

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
5300 BOARD OF MASSAGE AND BODYWORK
Statutory Authority: 24 Delaware Code, Section 5306(a)(1) (24 **Del.C.** §5306(a)(1))
24 **DE Admin. Code** 5300

FINAL

ORDER

5300 Board of Massage and Bodywork

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 18, 2018 at a scheduled meeting of the Delaware Board of Massage and Bodywork ("Board") to receive comments regarding the Board's proposed revisions to its rules and regulations.

The proposed changes serve to implement recent amendments to the Board's Practice Act, Chapter 53 of Title 24 of the Delaware Code, which authorize the Board to regulate and license massage establishments. The new Section 12.0 sets forth licensure standards, application procedures, and advertising requirements. Section 12.0 also provides for inspection of any location representing itself as a place where massage and bodywork services will be offered and sets forth specific prohibitions against illegal activity at massage establishments. Together, Chapter 53 and the proposed rules and regulations serve the interests public protection and the protection of the individuals working at massage establishments.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 21, Issue 6, on December 1, 2017. Notice of the January 18, 2018 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was February 2, 2018, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on February 15, 2018.

Summary of the Evidence and Information Submitted

The following exhibits were made part of the record:

Exhibit 1: *News Journal* Affidavit of Publication.

Exhibit 2: *Delaware State News* Affidavit of Publication.

Exhibit 3: January 12, 2018 letter from Laura Embleton, from Associated Bodywork & Massage Professionals ("ABMP").

Exhibit 4: January 18, 2018 letter from Christopher Asay.

Exhibit 5: Letter submitted January 25, 2018 from James Specker, from American Massage Therapy Association ("AMTA").

Exhibit 6: January 26, 2018 email from Barbara Williams.

Exhibit 7: January 31, 2018 letter from Joan Gennarini.

Exhibit 8: January 31, 2018 email from Linda Lowry.

Exhibit 9: February 1, 2018 email from Linda Lowry.

Exhibit 10: February 2, 2018 letter from Laura Embleton of ABMP.

In addition, testimony was presented at the January 18, 2018 hearing by Christopher Asay, Laura Embleton and Joan Gennarini.

Findings and Conclusions

Pursuant to 24 **Del.C.** §5306(a)(1), the Board has the statutory authority to promulgate rules and regulations. In addition, pursuant to 24 **Del.C.** §5306(a)(15), the Board has the authority to adopt rules and regulations "setting forth the requirements pertaining to the licensure, maintenance, and standards of massage establishments."

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's rules and regulations. In deliberations, the Board considered all comments presented by the public.

The Board addressed comments from Laura Embleton of ABMP. Ex. 3 and Ex. 10. Ms. Embleton objected to the sexually explicit language included in Section 12.0, particularly the definition of "sexual activity" in subsection 12.1 and the prohibitions on attire in subsection 12.6.6. Ms. Embleton argued that the explicit language is demeaning to the profession of massage and bodywork and duplicative of licensee standards of conduct set forth in Section 11.0. For example,

subsection 11.2.9 prohibits sexual intimacies during a professional relationship.

The Board disagreed with Ms. Embleton and concluded that, for ease of reference, all standards pertaining to massage establishments should be included in one regulation. Further, although Section 12.0 includes certain prohibitions set forth in Section 11.0, Section 12.0 is broader and more comprehensive. For example, subsection 12.7.1 provides that "[s]exual activity in a massage establishment is absolutely prohibited." In addition, the Board found that the explicit nature of certain language was necessary to close any loopholes and ensure that all inappropriate sexual conduct is captured by the regulations. The Board anticipated a scenario where, in the absence of the specifics in Section 12.0, a licensee will be able to argue that his or her conduct did not fall within the regulations' prohibitions. The Board declined to make the revisions requested by Ms. Embleton.

Ms. Embleton expressed concern regarding subsection 12.2.3, which provides that a "massage establishment license shall issue for a single, identified location." The Board verified that, as stated, a license will be required for each location, regardless of business ownership. Ms. Embleton also requested a possible tiered fee structure to assist practitioners with multiple practice locations. The Board noted that fees are determined by the Division of Professional Regulation ("Division") and are not a Board issue. Ms. Embleton also commented on subsection 12.2.4.2, which states that the Board *may* issue a temporary operating permit for up to ninety days pending disposition of the application. Ms. Embleton requested that the term "may" be changed to "shall" due to her concern that the Board might not be able to finalize applications and issue licenses within a 90 day period. Processing and issuance of licenses is a Division function. Further, the Board may delegate authority to the Division to issue licenses to facilitate and expedite the licensure process. The Board determined that Ms. Embleton's comments did not warrant a change to subsection 12.2.4.2.

Ms. Embleton requested revision to the waiver provision, subsection 12.11.1, which gives the Board discretion to grant a waiver of any of Section 12.0's requirements upon a showing of "extreme and undue hardship." Ms. Embleton suggested that the standard be "undue hardship" only. The Board found that requests for a waiver will be handled on a case by case basis and revision to the waiver provision is not warranted at this time. Ms. Embleton commented that fees are not specified in the proposed regulations. The Board noted that fee setting is a matter for the Division and, as a general matter, fees are not included in regulations.

Ms. Embleton inquired about HIPAA compliance and the required client intake forms, as set forth in subsection 12.6.5. The Board deferred discussion of HIPAA until later in deliberations. Ms. Embleton commented that some practitioners maintain records at home and asked whether inspectors will conduct unannounced inspections at their homes. Inspections will be conducted at massage establishments. The objective of inspections is to verify licensure and that the establishment is conducting a legitimate massage business and reviewing and copying client records will not be part of the inspection process.

The Board addressed comments from Christopher Asay pertaining to subsection 12.6.5, which sets forth the information to be included on the required client intake forms. Ex. 4. Mr. Asay requested striking of the "dated signatures" requirement on the basis that records may be maintained electronically. The Board declined to make this requested amendment on the basis that nothing in the subsection prohibits electronic signatures. Mr. Asay also raised the issue of a cap on the licensing fees and the Board noted once again that fees are an issue for the Division. Finally, in response to Mr. Asay's request that proposed public health regulations go through a notice and hearing process, the Board stated that the regulations in question were promulgated by the Division of Public Health, not the Board, but they would be published in the *Register of Regulations* at some time in the future.

Mr. Specker of AMTA objected to the definitions of "sexual activity" and "sexually oriented business" in subsection 12.1 and argued that these definitions are not necessary as they are duplicative of the standards set forth in Section 11.0. Having previously addressed this topic, the Board declined to make the requested revisions. Mr. Specker also presented the option of a tiered fee structure for practitioners with multiple locations. The Board noted once again that fees are a matter for the Division. Mr. Specker requested that, in subsection 12.2.4.2, pertaining to temporary permits, "may" be amended to "shall." This request was previously raised by Ms. Embleton and the Board noted that issuance of licenses may be delegated to the Division to facilitate and expedite the process. Mr. Specker also expressed concern regarding subsection 12.4.3, which states that a licensee may only serve as professional-in-charge for one establishment at any given time. Mr. Specker commented that he wanted to be sure that a waiver will be extended so that businesses with more than one location aren't limited. As noted, requests for a waiver will be determined on a case by case basis. Mr. Specker referenced a previous version of subsection 12.6.5 regarding client records and questioned whether record maintenance would implicate HIPAA. The Board deferred a discussion of HIPAA for later in deliberations. Finally, Mr. Specker requested that "without notice" be stricken from subsection 12.9 regarding inspections. Because the term "without notice" is part of the statute, the Board doesn't have discretion to make the requested change. 24 **Del.C.** § 5321(a).

The Board considered Ms. Williams' email requesting that the Board keep the regulations as flexible and minimal as possible. Ex. 6. In particular, she requested that inspections be limited to a request to see licenses, to see a log of clients and client intake forms and determine if anyone is living on the premises. The Board found that Ms. Williams' comments did not warrant amendment to the proposed regulations.

The Board addressed Ms. Gennarini's comments, which were presented by testimony and in writing. Board Ex. 7. Ms. Gennarini questioned why cosmetology businesses offering massage services will not be required to hold massage establishment licenses. The Board noted that cosmetology shops are licensed and subject to inspection, and, therefore,

another license requirement would be duplicative. Further, cosmetology shops are exempt from massage establishment licensing pursuant to 24 **Del.C.** §5302(4) as a "business establishment licensed pursuant to another chapter of this title." Ms. Gennarini repeated the concerns expressed by other commenters regarding the "sexual activity" definition and the attire requirements, concerns which the Board had already considered and determined did not warrant revisions to the proposed regulations.

Ms. Gennarini requested clarification of certain terms in the proposed regulations, specifically "corporate charter" and "explicitly communicate" as used in reference to advertising in subsection 12.8.3. The Board found that amendments to the regulations to define these terms are not warranted. Ms. Gennarini objected to subsection 12.6.5, pertaining to client records, as not reflecting prior committee discussions. The Board noted that the proposed regulations as published had been reviewed and approved at a Board meeting. With respect to Ms. Gennarini's concerns regarding subsection 12.8.1, which addresses the requirements for advertising, the Board found that all of the identified pieces of information, including establishment license number, are significant and needed on all forms of advertising, including business cards.

Ms. Gennarini requested amendment to subsection 12.9.2, which provides that an agent conducting an inspection "shall not interrupt an in-progress treatment session," to add "as indicated by signage on the door." The Board declined to make this change and found that subsection 12.9.2 is clear and offers protection to the individual receiving a massage. Ms. Gennarini expressed concern for practitioners who keep records at home and questioned whether home inspections would be conducted. The Board noted again that a home office is not a "massage establishment" and would not be subject to inspection. With respect to Ms. Gennarini's request that renewals for practitioner licenses and establishment licenses be staggered to alleviate the financial burden on practitioners, the Board noted that the renewal process is conducted by the Division, not the Board. Ms. Gennarini repeated a concern expressed by Ms. Embleton with respect to the term "extreme and undue hardship" in the waiver provision, subsection 12.11.1. The Board again declined to make the requested change.

The Board considered written comments submitted by Ms. Lowry. Ms. Lowry submitted two documents, Exhibits 8 and 9, which are virtually identical. The submissions consist of email exchanges between Ms. Lowry and Board Liaison Gina Bloom and Division Director David Mangler. The Board reviewed Exhibits 8 and 9 considered outstanding areas of concern expressed by Ms. Lowry.

Ms. Lowry's most significant concern appears to be Division inspectors' access to client records located at massage establishments. Ms. Lowry's concern is based on her assumption that massage and bodywork is "recognized as a Healthcare Profession in the State of Delaware." Exhibit 9. This assertion is based on the circumstance that, on the Division website, "Massage and Bodywork" is listed under "Health Care" rather than under "Commerce" or "Construction." Based on her assumption that massage and bodywork is a health care profession, Ms. Lowry argues that massage practitioners are required to comply with federal laws applicable to health care professionals and questioned whether Delaware law pertaining to massage establishments "supersede[s] Federal law in search and HIPPA [sic] protected records." Exhibit 9.

Ms. Lowry suggested that massage establishment licensing in Delaware may conflict with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The objective of HIPAA's Privacy Rule is to ensure that individuals' health information is protected while allowing access to health information needed to provide quality health care and protect the health and well-being of the public. "Summary of the HIPAA Privacy Rule" found at <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>. Delaware's massage establishment licensing scheme doesn't implicate HIPAA in that clients' health information isn't at issue.

Inspections of massage establishments are subject to the parameters of Chapter 53 of Title 24 of the Delaware Code. Specifically, as set forth in Section 5319, the objective of the establishment licensing is to ensure that individuals providing services are licensed, are supervised by a licensee who is responsible for the establishment, and are working in a licensed location that is not being used as living quarters. The fact that client records exist are indicative of a legitimate business. There is no expression of legislative intent in the language of Chapter 53 to authorize Division agents to search through and read client records maintained by massage licensees.

Further, as a threshold matter, HIPAA's applicability to the practice of massage and bodywork is unclear. In addition, the protection afforded health information is not absolute and is subject to certain exceptions. For example, the "required by law" exception provides that a "covered entity" may disclose protected health information to the extent that such disclosure is required by law and the disclosure complies with and is limited to the requirements of such law. 45 C.F.R. 164.512(a). Consequently, any incidental access to client records during inspections would be authorized by Delaware law and would fall within the "required by law" exception. See *Ohio Legal Rights Service v. The Buckeye Ranch, Inc.*, 365 F. Supp. 2d 877, 889 (S.D. Ohio 2005) (applying "required by law" exception to permit access to health records).

In short, the Board finds that Ms. Lowry's concerns regarding the applicability of HIPAA to massage establishment licensing do not warrant amendments to the regulations as proposed.

Ms. Lowry expressed several other concerns in her emails. The Board found that those concerns were appropriately addressed by Mr. Mangler and there was no need to revise the regulations as proposed. Specifically, Ms. Lowry posed a question as to verification of inspectors' credentials at the time of inspection. Mr. Mangler explained that inspectors will present a law enforcement badge and a State-issued photo identification card. Ms. Lowry also inquired about streamlining of the application process. As explained by Mr. Mangler, processing applications is an operational function of the Division, and pursuant to 29 **Del.C.** §8735(w), the Board can delegate to the Division the authority to issue licenses administratively. ("Any board, commission, committee or council listed in subsection (a) of this section shall have the authority to delegate to

the Director or his or her designee the authority to issue permits and licenses administratively using specific criteria agreed upon by each such entity and the Director"). The Board may also delegate the authority to grant waivers to the Division. Ms. Lowry further inquired as to how the public will be advised of the revocation of establishment licenses. As Mr. Mangler explained, this information will be available on the Board's website.

Ms. Lowry also objected to subsection 12.5 which sets forth permissible hours of operation, 7:00 a.m. - 9:00 p.m. She questioned why hours of operation aren't restricted for other professions regulated by the Division. As noted by Mr. Mangler, the Board has been legislatively directed to "establish by regulation the permissible operating hours of establishments, as well as the mechanisms to apply for a waiver." 24 Del.C. §5319(e). Subsection 12.11 sets forth the procedures for requesting a waiver. Further, in drafting Subsection 12.11, the Board did not contemplate that a licensee will be required to ask for a waiver for every massage that may take place outside of the prescribed time frame.

Finally, Ms. Lowry requested revisions to the Board's continuing education rules and regulations. These regulations are not at issue with respect to the proposed revisions under consideration, but will be considered by the Board at a later date.

The proposed regulations implement amendments to the Board's Practice Act, Chapter 53 of Title 24 of the Delaware Code, which went into effect on January 22, 2018. The statutory amendments provide a framework for licensure of massage establishments, set certain standards for the operation of these businesses and provide for inspections by agents of the Division. The Board met in subcommittee over several months to discuss and revise draft regulations. Members of the public attended and were able to participate in those subcommittee meetings. The draft regulations were amended to incorporate some of the comments from the public. During deliberations, the Board carefully considered and discussed the testimony and written comments from the public.

The Board appreciates the comments and concerns voiced by members of the public and remains open to further discussion about the important issues presented in the proposed regulations. However, the Board finds that the rules and regulations as proposed thoroughly and appropriately implement the amendments to Chapter 53 of Title 24 of the Delaware Code pertaining to massage establishment licensing and that further revision is not warranted at this time.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Final Order in the *Register of Regulations*.

Text and Citation

The exact text of the rules and regulations, as amended, is attached to this Final Order as Exhibit A.

IT IS SO ORDERED this 15th day of March, 2018 by the Delaware Board of Massage and Bodywork.

Danielle DiFonzo, Professional Member, President

Sandra Jachimowski, Professional Member

Jermaine Cannon, Professional Member (absent)

Frank Beebe, Public Member

Kathy Sherwin, Public Member, Secretary (absent)

Ethel Loesche, Public Member

Holly Overmyer, Professional Member

5300 Board of Massage and Bodywork

1.0 Scope of Practice

Licensed massage and bodywork therapists and certified massage technicians shall perform only the massage and bodywork activities and techniques for which they have been trained as stated in their certificates, diplomas or transcripts from the school or program of massage therapy where trained.

2.0 Definitions

"200-hour course of supervised in-class study of massage" as referenced in 24 Del.C. §5309(b) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage and bodywork therapy, and can document that the applicant has successfully completed a curriculum that meets the requirements of 24 Del.C. §5309(b).

"300-hour course of supervised in-class study of massage" as referenced in 24 Del.C. §5309(a)(2) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage and bodywork therapy, and can document that the applicant has successfully completed a curriculum that meets the requirements of 24 Del.C. §5309(a)(2). The entire 300-hour course must be taken at one school or approved program. The Board may, upon request, waive the "single school" requirement for good cause or hardship, such as the closure of a school.

"500 hours of supervised in-class study" as referenced in 24 Del.C. §5308(a)(2) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a

curriculum that meets the requirements of 24 Del.C. §5308(a)(2) and which includes hands-on technique and contraindications as they relate to massage and bodywork. More than one school or approved program of massage or bodywork therapy may be attended in order to accumulate the total 500-hour requirement.

“Core course” shall mean a continuing education course with a subject matter within the “practice of massage and bodywork,” which contributes to the professional competency of the massage and bodywork therapist or massage technician. Core courses must be designed to maintain, improve, or expand skills and knowledge or to develop new and relevant skills and knowledge. Ethics is a core course.

“CPR certification” shall mean a valid Heartsaver® CPR Certification or its equivalent issued by the American Heart Association, a valid Adult CPR Certification or its equivalent issued by the American Red Cross, or a valid Standard CPR Certification or its equivalent issued by the National Safety Council, or, upon review and approval of the Board, a substantially similar certification taught by a certified instructor. CPR certification cannot be obtained solely through an on-line course.

“Elective course” means a continuing education course with a subject matter that is outside the “practice of massage and bodywork,” which does not directly contribute to the professional competency of the massage and bodywork therapist or massage technician. Elective courses may have one of the following subject matters: courses outside the “practice of massage and bodywork,” professional growth and improvement, and business practices.

“Massage and bodywork” includes, but is not limited to, the following practices or modalities:

- Acupressure
- Chair Massage
- Craniosacral therapy
- Deep Tissue Massage Therapy
- Hellerwork
- Manual Lymphatic Drainage
- Massage Therapy
- Myofascial Release Therapy
- Neuromuscular Therapy
- Process Acupressure
- Reflexology
- Rolfing
- Shiatsu
- Swedish Massage Therapy
- Trager
- Visceral Manipulation

“School or approved program” means a school or program of massage that has been approved by the Delaware Department of Education or the Board of Education, or its equivalent, in the state where the school is conducting classes.

20 DE Reg. 825 (04/01/17)

3.0 Change of Address

~~A licensee shall notify the Board of any change of address from that registered with the Board. Such notice shall be sent to the Board by certified mail not later than 30 days following the change of address. A licensee's failure to notify the Board of a change in address will not excuse the licensee from audit requirements, including possible sanctions for non-compliance.~~

3.0 Duty to Update Address

Licensees, including massage establishment licensees, must provide the Division of Professional Regulation with a current mailing address. Any change in mailing address must be reported to the Division within ten days of such change. All notifications and correspondence pertaining to a license that are sent through the mail will be sent only to the most recent address provided by the licensee. The failure to provide the Division with a current mailing address will not operate to excuse any duty or responsibility of the licensee and confirmed delivery to the most recent address provided by the licensee will be considered proper notice.

20 DE Reg. 825 (04/01/17)

4.0 Application for Licensure as Massage and Bodywork Therapist

- 4.1 A person seeking licensure as a massage and bodywork therapist must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation ("Division"), Dover, Delaware. Each application must be accompanied by (1) proof of current CPR certification and (2) payment of the application fee established by the Division.
- 4.2 In addition to the application and materials described in subsection 4.1, an applicant for licensure as a massage and bodywork therapist shall:
 - 4.2.1 Have each school or approved program of massage and bodywork, where the applicant completed the hours of study required by 24 **Del.C.** §5308(a)(2), submit to the Board: 1) an official transcript showing dates and total hours attended and a description of the curriculum completed, 2) proof of the school or program's current state approval, 3) contact information for the school or program director, and 4) a copy of the school or program's catalogue; and
 - 4.2.2 Have the testing agency submit to the Board verification of the applicant's score on the written examination described in Section 5.0.
- 4.3 The Board shall not consider an application for licensure as a massage and bodywork therapist until all items specified in subsections 4.1 and 4.2 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.

20 DE Reg. 825 (04/01/17)

5.0 Examination

A person applying for licensure as a massage and bodywork therapist shall take the MBLEx examination administered by the Federation of State Massage Therapy Boards ("FSMTB"). The Board will accept as a passing score on the exam the passing score established by the FSMTB.

20 DE Reg. 825 (04/01/17)

6.0 Application for Licensure as a Certified Massage Technician

- 6.1 A person seeking licensure as a certified massage technician must submit a completed application on a form prescribed by the Board to the Board office at the Division, Dover, Delaware. Each application must be accompanied by (1) proof of current CPR certification and (2) payment of the application fee established by the Division.
- 6.2 In addition to the application and materials described in subsection 6.1, an applicant for licensure as a certified massage technician shall have each school or approved program of massage and bodywork, where the applicant completed the hours of study required by 24 **Del.C.** §5309(a)(2), submit to the Board: 1) an official transcript showing dates and total hours attended and a description of the curriculum completed, 2) proof of the school or program's current state approval, 3) contact information for the school or program director, and 4) a copy of the school or program's catalogue.
- 6.3 In addition to the application and materials described in subsection 6.1, an applicant for temporary licensure as a certified massage technician shall have each school or approved program of massage and bodywork, where the applicant completed the hours of study required by 24 **Del.C.** §5309(b), submit to the Board: 1) an official transcript showing dates and total hours attended and a description of the curriculum completed, 2) proof of the school or program's current state approval, 3) contact information for the school or program director, and 4) a copy of the school or program's catalogue.
- 6.4 The Board shall not consider an application for licensure as a certified massage technician until all items specified in subsections 6.1 and 6.2 are submitted to the Board's office. If an application is complete in terms of required documents, but the candidate has not responded to a Board request for further information, explanation or clarification within 60 days of the Board's request, the Board will vote on the application as it stands.

20 DE Reg. 825 (04/01/17)

7.0 License renewal

- 7.1 All licenses shall be renewed biennially. Licenses shall expire on August 31 of each even numbered year. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed one year with submission of a late fee. 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. Licensees shall not practice massage after a license has expired.
- 7.2 As a condition of renewal, all licensees shall be required to satisfy the continuing education requirements set forth in Section 9.0, show proof of current CPR certification, and pay the renewal fee.

7.3 After the one (1) year period permitted for late renewal, the individual must re-apply as a new applicant.

20 DE Reg. 825 (04/01/17)

8.0 Inactive Status

- 8.1 A licensee asking to have his or her license placed on inactive status must notify the Board of his/her intention to do so in writing prior to the expiration of his/her current license. Holders of temporary certified massage technician licenses are not eligible for inactive status.
- 8.2 A licensee on inactive status seeking to re-enter practice must notify the Board in writing of his/her intention, pay the appropriate fee, and provide the Board with documentation demonstrating compliance with the continuing education hours required by subsection 9.9, and proof of current CPR certification.

20 DE Reg. 825 (04/01/17)

9.0 Continuing Education (CE)

- 9.1 Renewal Requirements. Licensees shall complete 24 hours of approved CE during each biennial licensing period. Completion of the required CE hours is a prerequisite for renewing a license. Hours earned in a biennial licensing period in excess of those required for renewal may not be credited towards the hours required for renewal in any other licensing period.
- 9.2 Calculation of Hours. For academic course work, correspondence courses, or seminar/workshop instruction, one hour of acceptable CE shall mean 50 minutes of actual instruction. One academic semester hour shall be equivalent to 15 CE hours; one academic quarter hour shall be equivalent to 10 CE hours.
- 9.3 Pro-ration schedule:
 - 9.3.1 If the license is issued more than 12 months prior to the next renewal date, the licensee shall complete 24 hours of acceptable CE during the licensing period.
 - 9.3.2 If the license is issued less than 12 months prior to the next renewal date, the licensee shall complete 12 hours of acceptable CE during the licensing period.
 - 9.3.3 Candidates for renewal who were first licensed or certified 12 months or less before the date of renewal are exempt from the CE requirement for the period in which they were first licensed or certified.
- 9.4 Licensees shall complete 24 hours of CE, which shall include:
 - 9.4.1 Three hours in ethics, which may be taken in classroom or online;
 - 9.4.2 Nine hours of Core credits which must be taken in a classroom, hands-on setting; and
 - 9.4.3 Twelve hours which may be Elective or Core credits and which may be taken on-line.
- 9.5 Board approval.
 - 9.5.1 Courses approved by NCBTMB, American Massage Therapy Association ("AMTA") and Associated Bodywork and Massage Professionals ("ABMP") are automatically approved for content.
 - 9.5.2 To obtain credit for CE courses not approved by NCBTMB, AMTA or ABMP, those courses must be approved by the Board before license renewal. CE course participants or providers may apply for pre-approval of courses by submitting a written request to the Board that must include a program agenda, a syllabus indicating the time spent on each topic, the names and resumes of the presenters, and the number of CE hours and category requested. The Board reserves the right to approve less than the number of hours requested or to approve a course in a different category than requested.
 - 9.5.3 Self-directed activity. The Board may approve credit for up to 6 hours for self-directed activities, including, but not limited to teaching, research, and preparation or presentation of professional papers and articles. Licensees may apply for pre-approval of self-directed activities by submitting a written request for pre-approval that must include an outline of the scope of the activity, the number of CE hours and category requested, the anticipated completion date, the role of the licensee in the case of multiple participants (e.g. research), and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Research involving hands on protocols may be considered Core CE, at the discretion of the Board, with a limit of 6 CE credits.
 - 9.5.4 Course preparation and instruction. The Board may approve up to six additional CE credits, on an hour for hour basis, to instructors for their initial preparation and presentation of an approved CE course (e.g. an instructor preparing and presenting an eight hour course for the first time may receive up to six additional credit hours.)
 - 9.5.5 Board approval of a licensee's CE hours in a modality is not a Board endorsement of the licensee's competence to practice that modality.
- 9.6 Verification.
 - 9.6.1 Verification of CE hours shall be by attestation. Attestation shall be completed online.

- 9.6.2 Post-Renewal Audit. The Board shall conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the renewal requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate of attendance or completion that must be signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance documentation for each licensure period and for at least one year after renewal. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary proceedings and may have their license disciplined. Licensees renewing during the late renewal period pursuant to Section 7.0 shall be audited.
- 9.6.3 A licensee's failure to notify the Board of a change in mailing address will not excuse the licensee from audit requirements, including possible sanctions for non-compliance.
- 9.7 Hardship. A candidate for renewal may be granted an extension of time in which to complete CE hours upon a showing of unusual hardship. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction, and exceptional family responsibilities. Requests for hardship extensions must be submitted to the Board in writing prior to the end of the licensing or certification period for which the request is being made.
- 9.8 Requirements for Late Renewal. Unless extended by the Board for hardship as defined in subsection 9.7, and subject to the one-year limitation set forth in Section 7.0, massage and bodywork therapists and massage technicians applying for late renewal must provide proof of completion of the required CE for the immediately preceding licensure period.
- 9.9 Requirements for Return to Active Status. Unless extended by the Board for hardship as defined in subsection 9.7, massage and bodywork therapists and massage technicians returning from inactive status must provide notice to the Board as set forth in subsection 8.2 and must provide adequate proof of the satisfactory completion of 24 hours of Board approved CE within the immediately preceding two-year period prior to the date of the notice to return to active status. CE hours required to return to active status may not be credited towards the hours required for renewal in any other licensing period.
- 9.10 Professional members of the Board, and licensees, may receive up to 2 hours of Elective CE in a renewal period for attendance at Board meetings. Such hours may be applied to CE required for licensure renewal.

20 DE Reg. 825 (04/01/17)

10.0 Client Disclosure Form

All certified massage technicians shall provide the client with a client disclosure form. The client disclosure form must state that the person providing services is a certified massage technician, and not a licensed massage and bodywork therapist, and, by law, is not authorized to treat medically diagnosed conditions. The client disclosure form must be provided to all new and existing clients for signature at the first treatment session and retained by the certified massage technician as part of the client's record.

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11.0 Standards of Professional Conduct

- 11.1 A licensee shall:
- 11.1.1 Maintain current knowledge of the application of massage practice, including indications, contraindications and precautions.
 - 11.1.2 Undertake a specific technique or use a product or equipment only if the licensee has the necessary knowledge, training or skill to competently perform the technique.
 - 11.1.3 Base decisions and action on behalf of a client on sound ethical reasoning and current principles of practice.
 - 11.1.4 Provide treatment only where there is an expectation that it will be advantageous to the client.
 - 11.1.5 Refer the client to an appropriate health care professional when indicated in the interests of the client.
 - 11.1.6 Discuss with clients which massage modalities and techniques will be utilized and the benefits of these modalities and techniques, the objectives, and that participation is voluntary and that consent to treatment or participation may be withdrawn at any time.
 - 11.1.7 Modify or terminate the massage session at any time upon request of the client.
 - 11.1.8 Keep client information private and confidential. This standard does not prohibit or affect reporting mandated under State or Federal law to protect children, older adults or others.
 - 11.1.9 Use safe and functional coverage/draping practices during the practice of massage when the client is disrobed. Safe and functional coverage/draping means that the client's genitals and gluteal cleft and the breast area of female clients are not exposed and that massage or movement of the body does not expose genitals, gluteal cleft or breast area.

- 11.1.10 Continuously maintain current CPR certification.
- 11.1.11 Be clean, fully-clothed and professional in dress and appearance.
- 11.1.12 Display his or her current license with expiration date in a location clearly visible to clients or, when practicing offsite, display the licensee's wallet card.
- 11.1.13 Include the licensee's license number on all forms and in all advertisements, including business cards, brochures and in print and online media.
- 11.1.14 Cooperate with the Division of Professional Regulation in the investigation of complaints.
- 11.1.15 Maintain massage records for at least 3 years from the last date that services were provided to the client.
- 11.1.16 Educate clients about maintaining the beneficial effect of massage treatment when indicated by a massage treatment plan.
- 11.1.17 Know and comply with the Board's licensing law, Chapter 53 of Title 24 of the **Delaware Code**, and Rules and Regulations.
- 11.2 A licensee shall not:
 - 11.2.1 Misrepresent professional credentials, qualifications, education or affiliations.
 - 11.2.2 Knowingly engage in or condone behavior that is fraudulent, dishonest, or deceitful or involves moral turpitude.
 - 11.2.3 Psychologically or physically abuse a client.
 - 11.2.4 Violate a client's boundaries with regard to exposure, privacy or disclosure.
 - 11.2.5 Utilize techniques that are contraindicated based on the client's condition.
 - 11.2.6 Falsify or knowingly make incorrect entries into the client's record or other related documents.
 - 11.2.7 Intentionally expose a client's genitals, gluteal cleft or the breasts of a female client.
 - 11.2.8 Engage in sexual harassment, sexual impropriety, sexual violation or sexual abuse.
 - 11.2.9 Engage in sexual intimacies during the professional relationship.
 - 11.2.10 Perform or offer to perform any services for clients other than those connected with the practice of massage and bodywork, as defined in 24 **Del.C.** §5302(6), unless the licensee has additional training and licensure to perform those services.
 - 11.2.11 Knowingly permit another individual to use the licensee's license for any purpose.
 - 11.2.12 Knowingly aid, abet or assist another person to violate the Board's licensing law or Rules and Regulations.
 - 11.2.13 Misappropriate equipment, materials, property or money from a client.
 - 11.2.14 Refuse a client's request for a refund of the unearned portion of prepaid or packaged massage therapy services. This provision does not apply to gift certificate purchases.
- 11.3 Any licensee who has knowledge that another licensee has violated the Standards of Professional Conduct set forth in section 11.0, or any other Board law, Rule or Regulation, shall present that information by complaint to the Division of Professional Regulation for investigation.

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12.0 Message 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," "masseuse," 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.

42.013.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

42-413.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

42-213.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

42-313.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

42-413.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

42-513.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 9.8 of this section.

42-613.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

42-6-413.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

42-6-213.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

42-6-313.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

42-6-413.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional

Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

~~42.6.5~~13.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/ her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

~~42.6.6~~13.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

~~42.7~~13.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

~~42.8~~13.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

~~42.9~~13.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

~~42.10~~13.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

~~42.11~~13.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

~~42.12~~13.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

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~~43.0~~14.0 Crimes Substantially Related to the Practice of Massage and Bodywork:

~~43.1~~14.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of massage and bodywork in the State of Delaware without regard to the place of conviction:

~~43.1.1~~14.1.1 Reckless endangering in the first degree. 11 **Del.C.** §604

~~43.1.2~~14.1.2 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.

~~43.1.3~~14.1.3 Assault in the second degree. 11 **Del.C.** §612

~~43.1.4~~14.1.4 Assault in the first degree. 11 **Del.C.** §613.

~~43.1.5~~14.1.5 Unlawfully administering drugs. 11 **Del.C.** §625.

~~43.1.6~~14.1.6 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626.

~~43.1.7~~14.1.7 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.

~~43.1.8~~14.1.8 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.

~~43.1.9~~14.1.9 Murder in the second degree. 11 **Del.C.** §635.

~~43.1.10~~14.1.10 Murder in the first degree. 11 **Del.C.** §636.

~~43.1.11~~14.1.11 Incest. 11 **Del.C.** §766.

~~43.1.12~~14.1.12 Unlawful sexual contact in the third degree. 11 **Del.C.** §767.

~~43.1.13~~14.1.13 Unlawful sexual contact in the second degree. 11 **Del.C.** §768.

~~43.1.14~~14.1.14 Unlawful sexual contact in the first degree. 11 **Del.C.** §769.

~~43.1.15~~14.1.15 Rape in the fourth degree. 11 **Del.C.** §770.

~~43.1.16~~14.1.16 Rape in the third degree. 11 **Del.C.** §771.

~~43.1.17~~14.1.17 Rape in the second degree. 11 **Del.C.** §772.

~~43.1.18~~14.1.18 Rape in the first degree. 11 **Del.C.** §773.

~~43.1.19~~14.1.19 Sexual extortion. 11 **Del.C.** §774.

- ~~13.1.20~~14.1.20 Continuous sexual abuse of a child. 11 **Del.C.** §776.
- ~~13.1.21~~14.1.21 Dangerous crime against a child. 11 **Del.C.** §777.
- ~~13.1.22~~14.1.22 Sex offender unlawful sexual conduct against a child. 11 **Del.C.** §777A.
- ~~13.1.23~~14.1.23 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree; penalties. 11 **Del.C.** §778.
- ~~13.1.24~~14.1.24 Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree; penalties. 11 **Del.C.** §778A.
- ~~13.1.25~~14.1.25 Female genital mutilation. 11 **Del.C.** §780.
- ~~13.1.26~~14.1.26 Kidnapping in the second degree. 11 **Del.C.** §783.
- ~~13.1.27~~14.1.27 Kidnapping in the first degree. 11 **Del.C.** §783A.
- ~~13.1.28~~14.1.28 Trafficking an individual, forced labor and sexual servitude; class D felony; class C felony; class B felony; class A felony. 11 **Del.C.** §787.
- ~~13.1.29~~14.1.29 Acts constituting coercion. 11 **Del.C.** §791.
- ~~13.1.30~~14.1.30 Arson in the first degree. 11 **Del.C.** §803.
- ~~13.1.31~~14.1.31 Burglary in the second degree. 11 **Del.C.** §825.
- ~~13.1.32~~14.1.32 Burglary in the first degree. 11 **Del.C.** §826.
- ~~13.1.33~~14.1.33 Robbery in the first degree. 11 **Del.C.** §832.
- ~~13.1.34~~14.1.34 Carjacking in the second degree. 11 **Del.C.** §835.
- ~~13.1.35~~14.1.35 Carjacking in the first degree. 11 **Del.C.** §836.
- ~~13.1.36~~14.1.36 Insurance fraud. 11 **Del.C.** §913.
- ~~13.1.37~~14.1.37 Health care fraud. 11 **Del.C.** §913A.
- ~~13.1.38~~14.1.38 Dealing in children. 11 **Del.C.** §1100A.
- ~~13.1.39~~14.1.39 Endangering the welfare of a child; class E or G felony. 11 **Del.C.** §1102.
- ~~13.1.40~~14.1.40 Sexual exploitation of a child. 11 **Del.C.** §1108.
- ~~13.1.41~~14.1.41 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- ~~13.1.42~~14.1.42 Possession of child pornography. 11 **Del.C.** §1111.
- ~~13.1.43~~14.1.43 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.
- ~~13.1.44~~14.1.44 Sexual solicitation of a child. 11 **Del.C.** §1112A.
- ~~13.1.45~~14.1.45 Hate crimes; felony. 11 **Del.C.** §1304.
- ~~13.1.46~~14.1.46 Stalking. 11 **Del.C.** §1312.
- ~~13.1.47~~14.1.47 Cruelty to animals; felony. 11 **Del.C.** §1325.
- ~~13.1.48~~14.1.48 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.
- ~~13.1.49~~14.1.49 Adulteration. 11 **Del.C.** §1339.
- ~~13.1.50~~14.1.50 Lewdness. 11 **Del.C.** §1341.
- ~~13.1.51~~14.1.51 Prostitution. 11 **Del.C.** §1342.
- ~~13.1.52~~14.1.52 Patronizing a prostitute prohibited. 11 **Del.C.** §1343.
- ~~13.1.53~~14.1.53 Promoting prostitution in the third degree. 11 **Del.C.** §1351.
- ~~13.1.54~~14.1.54 Promoting prostitution in the second degree. 11 **Del.C.** §1352.
- ~~13.1.55~~14.1.55 Promoting prostitution in the first degree. 11 **Del.C.** §1353.
- ~~13.1.56~~14.1.56 Permitting prostitution. 11 **Del.C.** §1355.
- ~~13.1.57~~14.1.57 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 **Del.C.** §1136(a), (b) and (c).
- ~~13.1.58~~14.1.58 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 **Del.C.** §3913(a), (b) and (c).
- ~~43.2~~14.2 Crimes substantially related to the practice of massage and bodywork shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

3 DE Reg. 1516 (05/01/00)

4 DE Reg. 1245 (02/01/01)

4 DE Reg. 1944 (06/01/01)

8 DE Reg. 692 (11/01/04)

8 DE Reg. 1107 (02/01/05)

10 DE Reg. 575 (09/01/06)

11 DE Reg. 692 (11/01/07)

12 DE Reg. 75 (07/01/08)
16 DE Reg. 222 (08/01/12)
17 DE Reg. 342 (09/01/13)
20 DE Reg. 825 (04/01/17)
21 DE Reg. 815 (04/01/18) (Final)