

**PROPOSED REGULATION OF THE
BOARD OF MASSAGE THERAPISTS**

LCB File No. R135-14

August 20, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-6, 12, 14 and 15, NRS 640C.320; §7, NRS 239B.010 and 640C.320; §§8-11 and 13, NRS 640C.320 and 640C.400.

A REGULATION relating to massage therapy; requiring a managing massage therapist to be designated at certain massage establishments; establishing requirements to restore a license to practice massage therapy; allowing credits earned from one program of massage therapy to apply toward the requirements for completion of another program if certain conditions are met; establishing requirements for the recognition of a program of massage therapy by the Board of Massage Therapists; revising sanitary requirements for massage establishments; revising provisions governing unethical or unprofessional conduct for purposes of disciplinary action; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Board of Massage Therapists to adopt regulations relating to the practice of massage therapy. (NRS 640C.320)

Section 3 of this regulation sets forth the conditions under which the Board will require a massage establishment to designate one or more massage therapists as managing massage therapists. **Section 4** of this regulation specifies the requirements and procedure for the appointment of a managing massage therapist and prescribes the duties of a managing massage therapist. **Section 5** of this regulation authorizes the Board to order each massage therapist at a massage establishment that has been required to appoint a managing massage therapist to cease and desist providing massage therapy at the massage establishment under certain conditions. **Section 6** of this regulation establishes a procedure for such a massage establishment to petition the Board for the removal of the requirement.

Section 7 of this regulation requires an applicant for the restoration of a license to practice massage therapy which expired more than 90 days before the date on which the application is submitted to the Board to include a complete set of his or her fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

Section 8 of this regulation prohibits a program of massage therapy from granting to a student transfer credit from another program of massage therapy unless certain conditions are satisfied.

Existing regulations set forth provisions governing the recognition by the Board of programs of massage therapy for the purpose of licensing massage therapists. (NAC 640C.060) **Sections 9-11 and 13** of this regulation revises those provisions by establishing requirements that a program must satisfy to be eligible for recognition by the Board, including, without limitation, course requirements, teaching methods, required hours of instruction and subject matter. **Section 12** of this regulation provides that the Board will publish in written form and on an Internet website maintained by the Board a list of all programs recognized by the Board and a list of all programs that the Board has declined to recognize.

Existing regulations establish sanitary requirements for massage establishments. (NAC 640C.220) **Section 14** of this regulation revises those requirements by providing that a massage establishment is required, in each restroom in the massage establishment that is used by the staff of the massage establishment, to post a sign which provides that hand washing is mandatory after use of the restroom facilities.

Existing law sets forth grounds for disciplinary action by the Board and specifically authorizes the Board to initiate such action against a licensee who has engaged in unethical or unprofessional conduct in the practice of massage therapy. (NRS 640C.700) Existing regulations set forth the Board's interpretation of the phrase "unethical or unprofessional conduct." (Section 26 of LCB File No. R009-07) **Section 15** of this regulation revises the Board's interpretation of that phrase to include: (1) violating any term or condition of a subpoena issued by the Board or its staff; (2) failing to provide required documents, data or information to a member of the Board or its staff; (3) prohibiting a member of the Board or its staff from entering the premises of a massage establishment during normal operating hours, subject to certain exceptions; and (4) interfering or refusing to cooperate with work being conducted by a member of the Board or its staff on the premises of a massage establishment.

Section 1. Chapter 640C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 6, inclusive, of this regulation, unless the context otherwise requires, "convicted" includes, without limitation, a conviction following a plea of guilty, guilty but mentally ill or nolo contendere.*

Sec. 3. 1. *A managing massage therapist must be designated at a massage establishment if:*

(a) The massage establishment employs more than one massage therapist or the massage establishment is owned, controlled and operated by more than one massage therapist; and

(b) At least one massage therapist who provides massage therapy services at the massage establishment has been:

(1) Convicted of a crime that constitutes grounds for disciplinary action pursuant to NRS 640C.700 on the premises of the massage establishment;

(2) Disciplined by the Board for grounds set forth in subsection 4 or 9 of NRS 640C.700; or

(3) Issued a citation by the Board for a reason relating to sanitation, hygiene or safety.

2. The Board will provide written notification to each massage therapist who provides massage therapy services at a massage establishment in which a managing massage therapist must be designated pursuant to subsection 1 that:

(a) Such a designation must be made; and

(b) The massage therapist shall not provide massage therapy services at the massage establishment for more than 10 days after receiving the notice unless a managing massage therapist has been so designated.

Sec. 4. 1. A managing massage therapist designated pursuant to section 3 of this regulation must be a natural person who owns, controls or operates the massage establishment or who is employed by and actively engaged in the practice of massage therapy at the massage establishment. Each managing massage therapist shall take such actions as necessary to ensure:

(a) That the massage establishment is operated in compliance with this chapter and chapter 640C of NRS and all other applicable state and local statutes, regulations and ordinances relating to the operation of a massage establishment; and

(b) That no massage therapist engages in unlawful activity at the massage establishment.

2. A person designated as a managing massage therapist shall notify the Board on a form provided by the Board:

(a) That he or she has been so designated and accepts the responsibilities of a managing massage therapist; and

(b) The name and license number of each massage therapist who provides massage therapy services at the massage establishment.

3. The managing massage therapist at a massage establishment shall notify the Board within 3 business days after:

(a) A massage therapist is no longer employed by or providing services at the massage establishment;

(b) A new massage therapist is employed by or providing services at the massage establishment; or

(c) The managing massage therapist resigns or no longer holds the position of managing massage therapist at the massage establishment.

Sec. 5. The Board may issue an order to each massage therapist that provides massage therapy services at a massage establishment to cease and desist providing massage therapy at that massage establishment if:

1. A managing massage therapist is not designated within 10 days after a notice is provided pursuant to subsection 2 of section 3 of this regulation;

2. A replacement for a managing massage therapist is not designated within 10 days after the managing massage therapist resigns or no longer holds the position; or

3. At any time during which a managing massage therapist is required to be designated at a massage establishment a massage therapist who provides massage therapy services at the massage establishment is:

(a) Convicted of committing a crime that constitutes grounds for disciplinary action pursuant to NRS 640C.700 on the premises of the massage establishment; or

(b) Disciplined by the Board for grounds set forth in subsection 4 or 9 of NRS 640C.700.

Sec. 6. 1. *Not less than 2 years after the date on which the Board provides notice that a managing massage therapist is required to be designated at a massage establishment pursuant to section 3 of this regulation, a managing massage therapist may petition the Board to remove the requirement.*

2. The Board will consider a petition filed pursuant to subsection 1 at its next regularly scheduled meeting if the petition is filed at least 40 days before the meeting is scheduled. The managing massage therapist must appear at the meeting and bears the burden of proving to the satisfaction of the Board that since a managing massage therapist was designated at the massage establishment:

(a) No massage therapist has been convicted of a crime that constitutes grounds for disciplinary action pursuant to NRS 640C.700 on the premises of the massage establishment;

(b) No massage therapist has been disciplined by the Board for grounds set forth in subsection 4 or 9 of NRS 640C.700;

(c) No citations have been issued to any massage therapist at the massage establishment for a reason relating to sanitation, hygiene or safety; and

(d) The massage therapists who provide massage therapy services at the massage establishment will continue to perform those services in compliance with this chapter and

chapter 640C of NRS and all other applicable state and local statutes, regulations and ordinances relating to massage therapy.

3. The Board may grant or deny a petition filed pursuant to this section to remove the requirement to designate a managing massage therapist, or may grant the petition subject to such conditions as the Board deems necessary to protect the health, safety and welfare of the public.

Sec. 7. 1. A person who wishes to apply for the restoration of his or her expired license pursuant to the requirements of subsection 2 of NRS 640C.500 must submit to the Board an application for the restoration of the license on a form provided by the Board. If the license expired more than 90 days before the date on which the application is submitted to the Board, the application must include a complete set of fingerprints of the applicant and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report. The license will not be restored until after the report from the Federal Bureau of Investigation is received by the Board.

2. If the report from the Federal Bureau of Investigation contains information regarding any arrest or conviction of the applicant that is not set forth in an existing report in the applicant's file, the Board may require the applicant to appear at the next regularly scheduled meeting of the Board to determine whether the restoration of his or her license is in the best interests of the health, safety and welfare of the clients of the applicant in this State.

3. If the Board determines that the restoration of the license is in the best interests of the health, safety and welfare of the clients of the applicant in this State and that the applicant has satisfied the requirements of subsection 2 of NRS 640C.500, the Board will restore the license.

If the Board determines that the restoration of the license is not in the best interests of the health, safety and welfare of the clients of the applicant in this State, the Board will permanently revoke the license.

Sec. 8. 1. *A program of massage therapy must not allow credits earned by a student from another program of massage therapy to be applied towards credits required to complete its program unless:*

(a) The program from which the credits were earned is licensed or approved by the educational licensing authority in the state in which it operates, or is exempt from licensure by statute;

(b) An official transcript that lists each course completed by the student is provided from the program from which the credits were earned;

(c) Each course for which credit was earned is substantially similar in content and intensity to a course offered by the program to which the credits are to be applied; and

(d) Documentation of previous training is included in the permanent file of the student.

2. *If a program of massage therapy allows credits earned by a student from another program of massage therapy to be applied towards completion of the requirements of its program pursuant to subsection 1, the program accepting the credits must, upon the completion of the program by the student, provide the student with a certificate of completion.*

Sec. 9. 1. *A program of massage therapy or a graduate of the program who has filed an application for licensure with the Board may provide to the Board evidence that the program satisfies the requirements of NAC 640C.060 and sections 10 and 11 of this regulation. The evidence provided to the Board must include:*

(a) A set of educational objectives which describe the intended skills, knowledge and professional attitudes that the program is designed to teach;

(b) A course of curriculum that sets forth the basic content of each class in the course and the sequence in which the classes are presented; and

(c) A syllabus for each class, which must include, without limitation:

(1) The title of the class;

(2) A description of the class;

(3) The educational objectives of the class;

(4) The total number of hours of instruction;

(5) The meeting dates and class times;

(6) Assignments;

(7) Textbooks;

(8) Evaluation methods;

(9) Dates for examinations and quizzes; and

(10) Performance standards.

2. All documents submitted to the Board by a program of massage therapy to be recognized by the Board must be in English or translated into English by a translator who has been approved by the Board. The cost of any translation services must be paid by the applicant.

Sec. 10. 1. *In addition to the requirements of NAC 640C.060, a program of massage therapy must provide not more than 8 hours of instruction per day with at least one 10-minute break provided for every 2 consecutive hours of instruction and at least one 30-minute break provided for every 4 consecutive hours of instruction.*

2. For each student who graduates from a program of massage therapy, the program of massage therapy must provide documentation of the dates on which the student began and completed his or her studies and the attendance record of the student.

Sec. 11. *1. In addition to the requirements of NAC 640C.060, a program of massage therapy must provide sufficient learning resources to students and instructional staff to support the educational objectives of the program, including, without limitation:*

(a) Books, periodicals and other informational materials relating to massage therapy and bodywork therapy which are provided:

(1) In a library or resource center;

(2) In an electronic format; or

(3) Pursuant to a contractual agreement with another facility to provide access to such materials; and

(b) Other resources, such as charts, models or videotapes, which must be maintained in good condition.

2. Upon request, a program of massage therapy shall provide to the Board a list of the learning resources available to students and instructional staff.

Sec. 12. *1. The Board will publish in written form and on an Internet website maintained by the Board:*

(a) A list of all programs of massage therapy that it has recognized; and

(b) A list of all programs of massage therapy that it has declined to recognize.

2. The Board may decline to recognize a program of massage therapy or may remove its recognition of a program of massage therapy if the program:

(a) Is not accredited or approved by the agency that accredits or approves such programs in the state in which the program is domiciled;

(b) Has had its accreditation or approval negatively affected by the action of such an agency in the state in which the program is domiciled or in any other state in which the program had been previously accredited or approved; or

(c) Was accredited or approved by a national accrediting agency and has had that accreditation or approval negatively affected by an action of the national accrediting agency.

Sec. 13. NAC 640C.060 is hereby amended to read as follows:

640C.060 1. ~~If an applicant for a license to practice massage therapy who otherwise satisfies the requirements of NRS 640C.400 or 640C.420 wishes the Board to recognize a program of massage therapy other than a program listed in paragraph (a) or (b) of subsection 4 of NRS 640C.400, the applicant must submit to the Board a detailed outline of the training of the applicant that includes, without limitation:~~

~~—(a) A list of the instructors of the training;~~

~~—(b) Any texts used as study guides for the training; and~~

~~—(c) Certificates of completion for the training which evidence that the applicant has satisfied the number of training hours required by the Commission on Postsecondary Education for a program of massage therapy.~~

~~—2.†~~ *The Board may recognize a program of massage therapy pursuant to NRS 640C.400 if the program:*

(a) Is intended to teach adults the skills and knowledge necessary for the professional practice of massage therapy and bodywork therapy.

(b) Consists of a series of courses which are organized in a logical sequence and which are consistent with the educational objectives of the program.

(c) Presents class materials for which students have the necessary skill and knowledge to use in a safe and effective manner.

(d) Provides consistent course requirements applicable to all instructors and develops teaching materials for each course to ensure such consistency, including, without limitation, detailed lesson plans.

(e) Uses teaching methods for each course which are appropriate to the content of the course and to diverse learning styles.

(f) Is organized as a privately owned and operated proprietary school or is operated by a publicly or privately owned postsecondary college or university.

(g) Is taught in English and consists of not less than 500 hours of instruction.

2. The hours of instruction required pursuant to paragraph (g) of subsection 1 must include, without limitation:

(a) Not less than 200 hours of instruction in the fundamental theory and practice of massage therapy and bodywork therapy which must include, without limitation:

(1) Not less than 100 hours of instruction in the application of hands-on methods; and

(2) Instruction for the remaining hours in assessing clients, indications and contraindications for treatment, body mechanics, draping procedures, standard practices for hygiene and the control of infectious diseases, and the history of massage therapy and bodywork therapy;

(b) Not less than 100 hours of instruction in anatomy and physiology, which must include, without limitation:

- (1) The structure of the human body;*
 - (2) The study of cells, tissues, bones, muscles, organ systems, histology, embryology and kinesiology; and*
 - (3) Common pathologies;*
 - (c) Not less than 15 hours of instruction in professional ethics, which must include, without limitation:*
 - (1) The rules for the practice of massage therapy and bodywork therapy;*
 - (2) Scope of practice issues; and*
 - (3) Sanitization;*
 - (d) Not less than 15 hours of instruction in business practices relating to massage therapy and bodywork therapy;*
 - (e) Not less than 20 hours of instruction in the dynamics of the relationship between the massage therapist and the client, communication skills and boundary functions; and*
 - (f) Not less than 150 hours of instruction in other subjects relating to the practice of massage therapy and bodywork therapy, which may include, without limitation:*
 - (1) Additional hands-on techniques;*
 - (2) Specific applications;*
 - (3) Spa massage;*
 - (4) Clinical massage;*
 - (5) Adjunctive modalities; and*
 - (6) Movement education.*
- 3. If a program of massage therapy includes a student clinic or an internship, externship or fieldwork experiential component for which work is supervised and evaluated by an*

instructor, not more than 100 hours of the instruction earned in those activities may be applied toward the requirements of paragraph (f) of subsection 2. The instruction provided pursuant to paragraph (f) of subsection 2 must not include first aid and cardiopulmonary resuscitation.

4. For a postsecondary institution, courses which fulfill the minimum requirements set forth in subsection 2 must relate to massage therapy and bodywork therapy. Courses in addition to the minimum requirements may include courses from other departments or programs which are directly relevant to the practice of massage therapy and bodywork therapy.

5. Each program of massage therapy consisting of 500 or more hours of instruction will be considered by the Board as a separate program.

6. For a student to receive credit for completing a program of massage therapy, the program of massage therapy must require students to attend at least 500 hours of instruction or not less than 85 percent of the total hours of instruction, whichever is greater, and to make up all missed hours of instruction according to the procedures established by the program.

7. Where practicable, a request for recognition of a program of massage therapy made pursuant to this section will be considered by the Board at the next regularly scheduled meeting of the Board immediately following the receipt of the request.

8. As used in this section, "hour of instruction" means at least 50 minutes during which a student participates in a learning activity in the physical presence of a member of the instructional staff of the program of massage therapy.

Sec. 14. NAC 640C.220 is hereby amended to read as follows:

640C.220 1. Any exterior door and window in a massage establishment must be tight-fitting and must effectively exclude insects, rodents and other vermin.

2. The walls, ceilings and floors in a massage establishment must be well maintained and kept clean.

3. The floors of a room in a massage establishment that contains a toilet must be made of an impervious material that is nonporous or nonabsorbent.

4. A sign must be posted in each restroom in a massage establishment that is used by the staff of the massage establishment which states that hand washing is mandatory after use of the restroom facilities.

Sec. 15. NAC 640C.410 is hereby amended to read as follows:

640C.410 1. As used in subsection 9 of NRS 640C.700, the Board interprets the phrase “unethical or unprofessional conduct” to include, without limitation:

(a) Offering to practice massage on a client in exchange for sexual favors.

(b) Using health care information to contact a client for the purpose of engaging in a sexual activity with the client.

(c) Using health care information or access to health care information to meet or attempt to meet the sexual needs of the massage therapist.

(d) Violating any term or condition of a subpoena or order issued by the Board or the staff of the Board.

(e) Failing to provide to a member of the Board or the staff of the Board, upon request, any document, data or information that is required to be made and maintained pursuant to this chapter or chapter 640C of NRS.

(f) Prohibiting a member of the Board or the staff of the Board from entering the premises of a massage establishment during the normal operating hours of the massage establishment, except that prohibiting a member of the Board or the staff of the Board from entering a treatment room where the door is closed is not unethical or unprofessional conduct unless the member of the Board or the staff of the Board has reasonable belief that unlawful activity or any act which violates this chapter or chapter 640C of NRS is actively occurring.

(g) Interfering or refusing to cooperate with work being conducted by a member of the Board or the staff of the Board on the premises of a massage establishment.

2. When evaluating whether a massage therapist is prohibited from engaging or attempting to engage in a sexual activity with a client or former client, the Board will consider, without limitation:

(a) Documentation of a formal termination of the professional relationship between the massage therapist and the client or former client;

(b) The transfer of care of the client or former client from the massage therapist to another massage therapist;

(c) The duration of the professional relationship between the massage therapist and the client or former client;

(d) The amount of time that has passed since the last services related to the practice of massage therapy were provided to the client or former client by the massage therapist;

(e) The communication between the massage therapist and the client or former client after the last services related to the practice of massage therapy were provided to the client or former client and before the commencement of the personal relationship;

(f) The extent to which the personal or private information of the client or former client was shared with the massage therapist;

(g) The nature of the health condition of the client or former client, if any, during the professional relationship between the massage therapist and the client or former client and after that professional relationship ended;

(h) The extent of emotional dependence of the client or former client on the massage therapist, if any, and the vulnerability of the client or former client; and

(i) The standard cycle for revisiting a massage therapist as determined by the Board.