

PROPOSED RULEMAKING

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Veterinarians and Veterinary Technicians

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend Chapter 43b (relating to Commission of Professional and Occupational Affairs) by rescinding § 43b.21 (relating to schedule of civil penalties—veterinarians and veterinary technicians—statement of policy) and replacing it with § 43b.21a (relating to schedule of civil penalties—veterinarians and certified veterinary technicians), to read as set forth in Annex A.

Effective Date

The amendments will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards and commissions in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate regulations setting forth a schedule of civil penalties, guidelines for their imposition, and procedures for appeal for: (1) operating without a current and valid license, registration, certificate or permit; and (2) violating an act or regulation of a licensing board or commission relating to the conduct or operation of a business or facility licensed by the board or commission.

Background and Purpose

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the Boards and Commissions being accomplished through the Act 48 citation process.

The Commissioner had previously published a policy statement at 37 Pa.B. 2608 (June 9, 2007) establishing Act 48 civil penalties for veterinarians and certified veterinary technicians (CVTs) and now proposes to codify and amend the schedule of civil penalties in this proposed rulemaking. Proposed § 43b.21a sets forth the complete civil penalty schedule for the State Board of Veterinary Medicine (Board). The civil penalties proposed in § 43b.21a were drafted following discussions between the Board and a representative of the Commissioner at regularly scheduled public meetings.

Description of the Proposed Amendments

The proposal would codify and amend the schedule of civil penalties that the Commissioner previously published and add new violations to the Board's Act 48 schedule. The new violations include failure to complete mandatory continuing education, failure to make up a deficiency in continuing education within 6 months of receiving a citation, failure to properly label drugs dispensed to clients and failure to dispense drugs in containers as required by Board regulations.

The Commissioner proposes amendments to alter the time periods and penalties associated with practicing on an expired license. Practice on a lapsed license for up to 6 months would still result in a warning. The second time period, previously 6–24 months, was changed to 7–12 months; the civil penalty would remain the same. The proposal would alter the third time period, previously 24–48 months, to 13–24 months; and would provide for a \$500 civil penalty for CVTs and a \$750 civil penalty for veterinarians. The Commissioner would add another time period, 25–30 months; with a \$750 civil penalty for certified veterinary technicians and a \$1,000 civil penalty for veterinarians. The shortened time periods and increased civil penalties reflect the determination that an enhanced penalty schedule is required to ensure compliance and protect the public.

The Commissioner proposes to add two new offenses to the Act 48 offenses that may be disposed of by issuance of a citation and civil penalty. The two new offenses involve violating a regulation related to the conduct or operation of a veterinary business. Because many drugs prescribed by veterinarians are exclusively animal drugs that are not stocked in commercial human pharmacies, veterinarians operate in-house pharmacies as part of their businesses. Section 31.21 (relating to Rules of Professional Conduct for Veterinarians), Principle 8(c) and (d), of the Board's regulations require veterinarians to properly label prescription drugs dispensed to clients and to dispense drugs in child resistant or original manufacturer's packaging. The Commissioner proposes civil penalties of \$500 for the first offense and \$1,000 for the second offense for violating either of these regulatory provisions. These provisions were modeled after provisions in the Act 48 schedule in § 43b.7 (relating to schedule of civil penalties—pharmacists and pharmacies), which provides for civil penalties for violations under § 27.18 of the State Board of Pharmacy's regulations (relating to standards of practice). Section 43b.7 provides for Act 48 civil penalties for dispensing drugs in "unsuitable containers" and for "lack of required information on container labels."

The Commissioner also proposes a schedule of civil penalties for the failure to complete mandatory continuing education by veterinarians and CVTs during the biennial renewal period preceding license renewal. The proposal calls for a \$25 per credit hour civil penalty for CVTs for the first offense and a \$150 per credit hour civil penalty for veterinarians for the first offense; however, these civil penalties would only apply if the licensee made up the hours of continuing education that were deficient within 6 months of the end of the biennial renewal period. The biennial renewal period for veterinarians and certified veterinary technicians ends on November 30 of even-numbered years. The proposal would require veterinarians and CVTs to make up the number of deficient hours within 6 months or face formal prosecution. The

\$150 proposed civil penalty per credit hour for veterinarians represents a significant increase over the civil penalty of \$50 per credit hour that was adopted by the Board in 2005. Because veterinary medicine is constantly evolving, with new treatments, new surgical techniques, new drugs, and new research, participation in continuing education is vital to the continued competence of veterinarians. The amended civil penalty demonstrates the commitment of the Commissioner and the Board to ensuring that licensees are able to provide high quality care to animals and adequately meet public health needs for veterinary medicine in this Commonwealth.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking would have a positive fiscal impact on the Commonwealth or its political subdivisions, and would reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for those violations subject to the Act 48 citation process.

Sunset Date

Professional licensure statutes require each bureau and commission to be self-supporting; therefore, bureaus and commissions continually monitor the cost effectiveness of regulations affecting their operations. As a result, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 27, 2010, the Commissioner submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commissioner, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Teresa Lazo, Counsel, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

BASIL L. MERENDA,
Commissioner

Fiscal Note: 16A-51. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.21. [**Schedule of civil penalties—veterinarians and veterinary technicians—statement of policy**] (Reserved).

[STATE BOARD OF VETERINARY MEDICINE]

<i>Violation under 63 P. S.</i>	<i>Violation under 49 Pa. Code Chapter 31</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 485.17	N/A	Failure to display current license.	Each offense—\$100
Section 485.21(1)	§ 31.21 Principle 5(c)	Improper advertising of emergency services.	First offense—\$250 Second offense—\$1,000 Subsequent offense—formal action
Sections 485.9(a) and 485.21(1)	§ 31.13	Practicing veterinary medicine on an expired license.	0—6 months—warning 6—24 months—\$500 24—48 months—\$1,000 More than 48 months—formal prosecution
Section 485.21(1)	§ 31.36	Practicing as a veterinary technician on an expired certificate.	0—6 months—warning 6—24 months—\$250 24—48 months—\$500 More than 48 months—formal action]

§ 43b.21a. Schedule of civil penalties—veterinarians and certified veterinary technicians.

STATE BOARD OF VETERINARY MEDICINE

<i>Violation under 63 P. S.</i>	<i>Violation under 49 Pa. Code Chapter 31</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Sections 485.17 and 485.21(3)	N/A	Failure to display current license.	Each offense—\$100

<i>Violation under 63 P. S.</i>	<i>Violation under 49 Pa. Code Chapter 31</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 485.21(1)	§ 31.21 Principle 5(c)	Improper advertising of emergency services.	First offense—\$250 Second offense—\$1,000 Subsequent offense—formal action
Sections 485.9(a) and 485.21(1)	§ 31.13	Practicing veterinary medicine on an expired license.	0—6 months—warning 7—12 months—\$500 13—24 months—\$750 25—30 months—\$1,000 More than 30 months—formal action
Section 485.21(1)	§ 31.36	Practicing veterinary technology on an expired certificate.	0—6 months—warning 7—12 months—\$250 13—24 months—\$500 25—30 months \$750 More than 30 months—formal action
Section 485.18	§ 31.15	Failure of veterinarian to complete required continuing education during the preceding biennial renewal period, which is corrected within 6 months.	First offense—\$150 per credit hour Second offense—formal action
Section 485.18	§ 31.36(a)	Failure of certified veterinary technician to complete required continuing education during the preceding biennial renewal period, which is corrected within 6 months.	First offense—\$25 per credit hour Second offense—formal action
Section 485.21(1)	§ 31.21 Principle 8(d)	Improper labeling of dispensed drugs.	First offense—\$500 Second offense—\$1,000 Subsequent offense—formal action
Section 485.21(1)	§ 31.21 Principle 8(c)	Improper packaging of dispensed drugs.	First offense—\$500 Second offense—\$1,000 Subsequent offense—formal action

[Pa.B. Doc. No. 10-827. Filed for public inspection May 7, 2010, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 86]

Unsuitable for Surface Mining; Muddy Run

The Environmental Quality Board (Board) proposes to amend Chapter 86 (relating to surface and underground coal mining; general). The amendment designates the surface mineable reserves of the Lower Kittanning, Clarion, Brookville and Mercer coals within the headwaters of the Muddy Run Watershed, Reade Township, Cambria County as unsuitable for surface mining operations.

This proposal was adopted by the Board at its meeting of March 16, 2010.

A. Effective Date

This proposed amendment will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information, contact Geoffrey Lincoln, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103; or Richard Morrison, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site at <http://www.dep.state.pa.us>.

C. Statutory Authority

The proposed rulemaking is being made under the authority of section 4.5 of the Surface Mining Conservation and Reclamation Act (act) (52 P. S. § 1396.4e); section 6.1 of the Coal Refuse Disposal Control Act (52 P. S. § 30.56a); and section 315 (h)—(o) of The Clean Streams Law (35 P. S. § 691.315 (h)—(o)).

D. Background and Purpose

Section 522 of the Federal Surface Mining Control and Reclamation Act (30 U.S.C.A. § 1272), requires each state seeking primary regulatory authority (primacy) over coal mining operations to establish a procedure for the designation of areas as unsuitable for mining. The State statutory authority for this procedure, referenced in section C, was created in the 1980 amendments to the authorizing acts as part of the Commonwealth's effort to obtain primacy. On November 19, 1980, the Board adopted Chapters 86—90. Chapter 86, Subchapter D (§§ 86.121—86.129), contains the Department's regulation for procedures and criteria for the designation of areas as unsuitable for surface mining. Chapter 86, Subchapter D (§ 86.130) also contains a description of each area designated as unsuitable for mining by the Board.

The Department is required to designate areas as unsuitable for surface mining when it determines that reclamation pursuant to the requirements of the act is not technologically or economically feasible. In addition, the Department may designate an area as unsuitable for all or certain types of surface coal mining operations if such operations will: 1) be incompatible with existing State or local land use plans or programs; 2) affect fragile or historic lands where such operations would result in significant damage to important historical, cultural, scientific, and aesthetic values and natural systems; 3) cause a substantial loss or reduction in long-range productivity of food or fiber products or water supply, including aquifers and aquifer recharge areas; or 4) substantially endanger life and property in natural hazard areas, including areas subject to frequent flooding and areas of unstable geology.

On March 21, 1996, under § 86.122 (relating to criteria for designating lands as unsuitable), the Reade Township Municipal Authority (RTMA) submitted a petition to the Department requesting that approximately 3,200 acres of the Muddy Run Watershed be designated as "unsuitable for mining." RTMA's stated purpose was the protection of their public water supply wells from potential, adverse mining-related impacts. RTMA's petition alleged that surface mining activities could destroy or seriously degrade the source aquifers tapped by the township's public water supply wells, and could adversely impact other local surface and groundwater resources. RTMA provided supporting evidence documenting mining-related impacts to a private water well within the Muddy Run Watershed, and provided an outline of deleterious mining-induced impacts to Muddy Run and to adjacent watersheds.

The Department determined the petition to be complete and acceptable for technical study in April of 1997. The petitioner was notified accordingly on May 1, 1997.

Technical study fieldwork, including water sampling and site reconnaissance, began in 1997. The technical study process was suspended in early 1999 and was reactivated in December of 2003. This suspension occurred while the Department awaited the courts' decision on a challenge to a previous UFM designation as an unconstitutional taking. The Pennsylvania Supreme Court decided, in *Machipongo Land and Coal Company, Inc. v. Dep't of Environmental Resources*, 569 Pa. 3 (2002), that a UFM designation was not an unconstitutional taking. The Muddy Run study was completed in October of 2004. Copies of the two-volume technical study, entitled "A Petition to Designate Areas Unsuitable for Mining: Muddy Run Watershed," as well as the Comment and Response Document prepared to address public input are

available from the Department. The key findings of the technical study are as follows:

- The recharge area for the RTMA wells appears to be primarily from the area east of the well field along the upper flank of the Allegheny Mountain, where the source aquifers are at, or near, the surface. Additional recharge to these aquifers is from downward infiltration from closely overlying coal-bearing units. The downward infiltration of water is enhanced by numerous fractures and two regional faults in the area.

- Based on available information, including regional geochemical tracer studies confirming acidic mine water traveling significant horizontal and vertical distances in the subsurface, there is a potential for mining-related pollution of the RTMA wells. Groundwater tests conducted to date are not sufficient to characterize conditions beyond the immediate vicinity of the RTMA wells or to assess the impact of highly transmissive fractures. The potential exists for hydrologic exchange between the RTMA water supply aquifer and the potentially acidic overlying coal-bearing units. The only way to conclusively determine the existence of a hydrologic connection to the well is to conduct extensive draw down pump testing. However those tests create an unacceptable risk because establishing the connection would destroy the public water supply wells.

- Overburden analysis results indicate the presence of high sulfur zones, with little or no alkaline strata, associated with the Lower Kittanning, Clarion, Brookville, and Mercer coals. There is a very significant potential for production of acid mine water from surface mining of these coals.

- Coal mining has significantly impacted the water quality and aquatic community of Muddy Run. As a result of coal mining activities, all stream sections of Muddy Run and its tributaries within the study area, except for the headwaters in the eastern portion of the study area (the unmined RTMA wells' recharge area), are acidic with low pH and have high concentrations of aluminum, iron, and manganese.

- Surface mining activities have significantly degraded groundwater resources within the technical study area, including numerous domestic and private water supplies.

The purpose of the proposed amendment is to protect the quality of surface water and groundwater in the Muddy Run Watershed, including source aquifers for the RTMA wells. A secondary purpose is to help coal mine operators plan future mining activities by alerting potential mine permit applicants to the adverse hydrologic impacts associated with mining certain coal seams adjacent to the designated area.

E. Summary of Regulatory Requirements

Section 86.122 requires that the Board's decisions to designate areas unsuitable for mining be published as regulations. Pursuant to § 86.122, § 86.130(b) lists areas that the Board has designated as unsuitable for mining. Section 86.130(b) is periodically amended as new areas are designated. The proposed amendment will amend § 86.130(b) to include a description of the portion of the Muddy Run Watershed that is covered by the unsuitable for surface mining designation. The description identifies impacted coal seams. This proposed amendment does not affect or modify §§ 86.121—86.129, which provide the underlying procedural provisions that define the unsuitable for mining process.

As outlined in section D, the Federal companion provisions to the Commonwealth's unsuitable for mining statu-

tory language are in section 522 of the Federal Surface Mining Control and Reclamation Act of 1977. The proposed regulation does not include any standards or requirements that exceed Federal requirements.

On March 21, 1996, under §§ 86.122 and 86.123 (relating to procedures: petitions), the Reade Township Municipal Authority, Cambria County, submitted a petition to the Department requesting that approximately 3,200 acres of the Muddy Run watershed be designated as "unsuitable for mining." The Department determined the petition to be complete and acceptable for technical study in April of 1997. The petitioner was notified accordingly on May 1, 1997.

Under § 86.124 (relating to procedures: initial processing, recordkeeping and notification requirements), notification of the receipt and acceptance of the petition was made to persons with known mineral ownership, surface ownership, and other interested parties on May 12, 1997. Notification to the general public was made on May 10 and 17, 1997, in the *Progress*, Clearfield, PA, on May 11 and 18, 1997, in *The Tribune Democrat*, Johnstown, PA, and in the *Pennsylvania Bulletin* on May 17, 1997 (27 Pa.B. 2476). Under § 86.125 (relating to procedures: hearing requirements), in early 1998 local landowners were notified by mail of an opportunity to provide comments on the petition at a public hearing. Notification of the hearing was made to the general public on December 31, 1997, and February 14 and 21, 1998, in the *Progress*, Clearfield, PA, and on January 29, and February 12 and 19, 1998, in *The Tribune Democrat*, Johnstown, PA. The hearing was held on February 26, 1998, at Glendale High School in Reade Township.

The Muddy Run UFM technical study process was suspended in early 1999 and was reactivated in December of 2003. This suspension occurred while the Department awaited the courts' decision on a challenge to a previous UFM designation as an unconstitutional taking. The Pennsylvania Supreme Court decided, in *Machipongo Land and Coal Company, Inc. v. Dep't of Environmental Resources*, 569 Pa. 3 (2002), that a UFM designation was not an unconstitutional taking. Subsequently, in May of 2004, a second round of notification letters was sent to mineral and surface property owners primarily to solicit input from new property owners within the technical study area. This was done to address surface and mineral tracts that may have been sold, transferred or subdivided since 1998. A Comment and Response Document was prepared to address the comments raised at the public hearing, as well as written comments received since the Department accepted the petition. There were 16 commentators.

F. *Benefits, Costs and Compliance*

Benefits

The proposed amendments would benefit the RTMA's customers by restricting mining on coal seams with high acid mine drainage potential in areas in close proximity to the RTMA water supply aquifers. Mining in close proximity could pollute the public water supply wells. The RTMA presently provides potable water to approximately 550 service accounts and provides water for local fire protection to Reade Township, including the towns of Blandburg, Hollentown, Fallentimber, Flinton and Van Ormer. The RTMA wells were drilled in 1993 and 1994, using part of a nearly \$5 million grant provided by the Rural Economic Development Agency. The location and construction of the Reade Township Municipal Authority water supply wells was the result of several years of

effort. Two previous attempts to develop water supply wells were not successful because of insufficient quantity or quality of local groundwater resources, in part due to aquifer degradation from previous surface coal mining. Based on available information, alternative well sites would be limited or nonexistent should the existing wells become contaminated.

The designation process also serves to aid coal operators in planning future mining activities. The unsuitable for mining areas are explicitly delineated by regulation. This allows operators to avoid the cost of evaluating properties within designated areas, and to avoid the subsequent costs of preparing permit applications for mine sites on similar coal seams adjacent to the designated area that are highly unlikely to be approved for surface mining activities.

The designation restricts mining by seam, and by type, within the boundaries of the technical study area. Therefore, the designation will benefit the surface water and groundwater quality of the Muddy Run Watershed by eliminating or limiting the mining-related disturbance of high-sulfur acid mine drainage producing rock formations that have minimal or no neutralizing potential.

Compliance Costs

The proposed imposes no costs on the regulated community. The regulation benefits the regulated community by helping coal operators plan future mining activities. The unsuitable for mining areas are explicitly delineated by regulation. This allows operators to avoid the cost of evaluating properties within designated areas, and to avoid the subsequent costs of preparing permit applications for mine sites on similar coal seams adjacent to the designated area that are highly unlikely to be approved for surface mining activities.

Compliance Assistance Plan

The Department will provide written notification of the changes to the coal mining industry.

Paperwork Requirements

The only paperwork requirements imposed by the proposed regulation are those necessary to make operators and Department personnel aware of the location of the designated area. Copies of the proposal containing a description of the area and a map of the location of the area will be held on file at the appropriate Department offices.

G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This regulation has incorporated the following pollution prevention incentives:

The proposed designation of the headwaters of Muddy Run as unsuitable for mining prevents pollution by prohibiting further coal mining in the area. The intent of the designation is to protect the public water supply wells of RTMA.

H. *Sunset Review*

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 27, 2010, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed amendment within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. *Public Comments*

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulation to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by June 7, 2010. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one-page in length and must also be received by the Board by June 7, 2010. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by June 7, 2010. A subject heading of the proposal and a return name and address must be included in each transmission.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOHN HANGER,
Chairperson

Fiscal Note: 7-456. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter D. AREAS UNSUITABLE FOR MINING CRITERIA AND PROCEDURES FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE MINING

§ 86.130. Areas designated as unsuitable for mining.

* * * * *

(b) The following is a list of descriptions of areas which are unsuitable for all or certain types of surface mining operations and where all or certain types of surface mining operations will not be permitted:

* * * * *

(18) The surface mineable coal reserves of the Lower Kittanning, Clarion, Brookville, and Mercer coals in the Muddy Run Watershed, Cambria County, located south of State Route 253, including Muddy Run and its eastern tributary, Curtis Run.

[Pa.B. Doc. No. 10-828. Filed for public inspection May 7, 2010, 9:00 a.m.]

STATE BOARD OF MESSAGE THERAPY

[49 PA. CODE CH. 20]

Massage Therapy

The State Board of Massage Therapy (Board) proposes to promulgate regulations to effectuate the Massage Therapy Law (act) (63 P.S. §§ 627.1—627.50).

Effective Date

The regulations will become effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*. Section 50 of the act (63 P.S. § 627.50) directed the Board to promulgate regulations within 18 months of the effective date, or by April 9, 2010. The Board was appointed in April 2009, and members were confirmed on June 24, 2009. The Board held its first meeting on August 5, 2009, to begin drafting regulations. The draft rulemaking was provided to stakeholders for predraft comment in September 2009, and comments were reviewed in October 2009. The Federation of State Board of Massage Therapy and the National Certification Board for Massage Therapy and Bodywork sent representatives to speak with the Board about their massage therapy examinations at the Board's October 15, 2009, meeting. Stakeholder comments were also considered at public meetings of the Board throughout the drafting process. The Board voted to promulgate this rulemaking package at its meeting on December 2, 2009.

Statutory Authority

Sections 4(2) (63 P. S. §§ 627.4(2) and 50) of the act require the Board to promulgate regulations to effectuate the act.

Background and Purpose

The act provides for the creation of the Board. The Board is charged with determining qualifications for licensure, issuing temporary practice permits and licensing massage therapists, establishing standards of practice which protect the public, disciplining licensees and protecting the public from unlicensed persons attempting to practice massage therapy.

Description of Amendments

In § 20.1 (relating to definitions), the Board defines key terms used in the regulations. Section 20.2 (relating to applicability of general rules), provides notice that proceedings before the Board are subject to 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

The Board proposed to set forth its fees in § 20.3 (relating to fees). In § 20.3(a), the Board proposes fees for services provided to licensees and persons seeking to conduct continuing education for licensees. These fees are based on estimates of the amount of time required, on average, to perform the services. In § 20.3(b), the Board proposes a biennial renewal fee. The biennial renewal fee creates the funds that sustain the general operations of the Board, primarily investigating and prosecuting violations of the act and regulations.

After providing for definitions and fees, the Board first addresses educational matters. Section 5(a)(3) of the act (63 P. S. § 627.5(a)(3)) authorizes the Board to approve massage therapy education programs. This section also requires an applicant for licensure to complete at least 600 hours of in-class, postsecondary education approved by the Board at a regionally accredited college or university, the Commonwealth's private licensed school or its equivalent as determined by the Board. In § 20.11 (relating to minimum hour requirements for massage therapy programs), the Board proposes standards for massage therapy programs, including permitting the 600-hour requirement to be met through both didactic and clinical courses. Hours a student may spend in an externship or practicing techniques assigned as homework may not be used to meet the 600-hour requirement. The Board proposes to exclude externship hours because there is no mechanism to assure that students in externships receive appropriate supervision and guidance. The Board proposes to exclude homework assignments because homework is not instructional.

In addition, the Board's proposal would provide for minimum hours in certain subject areas. The proposed hour requirements are consistent with recognized standards for massage therapy education, and include a minimum of 175 hours of instruction in anatomy and physiology, kinesiology and pathology, including training in the human immunodeficiency virus and related risks; a minimum of 250 hours in massage therapy and bodywork assessment, theory and practice including sanitation, safety and hygiene; a minimum of 25 hours in business, ethics and law; and a minimum of 150 hours in related courses appropriate to a massage therapy curriculum, including cardiopulmonary resuscitation.

The Board's proposal would also provide, in § 20.12 (relating to information that must be provided to prospective students), for the minimum information that a

massage therapy school must provide to its prospective students. This section requires massage therapy schools to inform prospective students, in writing, prior to enrollment, of the annual passing rate of the school's graduates on each of the approved examinations for licensure for the past 2 calendar years for which the data is available. Massage therapy schools charge significant sums for educating students and must be accountable to students. One foundation of this accountability is to provide prospective students with accurate information regarding the passing rate of the school's graduates on the examinations that are required for licensure. This section also provides that any licensee employed by a massage therapy school who knows or has reason to know that the school is not abiding by this provision will be subject to discipline under section 9(a)(7) of the act (63 P. S. § 627.3(a)(7)). In this way, the Board can hold licensees employed as administrators and instructors in massage therapy schools accountable. Finally, this section provides that the Board will report the failure of a massage therapy school to conform to this section to the school's approving or accrediting body.

In § 20.13(a) (relating to required knowledge base), the Board's proposal would set forth the minimum required knowledge base for graduates of massage therapy schools, which includes massage and bodywork assessment and application, contraindications and precautions for massage therapy, anatomy and physiology, kinesiology, pathology, legal requirements, business practices, professional ethics, basic CPR, communicable diseases and universal precautions, power differentials and other therapeutic boundary issues as they relate to client interaction, and fundamentals of human behavior and respect for clients in the practice of massage therapy.

In § 20.13(b), the Board would set forth the practical skills that must be taught to massage therapy students, including the skills to: administer fundamental therapeutic massage techniques for the treatment of soft tissue manifestations of the human body, safely utilize topical preparations, thermal and cryogenic modalities, hydrotherapy and movements that lengthen and shorten soft tissues within the client's normal range of motion, maintain safe and effective body mechanics in the application of therapeutic massage techniques, locate and palpate muscle attachments, muscle bellies and other anatomical landmarks necessary for the practice of massage therapy, and use draping/coverage practices that address both function and safety.

The Board also lists additional skills that a massage therapy education must cover, including: development, implementation and modification of a treatment plan that addresses client soft tissue manifestations, needs and concerns, including identifying indications, contraindications and precautions of massage therapy within the scope of the act, obtaining informed consent regarding the risks and benefits of the treatment plan and application and modification of the treatment plan as needed, using effective interpersonal communication, utilizing an ethical decision making process, establishing and maintaining a practice environment that provides for the client's safety and comfort, and establishing and maintaining client records, professional records and business records in compliance with standards of practice and legal requirements.

To effectively learn massage therapy, hands on practice is required; therefore, it is vital to public protection that the Board set forth regulations for student practice. In § 20.14(a) (relating to student practice), the Board's

proposal provides that a student may practice massage therapy techniques by providing services under the immediate supervision of an instructor or clinical supervisor as part of a clinical training program operated by the school in which the student is obtaining credit. Homework assignments for massage therapy students typically require the student to practice specific assigned techniques on friends or family members. This practice is authorized in § 20.14(b).

A student may not receive payment from the school or client for services provided as part of a clinical training program operated by the school in which the student is obtaining credit. The Board has also proposed that a student may accept a nominal gratuity voluntarily given by a client in a clinical training program operated by the school in which the student is obtaining credit. The Board found that the structure of a school-run clinical training program provides adequate safeguards to permit students to handle money, and provides for a supervised learning experience for students in handling money. However, because there is no supervision outside the formal clinic setting, the Board would provide that a student may not receive any payment or gratuity for services provided as part of practicing techniques under indirect supervision or on the student's own initiative while enrolled in a massage therapy school.

The Board has also proposed that students providing services as part of a clinical training program operated by a school shall be clearly identified to the public as students, as not to mislead the public. Finally, the Board would require the massage therapy schools to maintain records of services provided by students in a clinical training program for at least 3 years.

The Board next addresses issues related to licensure. In § 20.21 (relating to application for temporary practice permit, initial licensure and licensure by reciprocity), the Board lists the documents that all applicants must submit to the Board with their application. These documents include a legal form of identification, a Criminal History Record Information check current to within 6 months of the date of application, documentation of the applicant's CPR certification, and proof of high school graduation or the equivalent. Requiring identification will assist the Board in monitoring to whom licenses are issued and reducing the possibility of fraud. Requiring a criminal background check will assist the Board in licensing only individuals who do not pose a threat to the public. One commentator opined that it was overly cumbersome for applicant's to provide criminal background checks from the states in which the applicant had resided for the past 5 years. The Board believes this is necessary to protect the public. Applicants are required to disclose any criminal history from any time, but must only provide background checks for the past 5 years. CPR certification is required by statute to protect the public. Additionally, the act requires that applicant have graduated from high school or the equivalent.

Section 20.21(c) would require applicants to request that their massage therapy program send the applicants' transcript directly to the Board. One predraft commentator noted that she would prefer if students could send the transcript to the Board themselves. The Board determined that the transcript should come directly from the school. This provision will reduce the possibility that unscrupulous individuals can provide false transcripts.

Section 20.21(d) would notify applicants that they may be required to submit additional information if requested by the Board. Additional information may be required to

provide more detail about an applicant's criminal history or licensure status in another state. If an applicant indicates on the application that he may be unable to practice safely due to impairment or disability, additional information may be required so that the Board can determine whether licensure is appropriate.

Applicants will be required to supply any missing documentation within 6 months from the date of application. If the documentation is not submitted, the application will be denied and the applicant will be required to apply anew to obtain licensure. The information that the Board requires in the application process is easily obtainable by the applicant; therefore, the 6-month time period is appropriate. Moreover, the Board determined that a fairly short time period was appropriate to protect the public by ensuring that information submitted was up to date. Applicants are also required to notify the Board of any changes that might occur during the application process.

In § 20.22 (relating to procedure for licensure denial), the Board's proposal sets forth the procedure it will follow if it determines that an application for licensure should be denied or the applicant should submit to an evaluation.

Section 7 of the act (63 P.S. § 627.7) authorizes the Board to determine the examinations that an applicant must pass to qualify for licensure. There are currently two organizations that provide examinations for massage therapists appropriate for the licensure of massage therapists—the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) and the Federation of State Massage Therapy Boards (FSMTB). The FSMTB offers the Massage and Bodywork Licensure Examination (MBLEx), an examination developed specifically for the purpose of state licensure. The NCBTMB is an organization that confers National certification on massage therapists through two examinations, one which tests massage therapy (the NCETM—National Certification Examination for Therapeutic Massage) and the second, (the NCETMB—National Certification Examination for Therapeutic Massage and Bodywork) which tests both massage therapy and bodywork. In addition, the NCBTMB offers examination candidates the option of taking the NCETM or NCETMB without being screened by NCBTMB for initial qualifications and without NCBTMB conferring National certification on the candidate. This option is called the National Examination for State Licensure, or NESL option. For consistency, the Board proposes to adopt the NCBTMB's limit on three unsuccessful examination attempts. After the third unsuccessful attempt, a candidate must obtain at least 100 hours of additional instruction. If the candidate fails an additional two times, the candidate must repeat massage therapy school before being allowed to retest.

The act provided for grandfathering of existing massage therapists. The Board clarifies the application requirements for existing practitioners in § 20.24 (relating to application requirements for existing practitioners). Section 20.24(a) requires existing practitioners to submit their application and supporting documentation within 1 year of the effective date of the section. Some supporting documentation required is cross-referenced to § 20.21, which applies to all applicants, and includes the criminal background checks.

To establish that the existing practitioner applicant has conducted a business and been an active participant in that business which was mainly the practice of massage therapy, as required under section 5(b)(1) of the act (63

P. S. 627.5(b)(1)), the applicant shall submit one of the following: a signed copy of the applicant's Federal tax return for the previous year that lists the applicant's occupation as massage therapist, a signed copy of schedule C of the applicant's Federal income tax return for the previous year demonstrating that the individual has reported income from the practice of massage therapy, proof of professional or practitioner membership level or above in a professional association approved by the Board, or a notarized statement from the applicant's employer (on a form provided by the Board) attesting that the individual is a practicing massage therapist together with a copy of the employer's business card or letterhead. These same documents, demonstrating that the applicant was in active, continuous practice for at least 5 years immediately preceding October 9, 2010, may be submitted if they show 5 years of practice, as required in section 5(b)(3)(i) of the act.

For existing practitioners applying for licensure under section 5(b)(3)(ii) of the act, the Board will require the applicant to request that the certification agency provide, directly to the Board, evidence that the practitioner passed a massage therapy examination that is part of a certification program accredited by the National Commission for Certifying Agencies. For existing practitioners applying for licensure under section 5(b)(3)(iii) of the act, the Board will require the applicant to request that the applicant's educational program provide an official transcript directly to the Board to demonstrate that the practitioner completed at least 500 hours of instruction in massage and related subjects. For existing practitioners applying for licensure under section 5(b)(3)(iv) of the act, the Board will require the applicant to demonstrate, through certificates of completion, official transcript, or correspondence from the practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the NESL option of the NCBTMB. For existing practitioners applying for licensure under section 5(b)(3)(v) of the act, the Board will require the applicant to demonstrate, through certificates of completion, official transcript provided directly from educational institution, or correspondence from the practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the MBLEx.

The Board proposes additional application requirements for applicants for licensure by endorsement in § 20.25 (relating to additional application requirements for applicants for licensure by reciprocity). In addition to submitting the application form and supporting documentation, an applicant for licensure by endorsement would be required to demonstrate that the applicant's license in another jurisdiction is in good standing, document any disciplinary action taken in another jurisdiction, provide an official transcript and verification that the school is recognized by the other jurisdiction's licensing authority, accredited by a National accrediting organization, or authorized to operate by the jurisdiction's Department of Education, and provide proof of having passed one of the licensing examinations accepted in the Commonwealth. If an applicant for licensure by endorsement was originally licensed in another jurisdiction through grandfathering, the applicant will be required to demonstrate that the qualifications met in the other jurisdiction are equivalent to the requirements met by existing practitioners in this Commonwealth.

In § 20.26 (relating to application requirements for temporary practice permits), the Board proposes application requirements for applicants for temporary practice

permits. Individuals who have been issued a temporary practice permit may not hold themselves out as a licensed massage therapist, use the initials LMT or advertise their practice of massage therapy. Individuals who have been issued a temporary practice permit will be considered licensees for purposes of applying section 9 of the act (63 P. S. § 627.9) pertaining to the refusal, suspension and revocation of licenses. This provision allows the Board to discipline the holder of a temporary practice permit to protect the public. In accordance with section 5(c) of the act, a temporary practice permit will expire on the earlier of 6 months from the date of issuance or on the date the candidate fails the licensure examination.

Next, the Board provides regulations related to license renewal. In § 20.31 (relating to expiration, renewal and reactivation of license), the Board proposes general requirements related to license renewal, including the requirement that licensees inform the Board if they are licensed in another jurisdiction, disciplined in another jurisdiction or are convicted of any crime. This section also provides licensees with information about requesting inactive status. Reactivation within 5 years from the date of expiration is covered, as well as reactivation after 5 years, which requires the licensee to demonstrate current competence to practice. Finally, this section provides notice that licensees who practice on an inactive or lapsed license are subject to discipline.

Section 20.32 (relating to continuing education hours, maintenance of certificates of completion), is the first in a series of sections related to continuing education requirements. Section 20.32(a) would require licensees to complete 24 hours of continuing education during each biennial renewal period as required under section 4(6) of the act (63 P. S. § 627.4(6)). Section 20.32(b) would require licensees to complete at least 4 hours biennially in professional ethics. Section 20.32(c) would notify licensees that a maximum of 6 hours may be earned to meet the biennial requirement by taking any type of correspondence courses, such as online courses, courses on audio/visual media and print courses. One commentator opined that this was overly restrictive; however, because the majority of massage therapy instruction that occurs post-licensure is practice-oriented rather than didactic, the Board finds the restriction appropriate.

Section 20.32(d) would provide that courses for the renewal of the licensee's CPR certification could not be used to meet the biennial continuing education requirement. One commentator stated that the requirement of 24 hours of continuing education in addition to CPR was excessive and suggested that CPR should be included in the 24-hour requirement. Section 6(b) of the act (63 P. S. § 627.6(b)) provides that "to renew a license, a licensee must do all of the following" and then enumerates both current certification to administer CPR and 24 hours of continuing education. The Board interprets the statute as requiring 24 hours of continuing education in addition to whatever training is necessary to maintain current certification to administer CPR.

Also in § 20.32(e) is the requirement that licensees retain the certificates of completion from continuing education courses for a minimum of 5 years. If a licensee is audited for compliance with the continuing education requirement after license renewal, this provision ensures that the licensee will have the necessary documents to demonstrate compliance. Section 20.32(f) sets forth the process for requesting an extension or waiver of the continuing education requirement. Section 20.32(g) would provide for audits to ensure compliance with the continuing education requirements.

In § 20.33 (relating to continuing education content and providers), the Board proposes requirements for continuing education content and providers. Continuing education must be designed to advance the practitioner's professional knowledge and skills related to the practice of massage therapy as defined in section 2 of the act (63 P. S. § 627.2). One predraft commentator suggested that course in shiatsu, acupressure, tui na or reflexology should be eligible for continuing education credit because they are important modalities. Another commentator suggested that each licensee should decide which class could help them, whether it is a new modality, a business class or a review of anatomy and physiology. Practitioners who utilize only acupressure, tui na or reflexology are not required to be licensed under section 13(6) of the act (63 P. S. § 327.13(6)). The act also restricts the granting of credit for taking courses to build one's business. The Board finds its subject matter restrictions appropriate.

In § 20.33(b), the Board provides a list of proposed preapproved providers of continuing education, which includes schools of massage therapy in this Commonwealth operating under section 5(a)(3) of the act, schools of massage therapy approved by the Board or accredited by a National accrediting agency recognized by the United States Department of Education, the American Massage Therapy Association and its state chapters, NCBTMB-approved providers, and Associated Bodywork and Massage Professionals. Continuing education providers would be required to provide attendees with a certificate of completion. The information that is proposed to be required to be included on the certificate under § 20.33(c). Continuing education providers would be required to retain documentation of the participants in their continuing education programs for at least 5 years. This provision would allow a massage therapist who has lost a certificate of attendance to obtain a duplicate from the course provider. The Board would also provide a process by which LMTs or providers of continuing education who are not on the Board's preapproved list may obtain approval for a creditable continuing education course. Finally, the proposal notes that the Board would reserve the right to reject a continuing education course submitted by a massage therapist who is audited for compliance if the course is outside the scope of practice of massage therapy as defined by the act. A licensee who was notified of a rejection would be provided the opportunity to apply additional courses the licensee has taken or to take additional courses to meet the continuing education requirement.

Section 20.34 (relating to penalty for failure to complete continuing education) would instruct licensees regarding reporting continuing education on the biennial renewal application. A licensee would be required to report the number of continuing education hours completed on the biennial renewal application. If a licensee failed to complete the 24 hours mandated by statute, the licensee would be afforded an opportunity to make up the deficiency within 6 months of the expiration date of the massage therapist's license. If the licensee completed the 24 hours in this time frame, the license would be subject only to a civil penalty under the Board's Act 48 civil penalty schedule. If the licensee did not make up the deficient hours, the licensee would be subject to additional disciplinary action.

In the next section of the proposed regulations, the Board would address the scope and standards of practice for massage therapists. Section 20.41(a) (relating to scope of practice) would provide a list of some of the soft tissue manifestations of the human body which massage thera-

pists treat, including pain, edema, hypertonicity, hypotonicity, loss of muscular function, muscle atrophy, muscle cramps or spasms, diminished mobility, adhesions/scarring/scar tissue/fascial thickening, restricted lymph flow, restricted blood flow, fascial restrictions, postural deviations, paresthesia and hypersensitivity. In § 20.41(b), the Board would provide a list of some of the things that are outside the scope of practice of massage therapists, including the diagnosis or treatment of impairment, illness, disease or disability, medical procedures, chiropractic manipulation—adjustment, physical therapy mobilization—manual therapy, therapeutic exercise, the prescription of medicines for which a license to practice medicine, chiropractic, physical therapy, occupational therapy, podiatry or other practice of the healing arts is required, the application of high velocity/low amplitude force further defined as thrust techniques directed toward joint surfaces and the use of equipment or devices that require a prescription, for example, ultrasound, diathermy, electrical neuromuscular stimulation.

The Board proposes standards of professional conduct in § 20.42 (relating to standards of professional conduct). Under § 20.42(a), a massage therapist shall maintain current knowledge of the appropriate application of massage therapy, including indications, contraindications and precautions; undertake a specific technique only if the massage therapist has the necessary knowledge, training or skill to competently execute the technique; base decisions and actions on behalf of a client on sound ethical reasoning and current principles of practice; provide treatment only where there is a reasonable expectation that it will be advantageous to the client; refer to an appropriate health care professional when indicated in the interest of the client; discuss with clients, as appropriate, which massage therapy modalities and techniques will be utilized and the benefits of these modalities and techniques, the treatment objectives, and that participation is voluntary and that consent to treatment or participation may be withdrawn at any time; obtain written consent prior to performing breast massage; modify or terminate the massage therapy session at the client's request; keep client information private and confidential; use safe and functional coverage/draping practices during the practice of massage therapy when the client is disrobed; act to safeguard clients from incompetent, abusive or illegal practices of other massage therapists or caregivers; be clean, fully-clothed and professional in dress; display the massage therapist's current license in a location clearly visible to clients and carry the massage therapist's wallet card whenever practicing off-site; include the massage therapist's license number in all advertisements; conspicuously display the massage therapist's name and the title L.M.T. or the words "Licensed Massage Therapist" on an identification badge or directly on clothing worn in the public areas where massage therapy services are being provided; cooperate with the Board, the Department of State or the Bureau of Enforcement and Investigation in the investigation of complaints filed under the act; provide massage therapy records immediately upon demand of the Board or its authorized agents; maintain massage therapy records for at least 3 years from the last date that services were provided to the client; educate clients about maintaining the beneficial effects of massage therapy treatment when indicated by a treatment plan; obtain the written permission of a parent or guardian, or their representative, prior to providing massage therapy services to a minor; and require that a parent or guardian, or their representative, be physically present in the room during treatment of a minor.

Section 20.42(b) lists prohibitions for massage therapists, including: psychologically or physically abusing a client; violating a client's boundaries with respect to privacy, disclosure and exposure; utilizing techniques that are contraindicated based on the client's condition; falsifying or knowingly making incorrect entries into the client's record or other related documents; intentionally expose a client's genitals, gluteal cleft or the breasts of a female client except temporarily to perform therapeutic treatment of the area; engaging in conduct defined under § 20.1 as sexual harassment, sexual impropriety, sexual violation or sexual abuse; engaging in sexual intimacies during the professional relationship; performing or offering to perform any services for clients other than those connected with giving massage therapy treatments as defined in section 2 of the act, unless the massage therapist has additional training and licensure, if required, to perform those services; knowingly permitting another individual to use the massage therapist's license or temporary permit for any purpose; knowingly aiding, abetting or assisting another person to violate or circumvent a law or Board regulation; misappropriating equipment, materials, property or money from an employer or client; and refusing a client's request for a refund for the unearned portion of prepaid or packaged massage therapy services; however, this provision does not apply to gift certificate purchases.

Section 20.42(b)(5) would prohibit a massage therapist from engaging in sexual intimacies with a client during the professional relationship. "Professional relationship" is defined under § 20.1 to include a period 6 months after the last professional contact between a therapist and a client. The Board discussed these provisions extensively and received input from the public on the issue. One commentator, the Associated Bodywork and Massage Professionals (ABMP), objected to the prohibition because it viewed the prohibition as an attempt by the Board to regulate the personal lives of massage therapists. The Board is regulating the professional lives of massage therapists. The Board's statutory mission is to protect the public. In a profession where a licensee is clothed and a client is often unclothed, the Board finds it imperative to regulate sexual intimacies during the professional relationship.

Some commentators and Board members believed that a massage therapist should never engage in sexual intimacies with a client; others believed that a 6-month period of time after termination of the professional relationship was too long. The majority of the Board determined that the 6-month period would be effective in protecting the public from any unscrupulous licensee who might seek to exploit the therapist-client power differential without being so long as to be overly restrictive.

Specific information related to disciplinary procedures are set forth under § 20.43 (relating to disciplinary procedures). The Board's proposal would notify licensees that immediate temporary suspension in accordance with section 9(d) of the act is appropriate in cases of certain sexual misconduct. In addition, this section would provide that the consent of an individual to engage in conduct defined herein as sexual harassment, sexual impropriety, sexual violation or sexual abuse with a massage therapist is not a defense in any disciplinary action brought under this section and that with the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a client is admissible in a disciplinary action brought under this section.

The Board next proposes to address sanitation and facility and equipment requirements necessary for the safe practice of massage therapy. In § 20.51 (relating to massage therapy treatment areas), the Board would provide that all treatment spaces must provide for client privacy when clients disrobe; provide for sufficient heating, cooling and ventilation for client comfort; provide illumination for cleaning; be clean, sanitary and free from mold and contaminants; and be maintained in a manner to ensure client safety. In § 20.52 (relating to massage therapy equipment), the Board would set forth minimum standards for equipment, including a requirement that equipment be maintained in working order and cleaned between each use. Specifically related to cushions on massage tables and massage chairs, as well as bolsters and pillows, this section would require that this equipment be covered with impervious material that is cleaned regularly. Finally, face rests, whether covered or uncovered, would have to be cleaned between each use.

Topical preparations would be addressed in § 20.53 (relating to topical preparations). The Board would require massage therapists to store topical preparations in a manner that maintains the integrity of the product and prevents spoilage and contamination, dispense topical preparations in a manner that prevents contamination of the unused portion, and dispense topical preparations in a manner that prevents cross-contamination between clients. In addition, for topical preparations that come into contact with a client, such as ice cubes, plasters, herbs, seaweed, muds, scrubs, paraffin or any other similar products, the proposal would require that massage therapists use these topical preparations only once and then dispose of the topical preparations in a sanitary manner. Massage therapists would be required to place used topical preparations that are not washed away in a covered receptacle that is emptied at least daily.

The Board would address linens used in the practice of massage therapy in § 20.54 (relating to linens). This section requires that all single-service materials, including linens, must be stored in a manner that maintains their cleanliness; all single-service materials, linens and any other items, materials or tools that come into contact with a client's body must be furnished clean and fresh for the use of each individual client; all soiled linens must be placed in a covered receptacle after use; and all soiled linens must be washed after every use in hot water with detergent and bleach in a clothes washing machine. Several commentators thought the Board should permit the use of bleach alternative. Bleach alternative does not have the sanitizing effect of bleach. The Board determined that bleach should be used to ensure effective sanitation of linens that generally touch clients' naked bodies.

Fiscal Impact and Paperwork Requirements.

The regulations may have a fiscal impact on massage therapists because there is a cost to licensure and license renewal. Fees, except biennial renewal fees, are based on an estimate of the amount of time required to perform the service to an individual and the type of staff required to perform the service. Biennial renewal fees are developed by the Department's Bureau of Finance and Operations and are used to sustain the day-to-day operations of the Board. The regulations may have a fiscal impact on individual licensees if the massage therapists do not already abide by the minimum safety and cleanliness requirements set forth by the Board. Minor paperwork and recordkeeping requirements are placed on massage therapy schools and providers of continuing education for massage therapists.

The regulations will not otherwise have any fiscal impact nor impose additional paperwork on the private sector, the general public and the Commonwealth and its political subdivisions.

Sunset Date

The Bureau continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 27, 2010, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days from the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations and objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Judy Harner, Board Administrator, State Board of Massage Therapy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation # 16A-721, Massage Therapy, when submitting comments.

ROBERT JANTSCH,
Chairperson

Fiscal Note: 16A-721. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 20. STATE BOARD OF MASSAGE THERAPY

GENERAL PROVISIONS

- § 20.1. Definitions.
- § 20.2. Applicability of general rules.
- § 20.3. Fees.

EDUCATION

- § 20.11. Minimum hour requirements for massage therapy programs.
- § 20.12. Information that must be provided to prospective students.
- § 20.13. Required knowledge base.
- § 20.14. Student practice.

LICENSURE

- § 20.21. Application for temporary practice permit, initial licensure and licensure by reciprocity.
- § 20.22. Procedure for licensure denial.
- § 20.23. Licensure examinations.
- § 20.24. Application requirements for existing practitioners.
- § 20.25. Additional application requirements for applicants for licensure by reciprocity.
- § 20.26. Application requirements for temporary practice permits.

LICENSURE RENEWAL AND REACTIVATION

- § 20.31. Expiration, renewal and reactivation of license.
- § 20.32. Continuing education hours, maintenance of certificates of completion.
- § 20.33. Continuing education content and providers.
- § 20.34. Penalty for failure to complete continuing education.

SCOPE AND STANDARDS OF PRACTICE

- § 20.41. Scope of practice.
- § 20.42. Standards of professional conduct.
- § 20.43. Disciplinary procedures.

SANITATION, FACILITY AND EQUIPMENT REQUIREMENTS

- § 20.51. Massage therapy treatment areas.
- § 20.52. Massage therapy equipment.
- § 20.53. Topical preparations.
- § 20.54. Linens.

GENERAL PROVISIONS

§ 20.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Massage Therapy Law (63 P. S. §§ 627.1—627.50).

Board—The State Board of Massage Therapy.

Client—Any individual, group of individuals, or organization to which an L.M.T. provides massage therapy services.

Contact hour—A 50 to 60 minute period of instruction related to the practice of massage therapy in the physical presence of an instructor or supervisor.

Draping—The use of linens to cover a massage therapy client to preserve client privacy and modesty, to maintain professional boundaries and for client warmth.

FSMTB—The Federation of State Massage Therapy Boards.

Immediate supervision—The supervisor or instructor is within visual or audible range of the individual being supervised.

In-class—In the physical presence of an instructor or under the immediate supervision of a clinical supervisor.

Indirect supervision—The supervision provided by a clinical supervisor or instructor who has given a student instructions on the performance of massage therapy activities, assigned for credit, that are to be practiced outside of class or clinic.

Informed consent—A process wherein the massage therapist and a competent client or the client's guardian come to a mutual understanding of the massage therapy treatment, including objectives, benefits and any risks.

L.M.T.—Licensed Massage Therapist.

MBLEx—Massage and Bodywork Licensure Examination of the Federation of State Boards of Massage Therapy.

NCBTMB—National Certification Board for Therapeutic Massage and Bodywork.

NCETM—National Certification Examination for Therapeutic Massage.

NCETMB—National Certification Examination for Therapeutic Massage and Bodywork.

NESL—National Examination for State Licensure, an option offered by the NCBTMB which allows individuals to take the NCETM or NCETMB without obtaining National certification.

Professional relationship—The relationship between a massage therapist and a client which shall be deemed to exist from the first professional contact or consultation and continue thereafter until 6 months after the last date of a professional service.

Sexual abuse—Conduct which constitutes a violation of any provision 18 Pa.C.S. (relating to crimes and offenses related to sexual offenses) (See 18 Pa.C.S. §§ 3121—3130 (relating to definition of offenses).)

Sexual harassment—Deliberate or repeated comments, gestures or physical contacts of a sexual nature.

Sexual impropriety—The term includes the following offenses during the professional relationship:

- (i) Making sexually demeaning or sexually suggestive comments about or to a client, including comments about a client’s body or clothing.
- (ii) Unnecessarily exposing a client’s body or watching a client dress or undress, unless the client specifically requests assistance due to disability.
- (iii) Discussing or commenting on a client’s potential sexual performance or requesting details of a client’s sexual history or preferences.
- (iv) Volunteering information to a client about one’s sexual problems, preferences or fantasies.
- (v) Behavior, gestures or expressions to a client that are seductive or of a sexual nature.
- (vi) Using draping practices that reflect a lack of respect for the client’s privacy.

Sexual intimacies—Romantic, sexually suggestive or erotic behavior or soliciting a date.

Sexual violation—Sexual conduct, during the professional relationship, between a massage therapist and a client, including any of the following:

- (i) Indecent exposure.
- (ii) Touching, with the massage therapist’s body or an object, the genitals or any sexualized body part of the client for any purpose other than appropriate examination or treatment or when the client has refused or withdrawn consent.
- (iii) Encouraging a client to masturbate in the presence of the massage therapist or masturbating while a client is present.
- (iv) Providing or offering to provide treatment in exchange for sexual favors.

Supervisor—A licensee or instructor who meets the qualifications under section 13(3) of the act (63 P. S. § 627.13(3)).

§ 20.2. Applicability of general rules.

The provisions of 1 Pa. Code § 31.1 (relating to scope of part), and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) are applicable to the activities of and proceedings before the Board.

§ 20.3. Fees.

(a) The following fees are charged for services provided by the Board:

Application for licensure	\$65
Verification of licensure	\$15
Certification of licensure history	\$25
Reactivation of license	\$65

Restoration after suspension or revocation	\$65
Approval of continuing education program	\$65

(b) The following fees are charged to sustain the operations of the Board:

Biennial renewal of license	\$75
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(c) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the MBLEx shall be responsible for any fees charged by the FSBMT for taking the examination.

(d) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the NESL, the NCETM or the NCETMB shall be responsible for any fees charged by the NCBTMB for taking the examinations.

EDUCATION

§ 20.11. Minimum hour requirements for massage therapy programs.

(a) Massage therapy programs must provide at least 600 hours of in-class, postsecondary education instruction, including:

(1) At least 175 contact hours of instruction (1) in anatomy and physiology, kinesiology and pathology, including training in the human immunodeficiency virus and related risks.

(2) At least 250 contact hours in massage therapy and bodywork assessment, theory and practice including sanitation, safety and hygiene.

(3) At least 25 contact hours in professional ethics, and business and law related to a massage therapy business.

(4) At least 150 contact hours in related courses appropriate to a massage therapy curriculum as set forth in § 20.13 (related to required knowledge base), including cardiopulmonary resuscitation.

(b) Massage therapy programs may meet the 600-hour requirement through both didactic and clinical courses.

(c) Externship hours may not be included in the 600-hour minimum education instruction. For purposes of this section, an externship is an offsite practical technique learning experience where the student’s supervision is provided by a licensed massage therapist, supervisor or other appropriate licensed health professional.

(d) Hours for practicing assigned techniques under indirect supervision may not be included in the 600-hour minimum education instruction.

§ 20.12. Information that must be provided to prospective students.

Massage therapy schools shall inform prospective students, in writing, prior to enrollment, of the annual passing rate of the school’s graduates on each of the approved examinations for licensure for the past 2 years. Any licensee employed by a massage therapy school who knows or has reason to know that the school is not abiding by this provision will be subject to discipline under section 9(a)(7) of the act (63 P. S. § 627.9(a)(7)). In addition, the Board will report the failure of a massage therapy school to conform to this section to the school’s approving or accrediting body.

§ 20.13. Required knowledge base.

(a) Massage therapy education must provide students with knowledge of the following:

- (1) Massage and bodywork assessment and application.

(2) Contraindications and precautions for massage therapy.

(3) Anatomy and physiology.

(4) Kinesiology.

(5) Pathology.

(6) Legal requirements.

(7) Business practices.

(8) Professional ethics.

(9) Basic CPR.

(10) Communicable diseases and universal precautions.

(11) Power differentials and other therapeutic boundary issues as they relate to client interaction.

(12) Fundamentals of human behavior and respect for clients in the practice of massage therapy.

(b) Massage therapy education must provide students with the practical skills to:

(1) Administer fundamental therapeutic massage techniques for the treatment of soft tissue manifestations of the human body.

(2) Safely utilize topical preparations, thermal and cryogenic modalities, hydrotherapy and movements that lengthen and shorten soft tissues within the client's normal range of motion.

(3) Maintain safe and effective body mechanics in the application of therapeutic massage techniques.

(4) Locate and palpate muscle attachments, muscle bellies and other anatomical landmarks necessary for the practice of massage therapy.

(5) Use draping/coverage practices that address both function and safety.

(c) Massage therapy education must provide students with additional skills in the following areas:

(1) Development, implementation and modification of a treatment plan that addresses client soft tissue manifestations, needs and concerns, including identifying indications, contraindications and precautions of massage therapy within the scope of this act.

(2) Obtaining informed consent regarding the risks and benefits of the treatment plan and application and modification of the treatment plan as needed.

(3) Using effective interpersonal communication in the professional relationship.

(4) Utilizing an ethical decision making process. Decision making that conforms to the ethical standards of the profession, as set forth in this chapter and in the codes of ethics of massage therapy professional associations.

(5) Establishing and maintaining a practice environment that provides for the client's safety and comfort.

(6) Establishing and maintaining client records, professional records and business records in compliance with § 20.42(a)(20) (relating to standards of professional conduct).

§ 20.14. Student practice.

(a) A student enrolled in an approved massage therapy program may practice massage therapy by providing services under immediate supervision as part of a clinical training program operated by the school in which the student is obtaining credit.

(b) A student, while enrolled in an approved massage therapy program, may perform techniques learned in class under indirect supervision.

(c) A student may not receive payment from the school or client for services provided as part of a clinical training program operated by the school in which the student is obtaining credit.

(d) A student may accept a nominal gratuity voluntarily given by a client in a clinical training program operated by the school in which the student is obtaining credit.

(e) A student may not receive payment or a gratuity for services provided as part of performing techniques learned in class under indirect supervision, whether the performance is assigned by an instructor as homework or undertaken on the student's own initiative.

(f) Massage therapy schools shall maintain records of services provided by students in a clinical training program for at least 3 years.

(g) Students providing services as part of a clinical training program operated by a school shall be clearly identified to the public as students.

LICENSURE

§ 20.21. Application for temporary practice permit, initial licensure and licensure by reciprocity.

(a) Application forms may be obtained from the Board and are posted on the Board's web site.

(b) An applicant for licensure shall submit to the Board a completed and signed application form, the application fee as set forth in § 20.3 (relating to fees) and the following documents:

(1) A copy of a legal form of identification, such as a valid driver's license, a current passport, or a valid State identification card.

(2) An official Criminal History Record Information check sent to the Board directly from the State Police or other state agency for every state in which the candidate has resided during the past 5 years. The reports must be dated within 6 months of the date of application.

(3) CPR certification, that is valid for at least 6 months following the date of application. A list of CPR certifying bodies will be posted on the Board's web site.

(4) Proof of graduation from high school or the equivalent.

(c) An applicant shall request that the applicant's massage therapy school send directly to the Board the applicant's official transcript showing successful completion of study in the required subject matter and hours required by the act and this chapter. If a school is no longer in operation, the Board may accept a copy of the official transcript from the school's record depository.

(d) An applicant shall provide a written explanation and copies of all relevant documents as requested by the Board if:

(1) The applicant is under investigation or has ever been denied professional licensure or disciplined by any professional licensing authority of the Commonwealth or any other jurisdiction of the United States or a foreign country.

(2) The applicant has surrendered a massage therapy license or other professional license in this Commonwealth or any other jurisdiction of the United States or a foreign country.

(3) The applicant has been arrested, charged or convicted of a misdemeanor or felony in this Commonwealth or any other jurisdiction of the United States or a foreign country.

(4) The applicant is unable to practice massage therapy with a reasonable skill and safety by reason of use of alcohol, drugs, narcotics, chemicals or any other type of material.

(5) The applicant is unable to practice massage therapy with a reasonable skill and safety by reason of illness or as a result of any mental or physical condition.

(e) An applicant shall verify that the applicant has read, understood and will comply with the act and this chapter.

(f) An applicant is responsible for ensuring that the Board receives all required documentation. If the application is incomplete, the Board will notify the applicant by means of first class mail, within 8 weeks of the receipt of the application, that the application is incomplete.

(g) Applicants shall supply the missing documentation within 6 months from the date the application is executed by the applicant. After that time, if the documentation has not been submitted, the application will be denied and the application fee forfeited. An applicant who wishes to reapply shall submit a new application and application fee.

(h) An applicant whose name changes during the application process or whose name has changed since the applicant completed massage therapy school shall notify the Board in writing and submit, with the notification of name change, the appropriate supporting documentation (such as, marriage certificate, divorce decree, court documents showing a legal name change).

(i) An applicant whose address changes shall notify the Board in writing and submit both the old and new address to the Board.

(j) If any other information requested on the application changes after the date the applicant submits the application to the Board for licensure, the applicant shall immediately notify the Board, in writing, of the change. Failure to update an application may subject an applicant to refusal of the license or a licensee to discipline under section 9(a)(4) of the act (63 P. S. § 627.9(a)(4)).

§ 20.22. Procedure for licensure denial.

(a) The Board will inform the applicant, in writing, of the basis upon which the Board has refused the license. The Board will provide the applicant with an opportunity to demonstrate, at a hearing, that the license should be issued.

(b) If information submitted with the application indicates that an applicant may be unable to safely practice massage therapy, the Board will require the applicant to participate in an evaluation to determine if the applicant can safely practice. An applicant may contest the results of the evaluation at a hearing. The Board will provide an applicant who refuses to participate in an evaluation with an opportunity to demonstrate, at a hearing, that the license should be granted.

(c) In a case when the Board refuses to issue a license, the Board will issue a written final decision setting forth the grounds for the refusal.

§ 20.23. Licensure examinations.

(a) The Board adopts the NCETM and NCETMB, including the NESL option, and MBLE_x as approved examinations for initial licensure under section 7 of the act (63 P. S. § 627.7).

(b) An individual who plans to take the MBLE_x offered by the FSBMT shall contact the FSBMT directly to apply for examination. The FSBMT will issue the candidate an Authorization to Test, which the candidate may use to schedule the examination. Candidates are responsible for registering for the licensure examination date and site. Candidates who are unable to test within 90 days of the date the FSBMT issued the candidate's Authorization to Test will be required to reapply as a new candidate subject to all application and fee requirements in place at that time.

(c) An individual who plans to take the NCETM or NCETMB examinations, including the NESL option offered by the NCBTMB, shall contact the NCBTMB directly to apply for examination. The NCBTMB will issue the candidate an Authorization to Test, which the candidate may use to schedule the examination. Candidates are responsible for registering for the licensure examination date and site. Candidates who are unable to test within 90 days of the date the NCBTMB issued the candidate's Authorization to Test will be required to reapply as a new candidate subject to all application and fee requirements in place at that time.

(d) Fees paid to the FSBMT or NCBTMB are nonrefundable.

(e) The following standards apply for failure to pass the licensure examinations:

(1) An applicant who is unsuccessful on any three attempts to pass a licensure examination or combination of licensure examinations shall obtain at least 100 additional hours of instruction in massage therapy at an approved school before the applicant may reexamine.

(2) An applicant who is unsuccessful an additional two times will not be allowed to retest without completing a massage therapy program of at least 600 hours.

§ 20.24. Application requirements for existing practitioners.

(a) Existing practitioners shall submit, by _____ (*Editor's Note:* The blank refers to a date 1 year after the effective date of adoption of this proposed rulemaking.), an application, application fee and the information required under § 20.21(b), (c) and (d) (relating to application for temporary practice permit, initial licensure and licensure by reciprocity) if applicable, and shall be subject to the provisions of § 20.21(e)—(i).

(b) Existing practitioners shall establish that they have conducted a business and been an active participant in that business which was mainly the practice of massage therapy by submitting one of the following:

(1) A signed copy of the applicant's Federal tax return for the previous year, that lists the applicant's occupation as massage therapist.

(2) A signed copy of Schedule C of the applicant's Federal income tax return for the previous year demonstrating that the individual has reported income from the practice of massage therapy.

(3) Proof of professional or practitioner membership level or above in a professional association approved by the Board.

(4) For applicants who have been employed as massage therapists, a notarized statement from the applicant's employer (on a form provided by the Board) attesting that the individual is a practicing massage therapist, a copy of the employer's business card or letterhead, and a copy of the applicant's Federal W-2 or 1099 form.

(c) Existing practitioners applying for licensure under section 5(b)(3)(i) of the act (63 P. S. § 627.5(b)(3)(i)) shall demonstrate that they have been in active, continuous practice for at least 5 years immediately preceding October 9, 2010, by submitting one of the following:

(1) Signed copies of the applicant's tax returns for the past 5 years, each listing the applicant's occupation as massage therapist.

(2) Copies of Schedule C of the Federal income tax return for the past 5 years demonstrating that the applicant has reported income from the practice of massage therapy.

(3) Proof of at least 5 years membership at the professional or practitioner level or above in a professional association approved by the Board.

(4) For applicants who have been employed as massage therapists, a notarized letter from the applicant's employer (on a form provided by the Board) attesting that the individual has practiced massage therapy for at least the last 5 years, a copy of the employer's business card or letterhead, and copies of the applicant's Federal W-2 or 1099 forms for the last 5 years.

(d) Existing practitioners applying for licensure under section 5(b)(3)(ii) of the act shall have the certification agency provide, directly to the Board, evidence that the practitioner passed a massage therapy examination that is part of a certification program accredited by the National Commission for Certifying Agencies.

(e) Existing practitioners applying for licensure under section 5(b)(3)(iii) of the act shall request that their educational program provide an official transcript directly to the Board to demonstrate that the practitioner completed at least 500 hours of instruction in massage and related subjects. Transcripts generated in a language other than English shall be translated into English at the applicant's expense by a professional translation service and verified to be complete and accurate.

(f) Existing practitioners applying for licensure under section 5(b)(3)(iv) of the act shall demonstrate, through certificates of completion, official transcript, or correspondence from the practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the NESL option of the NCBTMB.

(g) Existing practitioners applying for licensure under section 5(b)(3)(v) of the act shall demonstrate, through certificates of completion, official transcript provided directly from educational institution, or correspondence from the practitioner's instructor, that the practitioner completed at least 100 hours of instruction in massage and related subjects and passed the MBLEx.

§ 20.25. Additional application requirements for applicants for licensure by reciprocity.

(a) An applicant for licensure by reciprocity shall submit an application form provided by the Board and information required under § 20.21(b)(1)—(3) and (c) (relating to application for temporary practice permit, initial licensure and licensure by reciprocity), and shall be subject to the provisions of § 20.21(d) and (e).

(b) An applicant for licensure by reciprocity shall have the official licensing authority of every jurisdiction in which the applicant holds a license to practice massage therapy provide the Board with verification that the applicant is a licensee in good standing and documentation of any disciplinary action taken by the jurisdiction's licensing authority.

(c) An applicant for licensure by reciprocity shall request that the applicant's massage therapy school provide the Board with the applicant's official transcript and verification that the school is recognized by the jurisdiction's licensing authority, accredited by a National accrediting organization, or authorized to operate by the jurisdiction's Department of Education.

(d) An applicant for licensure by reciprocity shall provide evidence that the applicant passed the MBLEx, the NCETM, NCETMB or successfully completed the NESL option, or evidence that the applicant obtained original licensure through qualifications equivalent to those for existing practitioners under section 5(b) of the act (63 P. S. § 627.5(b)).

§ 20.26. Application requirements for temporary practice permits.

(a) An applicant for a temporary practice permit shall submit an application form provided by the Board.

(b) In addition to the completed application form, an applicant for a temporary practice permit shall comply with the application procedures under § 20.21(b)(1)—(3) and (c) (relating to application for temporary practice permit, initial licensure and licensure by endorsement), and shall be subject to the provisions of § 20.21(d) and (e).

(c) A temporary practice permit will expire on the earlier of 6 months from the date of issuance or on the date the candidate fails the licensure examination.

(d) Individuals who have been issued a temporary practice permit will be considered licensees for purposes of applying section 9 of the act, pertaining to refusal, suspension and revocation of licenses.

(e) Individuals who have been issued a temporary practice permit may not hold themselves out as a licensed massage therapist, use the initials LMT or advertise their practice of massage therapy.

LICENSURE RENEWAL AND REACTIVATION

§ 20.31. Expiration, renewal and reactivation of license.

(a) *Expiration of license.* Licenses expire on (date) of each (even/odd)-numbered year, regardless of the date of issuance. Licenses are renewable for a 2-year period beginning each (day and month) of each (even/odd)-numbered year. (*Editor's Note:* The blanks for the date and day and month will be added upon publication of final adoption of this proposed rulemaking.)

(b) *Practice prohibited.* A licensee may not practice massage therapy in this Commonwealth after the last day of (month) of the renewal year unless the license has been renewed. (*Editor's Note:* The blank for the data and day and month will be added upon publication of final adoption of this proposed rulemaking.)

(c) *Renewal application.* A licensee shall:

(1) Apply for licensure renewal online or on the form provided by the Board.

(2) Pay the biennial renewal fee as set forth in § 20.3 (relating to fees).

(3) Submit proof of current certification in CPR.

(4) Submit verification of completion of at least 24 hours of Board-approved continuing education.

(5) Submit verification that the licensee has read, understood and will comply with the act and this chapter.

(d) *Disclosure of licensure or discipline.* A licensee who becomes licensed to practice massage therapy in another jurisdiction shall report this information on the biennial renewal form or within 30 days of licensure, whichever occurs sooner. Disciplinary action taken in another jurisdiction or the filing of or disposition of any criminal charges shall be reported to the Board on the biennial renewal form or within 30 days, whichever is sooner.

(e) *Licensure documentation.* Upon renewing a license, a licensee will receive a wall certificate and wallet-size card that will show the next expiration date of the license. A licensee who renews online may print a temporary license that may be used until the biennial license is received.

(f) *Inactive status.* A license may be placed on inactive status by the licensee notifying the Board during the online renewal process or in a signed, notarized statement that the licensee wishes to have the license marked inactive. The licensee shall immediately return all licensure documents to the Board and may not practice massage therapy in this Commonwealth until the licensee's license is reactivated and renewed.

(g) *Reactivation.* The holder of an inactive or expired license to practice massage therapy may reactivate and renew the license within 5 years from the date of its expiration by submitting:

- (1) An application to the Board.
 - (2) Payment of the current biennial renewal fee as set forth in § 23.3.
 - (3) Certificates of attendance at continuing education courses required by § 20.32 (relating to continuing education hours, maintenance of certificates of completion) for the previous biennial renewal period.
 - (4) Current CPR certification.
 - (5) An affidavit of nonpractice within this Commonwealth.
- (h) *Late fees.* A licensee who practiced massage therapy on an inactive or expired license will be subject to late fees as prescribed by the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. §§ 1401-101—1401-501) upon renewal.
- (i) *Disciplinary action authorized.* A licensee who practiced massage therapy on an inactive or expired license may be subject to discipline by the Board under section 9(a)(7) of the act.

(j) *Demonstration of competence after 5 years.* The holder of an inactive or expired license to practice massage therapy will not be reactivated and renewed if more than 5 years have passed from the date of the license expiration unless the licensee has demonstrated current competence to practice. To demonstrate current competence to practice, a licensee must either prove continuous active practice in another jurisdiction during the past 5 years or achieve a passing score on a licensure examination approved for entry into practice in this Commonwealth.

§ 20.32. Continuing education hours, maintenance of certificates of completion.

(a) Licensees shall complete a minimum of 24 hours of continuing education in the field of massage therapy as set forth in section 4(6) of the act (63 P. S. § 627.4(6)) and § 20.33 (relating to continuing education content and providers) in the 2-year period immediately preceding the application for license renewal. To be creditable, continu-

ing education must meet the requirements for Board approval set forth in this section and § 20.33.

(b) Licensees shall complete a minimum of 4 contact hours of continuing education in professional ethics in each biennial renewal period.

(c) A maximum of 6 hours may be earned to meet the biennial requirement by taking any type of correspondence courses, such as online courses, courses on audio/visual media and print courses.

(d) Courses for the renewal of the licensee's CPR certification may not be used to meet the biennial continuing education requirement.

(e) Licensees shall retain the certificates of completion from continuing education courses for a minimum of 5 years.

(f) A licensee who is unable to complete the required continuing education shall request a waiver or extension from the Board at least 60 days prior to the expiration of the license. The request must include details about the licensee's illness, emergency or hardship, including documentation such as a letter from the licensee's physician or a copy of the licensee's military orders. The Board will respond in writing either granting or denying a request for waiver or extension.

(g) Licensees may be audited to ensure their compliance with the continuing education requirements.

§ 20.33. Continuing education content and providers.

(a) Continuing education must be designed to advance the licensee's professional knowledge and skills related to the practice of massage therapy as defined in section 2 of the act (63 P. S. § 627.2).

(b) The following continuing education providers are approved to offer creditable continuing education provided they comply with subsections (a), (c) and (d):

- (1) Schools of massage therapy in this Commonwealth operating under section 5(a)(3) of the act (63 P. S. § 627.5(a)(3)).
- (2) Schools of massage therapy approved by the Board or accredited by a National accrediting agency recognized by the United States Department of Education.
- (3) The American Massage Therapy Association and its state chapters.
- (4) NCBTMB-approved providers.
- (5) Associated Bodywork and Massage Professionals.

(c) Continuing education providers shall provide certificates of completion to massage therapists that include the name of the massage therapist, name of the course provider, title of the course, date of the course, and number of hours.

(d) Continuing education providers shall retain documentation of the participants in their continuing education programs for at least 5 years.

(e) Providers of continuing education who are not listed in subsection (b) may apply to the Board for approval of a continuing education course by submitting an application and paying the application fee under § 20.3 (relating to fees). The Board will approve only courses that are designed to advance the knowledge and skills of licensees relative to massage therapy as defined in section 2 of the act and that are taught by approved faculty. Approved faculty include massage therapists licensed in the state in which they practice if licensure is required in that state,

physical therapists, physicians, professional nurses and chiropractors. Other instructors with demonstrated expertise may be approved on a case-by-case basis.

(f) An LMT may submit a course offered by a continuing education provider not listed in subsection (b) by filing an application with the Board for approval of a continuing education course and paying the application fee set forth in § 20.3. The Board will approve only courses that are designed to advance the knowledge and skills of licensees relative to massage therapy as defined in section 2 of the act and that are taught by approved faculty, as set forth in subsection (e).

(g) The Board reserves the right to reject a continuing education course submitted by a massage therapist who is audited for compliance if the course is outside the scope of practice of massage therapy as defined in the act. A licensee will be notified of the rejection of a course and will be provided the opportunity to apply additional courses the licensee has taken or to take additional courses to meet the continuing education requirement.

§ 20.34. Penalty for failure to complete continuing education.

(a) Failure to complete a minimum of 24 hours of continuing education in a biennial period may subject a licensee to discipline under section 9(7) of the act (63 P. S. § 627.9(7)) in accordance with the schedule of civil penalties at § 43b.23 (relating to schedule of civil penalties—massage therapists).

(b) A licensee who has not completed a minimum of 24 hours of continuing education shall report the number of continuing education hours completed on the biennial renewal application and shall make up the deficiency within 6 months of the expiration date of the massage therapist's license. Failure to accurately report the number of continuing education hours completed may subject the licensee to discipline under section 9(5) of the act (63 P. S. § 627.9(5)).

(c) A licensee who, under subsection (b), has made up a deficiency in continuing education hours, shall provide copies of the certificates of completion for 24 hours of continuing education upon completion of the deficient hours. The documentation shall be submitted to the Board no later than 1 month following the make up period (a period 7 months after the end of the biennial renewal period).

(d) Notwithstanding any civil penalty assessed under subsection (a), failure to provide the Board with certificates of completion under subsection (c) may subject the licensee to additional discipline under section 9(7) of the act.

SCOPE AND STANDARDS OF PRACTICE

§ 20.41. Scope of practice.

(a) Massage therapists treat the soft tissue manifestations of the human body, which may include the following:

- (1) Pain.
- (2) Edema.
- (3) Hypertonicity.
- (4) Hypotonicity.
- (5) Loss of muscular function.
- (6) Muscle atrophy.
- (7) Muscle cramps or spasms.
- (8) Diminished mobility.

- (9) Adhesions/scarring/scar tissue/fascial thickening.
- (10) Restricted lymph flow.
- (11) Restricted blood flow.
- (12) Fascial restrictions.
- (13) Postural deviations.
- (14) Paresthesia.
- (15) Hypersensitivity.

(b) Massage therapy practice does not include:

- (1) The diagnosis or treatment of impairment, illness, disease or disability.
- (2) Medical procedures.
- (3) Chiropractic manipulation—adjustment.
- (4) Physical therapy mobilization—manual therapy.
- (5) Therapeutic exercise.
- (6) Ordering or prescribing drugs or treatments for which a license to practice medicine, osteopathic medicine, nursing, podiatry, optometry, chiropractic, physical therapy, occupational therapy, or other healing art is required.

(7) The application of high velocity/low amplitude force further defined as thrust techniques directed toward joint surfaces.

(8) The use of equipment or devices that require a prescription (for example, ultrasound, diathermy or electrical neuromuscular stimulation).

§ 20.42. Standards of professional conduct.

(a) A massage therapist shall:

(1) Maintain current knowledge of the application of massage therapy, including indications, contraindications and precautions.

(2) Undertake a specific technique or use a product or equipment only if the massage therapist has the necessary knowledge, training or skill to competently execute the technique.

(3) Base decisions and actions on behalf of a client on sound ethical reasoning and current principles of practice.

(4) Provide treatment only where there is an expectation that it will be advantageous to the client.

(5) Refer to an appropriate health care professional when indicated in the interest of the client.

(6) Discuss with clients which massage therapy modalities and techniques will be utilized and the benefits of these modalities and techniques, the treatment objectives, and that participation is voluntary and that consent to treatment or participation may be withdrawn at any time.

(7) Obtain written consent prior to performing breast massage.

(8) Modify or terminate the massage therapy session at any time upon request of the client.

(9) 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.

(10) Use safe and functional coverage/draping practices during the practice of massage therapy 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. With voluntary and informed consent of the client, the gluteal and breast drapes may be temporarily moved to perform therapeutic treatment of the area.

(11) Act to safeguard clients from incompetent, abusive or illegal practices of other massage therapists or caregivers.

(12) Continuously maintain current CPR certification.

(13) Be clean, fully-clothed and professional in dress and appearance.

(14) Display the massage therapist's current license in a location clearly visible to clients and carry the massage therapist's wallet card whenever practicing offsite.

(15) Include the massage therapist's license number in all advertisements.

(16) Conspicuously display the massage therapist's name and the title L.M.T. or the words "Licensed Massage Therapist" on an identification badge or directly on clothing worn in the public areas where massage therapy services are being provided.

(17) Cooperate with the Board, the Department of State or the Bureau of Enforcement and Investigation in the investigation of complaints filed under the act.

(18) Provide massage therapy records immediately upon demand of the Board or its authorized agents.

(19) Maintain massage therapy records for at least 3 years from the last date that services were provided to the client.

(20) Educate clients about maintaining the beneficial effects of massage therapy treatment when indicated by a treatment plan.

(21) Obtain the written permission of a parent or guardian, or their representative, prior to providing massage therapy services to a minor.

(22) Require that a parent or guardian, or their representative, be physically present in the room during treatment of a minor.

(b) A massage therapist may not:

(1) Psychologically or physically abuse a client.

(2) Violate a client's boundaries with regard to exposure, privacy or disclosure.

(3) Utilize techniques that are contraindicated based on the client's condition.

(4) Falsify or knowingly make incorrect entries into the client's record or other related documents.

(5) Intentionally expose a client's genitals, gluteal cleft or the breasts of a female client except temporarily to perform therapeutic treatment of the area.

(6) Engage in sexual harassment, sexual impropriety, sexual violation or sexual abuse.

(7) Engage in sexual intimacies during the professional relationship.

(8) Perform or offer to perform any services for clients other than those connected with giving massage therapy treatments as defined in section 2 of the act (63 P.S. § 627.2), unless the massage therapist has additional training and licensure, if required, to perform those services.

(9) Knowingly permit another individual to use the massage therapist's license or temporary permit for any purpose.

(10) Knowingly aid, abet or assist another person to violate or circumvent a law or this chapter.

(11) Misappropriate equipment, materials, property or money from an employer or client.

(12) Refuse a client's request for a refund for the unearned portion of prepaid or packaged massage therapy services. This provision does not apply to gift certificate purchases.

§ 20.43. Disciplinary procedures.

(a) A massage therapist whose conduct constitutes a sexual violation or sexual abuse is subject to immediate temporary suspension in accordance with section 9(d) of the act (63 P.S. § 627.9(d)).

(b) The consent of an individual to engage in conduct defined herein as sexual harassment, sexual impropriety, sexual violation or sexual abuse with a massage therapist is not a defense in any disciplinary action brought under this section.

(c) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a client is admissible in a disciplinary action brought under this section.

SANITATION, FACILITY AND EQUIPMENT REQUIREMENTS

§ 20.51. Massage therapy treatment areas.

Massage therapists shall maintain their treatment spaces to:

(1) Provide for client privacy when clients disrobe.

(2) Provide for heating, cooling and ventilation to enhance client comfort.

(3) Provide illumination for cleaning.

(4) Be clean, sanitary and free from mold and contaminants.

(5) Ensure client safety.

§ 20.52. Massage therapy equipment.

(a) Massage therapists shall maintain equipment used in the practice of massage therapy in working order.

(b) Massage therapists shall clean equipment that comes into direct contact with a client's skin between each use.

(c) Massage therapists shall cover with impervious material and regularly clean cushions on massage tables and massage chairs, as well as bolsters and pillows.

(d) Massage therapists shall clean face rests, whether covered or uncovered, between each use.

§ 20.53. Topical preparations.

(a) Massage therapists shall store topical preparations in a manner that maintains the integrity of the product and prevents spoilage and contamination.

(b) Massage therapists shall dispense topical preparations in a manner that prevents contamination of the unused portion and that prevents cross-contamination between clients.

(c) Massage therapists shall use topical preparations that come into contact with a client, such as ice cubes, plasters, herbs, seaweed, muds, scrubs, paraffin or any

other similar products only once and shall then dispose of the topical preparations in a sanitary manner. Preparations that are not washed away must be placed in a covered receptacle that is emptied at least daily.

§ 20.54. Linens.

(a) Massage therapists shall store single-service materials, including clean linens, in a manner that maintains their cleanliness.

(b) Massage therapists shall furnish clean and fresh for the use of each individual client single-service materials,

linens and any other items, materials or tools that come into contact with a client's body.

(c) Massage therapists shall place soiled linens in a covered receptacle or washing machine after use.

(d) Massage therapists shall wash soiled linens in a clothes washing machine in hot water with detergent and bleach after every use.

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