be identified with the component name and the weight or measure.
- (e) To assure the reasonable uniformity and integrity of compounded drug products, written procedures must be established and followed that describe the tests or examinations to be conducted on the product compounded. The control procedures must be established to monitor the output and to validate the performance of those compounding processes that include the following when appropriate:
 - (1) capsule weight variation;
 - (2) adequacy of mixing to assure uniformity and homogeneity;
 - (3) clarity, completeness, or pH of solutions;
- (f) A pharmacy engaging in compounding shall establish and follow appropriate written procedures designed to prevent microbiological contamination of compounded drug products purporting to be sterile. The procedures must include validation of any sterilization process.
- (g) For the purpose of compounding in quantities larger than required for immediate dispensing by a prescriber or for future dispensing upon prescription, a pharmacy shall maintain records that include
 - (1) the date of preparation;
 - (2) the lot numbers – the lot numbers may be the manufacturer’s lot numbers or new numbers assigned by the pharmacy. If a lot number is assigned by the pharmacy, the pharmacy shall record the original manufacturer’s lot numbers and expiration dates, if known. If the original manufacturer’s lot numbers and expiration dates are not known, the pharmacy shall record the source and acquisition date of the components;
 - (3) the expiration date of the finished product. This date may not exceed 180 days or the shortest expiration date of any component in the finished product unless a longer date is supported by stability studies in the same type of packaging as furnished to the prescriber or to be stored in until dispensing. Shorter dating than set forth in this subsection may be used if it is deemed appropriate in the professional judgment of the responsible pharmacist;
 - (4) the signature or initials of the pharmacist performing the compounding;
 - (5) initials of the person preparing each process;
 - (6) initials of the pharmacist supervising each process;
 - (7) a formula for the compounded product maintained in a readily retrievable form;

- (8) the name of the manufacturer of the raw materials;
 - (9) the quantity in units of finished products or grams of raw materials; and
 - (10) the package size and the number of units prepared.
- (h) “Component” means any ingredient intended for use in the compounding of a drug product, including those that may not appear in the product.

This pamphlet is prepared by the Alaska Board of Pharmacy to establish guidelines for a pharmacy or pharmacist on compounding practices. Professional conduct by a licensee includes adherence to these guidelines.
See 12 AAC 52.440.

M.E.L. Task
Application and
Renewal Requirements

Traci Gilmour

Licensed Massage Establishment by State

Licensed Massage Establishment

New Business or Renewal

Florida

Requirements:

For Licensure as a Massage Establishment, the requirements are as follows and can be found in Section 480.043, F.S.

1. Must submit to the department an application, upon forms provided by the department, accompanied by any information requested by the department and an application fee.
2. Upon receiving the application, the department may cause an investigation to be made of the proposed massage establishment.

Please note: The owner(s) or corporation(s) are/is required to maintain property damage and bodily injury liability insurance coverage on the massage establishment.

- Proof of insurance must list the exact business name, address and owner(s) of the establishment as listed on the application.
- Only the licensed massage therapist who is the owner of the establishment may use insurance from a professional association to satisfy this requirement for establishment licensure.
- For more information regarding types of insurance please contact a licensed insurance agent directly.

Click here for a [Sample Inspection Form](#) used by DOH inspectors.

Attestation for Business Assets

If the applicant has more than \$250,000 dollars of business assets in this state, please submit a formal opinion letter from a Certified Public Accountant (CPA) duly licensed in this state affirming the corporation had more than \$250,000 of business assets in this state for the previous tax year. In lieu of submitting a formal opinion letter from a CPA, the applicant may submit its Florida Corporate Income/Franchise and Emergency Excise Tax Return (Form F-1120, Effective 01/09) from the previous tax year.

Articles of Incorporation

If the proposed massage establishment is owned by a corporation, applicants are required to submit Articles of Incorporation issued by the Secretary of State's Office.

Background Screening

Applicants with Criminal History

Applicants with Disciplinary History

Applicants with Health History

Health Care Fraud; Disqualification for License, Certificate, or Registration

Process

1. Submit application with the appropriate fees to the board office.
2. Complete the Livescan screening process.
 - a. All owner(s)/officer(s) must complete the Livescan screening process unless the proposed establishment qualifies for exemption. See application for additional information.

Once all an application has been received it will be reviewed by Board staff. It may be necessary for Board staff to request additional information. Once all requirements for licensure are met, Board staff will flag the proposed establishment for inspection.

Once Board staff receives a passing inspection result a license will be issued and should be received in the mail within 7-10 working days.

Fees

Application Fee – **\$150.00** (non-refundable)

Licensure Fee – **\$100.00**

Unlicensed Activity Fee – **\$5.00**

TOTAL FEE: \$255.00

Make cashier's check or money order payable to "Department of Health."

Individual Rules for Establishments

64B7-26.010 Sexual Activity Prohibited.

- (1) Sexual activity by any person or persons in any massage establishment is absolutely prohibited.
- (2) 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.
- (3) No licensed massage therapist shall use the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.
- (4) As used in this rule, "sexual activity" means any direct or indirect physical contact 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 includes sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse. For purposes of this subsection, 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 and is not dependent on whether penetration, orgasm, or ejaculation has occurred. Nothing herein shall be interpreted to prohibit a licensed massage therapist, duly qualified under Rule 64B7-31.001, F.A.C, from practicing colonic irrigation.

Rulemaking Authority 480.035(7), 480.043(2) FS. Law Implemented 480.043(2), 480.046(1)(h) FS. History—New 5-31-92, Formerly 21L-26.010, 61G11-26.010.

64B7-26.004 Inspection Upon Application for License.

Upon receipt of an application for a massage establishment license, employees of the Department shall cause an inspection to be made of the site. Such inspection shall be to confirm that the site is to be utilized for “massage” as defined by Section 480.033(4), F.S., and that the criteria enunciated in Rule 64B7-26.003, F.A.C., are satisfied.

Rulemaking Authority 480.043(1), (2) FS. Law Implemented 480.043(2), (4) FS. History—New 11-27-79, Formerly 21L-26.04, 21L-26.004, Amended 1-9-95, 3-9-95, Formerly 61G11-26.004.

64B7-26.005 Periodic Inspections.

The Department shall make periodic inspections of all massage establishments licensed in this state no less than once each year. Such inspection shall include, but not be limited to, whether the establishment is in compliance with Rule 64B7-26.003, F.A.C., governing the establishment’s operation facilities, personnel, safety, sanitary requirements, and a review of existing insurance coverage.

Rulemaking Authority 480.043(2), (9) FS. Law Implemented 480.043 FS. History—New 11-27-79, Formerly 21L-26.05, Amended 4-30-87, Formerly 21L-26.005, 61G11-26.005, Amended 1-26-00.

64B7-26.003 Massage Establishment Operations.

(1) Facilities, Each establishment shall meet the following facility requirements:

(a) Comply with all local building code requirements.

(b) Provide for the use of clients a bathroom with at least one toilet and one sink with running water. Such facilities shall be equipped with toilet tissue, soap dispenser with soap or other hand cleaning materials, sanitary towels or other hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle.

(c) Maintain toilet facilities in a common area of the establishment. Establishments located in buildings housing multiple businesses under one 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.

(d) If equipped with a whirlpool bath, sauna, steam cabinet and/or steam room, maintain clean shower facilities on the premises.

(2) Personnel. A licensed massage therapist must be on the premises of the establishment if a client is in a treatment room for the purpose of receiving massage therapy.

(3) Safety and sanitary requirements. Each establishment shall:

(a) 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 materials.

(b) Maintain a fire extinguisher in good working condition on the premises. As used herein “good working condition” means meeting the standards for approval by the State Fire Marshal. Such standards are presently contained in Chapter 69A-21, F.A.C.

(c) Exterminate all vermin, insects, termites, and rodents on the premises.

(d) Maintain all equipment used to perform massage services on the premises in a safe and sanitary condition, including the regular application of cleansers and bactericidal agents to the massage table. Unless clean sheets, towels, or other coverings are used to cover the massage table for each client, “regular application,” as used herein, means after the massage of each client. If clean coverings are used for each client, then “regular application” shall mean at least one time a day and also whenever oils or other substances visibly accumulate on the massage table surface.

(e) Maintain a sufficient supply of clean drapes for the purpose of draping each client while the client is being massaged, and launder before reuse all materials furnished for the personal use of the client, such as drapes, towels and linens. As used herein “drapes” means towels, gowns, or sheets.

(f) Maintain lavatories for hand cleansing and/or a chemical germicidal designed to disinfect and cleanse hands without the use of a lavatory in the treatment room itself or within 20 feet of the treatment area.

(g) Maintain all bathroom and shower facilities and fixtures in good repair, well-lighted and ventilated.

(4) Financial responsibility and insurance coverage. Each establishment shall maintain property damage and bodily injury liability insurance coverage. The original or a copy of such policy shall be available on the premises of the establishment.

Rulemaking Authority 480.035(7), 480.043(2) FS. Law Implemented 480.043(2) FS. History—New 11-27-79, Amended 10-13-81, 9-10-84, 9-25-85, Formerly 21L-26.03, Amended 4-30-87, 6-12-89, 8-15-89, 5-31-92, 11-2-92, Formerly 21L-26.003, 61G11-26.003, Amended 2-16-99, 11-4-99, 6-8-00.

64B7-26.007 Transfer of Massage Establishment License.

(1) When there is no change of ownership or location, the owner may change the business name of the establishment. The owner shall apply for a change of business name by submitting a completed Form DH-MQA 1264 “Massage Establishment Change of Location/Name Application” (Rev. 6/14), incorporated herein by reference, accompanied by the application fee provided in paragraph 64B7-27.100(2)(d), F.A.C. The form and the attached instructions may be obtained from the Board Office at 4052 Bald Cypress Way, Bin C-06, Tallahassee, Florida 32399 or from the website located at <http://floridasmassagetherapy.gov> or <http://www.flrules.org/Gateway/reference.asp?No=Ref-04618>. When a massage establishment business name is changed, without a change in ownership or location, a new establishment inspection is not required.

(2) When there is no change of ownership, the owner of a massage establishment may transfer the license from one location to another. The owner shall apply for a change of location by submitting a completed Form DH-MQA 1264 “Massage Establishment Change of Location/Name Application” (Rev. 6/14), accompanied by the application fee provided in paragraph 64B7-27.100(2)(e), F.A.C. A massage establishment license may not be transferred from one location to another until after inspection by the department.

Rulemaking Authority 480.035(7), 480.043(2), (9) FS. Law Implemented 480.043(2), (7), (9), 456.0635 FS. History—New 5-17-90, Formerly 21L-26.007, 61G11-26.007, Amended 9-14-98, 10-8-14.

64B7-26.001 Definitions.

(1) The term “owner” means the sole proprietor, partnership, limited partnership or corporation that operates the massage establishment.

(2) The term “business name” means the name under which the owner applies for the establishment license to provide massage therapy, if different from the name of the owner.

Rulemaking Authority 480.035(7) FS. Law Implemented 480.043(7) FS. History—New 7-16-98, Amended 8-5-03, 2-26-12.

64B7-26.002 Licensure of Massage Establishments.

(1) Each establishment, shall obtain a license from the Department as required by Section 480.043(1), F.S., by submitting a completed form DH-MQA 1263, “Massage Establishment Licensure Application” (Rev. 11/15), incorporated herein by reference, together with the fee set forth in subsection 64B7-27.100(2), F.A.C. The form and the attached instructions may be obtained from the Board office at 4052 Bald Cypress Way, Bin C-06, Tallahassee, Florida 32399 or from the website located at <http://floridasmassagetherapy.gov/applications/app-bus-original-mt.pdf> or <http://www.flrules.org/Gateway/reference.asp?No=Ref-06532>.

(2) The application for licensure shall be submitted in the name of the owner or owners of the establishment. If the owner is a partnership, limited partnership or corporation, the application shall be submitted in the name of the business entity and shall be signed by an authorized representative.

(3) An owner operating an establishment under a fictitious name as defined in Section 865.09, F.S., must provide such name to the Board on the application for licensure. Any advertisement by the establishment of massage therapy must include the fictitious name, and must comply with Rule 64B7-33.001, F.A.C.

(4) The applicant shall submit proof confirming property damage and bodily injury liability insurance coverage for the proposed establishment. If the establishment is operated under a business name, the proof of insurance shall include both the name of the owner and the business name.

Rulemaking Authority 480.035(7), 480.043(2), 480.044 FS. Law Implemented 480.043, 480.044, 456.0635 FS. History—New 11-27-79, Formerly 21L-26.02, Amended 1-7-86, Formerly 21L-26.002, Amended 3-9-95, 9-25-95, Formerly 61G11-26.002, Amended 7-16-98, 1-26-00, 4-2-09, 10-7-14, 3-14-16.

The 2018 Florida Statutes

Title XXXII
REGULATION OF PROFESSIONS AND
OCCUPATIONS

Chapter 480
MESSAGE
PRACTICE

View Entire
Chapter

480.043 Massage establishments; requisites; licensure; inspection.—

(1) No massage establishment shall be allowed to operate without a license granted by the department in accordance with rules adopted by the board.

(2) A person who has an ownership interest in an establishment shall submit to the background screening requirements under s. [456.0135](#). However, if a corporation submits proof of having more than \$250,000 of business assets in this state, the department shall require the owner, officer, or individual directly involved in the management of the establishment to submit to the background screening requirements of s. [456.0135](#). The department may adopt rules regarding the type of proof that may be submitted by a corporation.

(3) The board shall adopt rules governing the operation of establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.

(4) Any person, firm, or corporation desiring to operate a massage establishment in the state shall submit to the department an application, upon forms provided by the department, accompanied by any information requested by the department and an application fee.

(5) Upon receiving the application, the department may cause an investigation to be made of the proposed massage establishment.

(6) If, based upon the application and any necessary investigation, the department determines that the proposed establishment would fail to meet the standards adopted by the board under subsection (3), the department shall deny the application for license. Such denial shall be in writing and shall list the reasons for denial. Upon correction of any deficiencies, an applicant previously denied permission to operate a massage establishment may reapply for licensure.

(7) If, based upon the application and any necessary investigation, the department determines that the proposed massage establishment may reasonably be expected to meet the standards adopted by the department under subsection (3), the department shall grant the license under such restrictions as it shall deem proper as soon as the original licensing fee is paid.

(8) The department shall deny an application for a new or renewal license if a person with an ownership interest in the establishment or, for a corporation that has more than \$250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the establishment has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a violation of s. 796.07(2)(a) which is reclassified under s. 796.07(7) or a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

- (a) Section 787.01, relating to kidnapping.
- (b) Section 787.02, relating to false imprisonment.
- (c) Section 787.025, relating to luring or enticing a child.
- (d) Section 787.06, relating to human trafficking.
- (e) Section 787.07, relating to human smuggling.
- (f) Section 794.011, relating to sexual battery.
- (g) Section 794.08, relating to female genital mutilation.
- (h) Former s. 796.03, relating to procuring a person under the age of 18 for prostitution.
- (i) Former s. 796.035, relating to selling or buying of minors into prostitution.
- (j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.
- (k) Section 796.05, relating to deriving support from the proceeds of prostitution.

(l) Section 796.07(4)(a)3., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

(9)(a) Once issued, no license for operation of a massage establishment may be transferred from one owner to another.

(b) A license may be transferred from one location to another only after inspection and approval by the board and receipt of an application and inspection fee set by rule of the board, not to exceed \$125.

(c) A license may be transferred from one business name to another after approval by the board and receipt of an application fee set by rule of the board, not to exceed \$25.

(10) Renewal of license registration for massage establishments shall be accomplished pursuant to rules adopted by the board. The board is further authorized to adopt rules governing delinquent renewal of licenses and may impose penalty fees for delinquent renewal.

(11) The board is authorized to adopt rules governing the periodic inspection of massage establishments licensed under this act.

(12) A person with an ownership interest in or, for a corporation that has more than \$250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of an establishment that was issued a license before July 1, 2014, shall submit to the background screening requirements of s. 456.0135 before January 31, 2015.

(13) This section does not apply to a physician licensed under chapter 458, chapter 459, or chapter 460 who employs a licensed massage therapist to perform massage on the physician's patients at the physician's place of practice. This subsection does not restrict investigations by the department for violations of chapter 456 or this chapter.

History.—s. 12, ch. 78-436; ss. 13, 15, 25, 30, 34, 54, 62, ch. 80-406; s. 2, ch. 81-318; ss. 6, 12, 13, ch. 85-280; s. 4, ch. 91-429; s. 156, ch. 97-264; s. 4, ch. 2014-139; s. 60, ch. 2015-2; s. 64, ch. 2016-10; s. 6, ch. 2016-24.

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456.0635 Health care fraud; disqualification for license, certificate, or registration.—

(1) Health care fraud in the practice of a health care profession is prohibited.

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue a license, certificate, or registration to any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the candidate or applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction, unless the candidate or applicant has successfully completed a pretrial diversion or drug court program for that felony and provides proof that the plea has been withdrawn or the charges have been dismissed. Any such conviction or plea shall exclude the applicant or candidate from licensure, examination, certification, or registration unless the sentence and any subsequent period of probation for such conviction or plea ended:

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application;

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application;

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the candidate or applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the candidate or applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application; or

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

This subsection does not apply to an applicant for initial licensure, certification, or registration who was arrested or charged with a felony specified in paragraph (a) or paragraph (b) before July 1, 2009.

(3) The department shall refuse to renew a license, certificate, or registration of any applicant if the applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction, unless the applicant is currently enrolled in a pretrial diversion or drug court program that allows the withdrawal of the plea for that felony upon successful completion of that program. Any such conviction or plea excludes the applicant from licensure renewal unless the sentence and any subsequent period of probation for such conviction or plea ended:

1. For felonies of the first or second degree, more than 15 years before the date of application.
2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).
3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application.

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1, 2009, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application.

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years.

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application.

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

This subsection does not apply to an applicant for renewal of licensure, certification, or registration who was arrested or charged with a felony specified in paragraph (a) or paragraph (b) before July 1, 2009.

(4) Licensed health care practitioners shall report allegations of health care fraud to the department, regardless of the practice setting in which the alleged health care fraud occurred.

(5) The acceptance by a licensing authority of a licensee's relinquishment of a license which is offered in response to or anticipation of the filing of administrative charges alleging health care fraud or similar charges constitutes the permanent revocation of the license.

History.—s. 24, ch. 2009-223; s. 1, ch. 2012-64; s. 15, ch. 2016-230; s. 3, ch. 2017-41.

Link to Tennessee Msg Est Forms

<https://www.tn.gov/health/health-program-areas/health-professional-boards/ml-board/ml-board/applications.html>

Link to San Francisco msg est forms and regs

<https://www.sfdph.org/dph/EH/Massage/establishment.asp>

Delaware

<https://dpr.delaware.gov/boards/massagebodyworks/>

Arizona

<https://www.phoenix.gov/cityclerk/services/licensing/regbusinfo/massage>

Nebraska

<http://dhhs.ne.gov/publichealth/pages/crIMTHome.aspx>

<http://dhhs.ne.gov/publichealth/pages/crIMTEstabAppsRegsFees.aspx>

Oklahoma City

<https://www.okc.gov/departments/development-services/business-licensing/business-licenses/massage-establishment>

Florida

Checklist

Licensed Massage Establishment (New or Change of Ownership) – Checklist:

- I have included the **\$255.00 application fee**.
Applications submitted without fees will not be processed.
- I have submitted **proof of insurance** to the Board office.
 - Proof of insurance must list the exact business name, address, and owner(s) of the establishment, as listed on the application.
 - If the ownership type for your establishment is *individual*, and you are a licensed massage therapist, you may use insurance from a professional association to satisfy this requirement.
- Each owner/officer listed has been fingerprinted by an approved Livescan provider** (except corporations with more than \$250,000 in taxable assets – see below).
(Please visit www.flhealthsource.gov/background-screening for more information)
- I have completed the **massage establishment pre-inspection checklist** (found on page 8 of my application), and the establishment is ready for inspection by the Department of Health.

My establishment is a corporation and my taxable assets are less than \$250,000.

What else do I need?

- I have submitted my **Articles of Incorporation**.
- I have checked Section 1 – BUSINESS INFORMATION for accuracy;
The d/b/a and Corporate Name lines match what is listed in the submitted Articles of Incorporation.
- I have checked Section 3 – OWNERSHIP INFORMATION for accuracy. I understand that all parties having an ownership interest are **required** to submit their fingerprints electronically.

My establishment is a corporation and my taxable assets are \$250,000 or more.

What else do I need?

- I have submitted my **Articles of Incorporation**.
- I have submitted *either* a **formal opinion letter** from a Florida licensed Certified Public Accountant affirming the corporation had more than \$250,000 in assets during the previous tax year, OR, a copy of my **Florida Corporate Income/Franchise Tax Return (Form F-1120)**.
- I have checked Section 1 – BUSINESS INFORMATION for accuracy;
The d/b/a and Corporate Name lines match what is listed in the submitted Articles of Incorporation.
- I have checked Section 3 – OWNERSHIP INFORMATION for accuracy. I understand that the owner, officer, or individual directly involved in the management of the establishment is **required** to submit their fingerprints electronically.

For applicants who hold, or who have held other *health-related* licenses which have been disciplined:

- Section 5 of my application is complete and accurate.
- I have submitted a self-explanation of my disciplinary history.
- For each disciplinary action taken, I have submitted copies of the Administrative Complaint and Final Order.

For applicants with Criminal History:

- Sections 6 and 7 of my application are complete and accurate.
- I have submitted a self-explanation of my criminal history.
- For each conviction, I have submitted arrest records, final disposition, and documents showing successful completion of sentencing.

Hawaii

Abandoned Applications

Pursuant to HRS Section 436B-9, your application shall be considered abandoned and shall be destroyed if you fail to provide evidence of continued efforts to complete the licensing process for two (2) consecutive years. The failure to provide evidence of continued efforts includes, but is not limited to the failure to: (1) Submit any required information and documents requested by the licensing authority within two (2) consecutive years from the last date the documents and information were requested, or (2) Complete any additional requirements for licensure that remain after approval of your application, such as attempting to complete an examination requirement, within two (2) consecutive years from the date your application was approved, or (3) Provide the licensing authority with any written communication during two (2) consecutive years indicating that you are attempting to complete the licensing process. If an application is deemed abandoned, the applicant shall be required to reapply for licensure and comply with the licensing requirements in effect at the time of the reapplication.

Frequently Asked Questions regarding Abandoned Applications

1) Q: If after receiving my application the board or program requests additional information, how much time do I have to provide them with the requested information before my application is deemed abandoned?

A: You have two (2) consecutive years from the date the information is requested.

2) Q: If I am an applicant who is required to take a licensing examination in order to complete the licensing process and my application to take the licensing examination is approved, how much time do I have to complete the examination requirement before my application is abandoned?

A: You must make an attempt to take the examination within two (2) years from the date your application is approved.

3) Q: What is meant by "attempt to take the examination?"

A: You must register and take the examination.

4) Q: If the statutes or rules of the boards or programs do not set time limits on taking and passing the examination, and the only requirement left for me to become licensed is to pass the examination, and within the two (2) year period I should fail the examination, re-register for the examination, but fail again, will my application be abandoned because I could not pass the examination within two years?

A: Your application will not be abandoned because you would have demonstrated your efforts to take the examination by registering for and taking the examination.

(NOTE: Our office will only be notified of your efforts if you take the examination as a Hawaii candidate. Examination results will not automatically be provided to our office if you sit for the examination via another state board. Therefore, if you are in this situation, please arrange for the test results to be sent to us).

5) Q: What does it mean if my application is abandoned?

A: It means that your application is no longer valid, will be destroyed, and you shall be required to reapply and comply with the requirements for licensure at the time of the reapplication. To reapply, you must submit a new application and you will be required to comply with the licensing requirements and pay fees that are in effect at the time you submit your new application.

04/13

6) Q: Will you be providing a notice to me before my application is abandoned?

A: It is not required that we notify you before your application is abandoned. However, some boards and programs have taken the initiative to send out notifications.

7) Q: Will any of the documents that supplemented my first application be saved in case I need to reapply?

A: No. When you reapply, you will need to again provide us with documentation.

8) Q: Will the application fee that I paid with my first application carry over to cover the application fee for my new application?

A: No. You will be required to again pay the non-refundable application fee.

9) Q: If my application has not been destroyed does this mean that it has not yet been deemed "abandoned?"

A: No. Simply because an application has not been destroyed does not mean that it has not been deemed abandoned.

10) Q: If I am currently unable to complete the licensing process (eg., no continued effort), how do I prevent my application from being abandoned?

A: You have two (2) consecutive years to complete the licensing process. However, if you are unable to show continued effort for two consecutive years but you still intend to complete the licensing process, you must send a written communication to the board or program **prior** to the two (2) year expiration explaining why you are unable to complete the licensing process within two (2) years. Your written communication shall also request approval to complete the licensing process by a specific date after the two (2) year expiration. You will be advised whether your request is approved or disapproved. If disapproved, your application will be destroyed and you will need to reapply for licensure.

11) Q: Who do I contact to find out if my application is soon to be abandoned?

A: You may contact the Licensing Branch at (808) 586-3000.

Oklahoma

General Application for Massage Establishment



City of Oklahoma City
Licensing
420 West Main, 8th Floor
Oklahoma City, OK 73102
405-297-2606

Please complete the entire form. No licenses will be issued unless The City is able to verify the information provided. All County, State, and Federal licenses related to the business must be listed on this form. The Supervisor of license may revoke or suspend a license or permit pursuant to Chapter 26-18 of the Oklahoma City Municipal Code 2010. Additional information not requested on this form may be required prior to the issuance of any license.

Submit a copy of valid driver's license or State issued ID
Attach a copy of your Oklahoma Sales Tax Permit if applicable

Please check the following that apply:

New Business License Renewal License Additional License

Type License _____ Type License _____

Business Information

Name of Business _____ Business Website _____

DBA _____ Fax # _____

Premise Address of Business _____ Business Phone # _____

Mailing Address _____

City _____ State _____ Zip Code _____

Business Type/Use (example, used merchandise sales, car sales, bar/grill etc.)

Outdoor seller, Peddler, and Solicitor please describe how merchandise will be sold and attach a list of items to be sold:

Business Owner or Agent (responsible Person):

Address (NOT business address) _____

City _____ State _____ Zip Code _____

Email Address _____ Phone # _____ Cell # _____

Title _____ Date _____

Print Name:

Business Owner or Agent Signature:



MESSAGE ESTABLISHMENT LICENSE APPLICATION INSTRUCTIONS

Read the Massage Therapy Act (Texas Occupations Code, Title 3, Subtitle H, Chapter 455) and the Rules relating to massage therapy (16 Texas Administrative Code (TAC), Chapter 117) before completing the application.

No massage establishment can commence operation until the application for licensure of the establishment has been approved. In addition, an establishment may employ only licensed massage therapists to perform massage therapy. The current establishment license certificate along with the current license certificate(s) of all therapists must be displayed in a prominent location available for inspection

Complete this application and return it with the required non-refundable application fee. The application must be completed and signed by the company owner or representative. An application is not considered complete and will not be processed until all required items have been submitted. All information provided must be typed or printed in black ink.

DOCUMENTS SUBMITTED WITH YOUR APPLICATION WILL NOT BE RETURNED. KEEP A COPY OF YOUR COMPLETED APPLICATION, ALL ATTACHMENTS, AND YOUR CHECK OR MONEY ORDER. DO NOT SEND CASH.

1. ESTABLISHMENT NAME – Full legal name of establishment.
2. DOING BUSINESS AS (DBA) NAME - Write the full DBA name for your business.

What is a “Doing Business As” Name? A fictitious name (or assumed name, trade name or DBA name) is a business name that is different from your personal name, the names of your partners or the officially registered name of your LLC or corporation.

It’s important to note that when you form a business, the legal name of the business defaults to the name of the person or entity that owns the business, unless you choose to rename it and register it as a DBA name.

For example, consider this scenario: John Smith sets up a painting business. Rather than operate under his own name, John instead chooses to name his business: “John Smith Painting”. This name is considered an assumed name and John will need to register it with the appropriate local government agency.

Do I need a DBA name? A DBA is needed in the following scenarios:

- **Sole Proprietors or Partnerships** – If you wish to start a business under anything other than your real name, you’ll need to register a DBA so that you can do business as another name.
- **Existing Corporations or LLCs** – If your business is already set up and you want to do business under a name other than your existing corporation or LLC name, you will need to register a DBA.

3. ESTABLISHMENT PHONE NUMBER - Write the telephone number, including the area code, of the business listed.
4. ESTABLISHMENT FAX NUMBER - Write a fax number, including the area code, where we can send you faxes.
5. EMAIL ADDRESS – By providing my email address I authorize TDLR to send licensing communications and required notices to me by electronic mail. I understand that I may revoke this authorization in writing and that I must update my email address or I will not receive these notices. I understand that the email address I have provided in this application will remain confidential except as permitted or required by law.
6. ESTABLISHMENT MAILING ADDRESS – Write your current mailing address. This is the address where we will send you mail. This address can be a post office box. You can add the zip plus-4 to help the postal service deliver mail more efficiently and accurately.
7. ESTABLISHMENT PHYSICAL ADDRESS - Write the physical address of your facility. A post office box cannot be used for this address. Once your license has been issued, you can only change the business’s physical address by applying for a new license.

8. **TYPE OF OWNERSHIP** - Check the box that indicates how your business is organized. You can find a description of the various types of business structures at www.sos.state.tx.us/corp/businessstructure.shtml. If this business is a Sole Proprietorship or Partnership, write your Name, Social Security Number, date of Date of Birth, mailing address, and other requested information in the provide space.
Social Security Number disclosure is required by Section 231.302(c)(1) of the Texas Family Code to obtain a license. Your Social Security Number is subject to disclosure to an agency authorized to assist in the collection of child support payments. For more information regarding child support payments, contact the Texas Attorney General at: www.oag.state.tx.us/child/index or call (512) 460-6000 or (800) 252-8014.
Email address disclosure – By providing my email address I authorize TDLR to send licensing communications and required notices to me by electronic mail. I understand that I may revoke this authorization in writing and that I must update my email address or I will not receive these notices. I understand that the email address I have provided in this application will remain confidential except as permitted or required by law.
9. **CRIMINAL HISTORY** – Have any of the owners or operators ever been convicted of, or placed on deferred adjudication for, any Misdemeanor or Felony, other than a minor traffic violation. If YES, complete and attach a Criminal History Questionnaire for each offense. This form can be obtained from the TDLR website at www.tdlr.texas.gov/MISC/lic002.pdf.
10. **CERTIFYING STATEMENT** - Carefully read the statement before dating and signing your application.

NOTE: The application fee for a massage therapy establishment that is located at a massage school primary instructional location or approved additional location is \$100 (Fee Non-Refundable).

DEFAULT ON STUDENT LOANS

State law prohibits renewing a license more than once after a licensee has defaulted on a student loan guaranteed by the **Texas Guaranteed Student Loan Corporation (TGS LC)** unless the licensee has entered a repayment agreement with TGS LC. YOU SHOULD CONTACT TGS LC BEFORE FILING THIS APPLICATION if you have defaulted on a student loan. An application or renewal may be rejected if this agency has received information from TGS LC that the applicant has defaulted on a student loan. The Texas Guaranteed Student Loan Corporation can be contacted at: **Texas Guaranteed ATTN: Collections, PO Box 83100, Round Rock, TX 78683-3100, Telephone: (800) 222-6297, <http://www.tgslc.org> or email: cust.assist@tgslc.org.**

Texas

General Application for Massage Establishment



Texas Department of Licensing and Regulation
 PO Box 12157 • Austin, Texas 78711-2157
 (800) 803-9202 • (512) 463-6599 • FAX (512) 475-2871
 www.tdlr.texas.gov • cs.massagetherapy@tdlr.texas.gov

MESSAGE ESTABLISHMENT LICENSE APPLICATION

DO NOT WRITE ABOVE THIS LINE			
APPLICATION FEE: \$200 (APPLICATION FEE IS NON-REFUNDABLE)			
The application fee for a massage therapy establishment that is located at a massage school primary instructional location or approved additional location is \$100 (Fee Non-Refundable)			
This completed application must be accompanied by the application fee			
1. Establishment Name:			
2. DBA Name: (if applicable)			
3. Establishment Phone Number:		4. Establishment Fax Phone Number:	
Area Code	Number	Area Code	Number
5. Email Address:			
<small>(Ex: johndoe@aol.com See Instructions sheet for Disclosure)</small>			
6. Establishment Mailing Address:			
<small>(P.O. Box, Number, Street Name/Apartment Number)</small>			
City	State	Zip Code	
7. Establishment Physical Address (PO Box cannot be used for this address):			
<small>(Number, Street Name/Apartment Number)</small>		City	State Zip Code
8. Type of Ownership: (check only one box for the type of ownership)			
COMPLETE THE APPROPRIATE SECTION FOR THE APPLICABLE BUSINESS. INCOMPLETE FORMS WILL DELAY THE APPLICATION PROCESS.			
For information concerning the Texas Secretary of State (SOS) file number call 512-463-5555 or 800-252-1381, or 800-252-1381, or visit: www.sos.state.tx.us . The Federal Employer Identification Number (FEIN) also known as "Federal Tax ID Number" is a 9-digit number assigned by the Internal Revenue Service (IRS).			
<input type="checkbox"/> Sole Proprietor: (One individual)			
Name: _____			
Social Security Number or Federal Tax Identification Number: _____		Owner Date of Birth: _____	
Phone #:	Email Address:		
Area Code Number	<small>Ex: johndoe@aol.com) See instruction sheet for disclosure information</small>		
Mailing Address: _____			
<small>(P.O. Box, Number and Street Name)</small>			
City	State	Zip Code	

Partnership: (Two or more individuals)

Name of Partner #

1:

Social Security Number or Federal
Tax Identification Number: _____

Owner Date
of Birth: _____

Phone #: _____

Email
Address: _____
Ex: johndoe@aol.com) See instruction sheet for disclosure information

Mailing Address: _____
(P.O. Box, Number and Street Name)

City

State

Zip Code

Name of Partner # 2:

Social Security Number or Federal
Tax Identification Number: _____

Owner Date
of Birth: _____

Phone #: _____

Email
Address: _____
Ex: johndoe@aol.com) See instruction sheet for disclosure information

Mailing Address: _____
(P.O. Box, Number and Street Name)

City

State

Zip Code

FOR ADDITIONAL PARTNERS COMPLETE ANOTHER SHEET

Corporation, Limited Company or General Partnership: (example Corporation, LLC, LP, LLP)

Name of Business Entity: _____

Texas SOS File #: _____

Federal Tax Identification
Number (FEIN): _____

Phone #: _____

Email
Address: _____
Ex: johndoe@aol.com) See instruction sheet for disclosure information

Mailing Address: _____
(P.O. Box, Number and Street Name)

City

State

Zip Code

List all officers, directors and registered agents of the corporation. (Use additional sheets, if necessary.)

Name:

Last

First

Middle Name

Gender: Male Female

Date of
Birth: _____

Social Security
Number: _____

Position or
Title: _____

Phone
Number: _____

Name:

Last

First

Middle Name

Gender: Male Female

Date of
Birth: _____

Social Security
Number: _____

Position or
Title: _____

Phone
Number: _____

9. Have any of the operators or owners ever been convicted of, or placed on deferred adjudication for, any misdemeanor or felony, other than a minor traffic violation? Yes No
If YES, the individual needs to complete and submit a Criminal History Questionnaire (CHQ) for each offense.

See instructions sheet for more information

10. **CERTIFYING STATEMENT**

I certify that I have read and will comply with all applicable laws and rules of the Massage Therapy Program including Texas Occupations Code, Chapter 51 and 455; and administrative rules under 16 Texas Administrative Code, Chapters 60 and 117. I understand that providing false information on this application may result in denial of this application and/or revocation of the certification I am requesting and the possible imposition of administrative penalties.

Signature

Date

M.E.L. Task
Operations & Inspections

Jill Motz

Inspections

Inspections

(Original taken from Massachusetts)

- A. The board may make periodic inspections of all massage establishments.
- B. Such inspections may include, but need not be limited to, confirmation that the site is being utilized for massage therapy and a determination of whether the establishment is in compliance with the laws and rules governing the establishment's operation, facilities, personnel, safety, and sanitary requirements.

(Original taken from Missouri List)

- (1) A massage therapy business shall:
 - (A) Employ or permit to practice on the premises only licensed, provisionally licensed or officially enrolled student massage therapists (hereinafter referred to as licensee or licensees) to perform massage therapy as defined in statute.
 - (B) Ensure that no massage therapist practices beyond their scope and expertise nor shall a massage therapy business, direct or require a licensee to practice beyond their scope and expertise;
 - (C) Maintain a copy of the professional liability insurance
 - (D) Ensure that each massage therapist wears appropriate clothing and practices high standards of personal hygiene;
 - (E) Display in a conspicuous place the massage therapy business license and massage therapist license with a photograph of the massage therapist taken within the last two (2) years;
 - (F) Maintain policies and procedures that address but are not limited to the nature and scope of services provided and orient employees or those practicing on their premises to the practice standards as it relates to public standards and client records and maintain proof of this orientation;
 - (G) Be responsible for maintaining client records for at least three (3) years. This includes safeguarding verbal and written confidential information of the client, unless disclosure is required by law, court order, or authorized by the client.
 - (H) Shall maintain proof that the massage therapy business location or premises has current general liability insurance;
 - (I) Maintain documentation of compliance with all applicable building and fire codes prescribed by the state or local government. If no zoning codes are available establishments shall be equipped with and maintain fire extinguishers and smoke alarms that are in good working condition;
 - (J) Maintain all equipment used to perform massage therapy services on the premises in a safe and sanitary condition;
 - (K) Provide for safe and unobstructed human passage in the public areas of the premises;
 - (L) Ensure compliance with the regulations of other entities which include but are not limited to the Americans with Disabilities Act (ADA), Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA);
 - (M) Provide for the removal of garbage and refuse in a sanitary manner; and (N) Provide for safe storage or removal of flammable materials.

(Original from Florida)

Inspection Upon Application for License.

Upon receipt of an application for a massage establishment license, employees of the Department shall cause an inspection to be made of the site. Such inspection shall be to confirm that the site is to be utilized for “massage” as defined by (statue)

Periodic Inspections.

The Department shall make periodic inspections of all massage establishments licensed in this state no less than once each year. Such inspection shall include, but not be limited to, whether the establishment is in compliance with (statue) governing the establishment’s operation facilities, personnel, safety, sanitary requirements, and a review of existing insurance coverage.

Operations

Operations

(Original Taken from Florida)

(1) Facilities, Each establishment shall meet the following facility requirements:

(a) Comply with all local building and safety code requirements.

(b) Provide for the use of clients a bathroom with at least one toilet and one sink with running water. Such facilities shall be equipped with toilet tissue, soap dispenser with soap or other hand cleaning materials, sanitary towels or other hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle.

(c) Maintain toilet facilities in a common area of the establishment. Establishments located in buildings housing multiple businesses under one 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.

(d) If equipped with a whirlpool bath, sauna, steam cabinet and/or steam room, maintain clean shower facilities on the premises.

(2) Personnel. A licensed massage therapist must be on the premises of the establishment if a client is in a treatment room for the purpose of receiving massage therapy.

(3) Safety and sanitary requirements. Each establishment shall:

(a) 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 materials.

(b) Maintain a fire extinguisher in good working condition on the premises. As used herein "good working condition" means meeting the standards for approval by the State Fire Marshal. Such standards are presently contained in

(c) Exterminate all vermin, insects, termites, and rodents on the premises.

(d) Maintain all equipment used to perform massage services on the premises in a safe and sanitary condition, including the regular application of cleansers and bactericidal agents to the massage table. Unless clean sheets, towels, or other coverings are used to cover the massage table for each client, "regular application," as used herein, means after the massage of each client. If clean coverings are used for each client, then "regular application" shall mean at least one time a day and also whenever oils or other substances visibly accumulate on the massage table surface.

(e) Maintain a sufficient supply of clean drapes for the purpose of draping each client while the client is being massaged, and launder before reuse all materials furnished for the personal use of the client, such as drapes, towels and linens. As used herein "drapes" means towels, gowns, or sheets.

(f) Maintain lavatories for hand cleansing and/or a chemical germicidal designed to disinfect and cleanse hands without the use of a lavatory in the treatment room itself or within 20 feet of the treatment area.

(g) Maintain all bathroom and shower facilities and fixtures in good repair, well-lighted and ventilated.

(4) Financial responsibility and insurance coverage. Each establishment shall maintain property damage and bodily injury liability insurance coverage. The original or a copy of such policy shall be available on the premises of the establishment.

M.E.L. Task

Disciplinary Matrix & Fine Schedule

Ron Gibbs

Language

Establishment Penalties

Do we want to distinguish between criminal and non- criminal violations?
Some states have a \$1000 fine limit, Alaska Hairdresser and barbers set \$5000.

Need language :

- A. Violations Every violation of a provision of this chapter shall be a misdemeanor.
- B. Misdemeanor Criminal Penalty : Every misdemeanor violation of the provisions of this chapter shall be punishable by a fine not exceeding five thousand dollars (\$5,000), **can we include an imprisonment option for illegal activities?**
- C. Administrative license penalty In addition to the misdemeanor criminal penalties provided by this chapter, every person who violates any provision of this chapter shall be subject to the administrative license penalties of license denial, license revocation, or license suspension, as set forth herein.

Sec. 08.13.195. Civil penalty. (a) In addition to any other provision of law, if a person violates AS 08.13.070 or 08.13.217, the board may enter an order levying a civil penalty.

(b) A civil penalty levied under this section may not exceed \$5,000 for each offense. In levying a civil penalty, the board shall set the amount of the penalty imposed under this section after taking into account appropriate factors, including the seriousness of the violation, the economic benefit resulting from the violation, the history of violations, and other matters the board considers appropriate.

(c) Before issuing an order under this section, the board shall provide the person written notice and the opportunity to request, within 30 days of issuance of notice by the board, a hearing on the record.

(d) In connection with proceedings under (a) and (b) of this section, the board may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the attorney general to bring an action to enforce a subpoena.

(e) A person aggrieved by the levy of a civil penalty under this section may file an appeal with the superior court for judicial review of the penalty under AS 44.62.560 .

(f) If a person fails to pay a civil penalty within 30 days after entry of an order under (a) of this section, or if the order is stayed pending an appeal, within 10 days after the court enters a final judgment in favor of the board of an order appealed under (e) of this section, the board shall notify the attorney general. The attorney general may commence a civil action to recover the amount of the penalty.

(g) An action to enforce an order under this section may be combined with an action for an injunction under AS 08.01.087.

Language

Disciplinary Matrix

Here are some sample languages addressing the assessment of fines and license sanctions.

Alaska hairdresser and barber

Sec. 08.13.150. Disciplinary sanctions and grounds for refusal of a license or permit.

The board may, in addition to the actions authorized under AS 08.01.075, refuse, suspend, or revoke a license, student permit, temporary license, or temporary permit for failure to comply with this chapter, with a regulation adopted under this chapter, with a regulation adopted by the Department of Environmental Conservation under AS 44.46.020, or with an order of the board.

Sec. 08.13.190. Failure to possess a license or permit. (a) A person who practices barbering, hairdressing, esthetics, tattooing and permanent cosmetic coloring or body piercing or operates a shop, or operates a school of barbering, hairdressing, or esthetics, or teaches in a school of barbering, hairdressing, or esthetics, without a license, temporary permit, temporary license, or student permit and who is not exempt under AS 08.13.120 or under AS 08.13.160(d) is guilty of a class B misdemeanor.

(b) A person who practices manicuring, operates a shop for manicuring, operates a school of manicuring, or teaches in a school of manicuring without the appropriate license, temporary permit, temporary license, or student permit and who is not exempt under AS 08.13.120 or 08.13.160(d) is guilty of a violation.

Sec. 08.13.195. Civil penalty. (a) In addition to any other provision of law, if a person violates AS 08.13.070 or 08.13.217, the board may enter an order levying a civil penalty.

(b) A civil penalty levied under this section may not exceed \$5,000 for each offense. In levying a civil penalty, the board shall set the amount of the penalty imposed under this section after taking into account appropriate factors, including the seriousness of the violation, the economic benefit resulting from the violation, the history of violations, and other matters the board considers appropriate.

(c) Before issuing an order under this section, the board shall provide the person written notice and the opportunity to request, within 30 days of issuance of notice by the board, a hearing on the record.

(d) In connection with proceedings under (a) and (b) of this section, the board may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the attorney general to bring an action to enforce a subpoena.

(e) A person aggrieved by the levy of a civil penalty under this section may file an appeal with the superior court for judicial review of the penalty under AS 44.62.560 .

(f) If a person fails to pay a civil penalty within 30 days after entry of an order under (a) of this section, or if the order is stayed pending an appeal, within 10 days after the court enters a final judgment in favor of the board of an order appealed under (e) of this section, the board shall notify the attorney general. The attorney general may commence a civil action to recover the amount of the penalty.

(g) An action to enforce an order under this section may be combined with an action for an injunction under AS 08.01.087.

10.41.060 – Violations and Penalties. 42

Massage Establishment Licensing Page 18 of 18

A. Violations. Every violation of a provision of this chapter shall be a misdemeanor.

B. Misdemeanor Criminal Penalty. Every misdemeanor violation of the provisions of this chapter shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00), imprisonment in the municipal jail not to exceed six (6) months, or both such fine and imprisonment

C. Administrative License Penalty. In addition to the misdemeanor criminal penalties provided by this chapter, every person who violates any provision of this chapter shall be subject to the administrative license penalties of license denial, license revocation, or license suspension, as set forth herein.

1. Criminal penalties. Under Massachusetts General Laws (M.G.L.), Chapter 111, Section 31, any person who violates any provision of these Regulations shall, upon conviction, be fined not more than one thousand dollars (\$1,000.00) for violation of these regulations. Each day's failure to comply with an order of the Department shall constitute a separate offense.

2. Non-criminal penalties. Under Massachusetts General Laws (M.G.L.), Chapter 21D, Section 40, a civil penalty of fifty dollars (\$50.00) may be assessed at the discretion of the Director, the Department or the Board of Health for violation(s) of these Regulations.

82-010 DISCIPLINARY ACTION: A credential to operate a business may have disciplinary actions taken against it in accordance with 172 NAC 82-010 on any of the following grounds:

1. Violation of the Uniform Credentialing Act or the rules and regulations adopted and promulgated under the act relating to the applicable business;
2. Committing or permitting, aiding, or abetting the commission of any unlawful act;
3. Conduct or practices detrimental to the health or safety of an individual served or employed by the business;
4. Failure to allow an agent or employee of the Department access to the business for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department; or
5. Discrimination or retaliation against an individual served or employed by the business who has submitted a complaint or information to the

Department or is perceived to have submitted a complaint or information to the Department.

82-010.01 Temporary Suspension or Limitation

82-010.01A The Department may temporarily suspend or temporarily limit any credential issued by the Department without notice or a hearing if the Director determines that there is reasonable cause to believe that grounds exist under 172 NAC 82-010 for the revocation, suspension, or limitation of the credential and that the credential holder's continuation in practice or operation would constitute an imminent danger to the public health and safety. Simultaneously with the action, the Department will institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the credential. The hearing will be held no later than 15 days from the date of the temporary suspension or temporary limitation of the credential.

82-010.01B A continuance of the hearing will be granted by the Department upon the written request of the credential holder, and the continuance must not exceed 30 days unless waived by the credential holder. A temporary suspension or temporary limitation order by the Director will take effect when served upon the credential holder.

82-010.01C A temporary suspension or temporary limitation of a credential under 172 NAC 82-010.01 will not be in effect for more than 90 days unless waived by the credential holder. If a decision is not reached within 90 days, the credential will be reissued unless and until the Department reaches a decision to revoke, suspend, or limit the credential or otherwise discipline the credential holder.

Effective Date 5/11/2010 NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES 172 NAC 82 17 82-011.04 A limitation may be placed on the right of the credential holder to operate a business to the extent, for the time, and under the conditions as imposed by the Director.

82-011.05 Violation of any of the terms and conditions of a voluntary surrender or limitation by the credential holder will be due cause for the refusal of renewal of the credential, for the suspension or revocation of the credential, or for refusal to restore the credential.

82-011.06 Re-application following voluntary surrender is set out in 172 NAC 82-012.

82-011.07 The voluntary surrender of a credential may be unrelated to disciplinary matters, or may be done to resolve a pending disciplinary

matter, in lieu of disciplinary action, or in response to a notice of disciplinary action.

82-012 RE-APPLICATION: This section applies to businesses previously credentialed in Nebraska who seek the authority to return to practice in Nebraska with a valid Nebraska credential.

1. A business whose credential has expired, voluntarily surrendered for an indefinite period of time, or suspended or limited for disciplinary reasons may apply at any time to the Department for and obtain another credential as specified in 172 NAC 82-003.

2. A business whose credential has been voluntarily surrendered for a definite period may apply at any time to the Department for and obtain another credential as specified in 172 NAC 82-003.

3. A business whose credential has been revoked may apply only after a period of two years has elapsed from the date of revocation may apply to the Department for and obtain another credential as specified in 172 NAC 82-003.

4. An individual whose credential has been permanently voluntarily surrendered may not apply for another credential.

82-013 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists of practice without a credential to operate a business. Practice without a credential for the purpose of this regulation means practice:

1. Prior to the issuance of a credential;
2. Following the expiration of a credential; or
3. Prior to the re-application of a credential.

Texas 117.111. Administrative Penalties and Sanctions. *(New Section adopted effective November 1, 2017, 42 TexReg 4991; amended effective May 1, 2018, 43 TexReg 2406)*

- (a) If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 455, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapters 51 and 455 and any associated rules.
- (b) The commission or executive director may refuse to issue a license to a person, suspend or revoke the license of a person, or place a person licensed under the Act on probation if the person:

- (1) obtains a license by fraud, misrepresentation, or concealment of material facts;
- (2) sells, barter, or offers to sell or barter a license;
- (3) violates a rule adopted by the commission;
- (4) engages in unprofessional conduct that endangers or is likely to endanger the health, welfare, or safety of the public;
- (5) violates an order or ordinance adopted by a political subdivision under Local Government Code, Chapter 243; or
- (6) violates this chapter.

- (c) The commission or executive director shall revoke the license of a person if:

- (1) the person is convicted of, enters a plea of nolo contendere or guilty to, or receives deferred adjudication for an offense under Chapter 20A, Penal Code, or Subchapter A, Chapter 43, Penal Code or another sexual offense; or
- (2) the department determines the person has practiced or administered massage therapy at or for a sexually oriented business.

- (d) The commission or executive director shall revoke the license of a person licensed as a massage school or massage establishment if the department determines that:

- (1) the school or establishment is a sexually oriented business; or
- (2) an offense involving prostitution or another sexual offense that resulted in a conviction for the offense, a plea of nolo contendere or guilty to the offense, or a grant of deferred adjudication for the offense occurred on the premises of the school or establishment.

Disciplinary Action 480.046 Grounds for disciplinary action by the board 1. The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

- a. Attempting to procure a license to practice massage by bribery or fraudulent misrepresentation.
- b. Having a license to practice massage revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.
- c. Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of massage or to the ability to practice massage. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.
- d. False, deceptive, or misleading advertising. Elite Page 4
- e. Aiding, assisting, procuring, or advising any unlicensed person to practice massage contrary to the provisions of this chapter or to a rule of the department or the board.
- f. Making deceptive, untrue, or fraudulent representations in the practice of massage.
- g. Being unable to practice massage with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon probable cause, authority to compel a massage therapist to submit to a mental or physical examination by physicians designated by the department. Failure of a massage therapist to submit to such examination when so directed, unless the failure was due to circumstances beyond her or his control, shall constitute an admission of the allegations against her or him, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A massage therapist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent practice of massage with reasonable skill and safety to clients.
- h. Gross or repeated malpractice or the failure to practice massage with that level of care, skill, and treatment which is recognized by a reasonably prudent massage therapist as being acceptable under similar conditions and circumstances.
- i. Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that she or he is not competent to perform.
- j. Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform.

k. Violating a lawful order of the board or department previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the department.

l. Refusing to permit the department to inspect the business premises of the licensee during regular business hours.

m. Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition.

n. Practicing massage at a site, location, or place which is not duly licensed as a massage establishment, except that a massage therapist, as provided by rules adopted by the board, may provide massage services, excluding colonic irrigation, at the residence of a client, at the office of the client, at a sports event, at a convention, or at a trade show.

o. Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

2. The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

3. The board shall have the power to revoke or suspend the license of a massage establishment licensed under this act, or to deny subsequent licensure of such an establishment, in either of the following cases: a. Upon proof that a license has been obtained by fraud or misrepresentation. b. Upon proof that the holder of a license is guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the operation of the establishment so licensed.

4. Disciplinary proceedings shall be conducted pursuant to the provisions of chapter 120. Advertising 480.0465 Advertisement Each massage therapist or massage establishment licensed under the provisions of this act shall include the number of the license in any advertisement of massage services appearing in any newspaper, airwave transmission, telephone directory, or other advertising medium. Pending licensure of a new massage establishment pursuant to the provisions of s. 480.043(6), the license number of a licensed massage therapist who is an owner or principal officer of the establishment may be used in lieu of the license number for the establishment.

480.047 Penalties 1. It is unlawful for any person to:

a. Hold himself or herself out as a massage therapist or to practice massage unless duly licensed under this chapter or unless otherwise specifically exempted from licensure under this chapter.

b. Operate any massage establishment unless it has been duly licensed as provided herein, except that nothing herein shall be construed to prevent the teaching of massage in this state at a board-approved massage school.

c. Permit an employed person to practice massage unless duly licensed as provided herein.

- d. Present as his or her own the license of another.
- e. Allow the use of his or her license by an unlicensed person.
- f. Give false or forged evidence to the department in obtaining any license provided for herein.
- g. Falsely impersonate any other licenseholder of like or different name.
- h. Use or attempt to use a license that has been revoked
- . i. Otherwise violate any of the provisions of this act. 2. Any person violating the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s.

Disciplinary Matrix & Fine Schedule

DISCIPLINARY SANCTIONS / FINE SCHEDULE

Violation	Time Frame	Disciplinary Action	Civil Fine	
			Total Amount	Amount Suspended
Unlicensed Establishment	>90 days	Advisement letter		
	90 days-1 yr	Consent agreement/civil fine	\$1,000 per incident	
	1-2 yrs			
	additional yrs		additional \$1,000/yr	
Allow unlicensed practice	first offense	Consent agreement/civil fine 2 yr probation/reprimand	\$2,000 per employee	\$1,000 per employee
Fraudulent License		Consent agreement/civil fine 2 yr probation/reprimand	\$4,000	2,000
License not displayed	1st offense	Advisement letter		
	2nd offense +	Civil fine	\$1,000 per incident	N/A

Operations & Sanitation

Using a massage establishment for housing, shelter or living quarters	1st offense	Consent agreement/civil fine/2 yr probation/reprimand		
	2nd offense +			
Locking doors on treatment rooms	1st offense	Consent agreement/civil fine/2 yr probation/reprimand		
	2nd offense +			
Business hours b/w 12:00AM-5:00AM	1st offense	Advisement letter, reprimand and civil fine	\$500	
	2nd offense +			
Failure to maintain proper records	1st offense	Consent agreement/civil fine	\$500	
	2nd offense +			
Failure to maintain liability insurance	First offense	Consent agreement/civil fine/2 yr probation/reprimand	\$1,000	
Failure to allow inspection	First offense	suspension of license		

Storing/possessing controlled substance where massage therapy is provided	1st offense	Consent agreement/civil fine/2 yr probation/reprimand		
	2nd offense +			

Video recording in treatment rooms	1st offense	Consent agreement/civil fine/2 yr probation/reprimand		
	2nd offense +			

Unprofessional Conduct

Inappropriate dress which exposes the breast, buttocks, or genitalia or attire that shows the practitioners undergarments or swim wear (unless water modality)	1st offense	Consent agreement/civil fine/2 yr probation/reprimand		
	2nd offense +			

Engage, initiate, or permit any sexual contact or act within the massage establishment	First offense	Suspension of license		

BAH Sample

**Disciplinary Matrix & Fine
Schedule**

CONFIDENTIAL

Utah

Establishment Regulations

Salt Lake Valley Health Department

Health Regulation

#18

**MASSAGE FACILITIES
REGULATION**

**Adopted by the Salt Lake Valley Board of Health
June 3, 1982**

**Revised:
April 2, 1992,
November 2, 2006**

**Under Authority of Section 26A-1-114
Utah Code Annotated, 1953, as amended**

1. PURPOSE & APPLICABILITY OF REGULATION

- 1.1. The purpose of this regulation is to set forth permitting procedures and requirements for the maintenance and operation of massage facilities and temporary massage facilities that will protect and promote the public health, safety, and welfare; and prevent the spread of disease.
- 1.2. This regulation applies to individuals performing massage therapy and to persons who own or operate a massage facility or temporary massage facility. This regulation shall not apply to a physician, chiropractor or physical therapist licensed by the state of Utah who uses massage techniques in the practice of medicine, chiropractic, or physical therapy. This regulation shall not apply to an individual who performs massage exclusively for personal, non-commercial use.

2. DEFINITIONS

For the purposes of this regulation, the following terms, phrases, and words shall have the meanings herein expressed:

- 2.1. “Board of Health” shall mean the Salt Lake Valley Health Department Board of Health.
- 2.2. “Department” shall mean the Salt Lake Valley Health Department (SLVHD).
- 2.3. “Director” shall mean the Director of the Salt Lake Valley Health Department or his or her designated representative.
- 2.4. “Dwelling” shall mean a building or structure that is intended or designed to be used, rented, leased, let or hired out for human habitation.
- 2.5. “Massage” shall mean the practice of applying systematic manual or mechanical manipulation of the soft tissues of the body, including muscles, connective tissues, tendons, ligaments, and joints.
- 2.6. “Massage Equipment” shall mean any device used in massage therapy that may come into contact with the patron’s skin.
- 2.7. “Massage Facility” shall mean any location, place, area, structure, or business where either as a sole service or in conjunction with other services, massage therapy is performed. A massage facility does not include those locations, places, areas, structures, or businesses where massage is performed pursuant to a temporary massage facility permit as provided in this regulation.
- 2.8. “Massage Therapist” shall mean an individual licensed by the State of Utah Division of Professional and Occupational Licensing to perform massage therapy.

- 2.9. “Nuisance” shall mean an act or condition created by a person who unlawfully commits or omits to perform any duty, which either:
- 2.9.1. seriously injures or endangers the health, or safety of any person; or
 - 2.9.2. seriously renders a person insecure in life; or
 - 2.9.3. endangers the environment.
- 2.10. “Operator” shall mean a person who leases or manages a massage facility or temporary massage facility.
- 2.11. “Owner” shall mean any person who alone, jointly, or severally with others:
- 2.11.1. has legal title to any massage facility or temporary massage facility, with or without accompanying actual possession thereof; or
 - 2.11.2. has charge, care, or control of any massage facility or temporary massage facility as legal or equitable owner, agent of the owner, or is an executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the owner.
- 2.12. “Patron” shall mean any person who receives a massage by a massage therapist.
- 2.13. “Permit” shall mean a written form of authorization in accordance with this regulation.
- 2.14. “Personal service station” shall mean a booth, table, or chair in which a personal service is provided. Examples include but are not limited to tanning booths, massage tables, and hair stylist chairs.
- 2.15. “Temporary Massage Facility” shall mean a location, place, area, structure, or business where either as a sole service or in conjunction with other services, massage therapy is performed for seven days or less.

3. GENERAL PROVISIONS

3.1. Jurisdiction of the Department.

- 3.1.1. This regulation is promulgated by the Salt Lake Valley Board of Health as authorized by Section 26A-1-121(1), Utah Code Ann., 1953 as amended and Chapter 9.04, Salt Lake County Code of Ordinances.
- 3.1.2. The Department is empowered to enforce this regulation in all incorporated and unincorporated areas served by the Department as authorized by Section 26A-1-114(1)(a), Utah Code Ann., 1953 as amended and Chapter 9.04, Salt Lake County Code of Ordinances.

- 3.2. It shall be unlawful for any person not to comply with any regulation promulgated by the Department, unless granted an express variance by the Salt Lake Valley Board of Health.
- 3.3. Compliance with this regulation does not constitute a defense if charged with any environmental crime or violation of any local, state, or federal law.
- 3.4. Legal action taken by the Department under this Regulation does not preclude prosecution for any environmental crime that may have been committed or violation of any other local, state, or federal law.
- 3.5. Nothing in this regulation affects or modifies in any way the obligations or liability of any person under any other regulation or provision thereof issued by the Department, any ordinance issued by Salt Lake County or any municipality located within Salt Lake County, or any state or federally issued law, including common law. However, Departmental regulations supersede other existing local and county standards, regulations and ordinances pertaining to similar subject matter that are inconsistent.
- 3.6. Verbal or contractual obligations shall not diminish or remove the owner's or other responsible person's obligation to comply with this regulation.
- 3.7. **Severance.** If any section, subsection, sentence, clause, or phrase of this regulation is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this regulation.

4. MESSAGE PROVISIONS

4.1. Permits and Plan Review.

4.1.1. Department Approval and Permits Required.

- (i) No person shall operate a Massage Facility without written approval and a corresponding valid Massage Facility Permit from the Department.
- (ii) No person shall operate a Temporary Massage Facility without obtaining written approval and a corresponding valid Temporary Massage Facility Permit from the Department.

4.1.2. Permit Application, Duration, and Renewal.

- (i) Application for a permit required in part 4.1.1 shall be made upon a form provided by the Director.
- (ii) Application for a permit required in part 4.1.1 shall be made prior to commencement of operation of the establishment.

- (iii) **Permit Duration and Renewal.** The Massage Facility Permit shall be issued annually and shall one year from date of issuance expire. It is the responsibility of the owner or operator of the Massage Facility to pursue permit renewal through appropriate channels. The Permit shall be renewable within 60 calendar days prior to the expiration date. The Temporary Massage Facility Permit shall be valid for seven consecutive days beginning with the date written on the permit.

4.1.3. **Massage Facility Plan Review.** A Massage Facility Permit applicant or Permit holder may be required to submit to the Department prior to the start of construction or remodeling properly prepared plans and specifications for review and approval before:

- (i) The construction of a Massage Facility;
- (ii) The conversion of an existing structure for use as a Massage Facility; or
- (iii) The remodeling of a Massage Facility if the Department determines that plans and specifications are necessary to ensure compliance with this regulation.

4.2. **Construction and Operation Requirements for Massage Facilities.** Unless otherwise ordered or approved by the Department, each facility shall be constructed, operated, and maintained to meet the following minimum requirements:

4.2.1. **Physical Facilities.**

- (i) Each massage facility and temporary massage facility shall have a toilet and a hand-washing sink with hot and cold water accessible to patrons provided with soap and single-use towels. The toilet and hand-washing facilities shall be thoroughly cleaned each day the establishment is in operation and kept in compliance with applicable state and local regulations.
- (ii) A massage facility and temporary massage facility located in a dwelling shall have one dedicated restroom facility as described in subpart 4.2.1 (i) for the use of patrons and operators during business hours. Access to the restroom shall not be through the massage therapist's bedroom.
- (iii) The floors and walls in the toilet and hand-washing areas must be constructed of smooth, non absorbent material.
- (iv) A massage facility or temporary massage facility located in a dwelling shall not be in the massage therapist's bedroom. Access to the massage facility or a temporary massage facility shall not be through the massage therapist's bedroom.

- (v) All rooms of a massage facility or temporary massage facility shall be capable of being illuminated to allow for proper cleaning and sanitizing.
- (vi) No room used for performing massage shall be used for eating, cooking, or sleeping by the massage therapist.

4.2.2. Cleaning and Maintenance.

- (i) All tables, counters, equipment, chairs, carpeting, and other surfaces in the massage facility and temporary massage facility shall be kept clean and in good repair.
- (ii) Sanitization shall be carried out using U.S. Environmental Protection Agency (U.S. E.P.A.) registered sanitizer and in accordance with the U.S. E.P.A. approved label.
- (iii) At the request of the patron, sanitizer and instructions on the proper use of such shall be provided by the operator.
- (iv) Each massage facility and temporary massage facility shall have an adequate supply of clean towels and linens which shall be changed after each patron. All clean towels and linens shall be stored in a closed container.
- (v) Soiled towels and linens shall be placed in closed containers .
- (vi) Oils, creams, lotions, or other preparations shall be sanitary and stored in clean, closed containers.
- (vii) Only single use applicators or spouts that preclude contamination of the contents shall be used for the dispensing of oils, creams, lotions, or other preparations.

4.2.3. Owners, Operators, Massage Therapists, and Patrons.

- (i) Owners and operators of a business which employs individuals to perform massage, either as employees or private contractors shall ensure that such individuals are licensed to perform massage by the Utah Division of Occupational and Professional Licensing.
- (ii) All massage therapists shall conform to good hygienic practices while on duty in a massage facility.
- (iii) Massage therapists shall wash their hands thoroughly before and after performing each massage.

- (iv) No massage therapist shall administer a massage or give treatment if they know or should know that they have any disease capable of being transmitted to another individual.
- (v) If the Director has reasonable suspicion that a disease has been transmitted by a massage therapist in the course of performing massage, the Director shall make investigation or examination as appropriate and take action as needed to protect and preserve the public health. In addition to other legal remedies, such action may include, but is not limited to:
 - a. Exclusion of the employee or patron from the massage facility; or
 - b. The immediate closure of the facility.
- (vi) The Director may require medical testing or examinations if a contagious disease is suspected of being transmitted by a massage therapist.
- (vii) Massage therapists with an open wound, cut, sore, burn, or other skin injury capable of coming into contact with a client's skin shall not practice massage without covering the wound, cut, sore, burn or skin injury with a suitable physical barrier such as a finger cot or a latex glove.
- (viii) Massage therapists may deny service to patrons with skin diseases or other conditions posing public health concerns.

5. LICENSES, PERMITS, & REGULATORY FEES

- 5.1. The Department may establish and collect appropriate fees for licenses and permits as set out in this regulation. The Department may collect appropriate fees as set out in this regulation for the performance of services, including plan reviews. If information on a license or permit application changes, the applicant shall notify the Department in writing within 20 calendar days.
- 5.2. **Massage Facility Permit Fees.** The fees for a Massage Facility Permit required in part 4.1.1 of this regulation shall be paid to the Department at the time of application. It shall be based upon the reasonable expenses incurred by the Department to review plans and specifications, conduct inspection(s), and act upon the permit application. The annual fee for a Massage Facility Permit shall be \$100.00 plus \$5.00 for each personal service station.
- 5.3. **Temporary Massage Facility Permit Fees.** The fees for a Temporary Massage Facility Permit required in part 4.1.1 (ii) of this regulation shall be paid to the Department at the time of application. It shall be based upon the reasonable expenses incurred by the Department to conduct inspection(s), and act upon the permit application. The fee for a Temporary Massage Facility Permit shall be \$50.00.

5.4. Massage Facility Follow-Up Inspection Fee. The Department will charge a follow-up fee to a Massage Facility Permit holder when conditions found during an inspection require a follow-up inspection to ensure compliance. The fee for a massage facility follow-up inspection is \$100.

5.5. Late Fees.

5.5.1. The Department may impose upon any party subject to this regulation penalties and charges for failure to timely pay service and license or permit fees as set out in this regulation. Attorney's fees and collection fees may also be applied.

5.5.2. Fees unpaid to the Health Department after 30 calendar days of the due date will be assessed a penalty of 10% of the outstanding balance. Failure to pay the fees and additional charges after 60 days of the due date will be assessed an additional penalty of 15% of the outstanding balance including previous penalties. Failure to pay the fees and additional charges after 100 days of the due date will result in suspension of the permit and the right to operate. A \$40.00 charge will be assessed for each returned check.

5.6. Unless otherwise provided for in this regulation or approved by the Director in the Department's Fee Standard, all fees collected by the Department are non-refundable. All licenses and permits issued by the Department are non-transferable.

5.7. Denial, Suspension, or Revocation of License or Permit. Any permit or license applied for or issued pursuant to this regulation may be denied, suspended, or revoked by the Director for any of the following reasons:

5.7.1. Failure of the permit application, plans, or specifications to show that the massage facility will be operated or maintained in accordance with the requirements and standards of this regulation.

5.7.2. Submission of incorrect or false information in the permit application, plans, or specifications;

5.7.3. Failure to construct, operate or maintain the massage facility in accordance with the permit application, plans, and specifications approved by the Director;

5.7.4. Failure of the owner or operator of a massage facility to permit or allow the Department to conduct inspections as necessary to determine compliance with this Regulation;

5.7.5. Operation of the massage facility in a way that causes or creates a nuisance or hazard to the public health, safety, or welfare;

5.7.6. Violation of this regulation or any other restrictions required by the Director;

- 5.7.7. Violation of any condition upon which the permit was issued;
- 5.7.8. Failure to pay the permit fee or any late fees within 100 days of the permit fee's due date; or
- 5.7.9. Failure to supply updated information as required in subsection 5.1.

6. INSPECTIONS & INVESTIGATIONS

6.1. To ensure compliance, the Department has the authority to perform inspections, investigations, reviews, and other actions as necessary.

6.2. Authority for Department to Enter Premises.

6.2.1. **Regulated Commercial Premises.** Upon presenting proper identification, authorized representatives of the Department may enter upon the premises of properties regulated by the Department to perform routine inspections to ensure compliance with rules, standards, regulations, and ordinances adopted by the Board of Health, the Departments of Health & Environmental Quality, county or municipal governing bodies, or the division of Occupational and Professional Licensing.

6.2.2. **Private Dwellings.** Inspections of private dwellings are made by consent of owner or otherwise responsible party or upon a warrant issued by a court.

6.2.3. **Consent by License or Permit:** The Department may require licensees or permittees to consent to access for inspections as part of their license or permit. Failure to allow access for inspections as set out in the license or permit may result in the suspension or revocation of the license or permit.

6.3. The owner or other responsible person may request information gathered by the Department during an investigation, inspection or review as authorized by the Government Records Access and Management Act, §§ 63-2-101 to 63-2-1001 Utah Code Ann., 1953 as amended.

7. ENFORCEMENT MECHANISMS. If the Department has investigated or inspected any property or facility and believes the property owner or other responsible party is in violation of this regulation or the division has other reasonable grounds to believe that there has been a violation of any part of this regulation or that the property owner or otherwise responsible party is not in compliance with this regulation, the division may take civil enforcement action as authorized by statute, rule, ordinance, and regulation and may also refer the matter for criminal prosecution. Civil enforcement may involve court or administrative actions, injunctive actions, and closures and may involve cost recovery, penalties, and other remedies. Civil and criminal actions may be brought simultaneously. A person does not need to be first adjudged liable in a civil matter before facing criminal charges.

- 7.1. Criminal Enforcement Actions.** The Department may recommend criminal prosecution for violations either alone or in conjunction with civil enforcement. Criminal prosecutions for violations of state or federal law may be filed by the District Attorney, Utah Attorney General, United States Department of Justice, or other enforcement entity. Factors that the Department may consider in recommending criminal enforcement include the following factors and any other relevant factors.
- 7.1.1. The nature and seriousness of the offense including the immediacy of the threat of danger to the life or safety of another or the harm or threatened harm to human health or;
 - 7.1.2. The degree to which the violation was designed to provide economic gain or cost avoidance or it involved a pattern of conduct or a common attitude of illegal conduct;
 - 7.1.3. The degree to which the offender is a known violator and has avoided prior actions by the Department;
 - 7.1.4. The degree to which prosecution might deter future violations;
 - 7.1.5. The person's actual culpability in connection with the offense including the presence in connection with the offense including the presence of criminal intent;
 - 7.1.6. The person's willingness to cooperate in the investigation including whether the violator has attempted to conceal evidence or prosecution of others;
 - 7.1.7. The appropriateness of referring the case to other agencies having prosecutorial interest; and
 - 7.1.8. Possibilities of civil remedies which would be more appropriate than initiating the criminal justice process.

7.2. Civil Enforcement Actions.

- 7.2.1. The Department may request that the District Attorney bring an action to restrain or enjoin actions in violation of public health, environmental laws, and other laws or abate conditions in violation of such laws.

7.3. Administrative Actions.

- 7.3.1. The Department may, at its discretion, issue a Notice of Violation & Order of Compliance (NOV).
- 7.3.2. **Service of NOV.** The Department may provide notice to the owner of the property or otherwise responsible person by sending the NOV via first class mail to the last known address of the owner of the property or other responsible person.

If notice is returned undeliverable, the owner of the property or other responsible person may be personally served or be given notice by other methods reasonably calculated to give actual notice to the owner or other responsible party.

7.3.3. Contents of NOV. The NOV shall:

- (i) Describe the property and the persons believed to be in violation;
- (ii) Describe the violation;
- (iii) Describe remedial action that will comply with the provisions of this regulation;
- (iv) Set a reasonable time for the performance of any required remedial action(s);
- (v) Describe the procedure to contest the NOV and the time limits for such a contest; and
- (vi) Notify the owner or other responsible person that if no written contest is filed within the time required, the NOV will become final and unappealable to any administrative entity or court.

7.3.4. Challenging an NOV. As detailed in the SLVHD's Adjudicative Hearing Procedures, a party aggrieved by an NOV may request a departmental conference, departmental hearing, or departmental appeal in writing within ten (10) days of the date of the NOV.

7.3.5. Departmental Conference, Settlement Agreements, and Stipulations & Orders.

- (i) After issuance of the NOV, the alleged violator has the option to request and attend a Departmental Conference to discuss the NOV and settlement with the Department and its legal counsel. No hearing officer will be present. The process of requesting a Departmental Conference are more fully described in the SLVHD's Adjudicative Hearing Procedures.
- (ii) If the parties agree to a settlement, the Department will prepare, in conjunction with the District Attorney's Office, a binding Settlement Agreement or Stipulation & Consent Order which may require the payment of penalties and the costs of investigation. Parties may also agree to a settlement at any time subsequent to the Departmental Conference. After signing a Settlement Agreement or Stipulation & Consent Decree, the parties waive all rights to further department and court hearings or appeals. Settlement Agreements or Stipulation & Consent orders may be enforced in state courts.

- 7.3.6. **Hearings & Appeals.** Parties Aggrieved by an NOV may also request a Departmental Hearing or a Departmental Appeal. A hearing officer is present at these proceedings and makes a written determination. The methods of challenging an NOV are more fully described in the SLVHD's Adjudicative Hearing Procedures. Departmental Hearing Orders and Departmental Appeal Orders may be appealed to the entities and within the time limits set out in the SLVHD's Adjudicatory Hearing Procedures.
- 7.3.7. **Failing to respond to an NOV.** If a party fails to respond to an NOV within the required time, the NOV becomes a final order unappealable to any administrative entity or court. The Department may then enforce the order in state court.

7.4. **Additional Administrative Enforcement Authority.**

- 7.4.1. The Department may declare unsanitary conditions a nuisance and cause every nuisance affecting the public health to be abated.
- 7.4.2. **Variances.** Any variance allowed by the Department to the requirements of this regulation shall be only by written approval of the Board of Health.
- 7.4.3. **Exercise of Physical Control.** The Department may establish, maintain, and exercise physical control over property and over individuals as the Department finds necessary for the protection of the public health including but not limited to closing theaters, schools, and other public or private places and prohibit public gatherings. The order shall be effective immediately. Any person to whom the order is directed shall comply immediately but may petition the Director for a hearing in accordance with the Salt Lake Valley Health Department's Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this regulation, the Director shall continue the order in effect or modify or revoke it.
- 7.4.4. **Emergency Enforcement.** If the Director finds that an emergency exists that requires immediate action to protect the public health, he or she may without notice or hearing issue an order declaring the existence of an emergency and requiring that action be taken as he or she deems necessary to meet the emergency. The order shall be effective immediately. Any person to whom the order is directed shall comply and abate the nuisance immediately; but may petition the Director for a hearing in accordance with the Salt Lake Valley Health Department's Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this regulation, the Director shall continue the order in effect or modify or revoke it. If circumstances warrant because of the seriousness of the hazard, the Department may act to correct or abate the emergency without issuance of an order or directive or without waiting for the expiration of compliance time previously given in an order.

8. CRIMINAL, CIVIL & ADMINISTRATIVE PENALTIES

8.1. Criminal Penalties.

- 8.1.1. Any person who is found guilty by a court of violating any of the provisions of this regulation, either by failing to do the acts required herein or by doing a prohibited act, is guilty of a class B misdemeanor, pursuant to Section 26A-1-123, Utah Code Annotated, 1953, as amended.
- 8.1.2. Each day such violation is committed or permitted to continue shall constitute a separate violation.
- 8.1.3. Each similar subsequent violation occurring within two years of the initial violation may constitute a class A misdemeanor.

8.2. Civil & Administrative Penalties.

- 8.2.1. Penalties may be included in a Settlement Agreement or Stipulation & Consent Order. Penalties may be assessed according to the following factors:
 - (i) The violator's history of compliance or non-compliance;
 - (ii) The violator's economic benefit of non-compliance;
 - (iii) The documented costs associated with environmental or health damage;
 - (iv) The violator's degree of willfulness or negligence; and
 - (v) The violator's good faith efforts to comply and cooperate.
- 8.2.2. The Director may multiply the penalty by the number of days the violation occurred

8.3. Recovery of Investigation & Abatement Costs

- 8.3.1. The Department may recover its inspection, investigative and abatement expenses and costs from owners or other responsible person.
- 8.3.2. The Department may record a judgment lien on a violator's property to recover its expenses and costs.

9. EFFECTIVE DATE.

- 9.1. This regulation shall become effective upon its enactment by the Salt Lake Valley Board of Health.

APPROVED AND ADOPTED this _____ day of _____, 2006.

SALT LAKE VALLEY BOARD OF HEALTH

By: _____
William S. Kidder, D.D.S.

ATTEST:

By: _____
GARY L. EDWARDS, M.S.
Executive Director
Salt Lake Valley Health Department

M.E.L. Task

Exemptions & Change of Ownership

David Edwards-Smith

Exemptions

Massage Exemption Regulations

Establishment Exemption Regulation Language for Discussion

The following are exempt from the massage establishment license requirement:

1. Hospitals, residential care facilities, and assisted living facilities licensed by the state of Alaska;
2. Public and private secondary schools or accredited colleges and universities who are approved by the board and when massage is performed in a massage therapy school curriculum.
3. Sports venues at which massage may be conducted on the members of professional sports franchises by athletic trainers employed by professional sports or collegiate sports franchises.
3. Locations at which Chair Massage is exclusively done
4. On-site massage performed at the location of the client
5. Place of business is not required to hold a license under this chapter if:
 - (1) the place of business is owned by the federal government, the state, or a political subdivision of the state;
 - (2) at the place of business, a licensed massage therapist practices as a solo practitioner and:
 - (A) uses a business name or an assumed name and provides the massage therapist's full legal name or license number in each advertisement and each time the business name or assumed name appears in writing;
 - (3) at the place of business, an acupuncturist, athletic trainer, chiropractor, cosmetologist, midwife, nurse, occupational therapist, physical therapist, physician, physician assistant, podiatrist, respiratory care practitioner licensed in the state of Alaska employs or contracts with a licensed massage therapist to provide massage therapy as part of the person's practice
6. a business owned and operated by massage therapist(s) licensed in the state of Alaska.

Application for exemption?

7. An establishment or business whose primary function is not the provision of massage therapy services may be exempt from the requirement of obtaining licensure as a massage therapy establishment by filing with the Board a sworn and notarized statement by the owner, lessee, or legal possessor declaring the primary function of the establishment; and by filing with the Board official government related or business records, city business license, Internal Revenue Service tax returns and records or correspondence regarding advertisement, appointment books kept in the normal course of business, or statements of business associates consulted in relation to the practice of the primary function of the establishment to be other than massage therapy, and as to which massage therapy is an incidental practice. The Board may request such other and further documentation of the interaction of massage therapy practice and the primary function of the establishment as seems reasonable in making its determination as to the granting of exemption from establishment licensure.

Previous Language Draft by the Alaska Board of Massage Therapists

A. The following are exempt from the massage establishment license requirement:

1. Hospitals, residential care facilities, and assisted living facilities licensed by the state of Alaska;
2. Public and private secondary schools or accredited colleges and universities who are approved by the board and when massage is performed as an educational requirement. **Requirement of whom?**
3. Sports venues at which massage may be conducted on the members of professional sports franchises by athletic trainers employed by professional sports or collegiate sports franchises.
4. The business locations in which barbers and cosmetologists, currently licensed by the state of Alaska, practice massage limited to the neck, face, scalp, hair, hands, or feet, when such massage is conducted in conjunction with a cosmetic service such as a haircut or styling, shave, manicure, or pedicure.
5. A massage therapist licensed in the State of Alaska who owns and operates a massage business with or without employees. (???)

Exemption Regulation by States with Establishment Licensing

Alabama

(4) An establishment or business whose primary function is not the provision of massage therapy services may be exempt from the requirement of obtaining licensure as a massage therapy establishment by filing with the Board a sworn and notarized statement by the owner, lessee, or legal possessor declaring the primary function of the establishment; and by filing with the Board official government related or business records, city business license, Internal Revenue Service tax returns and records or correspondence regarding advertisement, appointment books kept in the normal course of business, or statements of business associates consulted in relation to the practice of the primary function of the establishment to be other than massage therapy, and as to which massage therapy is an incidental practice. The Board may request such other and further documentation of the interaction of massage therapy practice and the primary function of the establishment as seems reasonable in making its determination as to the granting of exemption from establishment licensure.¹

(c) The board shall provide by rule, for a fair and reasonable procedure to grant exemptions from the licensure requirement of this section when the applicant can show that the advertising of massage therapy services is incidental to the primary function of his or her business. No such exemption shall be granted to a sexually oriented business.

Massachusetts

(a) A Massage Therapy Establishment license is not required for the following:

1. Any healthcare facility licensed by the Massachusetts Department of Public Health;
2. Board approved continuing education programs and student clinics operated by Board licensed Massage Schools;
3. Locations at which Chair Massage is exclusively done; and
4. Locations at which Massage Therapy is offered for not more than 24 hours in a one week period every six months at a public or charitable event with a primary purpose unrelated to massage.

(b) The Board may require any location at which Massage Therapy is provided to provide satisfactory evidence why it is eligible for the exemption from Massage Therapy Establishment licensure requirements. The burden of proving eligibility shall rest with the entity claiming the exemption.

LOUISIANA

(2) All locations where one or more persons are regularly engaged in the practice of massage therapy shall register with the board as a massage establishment. Additionally, all locations where more than one person is regularly engaged in the practice of massage therapy shall pay the establishment license fee.

TEXAS

(a) Section 455.151 does not apply to an establishment or person that:

- (1) holds a license, permit, certificate, or other credential issued by this state under another law; and
- (2) offers or performs massage therapy under the scope of that credential.

(b) A licensed massage therapist who practices as a solo practitioner is not required to hold a license as a massage establishment.

(c) A place of business is not required to hold a license under this chapter if:

(1) the place of business is owned by the federal government, the state, or a political subdivision of the state;

(2) at the place of business, a licensed massage therapist practices as a solo practitioner and:

(A) does not use a business name or assumed name; or

(B) uses a business name or an assumed name and provides the massage therapist's full legal name or license number in each advertisement and each time the business name or assumed name appears in writing;

(3) at the place of business, an acupuncturist, athletic trainer, chiropractor, cosmetologist, midwife, nurse, occupational therapist, perfusionist, physical therapist, physician, physician assistant, podiatrist, respiratory care practitioner, or surgical assistant licensed or certified in this state employs or contracts with a licensed massage therapist to provide massage therapy as part of the person's practice; or

(4) at the place of business, a person offers to perform or performs massage therapy:

(A) for not more than 72 hours in any six-month period; and

(B) as part of a public or charity event, the primary purpose of which is not to provide massage therapy.

(d) A sexually oriented business may not:

(1) hold a license under this chapter; or

(2) operate as a massage establishment under this chapter.

(New Section adopted effective November 1, 2017, 42 TexReg 4991)

(a) A place of business is not required to hold a massage establishment license under the Act if:

(1) the place of business is owned by the federal government, the state, or a political subdivision of the state;

- (2) at the place of business, a licensed massage therapist practices as a solo practitioner and:
- (A) does not use a business name or assumed name; or
 - (B) uses a business name or an assumed name and provides the massage therapist's full legal name or license number in each advertisement and each time the business name or assumed name appears in writing;
- (3) at the place of business, an acupuncturist, athletic trainer, chiropractor, cosmetologist, midwife, nurse, occupational therapist, perfusionist, physical therapist, physician, physician assistant, podiatrist, respiratory care practitioner, or surgical assistant licensed or certified in this state employs or contracts with a licensed massage therapist to provide massage therapy as part of the person's practice; or
- (4) at the place of business, a person offers to perform or performs massage therapy:
- (A) for not more than 72 hours in any six-month period; and
 - (B) as part of a public or charity event, the primary purpose of which is not to provide massage therapy.
- (b) Unless the person is exempt from the licensing requirement, a person may not represent that the person is a massage establishment unless the person holds an appropriate license under this subchapter.

DELEWARE

- (f) This chapter shall not apply to:
- (1) Actions by any person, who is certified or licensed in this State by any other law, and who is engaged in and acting within the scope of the profession or occupation for which that person is certified or licensed;
 - (2) Actions by any person engaged in an occupation which does not require a certificate or certification, including, but not limited to, physical education teachers, athletic coaches, health or recreation directors, instructors at health clubs or spas, martial arts, water safety and dance instructors, or coaches, who is acting within the scope of activity for which such person is trained; and
 - (3) Any student of massage who is practicing within the scope of his or her course of study.

MISSOURI

A person desiring to receive a license to operate a massage business in the state of Missouri shall file a written application with the board on a form prescribed by the board and pay the appropriate required fee. It shall be unlawful for a business to employ or contract with any person in this state to provide massage therapy as defined in subdivision (7) of section 324.240 unless such person has obtained a license as provided by this chapter. Failure to comply with the provisions of this section shall be cause to discipline the licensee.

(L. 1998 H.B. 1601, et al., A.L. 1999 H.B. 343 merged with S.B. 362, A.L. 2006

NEBRASKA

Massage Therapy Establishment means any duly licensed place in which a massage therapist practices his/her profession of massage therapy. This does not include:

- a. On-site massage performed at the location of the client;
- b. Stand-alone devices, such as chairs, which are operated by the customer; or
- c. Establishments located within the confines of a hospital, nursing home, or other similar establishment or facility licensed or otherwise regulated by the Department of Health and Human Services.

NORTH CAROLINA

Massage and bodywork therapy establishment. Any duly licensed site or premises in which massage and bodywork therapy is practiced. This term does not include any of the following:

- a. On-site massage performed at the location of the customer.
- b. Stand-alone devices, such as chairs, that are operated by the customer.
- c. Establishments located within the confines of a hospital, nursing home, or other similar establishment or facility licensed or otherwise regulated by the Department of Health and Human Services.
- d. Massage and bodywork therapy provided by a sole practitioner.
- e. A student clinic operated by a Board-approved school or a massage and bodywork therapy program offered by community colleges in North Carolina that are accredited by the Southern Association of Colleges and Schools or massage and bodywork therapy programs offered by a degree or diploma granting college or university accredited by any accrediting agency that is recognized by the United States Department of Education and licensed by the North Carolina Community College System or The University of North Carolina Board of Governors or exempt from such licensure pursuant to G.S. 116-15(c).
- f. Chiropractic physician offices that provide massage and bodywork therapy only by massage and bodywork therapists currently licensed in North Carolina.

(4a) Owner. The person, sole proprietor, partnership, limited partnership, or corporation that operates the massage and bodywork therapy establishment.

...

(6) Sole practitioner. A single licensed massage and bodywork therapist offering massage or bodywork therapy services from a space the licensed massage and bodywork therapist controls and from which only the licensed massage and bodywork therapist offers and provides the services.

OREGON

(2) The board may exempt by rule a type of massage facility from the prohibition in subsection (1)(b) of this section if the board finds that requiring a permit for that type of facility is not necessary to regulate the practice of massage therapy or to protect the health and safety of the public.

TENNESSEE

The practice of reflexology shall not be subject to the licensure requirements of this chapter. For the purposes of this chapter, "reflexology" means the application of specific pressures to reflex points in the hands and feet only.

Change of Ownership

Transfer of License Regulation

After reviewing regulation language and researching this subject I suggest that the board has consideration for the Alabama transfer of license language.

Dave

ALABAMA

(3) In the event the licensed establishment sold, subleased, or legal possession of the establishment is changed, the new owner, lessee, or legal possessor of the establishment shall be required to apply for and obtain a new license within sixty (60) days of the change of ownership, lessee, or legal possess. The establishment license is not assignable or transferable.

DELEWARE

(i) A massage establishment license issued pursuant to this chapter shall be issued for a single, identified location and is not assignable or transferable.

FLORIDA

(b) A license may be transferred from one location to another only after inspection and approval by the board and receipt of an application and inspection fee set by rule of the board, not to exceed \$125.

(c) A license may be transferred from one business name to another after approval by the board and receipt of an application fee set by rule of the board, not to exceed \$25.

When a massage establishment business name is changed, without a change in ownership or location, a new establishment inspection is not required.

LOUISIANA

All name, location and/or ownership changes of licensure must be reported in writing to the board within 30 days of occurrence using a form provided by the board.

MISSOURI

A license shall not be transferable or assignable. When a massage business is sold or ownership or management is transferred, or the corporate legal organization status is substantially changed, the license of the massage business shall be voided and a new license obtained. Application for a new license shall be made to the board in writing, at least ninety days prior to the effective date of the sale, transfer, or change in corporate status. The application for a new license shall be on the same form, containing the same information required for an original license, and shall be accompanied by a license fee to be determined by the board. The board may issue a temporary operating permit to continue the operation of the massage business for a period of up to ninety days pending the survey inspection and the final disposition of the application.

(1) At least fifteen (15) days prior to a proposed name change, the massage therapy business owner shall notify the board of the proposed name change in writing prior to changing the business name or before revising any printing materials or advertisements.

(A) The license reflecting the name change shall replace the original license and be displayed in a conspicuous place on the premises of the licensed massage therapy business.

(2) When a massage therapy business changes location, an application for a location change must be submitted to the board along with the required fee. The business shall submit to a survey inspection by the board at the new location.

(3) When a massage therapy business is sold, or ownership or management is transferred, or the corporate legal organization status is substantially changed, the massage therapy business shall apply for a license by submitting an application, paying the required application fee, and submitting to an inspection.

NEBRASKA

Any establishment may apply for a change to its license, due to a change in Owner(s), change in name, or a change in location. Each establishment license issued is in effect solely for the Owner(s) and premises named thereon and will expire automatically upon any change of Owner(s) or change of location.

82-007.01 Change in Owner(s): The applicant must apply to the Department for and obtain another credential as specified in 172 NAC 82-003 at least 15 days prior to the change.

82-007.02 Change in Establishment Name: The applicant must submit:

1. A request for a change in the establishment name at least 15 days prior to the change; and
2. The required fee for a reissued license.

82-007.02A The Department will act within 150 days upon all completed applications and will reissue a license with the change of establishment name identified on the license.

82-007.03 Change in Location: The applicant must apply to the Department for and obtain another credential as specified in 172 NAC 82-003 at least 15 days prior to the change.

OREGON

3. Establishment licenses are not transferable

(5) The board may authorize transferring the name of a massage facility to another massage facility if the permittee who operates the massage facility to which the name will be transferred:

- (a) Submits an application in a form and manner prescribed by the board by rule;
- (b) Pays the fee required under ORS 687.071 (1)(j);
- (c) Makes all necessary changes to documents on file with the Secretary of State; and
- (d) Complies with any other applicable rule of the board.

Lunch

From: Scott and Traci
To: [Dulebohn, Dawn L \(CED\)](#)
Cc: [Chambers, Sara C \(CED\)](#)
Subject: Followup to today's MAS teleconference
Date: Friday, October 12, 2018 1:43:44 PM

Please forward to the board if you see fit. Thanks!

I would like to relay what I took away from the teleconference and "new" board information/process. Please add to my thoughts or correct me on what I didn't get right. :)

This "Check In" is intended for us to look at applicants in a way to find a path to licensure but stay as safe as possible in a world that looks to exploit women and sex trafficking. As I stated during the teleconference, the board seeks to find a way to keep prostitution from AK Massage businesses and move the existing trafficking sites out of Alaska and preferably shut them down. Some of this information today is disconcerting as we have spent a great deal of time and discussion on the Barrier Crimes Matrix only to be told it is not a tool we can rely on. I believe we can continue to use it as a guideline (you may have talked about this after I went to work) but understand that we cannot use it as a hard line denial tool.

I see today's information as a way to keep us from denying licenses when applicants may have made a mistake well in their past and have not reoffended. I am willing to look at applicants with a softer eye and use the Consent Agreement process to keep appeals to a minimum and leave legal out of the process unless absolutely necessary.

This will reduce our costs, allow qualified applicants to be licensed and work in our state and force some to take Ethics courses, be accountable to probationary requirements and help applicants understand that we will be watching yet hoping for the best.

Thanks, just wanted to process and be certain to get my thoughts down.

Traci



Subject		Unit(s)	PL #
PROCEDURES FOR A FITNESS TO PRACTICE REVIEW: CRIMINAL CONVICTION ON INITIAL APPLICATION		Professional Licensing & Investigations	TBD
Approvals	Signature	Date	Date Effective
Division Operations Manager	DRAFT		October 2018
Chief Investigator	DRAFT		
Revisions:			
Considerations:			
<p>This policy and procedure applies to all licensing programs requiring for licensure a criminal history standard unless otherwise codified in regulations prior to the effective date of this policy. Please refer to other policies and procedures for related topics on professional fitness.</p> <p>“Fitness to practice” means the applicant has the skills, knowledge, and character to practice their profession safely and effectively. However, fitness to practice is not just about professional performance. It also includes acts by a licensee which may have an impact on public protection or confidence in the profession or the regulatory process.</p> <p>Fitness to practice reviews are about protecting the public, not designed to punish applicants for past mistakes. Sometimes people make mistakes that are unlikely to be repeated. This may mean that the applicant’s fitness to practice is unlikely to be impaired. People do make mistakes or have lapses in behavior. Our processes do not mean that we will pursue every isolated or minor lapse. Boards may adopt guidelines on what minor criminal convictions may be excluded from review.</p> <p>Authority: AS 08.01.050, AS 08.01.070</p>			
Procedures:			
A. Application and Notification			
1.	A criminal conviction should be disclosed in the professional fitness answers on the application. Where applicable, a state or national criminal history background check may reveal criminal convictions. In these cases, staff must follow P&P-28 to ensure an investigator reviews the file prior to board review.		
2.	If the board elects not to issue the license, a Fitness to Practice Review will be scheduled with enough time to allow the applicant to provide supplementary documentation, yet it shall not be unreasonably delayed. The review shall be published in the next regular monthly meeting public notice as “consideration of license applications.”		

3.	The applicant shall be notified of the time, date, and location of the Fitness to Practice Review using the official notification letter. The letter explains the process and sets a deadline for the applicant to provide documentation in advance of the meeting for board review.
B. Fitness to Practice Review	
1.	The applicant shall be permitted to be present during the Fitness to Practice Review and may be interviewed by the board. All Fitness to Practice Reviews will occur in executive session unless the applicant waives their right to executive session by requesting the discussion take place on the record. The board may invite staff or experts sufficient to assist in their deliberations.
2.	The board shall seek consistency in the application of disciplinary sanctions and shall explain a significant departure from prior decisions involving similar facts in the order imposing the sanction.
3.	<p>The following factors will be applied by the board when analyzing an applicant’s fitness to practice:</p> <ul style="list-style-type: none">a. The specific duties and responsibilities necessarily related to the license sought or held by the person, including specific reference to sections of statute or regulations that define “scope of practice” or describe the duties of a licensee;b. How the criminal offense or offenses for which the person was convicted affects or is reasonably likely to affect the person’s ability to perform one or more duties or responsibilities required of a licensee;c. How long it has been since the conviction;d. Age of the person at the time of conviction;e. Seriousness of the offense or offenses;f. Circumstances of the offense or offenses;g. Number of offenses;h. Absence of misconduct since the conviction;i. Candor and remorsefulness of the applicant before the board;j. Acceptance of responsibility for and renunciation of past misconduct;k. Lack of malice and ill feeling toward those who disclosed the misconduct or initiated proceedings related to it;l. Demonstration of the productive use of one's time for the benefit of society, particularly in an occupation, community or civic service;m. Restitution of funds or property, where applicable;n. If substance abuse is at issue, evidence that the person has been sufficiently compliant with a treatment or management regimen that a return to abuse is unlikely.o. Compliance with the conditions of any order applicable to the conviction;p. Demonstration of a good reputation for professional ability, where applicable;

	<ul style="list-style-type: none"> q. Personal assurances, supported by corroborating evidence, of an intention to conduct oneself in an exemplary fashion in the future; r. A letter from the applicant's probation/parole officer, if applicable, documenting compliance with their probation/parole. A copy of the final probation/parole report must also be included; s. If the applicant's conviction resulted in any court ordered therapy, clinical evaluations, or counseling, a letter or report from the organization or individual who provided the evaluation, counseling or therapy is required. The letter or report should indicate if treatment is ongoing or if it has been completed and whether it was considered to have been successful. The letter should also indicate that the counselor/therapist believes that the applicant is suitable to perform the duties of the profession. An applicant may be requested to submit a similar letter even if therapy, counseling, or evaluation was not required by the court; t. Any other relevant information, including information submitted by the applicant/licensee or requested by the board; and u. The legitimate interest of the board/division and the safety and welfare of specific individuals or the public.
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C. Determination	
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1.	The board shall consider whether any concerns they may have about the applicant/licensee's performance or ability to practice competently and safely might be sufficiently addressed in a consent agreement. The board shall consider probation, supervision, remedial training, or other common terms of these agreements, when appropriate.
2.	All denials must be issued in writing as soon as practicable after the decision to deny a license is made.
3.	Denial letters must state the factual and legal reasons justifying the denial, including the reasons why the board believes the applicant is not fit to practice. The legal reasons should include reference to the specific statute or regulation and should state in plain terms what the person did to violate those provisions.
4	Unless the denial is to be permanent, denial letters should specify when the applicant may file a new application for licensure.
5.	The applicant must be made aware of his or her appeal rights according to the Administrative Procedures Act in writing at the time of denial notification.

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From: [Jacobs, Carl A \(CED\)](#)
To: [Dulebohn, Dawn L \(CED\)](#)
Cc: [Lipker, Sonia L \(CED\)](#); [Francois, Greg A \(CED\)](#)
Subject: RE: MAS- Sample Consent Agreements and Probation Process
Date: Thursday, November 1, 2018 11:51:45 AM
Attachments: [Investigations MAS Information.pdf](#)

Good morning Dawn,

Attached is an FAQ I put together based on guidance provided from the Department of Law. Referenced, and also attached are six consent agreements. Three of them are from past MAS cases where probation was put in place, and three are from the MED/NUR boards which contain additional requirements.

Please let me know if you think the Board will need more information.

Thank you.

Carl Jacobs
Investigator
Department of Commerce, Community, and Economic Development
Division of Corporations, Business, and Professional Licensing
550 West 7th Ave, Suite 1500
Anchorage, AK 99501
P. 907-269-0056
F. 907-269-8195

From: Dulebohn, Dawn L (CED)
Sent: Wednesday, October 31, 2018 9:05 AM
To: Jacobs, Carl A (CED) <carl.jacobs@alaska.gov>
Subject: RE: MAS- Sample Consent Agreements and Probation Process

Good Morning Carl,

Thank you for the follow-up. I will leave a place in the board packet for the samples. I would hope that LAW gets back to you before the November 15th meeting.

Happy Halloween!

Best Regards,

Dawn Dulebohn

Licensing Examiner
Board of Massage Therapists

MAS Board Probation Conditions FAQ

Can the Board of Massage Therapists impose specific probation conditions as part of a consent agreement which are not outlined explicitly in relevant Alaska Statute and Alaska Administrative Code?

Yes. While AS 08.01.075(a)(7) only outlines specific authority to require “a licensee to report regularly to the board on matters related to the grounds for probation”, guidance received from Department of Law indicates that the Board is not explicitly limited by the Statute regarding what probation requirements it can impose. In addition, AS 08.61.060 gives the Board authority to impose disciplinary sanctions under AS 08.01.075 on licensees.

Are there any practical limitations to what probation conditions can be imposed as part of a consent agreement?

Yes. Probation conditions must be reasonably related to why the probation was imposed. For example, if probation is used as an enforcement action in response to a failure to meet continuing education or training requirements, it should involve requiring the licensee to prove completion of remedial classes but should not require the licensee to submit to drug tests.

In addition, probation conditions should not unreasonably impinge the probationary licensee’s ability to continue to work, or upon any other protected interest. In other words, probation requirements should not be overly burdensome or punitive, and should not effectively put the licensee out of business.

Based on all of this information, Department of Law has suggested that the Board proceed very carefully with instituting unannounced physical inspections as a part of probation conditions, as the inspection process may overly burdensome or punitive to licensees, in addition to the possibility of putting client privacy at risk.

What probation conditions have other boards included as a part of probation?

The Board of Nursing Regulations contain the following:

12 AAC 44.730. TERMS OF PROBATION.

A licensee who is placed on probation will, in the board’s discretion, be subject to one or more of the following terms of probation, and to other relevant terms of probation including those set out in 12 AAC 44.740— 12 AAC 44.760:

- (1) obey all the laws of the United States, State of Alaska, and all laws pertaining to the practice of nursing in this state;*

- (2) *fully comply with the probation program established by the board, and cooperate with representatives of the board;*
- (3) *notify the board in writing of the dates of departure and return if the licensee leaves Alaska to reside or practice outside the state;*
- (4) *report in person at meetings of the board of nursing, or to its designated representatives, during the period of probation, as directed by the board;*
- (5) *submit written reports and verification of actions as are required by the board during the period of probation;*
- (6) *if employed in nursing at any time during the period of probation, have the employer submit to the board verification that the employer understands the conditions of probation;*
- (7) *be employed as a nurse only in a setting in which full supervision is provided, and not personally function as a supervisor.*

The Medical Board Statutes contain the following:

AS Sec. 08.64.331. Disciplinary sanctions.

(a) If the board finds that a licensee has committed an act set out in AS 08.64.326(a), the board may

- (5) place a licensee on probationary status and require the licensee to*
 - (A) report regularly to the board on matters involving the basis of probation;*
 - (B) limit practice to those areas prescribed;*
 - (C) continue professional education until a satisfactory degree of skill has been attained in those areas determined by the board to need improvement;*

Please see the attached consent agreement for specific examples of probation requirements imposed on a licensee by other Boards.

Should the Board of Massage Therapists consider working to update AS 08.61 and/or 12 AAC 79 to include the specific probation conditions it would like to impose on a regular basis?

The Department of Law provided the following guidance regarding this topic:

It is always best to have these kinds of things in regulation. Whenever a board has a rule or policy that affects the rights and obligations of licensees, it should be in regulation. Until the board can accomplish this, it can enter into agreements with disciplined licensees as to the conditions of their probation. If the board does this, it should do so in very clear terms, in writing that is agreed to by the licensee. A consent agreement would do the trick. And the board must be careful to impose conditions of probation consistently – in other words, do not require something of one disciplined licensee in one set of circumstances and require something different of another in similar circumstances.

State of Alaska
Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
Telephone 907-269-8160 Fax 907-269-8195

1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
3 DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
4 BEFORE THE BOARD OF MASSAGE THERAPISTS
5
6

7 In the Matter of:)
8)
9)
10)
11 Respondent)
12 Case No. 2017-001159

13 CONSENT AGREEMENT

14
15 IT IS HEREBY AGREED by the Department of Commerce, Community and Economic
16 Development, Division of Corporations, Business and Professional Licensing (Division) and
17 (Respondent) as follows:

18 1) **Licensure.** Respondent is not currently licensed as a Massage Therapist in the State of
19 Alaska. Respondent applied for permanent licensure as a Massage Therapist on June 6, 2017. His
20 application was assigned number 124263.

21 2) **Admission/Jurisdiction.** Respondent admits and agrees the Board of Massage Therapists
22 (Board) has jurisdiction over his application for licensure in Alaska, over any subsequent license
23 issued as a result of his applying for licensure and over this Consent Agreement.

- 24 3) **Admission/Facts.** Respondent admits to the following:
- 25 a. On March 20, 2014, Respondent was convicted of Possession of Controlled Substance
26 and was ordered to serve thirty-six (36) months of probation.
 - 27 b. On June 6, 2017, Respondent submitted an application to practice massage therapy in the
28 State of Alaska. On this application, Respondent answered "yes" to professional fitness
29 question number (1) which asks "*Have you been convicted of a crime or are you*
30 *currently charged with committing a crime? For purposes of this question, "crime"*
31 *includes a misdemeanor, felony, or a military offense, including a conviction involving*
32 *driving under the influence (DUI) or driving while intoxicated (DWI), driving without*
33 *a license, reckless driving, or driving with a suspended or revoked license. "Convicted"*
34 *includes having been found guilty by verdict of a judge or jury, having entered a plea of*
35 *guilty, nolo contendere or no contest, or having been given probation, a suspended*

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imposition of sentence, or a fine." Respondent disclosed he was convicted of *Possession of Controlled Substance* and provided court documentation pertaining to the conviction.

- c. On October 2, 2017, the Board of Massage Therapists reviewed Respondent's license application and voted to grant Respondent a conditional license upon acceptance of a Consent Agreement with a probation period to monitor his practice and conduct.
- d. Respondent admits that as a result of the above facts, grounds exist for denial of licensure as well as possible suspension, revocation, or other disciplinary sanctions of any license he may receive pursuant to AS 08.01.075, AS 08.61.030(9) and 12 AAC 79.910(10).

4) Formal Hearing Process. It is the intent of the parties to this Consent Agreement to provide for the compromise and settlement of all issues addressed in Paragraph 3 (above), which could be raised by a Statement of Issues to deny licensure through a formal hearing process.

5) Waiver of Rights. Respondent understands he has the right to consult with an attorney of his own choosing and has a right to an administrative hearing on the facts in this case. Respondent understands and agrees that by signing this Consent Agreement, Respondent is waiving his rights to counsel and to a hearing. Further, Respondent understands and agrees that he is relieving the Division of any burden it has of proving the facts admitted above. Respondent further understands and agrees that by signing this Consent Agreement he is voluntarily and knowingly giving up his right to present oral and documentary evidence, to present rebuttal evidence, to cross-examine witnesses against Respondent, and to appeal the Board's decision to Superior Court.

6) Effect of Non-Acceptance of Consent Agreement. Respondent and the Division agree that this Consent Agreement is subject to the approval of the Board. They agree that, if the Board rejects this agreement, it will be void, and a new or amended Statement of Issues may be filed. If this agreement is rejected by the Board, it will not constitute a waiver of Respondent's right to a hearing on the matters alleged in a Statement of Issues and the admissions contained herein will have no effect. Respondent agrees that, if the Board rejects this agreement, the Board may decide the matter after a hearing, and its consideration of this agreement shall not alone be grounds for claiming that the Board is biased against his, that it cannot fairly decide the case, or that it has received ex parte communication.

7) Consent Agreement, Decision, and Order. Respondent agrees that the Board has the authority to enter into this Consent Agreement and to issue the following Decision and Order.

AMK

1 **PROPOSED DECISION AND ORDER**

2 IT IS HEREBY ORDERED that upon the Board's approval of this Consent Agreement, a state
3 license to practice massage therapy will be issued to the Respondent, and that license will be subject
4 to the following terms and conditions:

5 **A. Duration of Probation**

6 Respondent's license will be on probation for four (4) years from the date of issuance. If
7 Respondent fully complies with all of the terms and conditions of this license probation, the
8 probationary period will end as conditioned under this Order. The four (4) year probationary period
9 will not be reduced by the following periods:

- 10 (1) any absence from the state in excess of 30 continuous days.
11 (2) any absence from the state in excess of 60 aggregate days in a single year.
12 (3) any period during which Respondent is not a resident of the State of Alaska.
13 (4) any period in which Respondent does not hold an active license in Alaska.

14 It will be Respondent's duty to inform the Board's agent in writing in advance of any
15 absence from Alaska and/or any move from Alaska to another licensing jurisdiction.

16 **B. Violation of Agreement**

17 If Respondent fails to comply with any term or condition of this Consent Agreement, the
18 Division may enforce this agreement by immediately suspending Respondent's license, without an
19 additional order from the Board or without a prior hearing, for a violation of this agreement. In
20 addition, any suspended portion of the civil fine will be immediately due.

21 If Respondent's license is suspended under this paragraph, as provided above, he will be
22 will be entitled to a hearing on an expedited basis, regarding the issue of the suspension. If
23 Respondent's license is suspended, he will continue to be responsible for all license requirements
24 pursuant to AS 08.61.

25 **C. Respondent Address**

26 It is the responsibility of the Respondent to keep the Board's agent advised, in writing, at
27 all times of his current mailing address, physical address, telephone number, current employment
28 and any change in employment.

29 Failure to provide notice of any changes within 10 calendar days will constitute grounds for
30 suspension of his license in accordance with paragraph 'B' above.

UMK

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D. Good Faith

All parties agree to act in good faith in carrying out the stated intentions of this Consent Agreement.

E. Address of the Board

All required reports or other communication concerning compliance with this Consent Agreement shall be addressed to:

Attn: Probation Monitor
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
(907)269-8437 Fax (907) 269-8195

F. Compliance with laws

Respondent shall obey all local, state and federal laws governing his license.

- i) Respondent shall report to the probation monitor any criminal charges by a law enforcement agency within five (5) business days.
- ii) Respondent shall report to the probation monitor any criminal conviction within five (5) business days.

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UMK

1 IT IS HEREBY FURTHER ORDERED that this Decision and Order shall take effect immediately
2 upon its adoption by the Board and is a public record of the Board and the State of Alaska. The
3 State may provide a copy of it to any person or entity, professional licensing board, federal, state,
4 or local government, or other entity making a relevant inquiry.

5 The action taken by the Board in this Consent Agreement will be reported to the National
6 Practitioner Data Bank, and other entities as required by law.

7
8 DATED this 8 day of November, 2017 at Anchorage, Alaska.

9
10 CHRIS HLADICK, COMMISSIONER

11
12
13 By: Greg Francois
14 Greg Francois, Acting Chief Investigator for
15 Janey Hovenden, Director
16 Division of Corporations, Business and
17 Professional Licensing

18
19 I, [REDACTED] have read the Consent Agreement, understand it, and agree to be bound
20 by its terms and conditions.

21
22 11/9/2017
23 Date _____

24
25
26 SUBSCRIBED AND SWORN TO before me this 9th day of
27 NOVEMBER, 2017, at DILLINGHAM, Alaska.

28
29
30 SEAL

31
32 **State of Alaska**
33 **NOTARY PUBLIC**
34 **Donette F. Heyano**
35 My Commission Expires Oct. 5, 2021

36
37
38 Donette F. Heyano
39 Notary Public in and for Alaska.

40 DONETTE F. HEYANO
41 Notary Printed Name

42 My commission expires: Oct 5 2021

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STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
BEFORE THE ALASKA STATE MEDICAL BOARD

In the Matter of:)
)
)
)
)
Respondent)
Case Nos. 2014-000153 and 2017-000119

CONSENT AGREEMENT

IT IS HEREBY AGREED by the Department of Commerce, Community and Economic Development, Division of Corporations, Business and Professional Licensing (Division) and (Respondent) as follows:

- 1) **Licensure.** Respondent is currently licensed as a Physician in the State of Alaska and holds License number, MEDS6271. This license was first issued on January 29, 2008, was suspended on May 5, 2016 by the Division, and will lapse, unless renewed, on December 31, 2018.
- 2) **Admission/Jurisdiction.** Respondent admits and agrees that the Alaska State Medical Board (“Board”) has jurisdiction over the subject matter of his license in Alaska and over this Consent Agreement.
- 3) **Admission/Facts.** Respondent admits to the following facts:
 - a) On May 12, 2011, the Alaska State Medical Board adopted a Non-Disciplinary Consent Agreement with Respondent due to the ongoing treatment of alcoholism. The Consent Agreement included probation for three (3) years, urinalysis testing, and a directive the respondent abstain from consuming alcohol.
 - b) On October 6, 2011, Respondent contacted his counselor and the Division to report he consumed two shots of vodka. Respondent provided “Fit-to-Practice” letters from his counselor and returned to employment under the terms of his 2011 Consent Agreement.
 - c) On November 9, 2012, Respondent was arrested for Operating Under the Influence (OUI) with a BAC of .216. Respondent pled “No Contest” to the charges. Respondent

- 1 did not report this arrest and conviction to the Board as required under 12 AAC
2 40.967(26)(A).
- 3 d) On December 10, 2012, Respondent knowingly failed to disclose the OUI conviction
4 on his Medical License Renewal Application, a violation of AS 08.64.326(a)(1).
- 5 e) On May 2, 2013 and May 3, 2013, Respondent did not complete daily check-ins for
6 urinalysis, as required by his Consent Agreement. Subsequently, Respondent missed a
7 scheduled urinalysis (UA).
- 8 f) On July 18, 2013, the Board suspended Respondent's medical license, for violations of
9 AS 08.64.326(a)(7) and 12 AAC 40.967(23), until he completed an alcohol abuse
10 reevaluation by a Board approved facility.
- 11 g) On November 12, 2013, Respondent did not complete a daily check-in for urinalysis, as
12 required by his Consent Agreement. Respondent asserted he had jury duty, and
13 provided a urinalysis a day late, on November 13, 2013 and tested positive for alcohol.
- 14 h) On November 16, 2013, Respondent wrote a letter addressed to the Board asserting he
15 consumed alcohol contained in a bottle of vanilla extract on November 10, 2013.
- 16 i) On January 9, 2014, the Board adopted a Consent Agreement with the Respondent due
17 to the violation of a Board Order and failure to disclose criminal history on his renewal
18 application. The Consent Agreement included probation for ten (10) years, \$10,000 fine
19 with \$8,000 suspended, and alcohol monitoring requirements.
- 20 j) On March 2, 2015, April 23, 2015, September 4, 2015, and November 6, 2015 the
21 Respondent missed urinalysis tests. The Division issued non-compliance letters for the
22 missing UA(s).
- 23 k) On July 2, 2015, February 17, 2016, and March 3, 2016, the Respondent tested positive
24 for alcohol.
- 25 l) On March 8, 2016, Respondent asserted he was ill and consumed Nyquil, which is why
26 he tested positive for alcohol.
- 27 m) On March 17, 2016, Respondent asserted he was dealing with a difficult project for his
28 grief support group and relapsed on two occasions, February 16, 2016, and March 1,
29 2016, by consuming a half pint of vodka. Respondent asserted he did not report the
30 relapse to anyone until he was notified of his positive UA.

- 1 n) On May 5, 2016, the Division suspended the Respondent's medical license for failure to
2 comply with an order of the Board, by failing to adhere to the terms of his 2012 Consent
3 Agreement, a violation of AS 08.64.326(a)(7) and 12 AAC 40.967(23).
4 o) On October 20, 2016, Respondent submitted a letter of request asking the Board to lift
5 the suspension of his medical license.
6 p) On November 3, 2016, the Board denied the Respondent's request to lift the suspension
7 of his medical license. The Board indicated the Respondent failed to satisfy the
8 recommended period of suspension at the time of this request.
9 q) On January 24, 2017, Respondent submitted a second letter asking the Board to lift the
10 suspension of his physician license.
11 r) On February 5, 2017, the Alaska State Medical Board resolved to allow the Respondent
12 to return to practice in May 2017, provided he enter into a Consent Agreement with the
13 Division with monitoring terms acceptable to the Board to protect public safety.
14 s) Respondent admits that as a result of the above facts, grounds exist for possible
15 suspension, revocation, or other disciplinary sanctions of his license pursuant to AS
16 08.01.075, AS 08.64.326(a)(1&7), AS 08.64.331, 12 AAC 40.967(23), 12 AAC
17 40.967(26)(A), and 12 AAC 40.967(18)(B).
18 4) **Formal Hearing Process.** It is the intent of the parties to this Consent Agreement to
19 provide for the compromise and settlement of all issues addressed in Paragraph 3 (above)
20 that could be raised by an Accusation to revoke, suspend, or impose disciplinary sanctions
21 against Respondent's license through a formal hearing process.
22 5) **Waiver of Rights.** Respondent understands he has the right to consult with an attorney of
23 his own choosing and has a right to an administrative hearing on the facts in this case.
24 Respondent understands and agrees that by signing this Consent Agreement, Respondent is
25 waiving his rights to counsel and to a hearing. Further, Respondent understands and agrees
26 that he is relieving the Division of any burden it has of proving the facts admitted above.
27 Respondent further understands and agrees that by signing this Consent Agreement he is
28 voluntarily and knowingly giving up his right to present oral and documentary evidence, to
29 present rebuttal evidence, to cross-examine witnesses against Respondent, and to appeal the
30 Board's decision to Superior Court.

1 6) **Effect of Non-Acceptance of Consent Agreement.** Respondent and the Division agree
2 that this Consent Agreement is subject to the approval of the Board. They agree that, if the
3 Board rejects this Consent Agreement, it will be void, and an Accusation may be filed. If
4 this Consent Agreement is rejected by the Board, it will not constitute a waiver of
5 Respondent's right to a hearing on the matters alleged in an Accusation and the admissions
6 contained herein will have no effect. Respondent agrees that, if the Board rejects this
7 Consent Agreement, the Board may decide the matter after a hearing, and its consideration
8 of this Consent Agreement shall not alone be grounds for claiming that the Board is biased
9 against Respondent, that it cannot fairly decide the case, or that it has received ex parte
10 communication.

11 7) **Consent Agreement, Decision, and Order.** Respondent agrees that the Board has the
12 authority to enter into this Consent Agreement and to issue the following Decision and
13 Order.

14 PROPOSED DECISION AND ORDER

15
16 IT IS HEREBY ORDERED that the license issued to Respondent is under probation. This
17 license shall be subject to the following terms and conditions of license probation.

18 **A. Duration of Probation**

19 Respondent's license shall be on probation for ten (10) years from the effective date of
20 this Order. If Respondent fully complies with all of the terms and conditions of this license
21 probation, the probationary period will end as conditioned under this Order. The ten (10) year
22 probationary period will not be reduced by the following periods:

- 23 (1) any absence from the state in excess of 30 continuous days.
- 24 (2) any absence from the state in excess of 60 aggregate days in a single year.
- 25 (3) any period during which Respondent is not a resident of the State of Alaska.
- 26 (4) any period in which Respondent does not hold an active license in Alaska.
- 27 (5) any period in which Respondent's license is suspended.

28 It will be Respondent's duty to inform the Probation Monitor in writing in advance of
29 any absence from Alaska and/or any move from Alaska to another licensing jurisdiction.

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B. Violation of Agreement

If Respondent fails to comply with any term or condition of this Consent Agreement, the Division may enforce this agreement by immediately suspending Respondent’s license, without an additional order from the Board or without a prior hearing, for a violation of this agreement. In addition, any suspended portion of the civil fine will be immediately due.

If Respondent’s license is suspended under this paragraph, as provided above, he will be entitled to a hearing, on an expedited basis, regarding the issue of the suspension. If Respondent’s license is suspended, he will continue to be responsible for all license requirements pursuant to AS 08.64.

C. Respondent Address

It is the responsibility of the Respondent to keep the Probation Monitor advised, in writing, at all times of his current mailing address, physical address, email address, telephone number, current employment and any change in employment.

Failure to provide notice of any changes within ten (10) calendar days will constitute grounds for suspension of his license in accordance with paragraph ‘B’ above.

D. Compliance with Laws

Respondent shall obey all Federal laws and State statutes and regulations governing his license, or relating to his fitness to practice.

E. Authorization

Within ten (10) calendar days of a request by the Board’s agent, Respondent will sign all authorizations necessary for the release of information required by this Consent Agreement.

F. Good Faith

All parties agree to act in good faith in carrying out the stated intentions of this Consent Agreement.

G. Address of the Board

All required reports or other communication concerning compliance with this Consent Agreement shall be addressed to:

Attn: Probation Monitor
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567

1 (907)269-8160 Fax (907) 269-8195

2 **H. Absence from Community of Residence**

3 While under license probation, Respondent shall notify the Probation Monitor in writing
4 in advance of each and every expected absence from community of residence in excess of
5 seven (7) days. Absences from the State of Alaska must be reported pursuant to Paragraph 'A'.

6 **I. Periodic Interview with the Board**

7 While under license probation and upon the request of the Board, or its agent,
8 Respondent shall report in person to the Board, or its agent, to allow a review of his compliance
9 with this probation. Respondent shall be excused from attending any interview only at the
10 discretion of the person requesting the interview.

11 **J. Civil Fine**

12 Respondent shall pay a fine of ten thousand dollars (\$10,000.00), with ten thousand
13 dollars (\$10,000.00) suspended. Respondent shall remain compliant with the entire Consent
14 Agreement or the suspended portion shall be due immediately.

15 **K. Psychotherapy Counseling**

16 Respondent shall be required to undergo psychiatric and/or psychological therapy with
17 a psychiatrist, psychologist, or counselor licensed in the State of Alaska, approved by the Board
18 or its agent, and provided with a copy of this Consent Agreement.

19 The Board may consider releasing Respondent from the therapy requirement upon
20 receipt of a written statement from Respondent's therapist that his rehabilitation has progressed
21 to the point that continued therapy is no longer necessary to assist in maintaining a drug-free
22 and sober lifestyle. However, the Board will not release Respondent from the therapy
23 requirement until satisfied that doing so is consistent with the public interest.

24 Respondent's therapist shall submit reports to his probation monitor on a quarterly
25 basis, as specified in paragraph L, indicating that:

- 26 (1) Respondent is continuing in therapy as required by his therapist; and
27 (2) Respondent does not pose a danger to the public, Respondent's patients, or
28 Respondent. **All costs are the responsibility of the Respondent.**

1 **L. Quarterly Reports**

2 Quarterly reports are due for each year of probation and the entire length of probation as
3 follows:

<u>Period Covered</u>	<u>Due Date(s)</u>
January 1 - March 31	between April 1 and April 7
April 1 - June 30	between July 1 and July 7
July 1 - September 30	between October 1 and October 7
October 1- December 31	between January 1 and January 7

9 Failure to submit complete and timely reports shall constitute a violation of probation.

10 **M. Consume No Alcohol or Controlled Drugs**

11 While under license probation, Respondent shall consume no alcohol or controlled
12 drugs whatsoever, including foods, medicines, and other substances containing controlled drugs
13 or alcohol. However, if Respondent is hospitalized and receiving inpatient care, or is receiving
14 outpatient care for a medical/dental condition that cannot be adequately treated without
15 medicines containing controlled drugs, Respondent must inform his treating health care
16 provider of his history of alcohol use. Respondent may then take drugs on his health care
17 provider's written prescription, in the prescribed dosage for the prescribed duration, and for the
18 prescribed purpose. The Board's agent will be notified of any prescription for controlled drugs
19 at the time Respondent's receives it, and a copy of the prescription will be promptly sent to the
20 Division. Further, Respondent shall not self-medicate with any other prescription drug. If a
21 condition exists which requires the use of such a drug, it must be prescribed by Respondent's
22 health care provider. **All costs are the responsibility of the Respondent.**

23 **N. AA Meetings**

24 While under license probation, Respondent shall attend at least three (3) Alcoholics
25 Anonymous (AA) meetings per week. Respondent shall keep a calendar or other record
26 indicating the dates of attendance at such meetings and shall obtain the signature or initials of
27 the leader of each meeting verifying Respondent's attendance at the meetings.

28 Such records shall be presented by Respondent to the Probation Monitor upon request.
29 Respondent must also obtain a sponsor and within 10 calendar days disclose the sponsor's
30 name to the Probation Monitor.

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O. Health Care Provider Support Group

Respondent shall participate regularly in the Alaska Physician Health Program. The program will submit quarterly evidence, as specified in Paragraph L, of participation in the group. **All costs of compliance with this paragraph are the responsibility of the Respondent.**

P. Self-Evaluation Report

While under license probation, Respondent shall submit quarterly reports, as specified in paragraph L, to the Probation Monitor regarding his method of handling stress, mental and physical health, professional responsibilities and activities, and personal activities.

Q. Drug Tests

While under license probation, Respondent shall submit to random substance testing (urinalysis, blood, breath, and/or hair tests), as may be ordered by the Board or Board's agent. All urinalysis shall be provided in a controlled (witnessed) setting, and shall be subjected to a comprehensive screening for drugs and alcohol. The test method is at the discretion of the Division.

Respondent must obtain the random screening test no later than 2 hours after being instructed to do so. Failure to respond as instructed is a violation of this Consent Agreement. If Respondent is not able to provide the relevant samples within the 2 hours, Respondent will immediately notify the Board's agent, and has the burden of showing why compliance was not possible. **All costs are the responsibility of the Respondent.**

R. Breathalyzer

While under license probation, Respondent shall submit to breathalyzer tests as ordered by the Board or the Board's agent. The breathalyzer test is administered at the discretion of the Division. Respondent shall submit to a breathalyzer test before the start of each work shift and again midway through the same work shift. The Respondent shall maintain a log within SoberLink of the breathalyzer results and present the log for inspection upon request or sign releases allowing the Division to access the results.

Failure to perform a breathalyzer test as instructed by the Division is a violation of this Consent Agreement. If Respondent is not able to provide a breathalyzer as instructed,

1 Respondent will immediately notify the Board's agent, and has the burden of showing why
2 compliance was not possible. **All costs are the responsibility of the Respondent.**

3 **S. Personal Health Care Provider**

4 While under license probation, Respondent shall be under the care of a health care
5 provider licensed in Alaska, identified to, and approved by the Board. The health care provider
6 shall be provided with a copy of this Consent Agreement. Within 10 calendar days,
7 Respondent shall advise the Probation Monitor in writing of any change of Respondent's health
8 care providers. Respondent may not receive medical care from his spouse, significant other,
9 family members and relatives, or associates.

10 Respondent will also obtain a primary pharmacist, who must be licensed and practicing
11 in the State of Alaska, and subject to prior approval by the Board.

12 Respondent shall have all prescriptions filled by his primary pharmacist with the
13 exception of emergencies, which will promptly be reported to the Probation Monitor.

14 All costs are the responsibility of the Respondent.

15 **T. Restriction on Remote Employment**

16 While under license probation, Respondent shall work only in communities that have
17 adequate facilities for Respondent to comply with the urinalysis, blood, and breath tests, and
18 other requirements as set forth in this Consent Agreement.

19 Respondent shall give the Probation Monitor prior written notice of each change of
20 employment or residence within ten (10) calendar days of occurrence.

21 **U. Employer Reports**

22 Within ten (10) calendar days of the effective date of this Consent Agreement, and for
23 the duration of probation, Respondent must provide his employer with a copy of the Consent
24 Agreement and understands that the Probation Monitor will be free to discuss with
25 Respondent's employer the subject matter of this Consent Agreement.

26 Respondent's supervisor shall report quarterly to the Probation Monitor as to Respondent's
27 employment performance and attendance. The report shall include a statement of whether
28 Respondent is suspected of violating any condition of this license probation.

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V. Hospital Privileges

Within ten (10) calendar days of the effective date of this Consent Agreement, Respondent shall notify the Chief of Staff and Administrator of any hospital in which Respondent has privileges of the terms of his probation, provide them a copy of this Consent Agreement, and shall cause reports of Respondent's progress and performance to be submitted to the Board on a quarterly basis, unless ordered to do otherwise by the Board.

W. Reprimand

It is hereby ordered that a public reprimand be issued against licensee, for failure to comply with the terms of his 2012 Consent Agreement, an order of the Alaska State Medical Board, by consuming alcohol and missing urinalysis tests, which constitutes violations of AS 08.64, listed above.

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1 IT IS HEREBY FURTHER ORDERED that this Decision and Order shall take effect
2 immediately upon its adoption by the Board and is a public record of the Board and the State of
3 Alaska. The State may provide a copy of it to any person or entity, professional licensing
4 board, federal, state, or local government, or other entity making a relevant inquiry.

5 The action taken by the Board in this Consent Agreement will be reported to the
6 Federation of State Medical Boards, the National Practitioner Data Bank, and other entities as
7 required by law.

8
9 DATED this 23rd day of MARCH 2017, at Anchorage, Alaska.

10 CHRIS W. HLADICK, COMMISSIONER

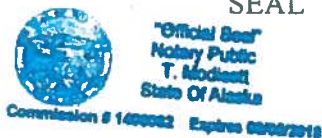
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14 By: [Signature]
15 Angela G. Birt, Chief Investigator for
16 Janey L. Hovenden, Director
17 Division of Corporations, Business and
18 Professional Licensing

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22 AMK

23 I, _____ have read the Consent Agreement, understand it, and agree to be
24 bound by its terms and conditions.

25
26 DATED: 3/24/2017

27 SUBSCRIBED AND SWORN TO before me this 24th day of
march, 2017, at Eagle River, Alaska.



T. Modisett
Notary Public in and for Alaska.

T. Modisett
Notary Printed Name
My commission expires: 08/08/2018

1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
3 DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
4 BEFORE THE BOARD OF MASSAGE THERAPISTS
5

6
7 In the Matter of:)
8)
9)
10)
11 Respondent)
12 Case No. 2017-000094

13 CONSENT AGREEMENT

14
15 IT IS HEREBY AGREED by the Department of Commerce, Community and Economic
16 Development, Division of Corporations, Business and Professional Licensing (Division) and
17 (Respondent) as follows:

18 1) **Licensure.** Respondent is not currently licensed as a Massage Therapist in the State of
19 Alaska. Respondent applied for permanent licensure as a Massage Therapist on October 7, 2016.
20 Her application was assigned number 116576.

21 2) **Admission/Jurisdiction.** Respondent admits and agrees the Board of Massage Therapists
22 (Board) has jurisdiction over her application for licensure in Alaska, over any subsequent license
23 issued as a result of her applying for licensure and over this Consent Agreement.

24 3) **Admission/Facts.** Respondent admits to the following:

- 25 a. On August 9, 2016, Respondent was convicted of *Interstate Domestic Violence Felony*
26 in Boise, Idaho.
- 27 b. On October 7, 2016, Respondent submitted an application to practice massage therapy in
28 the State of Alaska. On this application, Respondent answered "yes" to professional
29 fitness question number (1) which asks "*Have you been convicted of a crime or are you*
30 *currently charged with committing a crime? For purposes of this question, "crime"*
31 *includes a misdemeanor, felony, or a military offense, including a conviction involving*
32 *driving under the influence (DUI) or driving while intoxicated (DWI), driving without*
33 *a license, reckless driving, or driving with a suspended or revoked license. "Convicted"*
34 *includes having been found guilty by verdict of a judge or jury, having entered a plea of*
35 *guilty, nolo contendere or no contest, or having been given probation, a suspended*

CONSENT
AGREEMENT

2017-00094
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imposition of sentence, or a fine." Respondent disclosed she was convicted of *Interstate Domestic Violence Felony* and provided court documentation pertaining to the conviction.

c. Respondent admits that as a result of the above facts, grounds exist for denial of licensure as well as possible suspension, revocation, or other disciplinary sanctions of any license she may receive pursuant to AS 08.01.075, AS 08.61.030(9) and 12 AAC 79.910.

4) Formal Hearing Process. It is the intent of the parties to this Consent Agreement to provide for the compromise and settlement of all issues addressed in Paragraph 3 (above), which could be raised by a Statement of Issues to deny licensure through a formal hearing process.

5) Waiver of Rights. Respondent understands she has the right to consult with an attorney of her own choosing and has a right to an administrative hearing on the facts in this case. Respondent understands and agrees that by signing this Consent Agreement, Respondent is waiving her rights to counsel and to a hearing. Further, Respondent understands and agrees that she is relieving the Division of any burden it has of proving the facts admitted above. Respondent further understands and agrees that by signing this Consent Agreement she is voluntarily and knowingly giving up her right to present oral and documentary evidence, to present rebuttal evidence, to cross-examine witnesses against Respondent, and to appeal the Board's decision to Superior Court.

6) Effect of Non-Acceptance of Consent Agreement. Respondent and the Division agree that this Consent Agreement is subject to the approval of the Board. They agree that, if the Board rejects this agreement, it will be void, and a new or amended Statement of Issues may be filed. If this agreement is rejected by the Board, it will not constitute a waiver of Respondent's right to a hearing on the matters alleged in a Statement of Issues and the admissions contained herein will have no effect. Respondent agrees that, if the Board rejects this agreement, the Board may decide the matter after a hearing, and its consideration of this agreement shall not alone be grounds for claiming that the Board is biased against her, that it cannot fairly decide the case, or that it has received ex parte communication.

7) Consent Agreement, Decision, and Order. Respondent agrees that the Board has the authority to enter into this Consent Agreement and to issue the following Decision and Order.

//

PROPOSED DECISION AND ORDER

IT IS HEREBY ORDERED that upon the Board's approval of this Consent Agreement, a state license to practice massage therapy will be issued to the Respondent, and that license will be subject to the following terms and conditions:

A. Duration of Probation

Respondent's license will be on probation for four (4) years from the date of issuance. If Respondent fully complies with all of the terms and conditions of this license probation, the probationary period will end as conditioned under this Order. The four (4) year probationary period will not be reduced by the following periods:

- (1) any absence from the state in excess of 30 continuous days.
- (2) any absence from the state in excess of 60 aggregate days in a single year.
- (3) any period during which Respondent is not a resident of the State of Alaska.
- (4) any period in which Respondent does not hold an active license in Alaska.

It will be Respondent's duty to inform the Board's agent in writing in advance of any absence from Alaska and/or any move from Alaska to another licensing jurisdiction.

B. Violation of Agreement

If Respondent fails to comply with any term or condition of this Consent Agreement, the Division may enforce this agreement by immediately suspending Respondent's license, without an additional order from the Board or without a prior hearing, for a violation of this agreement. In addition, any suspended portion of the civil fine will be immediately due.

If Respondent's license is suspended under this paragraph, as provided above, she will be entitled to a hearing on an expedited basis, regarding the issue of the suspension. If Respondent's license is suspended, she will continue to be responsible for all license requirements pursuant to AS 08.61.

C. Respondent Address

It is the responsibility of the Respondent to keep the Board's agent advised, in writing, at all times of her current mailing address, physical address, telephone number, current employment and any change in employment.

Failure to provide notice of any changes within 10 calendar days will constitute grounds for suspension of her license in accordance with paragraph 'B' above.

State of Alaska
Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
Telephone 907-269-8160 Fax 907-269-8195

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D. Good Faith

All parties agree to act in good faith in carrying out the stated intentions of this Consent Agreement.

E. Address of the Board

All required reports or other communication concerning compliance with this Consent Agreement shall be addressed to:

Attn: Probation Monitor
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
(907)269-8437 Fax (907) 269-8195

F. Compliance with laws

Respondent shall obey all local, state and federal laws governing her license.

- i) Respondent shall report to the probation monitor any criminal charges by a law enforcement agency within five (5) business days.
- ii) Respondent shall report to the probation monitor any criminal conviction within five (5) business days.

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State of Alaska
Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
Telephone 907-269-8160 Fax 907-269-8195

1 IT IS HEREBY FURTHER ORDERED that this Decision and Order shall take effect immediately
2 upon its adoption by the Board and is a public record of the Board and the State of Alaska. The
3 State may provide a copy of it to any person or entity, professional licensing board, federal, state,
4 or local government, or other entity making a relevant inquiry.

5 The action taken by the Board in this Consent Agreement will be reported to the National
6 Practitioner Data Bank, and other entities as required by law.

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DATED this _____ day of _____, 2017 at Anchorage, Alaska.

CHRIS HLADICK, COMMISSIONER

AMK

By: _____
Greg Francois, Acting Chief Investigator for
Janey Hovenden, Director
Division of Corporations, Business and
Professional Licensing



I, _____, have read the Consent Agreement, understand it, and agree to be bound
by its terms and conditions.

11/9/17
Date

SUBSCRIBED AND SWORN TO before me this 9th day of
November, 2017, at Anchorage, Alaska.

SEAL

Dawn E. Burdick
Notary Public in and for Alaska.
Dawn E. Burdick
Notary Printed Name

My commission expires: w/ offer

1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
3 DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
4 BEFORE THE BOARD OF MASSAGE THERAPISTS
5
6

7 In the Matter of:)
8)
9)
10)
11 Respondent)
12 Case No. 2017-000811

13 CONSENT AGREEMENT

14 IT IS HEREBY AGREED by the Department of Commerce, Community and
15 Economic Development, Division of Corporations, Business and Professional Licensing
16 (Division) and (Respondent) as follows:
17 J.

18 1) **Licensure.** Respondent is currently licensed as a Massage Therapist in the State of Alaska
19 and holds license number 101576. This license was first issued on May 27, 2016 and will expire
20 unless renewed by September 30, 2019.

21 2) **Admission/Jurisdiction.** Respondent admits and agrees the Board of Massage Therapists
22 (Board) has jurisdiction over her licensure in Alaska and over this Consent Agreement.

23 3) **Admission/Facts.** Respondent admits to the following:

24 a) On September 27, 1994, Respondent was convicted of Driving While Intoxicated in
25 Sitka, Alaska under Alaska Court 1SI-94-00341CR .

26 b) On September 1, 2005, Respondent was convicted of Driving Under the Influence in
27 Sitka, Alaska under Alaska Court #1SI-05-237CR .

28 c) On August 2, 2017, Respondent was convicted of Driving Under the Influence in Sitka,
29 Alaska under Alaska Court #1SI-17-00094CR.

30 d) On August 8, 2017, Respondent submitted a renewal application to continue practicing
31 as a massage therapist in the State of Alaska. On this application, answered "yes" to professional
32 fitness question number two (2) which asks "Since the date of your last Alaska massage therapist
33 license application, have you been convicted of a crime or are you currently charged with
34 committing a crime? For purposes of this question, "crime" includes a misdemeanor, felony, or a
35 military offense, including but not limited to a conviction involving driving under the influence

CONSENT AGREEMENT

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1 (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving
2 with a suspended or revoked license. "Convicted" includes having been found guilty by verdict of
3 a judge or jury, having entered a plea of guilty, nolo contendere or no contest, or having been
4 given probation, a suspended imposition of sentence, or a fine.

5 e) Respondent properly disclosed the above listed criminal convictions and provided court
6 documentation pertaining to the convictions.

7 f) Respondent admits that as a result of the above facts, grounds exist for possible
8 suspension, revocation, or other disciplinary sanctions of any license she received pursuant to AS
9 08.01.075, AS 08.61.060(7).

10 4) **Formal Hearing Process.** It is the intent of the parties to this Consent Agreement to provide
11 for the compromise and settlement of all issues addressed in Paragraph 3 (above), which could be
12 raised by an Accusation to revoke, suspend, or impose disciplinary sanctions against Respondent's
13 license through a formal hearing process.

14 5) **Waiver of Rights.** Respondent understands she has the right to consult with an attorney of
15 her own choosing and has a right to an administrative hearing on the facts in this case. Respondent
16 understands and agrees that by signing this Consent Agreement, Respondent is waiving her rights
17 to counsel and to a hearing. Further, Respondent understands and agrees that she is relieving the
18 Division of any burden it has of proving the facts admitted above. Respondent further understands
19 and agrees that by signing this Consent Agreement she is voluntarily and knowingly giving up her
20 right to present oral and documentary evidence, to present rebuttal evidence, to cross-examine
21 witnesses against Respondent, and to appeal the Board's decision to Superior Court.

22 6) **Effect of Non-Acceptance of Consent Agreement.** Respondent and the Division agree that
23 this Consent Agreement is subject to the approval of the Board. They agree that, if the Board rejects
24 this agreement, it will be void, and an Accusation against her license may be filed. If this agreement
25 is rejected by the Board, it will not constitute a waiver of Respondent's right to a hearing on the
26 matters alleged in an Accusation and the admissions contained herein will have no
27 effect. Respondent agrees that, if the Board rejects this agreement, the Board may decide the matter
28 after a hearing, and its consideration of this agreement shall not alone be grounds for claiming that
29 the Board is biased against her, that it cannot fairly decide the case, or that it has received ex parte
30 communication.

CONSENT AGREEMENT

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C. Respondent Address

It is the responsibility of the Respondent to keep the Board's agent advised, in writing, at all times of her current mailing address, physical address, telephone number, current employment and any change in employment.

Failure to provide notice of any changes within 10 calendar days will constitute grounds for suspension of her license in accordance with paragraph 'B' above.

D. Good Faith

All parties agree to act in good faith in carrying out the stated intentions of this Consent Agreement.

E. Address of the Board

All required reports or other communication concerning compliance with this Consent Agreement shall be addressed to:

Attn: Probation Monitor
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
(907)269-8437 Fax (907) 269-8195

F. Periodic Interview with the Board

While under license probation and upon the request of the Board or its agent, Respondent shall report in person to the Board or its agent to allow a review of her compliance with this probation. Respondent shall be excused from attending any interview only at the discretion of the person requesting the interview.

G. Compliance with laws

Respondent shall obey all local, state and federal laws governing her license.

- i) Respondent shall report to the probation monitor any criminal charges by a law enforcement agency within five (5) business days.
- ii) Respondent shall report to the probation monitor any criminal conviction within five (5) business days.


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1 IT IS HEREBY FURTHER ORDERED that this Decision and Order shall take effect
2 immediately upon its adoption by the Board and is a public record of the Board and the State of
3 Alaska. The State may provide a copy of it to any person or entity, professional licensing board,
4 federal, state, or local government, or other entity making a relevant inquiry.

5 The action taken by the Board in this Consent Agreement will be reported to the National
6 Practitioner Data Bank, and other entities as required by law.

7
8 DATED this 14/04 day of February, 2018 at Anchorage, Alaska.

9
10 MIKE NAVARRE, COMMISSIONER

11
12
13 AMK By: 
14 Greg Francois, Chief Investigator for
15 Janey McCullough, Director
16 Division of Corporations, Business and
17 Professional Licensing

18
19 I, _____, have read the Consent Agreement, understand it, and agree to be
20 bound by its terms and conditions.

21
22
23 Date _____

24
25
26 SUBSCRIBED AND SWORN TO before me this _____ day of
27 _____, 2018, at _____, Alaska.

28
29
30 SEAL _____
31 Notary Public in and for Alaska.

32
33
34 Notary Printed Name _____

35
36 My commission expires: _____
37

1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
3 DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
4 BEFORE THE BOARD ON NURSING
5

6 In the Matter of:)
7)
8)
9)
10 Respondent)

11 Case No. 2013-001243

12 CONSENT AGREEMENT
13

14 IT IS HEREBY AGREED by the Department of Commerce, Community and Economic
15 Development, Division of Corporations, Business and Professional Licensing (Division) and
16 (Respondent) as follows:

- 17 1) **Licensure.** Respondent is not currently licensed as a Registered Nurse (RN); nor is she
18 authorized as an Advanced Nurse Practitioner (ANP) in the State of Alaska, at this time.
19 Respondent holds lapsed Registered Nurse License # NURR10298 and ANP Authorization #
20 NURU847. This RN license was first issued on March 21, 1984 and lapsed November 30,
21 2016. This ANP authorization was first issued on December 03, 2004 and lapsed November
22 30, 2016.
- 23 2) **Admission/Jurisdiction.** Respondent admits and agrees the Board of Nursing (Board) has
24 jurisdiction over the subject matter of her RN license and ANP authorization in Alaska, and
25 over this Consent Agreement.
- 26 3) **Admission/Facts.** Respondent admits to the following facts:
27 a) In 2012, Respondent continued treating seven (7) pain management patients at her home
28 in Anchorage, Alaska, after having closed her business, Humanistic Healthcare, LLC, due
29 to illness. The Division opened an investigation on the Respondent in 2013, and shortly
30 thereafter her attorney informed the Division the Respondent ceased providing medical
31 care to these patients and surrendered her prescription pads.

- 1 b) In the Respondent's 2014 RN renewal, the Respondent indicated she was not under
2 investigation, and did not affirmatively disclose a physical disability or illness that
3 impaired her ability to practice nursing.
- 4 c) In 2015, the Division's expert issued a report, concluding that Respondent's care of the
5 above seven patient was deficient, because Respondent had prescribed very high doses of
6 opioids, had failed to perform adequate histories, treatment plans, and periodic reviews,
7 and had failed to consult with behavioral health or pain specialists. After the Division's
8 expert concluded her review, the Respondent located additional relevant treatment
9 records. Due to the time of receipt, these records were neither reviewed by the Division's
10 expert nor referenced in her report.
- 11 d) In 2016, the Division filed an Accusation, based on the above report, and based on
12 Respondent's answers to professional fitness questions on her 2014 renewal. Respondent
13 denied the allegations and requested a hearing; however, no such hearing occurred.
- 14 e) Notwithstanding that the large volume of unreviewed treatment records may ameliorate
15 recordkeeping concerns expressed by the Division's expert, respondent admits that her
16 recordkeeping system and prescribing practices during her illness were imperfect and that
17 some criticisms will remain. Respondent understands that there is a potential basis for
18 disciplinary sanctions against her license and ANP authorization pursuant to AS
19 08.01.075, AS 08.68.270(1), (5), (6), (7), (8), and 12 AAC 44.770(1), (10). She agrees to
20 the Consent Agreement to end the disciplinary process and open the way to return to her
21 professional career by voluntarily accepting appropriate discipline by the board without
22 formal findings of fault.
- 23 4) **Formal Hearing Process.** It is the intent of the parties to this Consent Agreement to provide
24 for the compromise and settlement of all issues addressed in Paragraph 3 (above) that were
25 raised by an Accusation to revoke, suspend, or impose disciplinary sanctions against
26 Respondent's license and authorization through a formal hearing process.
- 27 5) **Waiver of Rights.** Respondent understands she has the right to consult with an attorney of
28 her own choosing and has a right to an administrative hearing on the facts in this case.
29 Respondent understands and agrees that by signing this Consent Agreement, Respondent is

1 waiving her rights to counsel and to a hearing. Further, Respondent understands and agrees
2 that she is relieving the Division of any burden it has of proving the facts admitted above.
3 Respondent further understands and agrees that by signing this Consent Agreement she is
4 voluntarily and knowingly giving up her right to present oral and documentary evidence, to
5 present rebuttal evidence, to cross-examine witnesses against Respondent, and to appeal the
6 Board's decision to Superior Court. Respondent understands that upon approval of this
7 Consent Agreement by the Board of Nursing, Office of Administrative Hearings Case No.
8 16-1252-NUR will be dismissed and closed without further action by the parties.

9 **6) Effect of Non-Acceptance of Consent Agreement.** Respondent and the Division agree that
10 this Consent Agreement is subject to the approval of the Board. They agree that, if the Board
11 rejects this Consent Agreement, it will be void, and a hearing on the Accusation will be held.
12 If this Consent Agreement is rejected by the Board, it will not constitute a waiver of
13 Respondent's right to a hearing on the matters alleged in the Accusation and the admissions
14 contained herein will have no effect. Respondent agrees that, if the Board rejects this
15 Consent Agreement, the Board may decide the matter after a hearing, and its consideration of
16 this Consent Agreement shall not alone be grounds for claiming that the Board is biased
17 against Respondent, that it cannot fairly decide the case, or that it has received ex parte
18 communication.

19 **7) Consent Agreement, Decision, and Order.** Respondent agrees that the Board has the
20 authority to enter into this Consent Agreement and to issue the following Decision and
21 Order.

22 PROPOSED DECISION AND ORDER

23 IT IS HEREBY ORDERED:

24 **I. Medical Evaluation as Precondition to Licensure**

25 As part of the application for reinstatement of her Registered Nurse license, pursuant to the
26 requirements enumerated within 12 AAC 44.317, the Respondent is required to undergo a
27 medical examination to determine her ability to safely practice nursing. Respondent's medical
28 examination shall be from a physician licensed in the State of Alaska, approved by the Board, or
29 its Executive Administrator, and provided with a copy of this Consent Agreement.

1 The Respondent may suggest a physician(s) of her choosing who are suitable for this evaluation,
2 by submitting their name and credentials to the Board; the decision of providers is at the
3 discretion of the Board. Respondent shall provide a letter from the health care provider verifying
4 her ability to practice nursing safely. If limited practice is determined to be appropriate by the
5 physician, the Respondent shall immediately advise the Board of Nursing and make
6 arrangements to comply with the practice limitations suggested by her physician.

7 **II. License Conditions**

8 If/when the Respondent meets all licensure requirements pursuant to AS 08.68.251(a), AS
9 08.68.276, and 12 AAC 44.317, and if/when an RN license and ANP authorization are issued,
10 both of the Respondent's license(s) shall be subject to the following terms and conditions:

11 **A. Limitation on Prescriptive Authority**

12 The Respondent agrees that if she is able to successfully reinstate her ANP Authorization,
13 she will not prescribe Schedule I, II, III or IV substances for the duration of her
14 licensure/authorization in Alaska. Evidence of a prescription, written by the Respondent, of a
15 Schedule I, II, III or IV drug provided to the Board, dated after this agreement is adopted, shall
16 constitute a violation of this agreement and be grounds for immediate suspension of all Nursing
17 licenses or authorizations issued in the State of Alaska.

18 **B. Registered Nurse Employment Must Be Supervised**

19 While working as a Registered Nurse, the Respondent must be supervised by a physician,
20 physician's assistant, doctor of chiropractic or advanced nurse practitioner licensed in the State
21 of Alaska. The supervisor shall be provided a copy of the Consent Agreement. This does not
22 require that Respondent be under constant, direct observation by her supervisor.

23 **C. Probation and ANP Employment Must Be Supervised**

24 If the Respondent successfully reinstates her ANP authorization, pursuant to 12 AAC
25 44.475, both the Respondent's RN license and ANP authorization shall be on probation for a
26 period of three (3) years, upon issuance of ANP authorization. Further, Respondent's ANP
27 practice shall be subject to the same terms as described in Paragraph II-B above.

1 If Respondent fully complies with all of the terms and conditions of this license
2 probation, the probationary period will end as conditioned under this Order. The three (3) year
3 probationary period will not be reduced by the following periods:

- 4 (1) any absence from the state in excess of 30 continuous days.
- 5 (2) any absence from the state in excess of 60 aggregate days in a single year.
- 6 (3) any period during which Respondent is not a resident of the State of Alaska.
- 7 (4) any period in which Respondent does not hold an active license in Alaska.
- 8 (5) any period in which Respondent's license and/or authorization is suspended
9 due to non-compliance of this Consent Agreement.

10 It will be Respondent's duty to inform the Probation Monitor in writing in advance of any
11 absence from Alaska and/or any move from Alaska to another licensing jurisdiction.

12 The Respondent's practice as an ANP must be supervised by a health care professional
13 licensed in Alaska (at or above the level of licensure of the Respondent. This group of health
14 care professionals can include: a licensed physician, physician's assistant, advanced nurse
15 practitioner, chiropractor, as approved by the Board. The Respondent shall maintain a limited
16 practice with no pain management patients and limitations on prescriptive authority as described
17 within Paragraph II-A of this agreement.

18 **D. Violation of Agreement**

19 If Respondent fails to comply with any term or condition of this Consent Agreement, the
20 Division may enforce this agreement by immediately suspending Respondent's license, without
21 an additional order from the Board or without a prior hearing, for a violation of this agreement.

22 If Respondent's license is suspended under this paragraph, as provided above, she will be
23 will be entitled to a hearing, on an expedited basis, regarding the issue of the suspension. If
24 Respondent's license is suspended, she will continue to be responsible for all license
25 requirements pursuant to AS 08.68.

26 **E. Comply with the Law**

27 The Respondent shall obey all federal, state and local laws governing her license.

1 **F. Good Faith**

2 All parties agree to act in good faith in carrying out the stated intentions of this Consent
3 Agreement.

4 **G. Address of the Board**

5 All required reports or other communication concerning probation compliance with this
6 Consent Agreement shall be addressed to:

7 Probation Monitor for Board of Nursing
8 Division of Corporations, Business and Professional Licensing
9 550 West 7th Avenue, Suite 1500
10 Anchorage, Alaska 99501-3567
11 Phone (907) 269-8437; Fax (907) 269-8195

12 **H. Civil Fine**

13 Respondent shall pay a fine of five thousand dollars (\$5,000.00), with four thousand
14 dollars (\$4,500) stayed, conditioned upon no violations of this agreement. The stay of fine is
15 based on the Board's assessment that respondent's noncompliance was related to a serious
16 illness, and that the same illness has led to several years without income. This unsuspended
17 portion of the civil fine, \$500, is due immediately upon reinstatement of the Respondent's ANP
18 authorization. This amount is payable to the "State of Alaska" in cash, certified check, money
19 order, or via credit card, within five working days of the reinstatement. Failure to pay this fine
20 within the stated time limit is a violation of this agreement, which will result in the imposition of
21 the any unpaid portion of the fine (\$5,000), which shall be due immediately.

22 All payments required by this Consent Agreement shall be addressed to:

23 Angela G. Birt, Chief Investigator
24 Division of Corporations, Business and Professional Licensing
25 550 West 7th Avenue, Suite 1500
26 Anchorage, Alaska 99501-3567

27 **I. Additional Education**

28 In addition to the continuing education/competency requirements for her licensure under
29 AS 08.68, 12 AAC 44.317, and 12 AAC 44.0600, the Respondent shall attend and satisfactorily
30 complete no less than (25) hours of education dealing with subject matter relating to proper
31 *prescribing practices, documentation of patient records and ethics* not later than 90 calendar
32
33

1 days following reinstatement of either license. The course curriculum must be approved by the
2 Board or its Executive Administrator prior to the Respondent registering in the course.

3 In addition, within 30 calendar days after completion of the course, a certificate of
4 satisfactory completion is to be provided to the Probation Monitor. **All costs are the**
5 **responsibility of the Respondent.**

6 **J. Reprimand**

7 It is hereby ordered that a public reprimand be issued against licensee,
8 , for obtaining a license and authorization to practice while failing
9 to disclose her physical disability on her 2014 license renewal; and failing to maintain an
10 adequate record for each client reflecting treatment issues, interventions undertaken for
11 that client, and a sufficient basis for the pain management prescribing practices adopted
12 for that patient.

13
14 The Board makes reprimands available to the public by linking them through the Board's
15 website. Ms. understands that her reprimand will be linked from the website
16 according to this consistent policy.

17
18 IT IS FURTHER ORDERED that this Adopted Decision and Order shall take effect immediately
19 upon its adoption by the Board and is a public record of the Board and the State of Alaska. The
20 State of Alaska may provide a copy of it to any person or entity, professional licensing board,
21 federal, state, or local government, or other entity making a relevant inquiry.

22 The action taken by the Board in this Consent Agreement will be reported to the National
23 Practitioner Data Bank, and National Council of State Boards of Nursing, as required by law.


24
25 DATED this 29th day of September, 2017 at Anchorage, Alaska.

26
27 CHRIS HLADICK, COMMISSIONER

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By: 
Angela Bivens, Chief Investigator for AMK
Janey Hovend, Director
Division of Corporations, Business and
Professional Licensing

I, _____, have read the Consent Agreement, understand it, and agree to be bound by its terms and conditions.

DATED: Sept. 8, 2017

Personally appeared before me _____ this 8th day of September, 2017 and acknowledged this Consent Agreement to be her free act and deed after being duly advised by the counsel of her choosing.

SEAL


Notary Public in and for Alaska.

Devon Refidal
Notary Printed Name

My commission expires: 9/16/2020



1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
3 DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
4 BEFORE THE BOARD ON NURSING
5

6 In the Matter of:)
7)
8)
9)
10 Respondent)
11 Case No. 2016-001064

12 CONSENT AGREEMENT

13
14 IT IS HEREBY AGREED by the Department of Commerce, Community and Economic
15 Development, Division of Corporations, Business and Professional Licensing (Division) and
16 (Respondent) as follows:

- 17 1) **Licensure.** Respondent is currently licensed as a Practical Nurse (LPN) in the State of Alaska
18 and holds license number NURP5269. This license was first issued on August 3, 1998 and
19 will lapse unless renewed by September 30, 2018.
- 20 2) **Admission/Jurisdiction.** Respondent admits and agrees that the Board of Nursing (Board)
21 has jurisdiction over the subject matter of his license in Alaska and over this Consent
22 Agreement.
- 23 3) **Admission/Facts.** Respondent admits to the following facts:
24 a) On October 22, 2015, Respondent entered into a Consent Agreement (Case No.: 2015-
25 000376) with the Board for physically abusing a patient by injecting the restrained patient
26 with insulin against the patient's will. The terms of this Consent Agreement included;
27 three years of probation, a \$3,000.00 fine and three hours of continuing education relating
28 to patient rights. Respondent is in compliance with the 2015 agreement.
- 29 b) On August 10, 2016, while working as a LPN for the State of Alaska, Department of
30 Corrections, Respondent made statements to a co-worker and his on-duty supervisor
31 indicating he wished to harm a correctional officer. Respondent was immediately placed
32 on Administrative leave due to concerns his unprofessional conduct could interfere with
33 his performance of nursing duties in a correctional facility setting.

- 1 c) On August 23, 2016, Respondent obtained a mental health assessment at the request of his
2 employer. Respondent was diagnosed with depression and anxiety. Respondent has
3 followed the recommended rehabilitative counseling recommendations from Counseling
4 Solutions of Alaska. Respondent was released to return to work as a LPN effective
5 September 30, 2016.
- 6 d) The State of Alaska Department of Corrections placed the Respondent on paid
7 administrative leave from the date of his infraction until November 3, 2016, when they
8 elected to terminate his employment.
- 9 e) Respondent admits that as a result of the above facts, grounds exist for possible
10 suspension, revocation, or other disciplinary sanctions of his license pursuant to AS
11 08.01.075, AS 08.68.270(6)(7) and 12 AAC 44.770(29).
- 12 **4) Formal Hearing Process.** It is the intent of the parties to this Consent Agreement to provide
13 for the compromise and settlement of all issues addressed in Paragraph 3 (above) that could be
14 raised by an Accusation to revoke, suspend, or impose disciplinary sanctions against
15 Respondent's license through a formal hearing process.
- 16 **5) Waiver of Rights.** Respondent understands he has the right to consult with an attorney of his
17 own choosing and has a right to an administrative hearing on the facts in this case.
18 Respondent understands and agrees that by signing this Consent Agreement, Respondent is
19 waiving his rights to counsel and to a hearing. Further, Respondent understands and agrees
20 that he is relieving the Division of any burden it has of proving the facts admitted above.
21 Respondent further understands and agrees that by signing this Consent Agreement he is
22 voluntarily and knowingly giving up his right to present oral and documentary evidence, to
23 present rebuttal evidence, to cross-examine witnesses against Respondent, and to appeal the
24 Board's decision to Superior Court.
- 25 **6) Effect of Non-Acceptance of Consent Agreement.** Respondent and the Division agree that
26 this Consent Agreement is subject to the approval of the Board. They agree that, if the Board
27 rejects this Consent Agreement, it will be void, and an Accusation may be filed. If this
28 Consent Agreement is rejected by the Board, it will not constitute a waiver of Respondent's
29 right to a hearing on the matters alleged in an Accusation and the admissions contained herein
30 will have no effect. Respondent agrees that, if the Board rejects this Consent Agreement, the
31 Board may decide the matter after a hearing, and its consideration of this Consent Agreement

1 shall not alone be grounds for claiming that the Board is biased against Respondent, that it
2 cannot fairly decide the case, or that it has received ex parte communication.

3 7) **Consent Agreement, Decision, and Order.** Respondent agrees that the Board has the
4 authority to enter into this Consent Agreement and to issue the following Decision and Order.

5 **PROPOSED DECISION AND ORDER**
6

7 IT IS HEREBY ORDERED that any Nursing license issued to Respondent is under probation.
8 This license shall be subject to the following terms and conditions of license probation.

9 **A. Duration of Probation**

10 Respondent's license shall be on probation for five (5) years, effective October, 15, 2015
11 (to run concurrently with probation in Case No.: 2015-000376). If Respondent fully complies
12 with all of the terms and conditions of this license probation, the probationary period will end as
13 conditioned under this Order. The five (5) year probationary period will not be reduced by the
14 following periods:

- 15 (1) any absence from the state in excess of 30 continuous days.
- 16 (2) any absence from the state in excess of 60 aggregate days in a single year.
- 17 (3) any period during which Respondent is not a resident of the State of Alaska.
- 18 (4) any period in which Respondent does not hold an active license in Alaska.
- 19 (5) any period in which Respondent's license is suspended.

20 It will be Respondent's duty to inform the Probation Monitor in writing in advance of any
21 absence from Alaska and/or any move from Alaska to another licensing jurisdiction.

22 **B. Violation of Agreement**

23 If Respondent fails to comply with any term or condition of this Consent Agreement, the
24 Division may enforce this agreement by immediately suspending Respondent's license, without
25 an additional order from the Board or without a prior hearing, for a violation of this agreement.

26 If Respondent's license is suspended under this paragraph, as provided above, he will be
27 entitled to a hearing, on an expedited basis, regarding the issue of the suspension. If
28 Respondent's license is suspended, he will continue to be responsible for all license requirements
29 pursuant to AS 08.68.

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C. Respondent Address

It is the responsibility of the Respondent to keep the Probation Monitor advised, in writing, at all times of his current mailing address, physical address, email address, telephone number, current employment and any change in employment.

Failure to provide notice of any changes within 10 calendar days will constitute grounds for suspension of his license in accordance with paragraph 'C' above.

D. Authorization

Within 10 calendar days of a request by the Probation Monitor, Respondent will sign all authorizations necessary for the release of information required by this Consent Agreement.

E. Noncooperation by Reporting Persons

If any of the persons required by this Order to report to the Board, fails or refuses to do so, and after adequate notice to Respondent to correct the problem, the Board may terminate probation and invoke other sanctions as it determines appropriate.

All costs are the responsibility of the Respondent.

F. Good Faith

All parties agree to act in good faith in carrying out the stated intentions of this Consent Agreement.

G. Compliance with Laws

Respondent shall obey all federal, state and local laws, governing his license.

H. Address of the Board

All required reports or other communication concerning compliance with this Consent Agreement shall be addressed to:

Probation Monitor for Board of Nursing
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
Phone (907) 269-8437; Fax (907) 269-8195

I. Absence from Community of Residence

While under license probation, Respondent shall notify the Probation Monitor in writing in advance of each and every expected absence from community of residence in excess of seven (7) days. Absences from the State of Alaska must be reported pursuant to Paragraph 'B'.

1 **J. Periodic Interview with the Board**

2 While under license probation and upon the request of the Board, its Executive
3 Administrator, or Probation Monitor, Respondent shall report in person to the Board, Board of
4 Nursing's Executive Administrator, or Probation Monitor to allow a review of his compliance
5 with this probation. Respondent shall be excused from attending any interview only at the
6 discretion of the person requesting the interview.

7 **K. Civil Fine**

8 Respondent shall pay a fine of two thousand five hundred dollars (\$2,500.00) with one
9 thousand five hundred dollars (\$1,500.00) suspended. The unsuspended portion of this civil fine
10 \$1,000 is due within 180 days of the adoption of this agreement and is payable to the "State of
11 Alaska" in cash, certified check, money order, or (by phone at 907-269-8160) via credit card.

12 All payments required by this Consent Agreement shall be addressed to:

13 Angela G. Birt, Chief Investigator
14 Division of Corporations, Business and Professional Licensing
15 550 West 7th Avenue, Suite 1500
16 Anchorage, Alaska 99501-3567

17 **L. Psychotherapy Counseling**

18 Respondent shall be required to undergo psychiatric and/or psychological therapy as
19 recommended by his counseling program. Psychiatric care/counseling shall be from a
20 psychiatrist, psychologist, or counselor licensed in the State of Alaska, approved by the Board or
21 its Executive Administrator, and provided with a copy of this Consent Agreement.

22 The Board or its Executive Administrator may consider releasing Respondent from the
23 therapy requirement upon receipt of a written statement from Respondent's therapist that his
24 rehabilitation has progressed to the point that continued therapy is no longer necessary.
25 However, the Board or its Executive Administrator will not release Respondent from the therapy
26 requirement until satisfied that doing so is consistent with the public interest. Respondent will
27 continue with counseling until the Board, or its Executive Administrator, officially releases the
28 Respondent from his counseling requirement in writing.

29 Respondent's therapist shall submit reports to his probation monitor on a quarterly basis,
30 as specified in paragraph 'M', indicating that:

- 31 (1) Respondent is continuing in therapy as required by his therapist; and

1 (2) Respondent does not pose a danger to the public, Respondent's patients, or
2 Respondent.

3 All costs are the responsibility of the Respondent.

4 **M. Quarterly Reports**

5 Quarterly reports are due for each year of probation and the entire length of probation as
6 follows:

<u>Period Covered</u>	<u>Due Date(s)</u>
January 1 - March 31	between April 1 and April 7
April 1 - June 30	between July 1 and July 7
July 1 - September 30	between October 1 and October 7
October 1 - December 31	between January 1 and January 7

12 Failure to submit complete and timely reports shall constitute a violation of probation.

13 **N. Self-Evaluation Report**

14 While under license probation, Respondent shall submit quarterly reports, as specified in
15 paragraph 'M', to the Probation Monitor regarding his method(s) of handling stress, mental and
16 physical health, professional responsibilities and activities, and personal activities.

17 **O. Employer Reports**

18 Within 10 calendar days of the effective date of this Consent Agreement, and for the
19 duration of probation, Respondent must provide his employer with a copy of the Consent
20 Agreement and understands that the Probation Monitor will be free to discuss with Respondent's
21 employer the subject matter of this Consent Agreement.

22 Respondent's supervisor shall report quarterly to the Probation Monitor as to Respondent's
23 employment performance and attendance (as specified in Paragraph 'N' above). The report shall
24 include a statement of whether Respondent is suspected of violating any condition of this license
25 probation.

26 **P. Additional Education**

27 In addition to the continuing education/competency requirements under Alaska statutes for
28 his licensure under AS 08.68, and within 90 calendar days of the effective date of this Order,
29 Respondent shall attend and satisfactorily complete no less than three (3) hours of education
30 dealing with subject matter relating to *Professional Conduct*. The course curriculum must be
31 approved by the Board or its Executive Administrator prior to the Respondent registering in the
32 course.

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In addition, within 30 calendar days after completion of the course, a certificate of satisfactory completion is to be provided to the Probation Monitor.

All costs are the responsibility of the Respondent.

Q. Reprimand

It is hereby ordered that a public reprimand be issued against licensee, _____, for unprofessional conduct relating to disruptive behavior directed at staff members, a violation of AS 08.68.270(7) and 12 AAC 44.770(29).

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1 IT IS FURTHER ORDERED that this Adopted Decision and Order shall take effect immediately
2 upon its adoption by the Board and is a public record of the Board and the State of Alaska. The
3 State of Alaska may provide a copy of it to any person or entity, professional licensing board,
4 federal, state, or local government, or other entity making a relevant inquiry.

5 The action taken by the Board in this Consent Agreement will be reported to the National
6 Practitioner Data Bank, and National Council of State Boards of Nursing as required by law.

7
8 DATED this 24th day of January, 2017 at Anchorage, Alaska.

9
10 CHRIS HLADICK, COMMISSIONER

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13 By: [Signature]
14 Angela Birt, Chief Investigator for
15 Janey Hovenden, Director
16 Division of Corporations, Business and
17 Professional Licensing

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AMK

I, _____ have read the Consent Agreement, understand it, and agree to be bound by its terms and conditions.

DATED: 2-21-2017

SUBSCRIBED AND SWORN TO before me this 21 day of February, 2017, at Anchorage, Alaska.



[Signature]
Notary Public in and for Alaska.
ANNE Leary
Notary Printed Name

My commission expires: with office

MAS Disciplinary Sanctions/Fine Schedules

December 8, 2017**

Violation	Time frame	Sanction/Fine	Amount suspended
Unlicensed Practice	1-90 days	\$500 fine	At Boards discretion
Unlicensed Practice	91 days to 1 Year	\$1000 fine	At Boards discretion
Unlicensed Practice	1 year or more	\$2500 fine	At Boards discretion

Violation	Time frame	Sanction/Fine	Amount suspended
License actions according to 12 AAC 79.900- Code of Ethics	1 st offense	Letter of Advisement/ Sanction Fines at Board's Discretion	At Board's Discretion
License actions according to 12 AAC 79.900- Code of Ethics	2 or more offenses	\$250 per offense at the Board's Discretion	At Board's discretion

Violation	Time frame	Sanction/Fine	Amount suspended
Fraud- In obtaining a license	n/a	-Denial or Revocation -4 year wait until reapplication - \$2,500 fine at the Board's Discretion	At Boards discretion
Fraud- In retaining a license	n/a	-Denial or Revocation -4 year wait until reapplication - \$2,500 fine at the Board's Discretion	At Boards discretion

** Updated and approved in Board of Massage Therapist meeting November 30- December 1, 2017

MAS BARRIER CRIMES MATRIX FOR THE BARRIER CRIMES LISTED 7 AAC 10.905

November 8, 2017

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BARRIER CRIME [See notes at end of table for conditions that increase some barrier times]	A Barrier Within the Following Time Periods					See 7 AAC 10.905 at:
	PERMANENT	10 Year	5 Year	3 Year	1 Year	

ATTEMPT, SOLICITATION, AND CONSPIRACY

AS 11.31.100 (attempt to commit a crime)						
Unclassified felony if the crime attempted is murder in the first degree	X					(b)(1)
Class A felony if the crime attempted is an unclassified felony other than murder in the first degree	X					(b)(1)
Class B felony if the crime attempted is a class A felony	Same barrier as the class A felony attempted					
Class C felony if the crime attempted is a class B felony	Same barrier as the class B felony attempted					
Class A misdemeanor if the crime attempted is a class C felony and is a barrier crime	Same barrier as the class C felony attempted					
Class B misdemeanor if the crime attempted is a class A or class B misdemeanor and is a barrier crime	Same barrier as the misdemeanor attempted					
AS 11.31.110 (solicitation to commit a crime)						
Unclassified felony if the crime solicited is murder in the first degree	X					(b)(1)
Class A felony if the crime solicited is an unclassified felony other than murder in the first degree	X					(b)(1)
Class B felony if the crime solicited is a class A felony	Same barrier as the class A felony solicited					
Class C felony if the crime solicited is a class B felony	Same barrier as the class B felony solicited					
Class A misdemeanor if the crime solicited is a class C felony and is a barrier crime	Same barrier as the class C felony solicited					
Class B misdemeanor if the crime solicited is a class A or class B misdemeanor and is a barrier crime	Same barrier as the misdemeanor solicited					
AS 11.31.120 (conspiracy to commit a crime)						
Unclassified felony if the object of the conspiracy is murder in the first degree	X					(b)(1)
Class A felony if the object of the conspiracy is a crime punishable as an unclassified felony other than murder in the first degree	X					(b)(1)
Class B felony if the object of the conspiracy is a crime punishable as a class A felony	Same barrier as the class A felony involved in the conspiracy					
Class C felony if the object of the conspiracy is a crime punishable as a class B felony	Same barrier as the class B felony involved in the conspiracy					

OFFENSES AGAINST THE PERSON

AS 11.41.100 (murder in the first degree) Unclassified Felony	X					(b)(1)
AS 11.41.110 (murder in the second degree) Unclassified Felony	X					(b)(1)
AS 11.41.120 (manslaughter) Class C Felony		X				(b)(1)
AS 11.41.130 (criminally negligent homicide) Class B Felony	X					(b)(1)
AS 11.41.200 (assault in the first degree) Class A Felony	X					(b)(1)
AS 11.41.210 (assault in the second degree) Class B Felony	X					(b)(1)
AS 11.41.220 (assault in the third degree) Class C Felony	X					(b)(4)
AS 11.41.230 (assault in the fourth degree) Class A Misdemeanor			X			(d)(1)(A)
AS 11.41.2S0 (reckless endangerment) Class A Misdemeanor			X			(d)(1)(B)

MAS BARRIER CRIMES MATRIX FOR THE BARRIER CRIMES LISTED 7 AAC 10.905

November 8, 2017

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BARRIER CRIME [See notes at end of table for conditions that increase some barrier times]	A Barrier Within the Following Time Periods					See 7 AAC 10.905 At:
	PERMANENT	10 Year	5 Year	3 Year	I Year	
AS 11.41.260 (stalking in the first degree) Class C Felony	X					(c)(1)
AS 11.41.270 (stalking in the second degree) Class A Misdemeanor			X			(d)(1)(C)
AS 11.41.300 (kidnapping)						
Unclassified Felony	X					(b)(1)
Class A Felony (victim released without serious injury)	X					(b)(1)
AS 11.41.320 (custodial interference in the first degree) Class C Felony ("crime involving domestic violence")	X					(b)(2)
AS 11.41.330 (custodial interference in the second degree) Class A Misdemeanor			X			(d)(1)(D)
AS 11.41.410 (sexual assault in the first degree) Unclassified Felony ("sex offense")	X					(b)(1)
AS 11.41.420 (sexual assault in the second degree) Class 8 Felony ("sex offense")	X					(b)(1)
AS 11.41.425 (sexual assault in the third degree) Class C Felony ("sex offense")	X					(b)(11)
AS 11.41.427 (sexual assault in the fourth degree Class A Misdemeanor ("sex offense")	X					(b)(11)
AS 11.41.434 (sexual abuse of a minor in the first degree) Unclassified Felony ("sex offense")	X					(b)(1)
AS 11.41.436 (sexual abuse of a minor in the second degree) Class B Felony ("sex offense")	X					(b)(1)
AS 11.41.438 (sexual abuse of a minor in the third degree) Class C Felony ("sex offense")	X					(b)(11)
AS 11.41.440 (sexual abuse of a minor in the fourth degree) Class A Misdemeanor ("sex offense")	X					(b)(11)
AS 11.41.450 (incest) Class C Felony ("sex offense")	X					(b)(11)
AS 11.41.452 (online enticement of a minor)						
Class B Felony if the defendant was required to register as a sex offender or child kidnapper ("sex offense")	X					(b)(1) and (b)(3)
Class C Felony if not required to register as a sex offender or child kidnapper-	X					(b)(3)
AS 11.41.455 (unlawful exploitation of a minor) Class 8 Felony ("sex offense")	X					(b)(1)
AS 11.41.458 (indecent exposure in the first degree) Class C Felony ("sex offense")	X					(b)(11)
AS 11.41.460 (indecent exposure in the second degree) ("sex offense")						
Class A misdemeanor if before a person under 16 years of age	X					(b)(5)
Class B misdemeanor if before a person 16 years age or older	X					(b)(5)
AS 11.41.500 (robbery in the first degree) Class A Felony	X					(b)(1)
AS 11.41.510 (robbery in the second degree) Class B Felony	X					(b)(1)
AS 11.41.520 (extortion) Class B Felony	X					(b)(1)}
AS 11.41.530 (coercion) Class C Felony			X			(d)(1)(E)
OFFENSES AGAINST PROPERTY						
AS 11.46.120 (theft in the first degree) Class B Felony		X				(c)(2)(A)
AS 11.46.130 (theft in the second degree) Class C Felony			X			(d)(2)
AS 11.46.140 (theft in the third degree) Class A Misdemeanor				X		(e)(1)(A)
AS 11.46.220 (concealment of merchandise) if a Class C Felony			X			(d)(2)

MAS BARRIER CRIMES MATRIX FOR THE BARRIER CRIMES LISTED 7 AAC 10.905

November 8, 2017

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BARRIER CRIME [See notes at end of table for conditions that increase some barrier times]	A Barrier Within the Following Time Periods					See 7 AAC 10.905 At:
	PERMANENT	10 Year	5 Year	3 Year	1 Year	
AS 11.46.260 (removal of identification marks) if a Class C Felony			X			(d)(2)
AS 11.46.270 (unlawful possession) if a Class C Felony			X			(d)(2)
AS 11.46.280 (issuing a bad check)						
If Class B Felony			X			(c)(2)(B)
If Class C Felony				X		(d)(2)
AS 11.46.285 (fraudulent use of an access device)						
If Class B Felony		X				(c)(2)(C)
If Class C Felony			X			(d)(2)
AS 11.46.290 (obtaining an access device or identification document by fraudulent means) Class C Felony			X			(d)(2)
AS 11.46.300 (burglary in the first degree) Class B Felony		X				(c)(2)(D)
AS 11.46.310 (burglary in the second degree) Class C Felony			X			(d)(2)
AS 11.46.320 (criminal trespass in the first degree) Class A Misdemeanor (if domestic violence crime)				X		(e)(1)(B)
AS 11.46.360 (vehicle theft in the first degree) Class C Felony			X			(d)(2)
AS 11.46.400 (arson in the first degree) Class A Felony	X					(b)(6)
AS 11.46.410 (arson in the second degree) Class B Felony	X					(b)(6)
AS 11.46.430 (criminally negligent burning) Class A Misdemeanor (if domestic violence crime)				X		(e)(1)(C)
AS 11.46.475 (criminal mischief in the first degree) Class A Felony		X				(c)(2)(E)
AS 11.46.480 (criminal mischief in the second degree) Class B Felony		X				(c)(2)(f)
AS 11.46.482 (criminal mischief in the third degree) Class C Felony			X			(d)(2)
AS 11.46.484 (criminal mischief in the fourth degree) Class A Misdemeanor (if domestic violence crime)				X		(e)(1)(D)
AS 11.46.486 (criminal mischief in the fifth degree) Class B Misdemeanor (if domestic violence crime)					X	(t)(1)
AS 11.46.500 (forgery in the first degree) Class B Felony		X				(c)(2)(G)
AS 11.46.505 (forgery in the second degree) Class C Felony			X			(d)(2)
AS 11.46.510 (forgery in the third degree) Class A Misdemeanor				X		(e)(1)(E)
AS 11.46.520 (criminal possession of a forgery device) Class C Felony			X			(d)(2)
AS 11.46.530 (criminal simulation) If a Class C Felony			X			(d)(2)
AS 11.46.550 (offering a false instrument for recording in the first degree) Class C Felony			X			(d)(2)
AS 11.46.565 (criminal impersonation in the first degree) Class B Felony		X				(c)(2)(H)
AS 11.46.600 (scheme to defraud) Class B Felony		X				(c)(2)(1)
AS 11.46.620 (misapplication of property) if a Class C Felony			X			(d)(2)
AS 11.46.630 (falsifying business records) Class C Felony			X			(d)(2)
AS 11.46.660 (commercial bribe receiving) Class C Felony			X			(d)(2)
AS 11.46.670 (commercial bribery) Class C Felony			X			(d)(2)

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BARRIER CRIME [See notes at end of table for conditions that increase some barrier times]	A Barrier Within the Following Time Periods					See 7 AAC 10.905 At:
	PERMANENT	10 Year	5 Year	3 Year	1 Year	
AS 11.46.710 (deceptive business practices)						
Class C Felony			X			(d)(2)
Class A Misdemeanor				X		(e)(1)(F)
AS 11.46.730 (defrauding creditors)						
If Class B Felony		X				(c)(2)(J)
If Class C Felony			X			(d)(2)
AS 11.46.740 (criminal use of computer) Class C Felony			X			(d)(2)
OFFENSES AGAINST THE FAMILY AND VULNERABLE ADULTS,						
AS 11.51.100 (endangering the welfare of a child in the first degree)						
If Class B Felony (if child dies)	X					(b)(7)(A)
If Class C Felony (if the child suffers sexual contact, sexual penetration, or serious physical injury)	X					(b)(7)(A)
If Class A Misdemeanor (if the child suffers physical injury)	X					(b)(7)(A)
AS 11.51.110 (endangering the welfare of a child in the second degree) Violation			X			(d)(3)(A)
AS 11.51.120 (criminal nonsupport)						
Class C Felony			X			(d)(3)(B)
Class A Misdemeanor				X		(e)(2)
AS 11.51.121 (aiding the non-payment of child support in the first degree) Class C Felony			X			(d)(3)(C)
AS 11.51.130 (contributing to the delinquency of a minor) Class A Misdemeanor			X			(d)(3)(D)
AS 11.51.200 (endangering the welfare of a vulnerable adult in the first degree) Class C Felony	X					(b)(7)(8)
AS 11.51.210 (endangering the welfare of a vulnerable adult in the second degree) Class A Misdemeanor	X					(b)(7)(C)
OFFENSES AGAINST PUBLIC ADMINISTRATION						
AS 11.56.740 (violating a protective order) Class A Misdemeanor (if domestic violence crime)		X				(e)(3)(A)
AS 11.56.745 (interfering with a report of a crime involving domestic violence) Class A Misdemeanor				X		(e)(3)(B)
AS 11.56.750 (unlawful contact in the first degree) Class A Misdemeanor				X		(f)(2)
AS 11.56.755 (unlawful contact in the second degree) Class B Misdemeanor or Violation				X		(f)(2)
AS 11.56.765 (failure to report a violent crime committed against a child) Class A Misdemeanor			X			(d)(4)(A)
AS 11.56.807 (terroristic threatening in the first degree) Class B Felony (if domestic violence crime)		X				(c)(3)
AS 11.56.810 (terroristic threatening in the second degree) Class C Felony (if domestic violence crime)			X			(d)(4)(8)
AS 11.56.815 (tampering with public records in the first degree) Class C Felony			X			(d)(4)(C)
AS 11.56.835 (failure to register as a sex offender or child kidnapper in the first degree) Class C Felony	X					(b)(8)(A)
AS 11.56.840 (failure to register as a sex offender or child kidnapper in the second degree) Class A Misdemeanor	X					(b)(8)(B)

MAS BARRIER CRIMES MATRIX FOR THE BARRIER CRIMES LISTED 7 AAC 10.905

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BARRIER CRIME [See notes at end of table for conditions that increase some barrier times]	A Barrier Within the Following Time Periods					See 7 AAC 10.905 At
	PERMANENT	10 Year	5 Year	3 Year	1 Year	

OFFENSES AGAINST PUBLIC ORDER

AS 11.61.120 (harassment) Class B Misdemeanor (if domestic violence crime)					X	(f)(3)
AS 11.61.123 (indecent viewing or photography)						
Class C Felony	X					(b)(9)(A)
Class A Misdemeanor	X					(b)(9)(A)
AS 11.61.125 (distribution of child pornography) ("sex offense")						
Class A Felony	X					(b)(9)(B)
Class B Felony	X					(b)(9)(B)
AS 11.61.127 (possession of child pornography) Class C Felony ("sex offense")	X					(b)(9)(B)
AS 11.61.128 (electronic distribution of indecent material to a minor)						
Class B Felony if the defendant was required to register as a sex offender or child kidnapper	X					(b)(3)
Class C Felony if not required to register as a sex offender or child kidnapper	X					(b)(3)
AS 11.61.130 (misconduct involving a corpse) Class A Misdemeanor			X			(d)(5)(A)
AS 11.61.140 (cruelty to animals) Class A Misdemeanor		X				(d)(5)(B)
AS 11.61.145 (promoting and exhibition of fighting animals, if Class C Felony)		X				(d)(5)(C)
AS 11.61.190 (misconduct involving weapons in the first degree) Class A Felony		X				(c)(4)(A)
AS 11.61.195 (misconduct involving weapons in the second degree) Class B Felony		X				(c)(4)(B)
AS 11.61.200 (misconduct involving weapons in the third degree) Class C Felony			X			(d)(5)(D)
AS 11.61.240 (criminal possession of explosives)						
Class A Felony		X				(c)(4)(C)
Class B Felony		X				(c)(4)(C)
Class C Felony			X			(d)(5)(E)
Class A Misdemeanor				X		(c)(4)
AS 11.61.250 (unlawful furnishing of explosives) Class C Felony			X			(d)(5)(F)

OFFENSES AGAINST PUBLIC HEALTH AND DECENCY

AS 11.66.110 (promoting prostitution in the first degree)						
Class A Felony - If the person who was induced or caused to engage in prostitution was under 16 years of age	X					(b)(10)(A)
Class B Felony						
If the person who was induced or caused to engage in prostitution was 16 or 17 years of age at the time of the offense ("sex offense")	X					(b)(10)(A)
If the person who was induced or caused to engage in prostitution was 18 years of age or older at the time of the offense	X					(c)(5)

MAS BARRIER CRIMES MATRIX FOR THE BARRIER CRIMES LISTED 7 AAC 10.905

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	PERMANENT	10 Year	5 Year	3 Year	
AS 11.66.120 (promoting prostitution in the second degree) Class C Felony					
If the person who was induced or caused to engage in prostitution was under 16 years of age	X				(b)(10)(B)
If the person who was induced or caused to engage in prostitution was 16 or 17 years of age at the time of the offense ("sex offense")	X				(b)(10)(B)
If the person who was induced or caused to engage in prostitution was 18 years of age or older at the time of the offense	X				(d)(6)
AS 11.66.130 (promoting prostitution in the third degree) Class A Misdemeanor					
If the person who was induced or caused to engage in prostitution was under 16 years of age	X				(b)(10)(C)
If the person who was induced or caused to engage in prostitution was 16 or 17 years of age at the time of the offense ("sex offense")	X				(b)(10)(C)
CONTROLLED SUBSTANCES					
AS 11.71.010 (misconduct involving a controlled substance in the first degree) Unclassified Felony		X			(C)(6)
AS 11.71.020 (misconduct involving a controlled substance in the second degree) Class A Felony		X			(c)(6)
AS 11.71.030 (misconduct involving a controlled substance in the third degree) Class B Felony		X			(c)(6)
AS 11.71.040 (a)(1), (a)(2), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(10) (misconduct involving a controlled substance in the fourth degree) Class C Felony			X		(d)(7)
IMITATION CONTROLLED SUBSTANCES					
AS 11.73.010 (manufacture or delivery of an imitation controlled substance) Class C Felony		X			(d)(8)
AS 11.73.020 (possession of substance with intent to manufacture) Class C Felony		X			(d)(8)
AS 11.73.030 (delivery of an imitation controlled substance to a minor) Class B Felony		X			(c)(7)
AS 11.73.040 (advertisement to promote the delivery of an imitation controlled substance) Class C Felony		X			(d)(8)
OTHER CRIMES					
AS 21.36.360 (fraudulent or criminal insurance acts)					
Class B Felony		X			(c)(8)
Class C Felony			X		(d)(10)
AS 21.35.030 (operating a vehicle, aircraft or watercraft while intoxicated)					
(n)-A Class C Felony (if the person convicted has been previously convicted two or more times since January 1, 1996, and within 10 years preceding the date of the present offense)		X			(c)(9)

MAS BARRIER CRIMES MATRIX FOR THE BARRIER CRIMES LISTED 7 AAC 10.905

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	PERMANENT	10 Year	5 Year	3 Year	
AS 28.35.032 (refusal to submit to chemical test)					
(p) – A Class C Felony (if the person is convicted under this section and either has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense, or punishment under AS 28.35.032 (b) was previously imposed within the last 10 years)		X			(c)(10)
AS 47.30.815 (limitation of liability; bad faith application a felony [willful initiation of an involuntary civil commitment procedure without good cause]) Felony			X		(d)(11)

IMPORTANT NOTES

- (1) Under AS 12.62.900(23) "serious offense" means a conviction for a violation or for an attempt, solicitation, or conspiracy to commit a violation of any of the following laws, or of the laws of another jurisdiction with substantially similar elements: (A) a felony offense; (B) a crime involving domestic violence; (C) AS 11.41.410 - 11.41.470; (D) AS 11.51.130 or 11.5 1.200 – 11.56.210; (E) AS 11.61.110(a)(7) or 11.61.125; (F) AS 11.66.100- 11.66.130; (G) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160; or (H) former AS11.40.080, 11.40.110, 11.40.130,or 11.40.200- 11.40.420, if committed before January .1 1980.
- (2) Under AS 12.63.100(6) "sex offense" means (A) a crime under AS 11.41.100 (a)(3) [murder in the first degree], or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph. "sexual offense" has the meaning given in AS 11.41.100(a)(3); (B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:(i) sexual assault in the first degree; (ii) sexual assault in the second degree; (iii) sexual abuse of a minor in the first degree; or (iv) sexual abuse of a minor in the second degree; (C) a crime, or an attempt solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction: (i) AS 11.41.410 - 11.41.438; (ii) AS 11.41.440(a)(2); (iii) AS 11.41.450 - 11.41.458; (iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense; (v) AS 11.61.125 or 11.61.127; (vi) AS 11.66.110 or 1.66.130(a)(2) if the person who was induced or caused to engage in prostitution was 16 or 17 years of age at the time of the offense; or (vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160 former AS 11.40.110, or former 11.40.200.
- (3) Under AS 18.66.990(3) "domestic violence" and "crime involving domestic violence" mean one or more of the following offenses or an offense under a law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member: (A)a crime against the person under AS 11.41; (B) burglary under AS 11.46.300 - 11.46.310; (C) criminal trespass under AS 11.46.320 - 11.46.330; (D) arson or criminally negligent burning under AS 11.46.400-11.46.430; (E) criminal mischief under AS 11.46.475 -11.46.486; (F) terrorist threatening under AS 11.56.807 or 11.56.810; (G) violating a protective order under AS 11.56.740(a)(1); or (H) harassment under AS 11.61.120(a)(2) - (4).
- (4) Regardless of the barrier crimes listed above-or the barrier times shown above - the following is a permanent barrier under 7 AAC 10.905(b)(3): a crime that is a felony and involves a victim who was a child under 18 years of age at the time of the conduct, including a crime where the perpetrator was a person responsible for the child's welfare; in this paragraph, "person responsible for the child's welfare" has the meaning given in AS 47.17.290.
- (5) Even though some class B felonies are not classified as permanent barriers, if there is a conviction for two or more those felonies that constitutes a permanent barrier under 7 AAC 10.905(b)(12).
- (6) AS 47.05.310(c) provides: The department may not issue or renew a license or certification for an entity if an individual is applying for a license, license renewal, certification, or certification renewal for the entity and that (1) individual has been found by a court or agency of this or another jurisdiction to have neglected, abused, or exploited a child or vulnerable adult under AS 47.10, AS 47.24, or AS 47.62 or a substantially similar provision in another jurisdiction, or to have committed medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction; or (2) individual's name appears on the centralized registry established under AS 47.05.330 or a similar registry of this state or another jurisdiction.

Administrative Business

Meeting Calendar

STATE OF ALASKA

2018 HOLIDAY CALENDAR

State Holidays

Date	Holiday
01/01	New Year's Day
01/15	MLK Jr.'s Birthday
02/19	Presidents' Day
03/26	Seward's Day
05/28	Memorial Day
07/04	Independence Day
09/03	Labor Day
10/18	Alaska Day
11/11	Veterans' Day (observed 11/12)
11/22	Thanksgiving Day
12/25	Christmas Day

Biweekly employees please refer to appropriate collective bargaining unit agreement for more information regarding holidays.

 Holiday

UNAVAILABLE

NEARLY UNAVAILABLE

APR MEETING

MAS MEETING

State calendar maintained by the
Division of Finance,
Department of Administration
<http://doa.alaska.gov/calendars.html>
Rev. 7/10/2017

JANUARY

S	M	T	W	T	F	S
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FEBRUARY

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STATE OF ALASKA

2019

State Holidays

Date	Holiday
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02/18	Presidents' Day
03/25	Seward's Day
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07/04	Independence Day
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11/11	Veterans' Day
11/28	Thanksgiving Day
12/25	Christmas Day

Biweekly employees please refer to appropriate collective bargaining unit agreement for more information regarding holidays.

 Holiday

NEARLY UNAVAILABLE Unavailable

APR MEETING MAS MEETING



State calendar maintained by the
Division of Finance,
Department of Administration
<http://doa.alaska.gov/calendars.html>
Revised 04/16/2018

HOLIDAY CALENDAR

JANUARY

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JULY

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FEBRUARY

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MARCH

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SEPTEMBER

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APRIL

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OCTOBER

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NOVEMBER

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DECEMBER

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Correspondence

From: Joe Bob Smith
To: [Dulebohn, Dawn L \(CED\)](#)
Cc: [Maegan Smith](#); [Danielle Caron](#)
Subject: Re: Effective Date of Licensure- Lee
Date: Friday, October 12, 2018 1:46:19 PM
Attachments: [image001.png](#)
[image002.png](#)

Thank you, Dawn! The sleep withdrawal is a shock to the system but I'm slowly adapting.

My department only handles school approvals, so I don't have access to the individual information you seek. However, I've cc'd my counterparts in that department who can assist you with Ji Sun Lee's verification.

Something you may want to note and be aware of is our Legislature recently passed a law that suspends the exam requirement for 2 years starting January 1, 2019. I've copied our policy as stated on our website below, but please email me if you have any questions.

On September 19, 2018, the Governor signed SB 1480 into law. Among other things, this bill changes the Massage Therapy Act so that starting on January 1, 2019 through December 31, 2020, passage of a CAMTC approved exam will not be required for CAMTC Certification.

If you are seeking CAMTC Certification you have three options:

1. Apply now or any time before January 1, 2019, take and pass a CAMTC approved exam, and meet all of the other requirements for certification. This option allows you to be certified the fastest, but also requires that you take and pass a CAMTC approved exam.
2. Apply now or any time before January 1, 2019, DON'T take or pass a CAMTC approved exam, but meet all of the other requirements for certification. If you choose this option, CAMTC will hold your application until the law becomes effective on January 1, 2019, and it will then be processed after that time.
3. WAIT to apply until on or after January 1, 2019. If you choose this option, no exam requirement will apply.

Sincerely,

Joe Bob Smith

Director, Educational Standards Division

California Massage Therapy Council

One Capitol Mall, Suite 800

Sacramento, CA 95814

(818) 600-8769

www.camtc.org

jbsmith@camtc.org

From: "Dulebohn, Dawn L (CED)" <dawn.dulebohn@alaska.gov>

Date: Thursday, October 11, 2018 at 10:51 AM

To: Joe Bob Smith <jbsmith@camtc.org>

Subject: Effective Date of Licensure- Lee

New Task List

Adjourn