

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

**PROPOSED**

**PUBLIC NOTICE**

**5300 Board of Massage and Bodywork**

Pursuant to 24 Del.C. §5306(a)(1), the Board of Massage and Bodywork ("Board") has proposed revisions to its rules and regulations.

A public hearing will be held on February 16, 2017 at 1:30 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Massage and Bodywork, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 Del.C. § 10118(a), the final date to receive written comments will be March 3, 2017, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its next regularly scheduled meeting, at which time the Board will decide whether to adopt the revisions as proposed.

The Board has proposed the addition of a definition of "school or approved program" of massage and bodywork and has included specific requirements for documentation of education. These proposed changes will address the widespread problem of applicants presenting invalid and falsified diplomas and school records. The continuing education requirements have been clarified and language has been added to state that a licensee's failure to provide an updated address to the Division of Professional Regulation will not excuse that licensee from discipline for continuing education violations. The new Section 13.0 has been amended to remove crimes not related to the practice of massage and bodywork and thereby eliminate unjustified obstacles to licensure. Finally, various rules and regulations have been modified for clarity and consistency.

**5300 Board of Massage and Bodywork**

**1.0 Scope of Practice**

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

**2.0 Definitions**

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

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

2.1 ~~The term "500 hours of supervised in-class study" as referenced in 24 Del.C. §5308(a)(2) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a curriculum that meets the requirements of 24 Del.C. §5308(a)(2) and which includes hands-on technique and contraindications as they relate to massage and bodywork. More than one school or approved program of massage or bodywork therapy may be attended in order to accumulate the total 500-hour requirement.~~

2.2 ~~The term a "300 – hour course of supervised in-class study of massage" as referenced in 24 Del.C. §5309(a)(2) shall mean that an instructor has controlled and reviewed the applicant's education on the~~

premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a curriculum that meets the requirements of 24 ~~Del.C.~~ §5309(a)(2).

2.2.1 The 300 hour course must be a unified introductory training program in massage and bodywork, including training in the subjects set forth in 24 ~~Del.C.~~ §5309(a)(2). The entire 300 hour course must be taken at one school or approved program. The Board may, upon request, waive the "single school" requirement for good cause or hardship, such as the closure of a school.

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

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

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

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

2.4 "**Massage and bodywork**" includes, but is not limited to, the following practices or modalities:

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

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

2.5 Continuing Education categories

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

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

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

### 3.0 Change of Address

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

### 4.0 Application for Licensure as Massage and Bodywork Therapist and License Renewal

- 4.1 A person seeking licensure as a massage and bodywork therapist must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation (“Division”), Dover, Delaware. Each application must be accompanied by (1) proof of current CPR certification and (2) payment of the application fee established by the Division.
- 4.2 ~~In addition to the application and materials described in section 3.1, an applicant for licensure as a massage and bodywork therapist shall have (1) each school or approved program of massage and bodywork where the applicant completed the hours of study required by 24 Del.C. §5308(a)(2) submit to the Board an official transcript showing dates and total hours attended and a description of the curriculum completed; and (2) the applicable testing agency submit to the Board verification of the applicant's score on the written examination described in section 5.0.~~
- 4.2 In addition to the application and materials described in subsection 4.1, an applicant for licensure as a massage and bodywork therapist shall:
- 4.2.1 Have each school or approved program of massage and bodywork, where the applicant completed the hours of study required by 24 Del.C. §5308(a)(2), submit to the Board: 1) an official transcript showing dates and total hours attended and a description of the curriculum completed, 2) proof of the school or program's current state approval, 3) contact information for the school or program director, and 4) a copy of the school or program's catalogue; and
- 4.2.2 Have the testing agency submit to the Board verification of the applicant's score on the written examination described in Section 5.0.
- 4.3 The Board shall not consider an application for licensure as a massage and bodywork therapist until all items specified in ~~subsections 3.1 4.1 and 3.2 4.2~~ are submitted to the Board's office.
- 4.3.1 ~~The Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 60 days from the date when the application is first reviewed by the Board, the Board shall propose to deny the application.~~
- 4.3.2 If an application is complete in terms of required documents, but the candidate applicant has not responded to a Board request for further information, explanation or clarification within 60 days of the Board's request, the Board shall vote on the application as is.
- 4.4 ~~Renewal. Renewal shall be accomplished online. Applicants for renewal of a massage and bodywork therapist license must maintain a current CPR certification, pay the required renewal fee, and attest to completion of the CE requirements pursuant to section 7.0. License renewal and reactivation for military personnel and military spouses is governed by 29 Del.C. §§8735(p), (q) and (r). Licensees shall maintain current CPR certification throughout the biennial licensure period.~~

### 5.0 Examination

- 5.1 A person applying for licensure as a massage and bodywork therapist shall take ~~one of the following written examinations:~~
- 5.1.1 ~~The National Certification Examination for Therapeutic Massage or for Therapeutic Massage and Bodywork administered by the National Certification Board for Therapeutic Massage and Bodywork (“NCBTMB”). The Board will accept as passing scores on the exams the passing scores established by the NCBTMB.~~
- 5.1.2 ~~The MBLEx examination administered by the Federation of State Massage Therapy Boards (“FSMTB”). The Board will accept as a passing score on the exam the passing score established by the FSMTB.~~

## **6.0 Application for Certification Licensure as a Certified Massage Technician and Certificate Renewal**

- 6.1 A person seeking ~~certification licensure~~ as a certified massage technician must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) proof of current CPR certification and (2) payment of the application fee established by the Division of Professional Regulation.
- 6.2 ~~In addition to the application and materials described in section 6.1, an applicant for certification as a massage technician shall have the school or approved program of massage or bodywork therapy where the applicant completed the hours or study required by 24 Del.C. §5309(a)(2) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed.~~
- 6.2.1 ~~An applicant for a temporary massage technician certification, in addition to the application and materials described in section 6.1, shall have the school or approved program of massage and bodywork therapy where the applicant completed the hours or study required by 24 Del.C. §5309(b) submit to the Board an official transcript showing dates and total hours attended and a description of the curriculum completed.~~
- 6.2 In addition to the application and materials described in subsection 6.1, an applicant for licensure as a certified massage technician shall have each school or approved program of massage and bodywork, where the applicant completed the hours of study required by 24 Del.C. §5309(a)(2), submit to the Board: 1) an official transcript showing dates and total hours attended and a description of the curriculum completed, 2) proof of the school or program's current state approval, 3) contact information for the school or program director, and 4) a copy of the school or program's catalogue.
- 6.3 In addition to the application and materials described in subsection 6.1, an applicant for temporary licensure as a certified massage technician shall have each school or approved program of massage and bodywork, where the applicant completed the hours of study required by 24 Del.C. §5309(b), submit to the Board: 1) an official transcript showing dates and total hours attended and a description of the curriculum completed, 2) proof of the school or program's current state approval, 3) contact information for the school or program director, and 4) a copy of the school or program's catalogue.
- 6.36.4 ~~The Board shall not consider an application for certification licensure as a certified massage technician until all items specified in subsections 6.1 and 6.2 are submitted to the Board's office.~~
- 6.3.1 ~~The Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 60 days from the date when the application is first reviewed by the Board, the Board will propose to deny the application.~~
- 6.3.2 ~~If an application is complete in terms of required documents, but the candidate has not responded to a Board request for further information, explanation or clarification within 60 days of the Board's request, the Board will vote on the application as it stands.~~
- 6.4 ~~Renewal. Renewal shall be accomplished online. Applicants for renewal of a massage technician certificate must maintain a current CPR certification, pay the required renewal fee, and attest to completion of the CE requirements pursuant to section 7.0. License renewal and reactivation for military personnel and military spouses is governed by 29 Del.C. §§8735(p), (q) and (r). Certificate holders shall be required to maintain current CPR certification throughout the biennial licensure period. Temporary massage technician certificates are valid for no more than one (1) year and may not be renewed or reissued pursuant to the provision of 24 Del.C. §5309(b).~~

## **7.0 Expired License or Certificate**

~~An expired license as a massage and bodywork therapist or expired certificate as a massage technician, excluding temporary massage technician certificates, may be reinstated within one (1) year after expiration upon application and payment of the renewal fee plus a late fee as set by the Division of Professional Regulation, submission of documentation demonstrating compliance with the continuing education requirements of section 7.0 and proof of current CPR certification. After the one (1) year period, the individual must re-apply as a new applicant and provide proof of completion of the required continuing education requirements set forth in section 9.0.~~

## **7.0 License renewal**

- 7.1 All licenses shall be renewed biennially. Licenses shall expire on August 31 of each even numbered year. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed one year with submission of a late fee. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date. Licensees shall not practice massage after a license has expired.

7.2 As a condition of renewal, all licensees shall be required to satisfy the continuing education requirements set forth in Section 9.0, show proof of current CPR certification, and pay the renewal fee.

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

## **8.0 Inactive Status**

8.1 A licensee asking to have his or her license placed on inactive status must notify the Board of his/her intention to do so in writing prior to the expiration of his/her current license. Holders of temporary certified massage technician ~~certificates~~ licenses are not eligible for inactive status.

8.2 A licensee on inactive status seeking to re-enter practice must notify the Board in writing of his/her intention, pay the appropriate fee, and provide the Board with documentation demonstrating compliance with the continuing education hours required by ~~subsection 7.0~~ 9.9, and proof of current CPR certification.

## **9.0 Continuing Education (CE)**

9.1 ~~Renewal Requirements. Massage and bodywork therapists shall complete 24 hours of approved CE during each biennial licensing period, except as otherwise provided in these Regulations. Massage technicians shall complete 12 hours of approved CE during each biennial licensing period, except as otherwise provided in these Regulations. For the licensure renewal period beginning September 1, 2014, massage technicians~~ Licensees shall complete 24 hours of approved CE during each biennial licensing period. Completion of the required CE hours is a prerequisite for renewing a license ~~or certificate~~. Hours earned in a biennial licensing period in excess of those required for renewal may not be credited towards the hours required for renewal in any other licensing period.

~~9.1.1~~ 9.2 Calculation of Hours. For academic course work, correspondence courses, or seminar/workshop instruction, one hour of acceptable CE shall mean 50 minutes of actual instruction. One academic semester hour shall be equivalent to 15 CE hours; one academic quarter hour shall be equivalent to 10 CE hours.

~~9.1.2~~ 9.2 If, during a licensing period, an individual certified by the Board as a massage technician is issued a license as a massage and bodywork therapist, the CE requirement for that licensing period is as follows:

### 9.3 Pro-ration schedule:

~~9.1.2.1~~ 9.3.1 If the license is issued more than 12 months prior to the next renewal date, the licensee shall complete 24 hours of acceptable CE during the licensing period.

~~9.1.2.2~~ 9.3.2 If the license is issued less than 12 months prior to the next renewal date, the licensee shall complete 12 hours of acceptable CE during the licensing period.

~~9.2~~ 9.3.3 Candidates for renewal who were first licensed or certified 12 months or less before the date of renewal are exempt from the CE requirement for the period in which they were first licensed or certified.

9.3 ~~Content. For the licensure renewal period September 1, 2012 – August 31, 2014, therapists and technicians may:~~

~~9.3.1 Fulfill all of their CE requirements with approved Core courses.~~

~~9.3.2 Fulfill 25% of their CE requirements with approved Elective courses.~~

~~9.3.3 Fulfill 50% of their CE requirements with Board approved courses conducted online, by video replay, video or tele-conference. This allowance is subject to the limitation of Elective courses in section 9.3.2.~~

9.4 ~~For the licensure renewal period September 1, 2014 – August 31, 2016, all licensees shall complete 24 hours of CE, which shall include:~~

~~9.4.1 At least 3 hours in ethics, which may be taken online;~~

~~9.4.2 Three hours must be in ethics, which may be taken in classroom or online-;~~

~~9.4.2 Nine hours of Core credits which must be taken in a classroom, hands-on setting; and~~

~~9.4.3 Six hours of Elective credits, all of which may be taken online. Twelve hours which may be Elective or Core credits and which may be taken on-line.~~

~~9.4.4 The remaining 15 hours of Core credits must be taken in a classroom, hands-on setting, and may not be taken online.~~

9.5 Board approval.

9.5.1 Courses approved by NCBTMB, American Massage Therapy Association (“AMTA”) and Associated Bodywork and Massage Professionals (“ABMP”) are automatically approved for content. ~~This provision is subject to the requirements and limitations under sections 9.3 and 9.4.~~

9.5.2 To obtain credit for CE courses not approved by NCBTMB, AMTA or ABMP, those courses must be approved by the Board before license renewal. CE course participants or providers may apply for pre-

approval of courses by submitting a written request to the Board that must include a program agenda, a syllabus indicating the time spent on each topic, the names and resumes of the presenters, and the number of CE hours and category requested. The Board reserves the right to approve less than the number of hours requested or to approve a course in a different category than requested.

- 9.5.3 Self-directed activity. The Board may approve ~~Elective~~ credit for up to 6 hours for self-directed activities, including, but not limited to teaching, research, and preparation or presentation of professional papers and articles. Licensees may apply for pre-approval of self-directed activities by submitting a written request for pre-approval that must include an outline of the scope of the activity, the number of CE hours and category requested, the anticipated completion date, the role of the licensee in the case of multiple participants (e.g. research), and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Research involving hands on protocols may be considered Core CE, at the discretion of the Board, with a limit of 6 CE credits.
- 9.5.4 Course preparation and instruction. The Board may approve up to six additional ~~Elective~~ CE credits, on an hour for hour basis, to instructors for their initial preparation and presentation of an approved CE course (e.g. an instructor preparing and presenting an eight hour course for the first time may receive up to six additional credit hours.)
- 9.5.5 Board approval of a licensee's CE hours in a modality is not a Board endorsement of the licensee's competence to practice that modality.
- 9.6 Verification.
  - 9.6.1 Verification of CE hours shall be by attestation. Attestation shall be completed online.
  - 9.6.2 Post-Renewal Audit. The Board ~~will~~ shall conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the renewal requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate of attendance or completion that must be signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance documentation for each licensure period and for at least one year after renewal. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary proceedings and may have their license disciplined. Licensees renewing during the late renewal period pursuant to Section 7.0 shall be audited.
    - 9.6.3 A licensee's failure to notify the Board of a change in mailing address will not excuse the licensee from audit requirements, including possible sanctions for non-compliance.
- 9.7 Hardship. A candidate for renewal may be granted an extension of time in which to complete CE hours upon a showing of unusual hardship. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction, and exceptional family responsibilities. Requests for hardship extensions must be submitted to the Board in writing prior to the end of the licensing or certification period for which the request is being made.
- 9.8 Requirements for Late Renewal. Unless extended by the Board for hardship as defined in subsection 9.7, and subject to the one-year limitation set forth in ~~s~~Section 7.0, massage and bodywork therapists and massage technicians applying for late renewal must provide proof of completion of the required CE for the immediately preceding licensure period.
- 9.9 Requirements for Return to Active Status. Unless extended by the Board for hardship as defined in subsection 9.7, massage and bodywork therapists and massage technicians returning from inactive status must provide notice to the Board as set forth in subsection 8.2 and must provide adequate proof of the satisfactory completion of 24 hours of Board approved CE within the immediately preceding two-year period prior to the date of the notice to return to active status. ~~A massage technician returning from inactive status must provide notice to the Board as set forth in section 8.2 and must provide adequate proof of the satisfactory completion of 12 hours of Board approved CE within the immediately preceding two year period prior to the date of the notice to return to active status. After August 31, 2014, massage technicians must provide adequate proof of the satisfactory completion of 24 hours of Board approved CE within the immediately preceding two year period prior to the date of the notice to return to active status.~~ CE hours required to return to active status may not be credited towards the hours required for renewal in any other licensing period.
- 9.10 Professional members of the Board, and licensees, may receive up to 2 hours of Elective CE in a renewal period for attendance at Board meetings. Such hours may be applied to CE required for licensure renewal.

## 10.0 Client Disclosure Form

All certified massage technicians shall provide the client with a ~~Board-approved~~ client disclosure form. The client disclosure form must state that the person providing services is a certified massage technician, and not a licensed massage and bodywork therapist, and, by law, is not authorized to treat medically diagnosed

conditions. The client disclosure form must be provided to all new and existing clients for signature at the first treatment session and retained by the certified massage technician as part of the client's record.

## 11.0 Standards of Professional Conduct

### 11.1 A licensee shall:

- 11.1.1 Maintain current knowledge of the application of massage practice, including indications, contraindications and precautions.
- 11.1.2 Undertake a specific technique or use a product or equipment only if the licensee has the necessary knowledge, training or skill to competently perform the technique.
- 11.1.3 Base decisions and action on behalf of a client on sound ethical reasoning and current principles of practice.
- 11.1.4 Provide treatment only where there is an expectation that it will be advantageous to the client.
- 11.1.5 Refer the client to an appropriate health care professional when indicated in the interests of the client.
- 11.1.6 Discuss with clients which massage modalities and techniques will be utilized and the benefits of these modalities and techniques, the objectives, and that participation is voluntary and that consent to treatment or participation may be withdrawn at any time.
- 11.1.7 Modify or terminate the massage session at any time upon request of the client.
- 11.1.8 Keep client information private and confidential. This standard does not prohibit or affect reporting mandated under State or Federal law to protect children, older adults or others.
- 11.1.9 Use safe and functional coverage/draping practices during the practice of massage when the client is disrobed. Safe and functional coverage/draping means that the client's genitals and gluteal cleft and the breast area of female clients are not exposed and that massage or movement of the body does not expose genitals, gluteal cleft or breast area.
- 11.1.10 Continuously maintain current CPR certification.
- 11.1.11 Be clean, fully-clothed and professional in dress and appearance.
- 11.1.12 Display his or her current license with expiration date in a location clearly visible to clients or, when practicing offsite, display the licensee's wallet card.
- 11.1.13 Include the licensee's license number on all forms and in all advertisements, including business cards, brochures and in print and online media.
- 11.1.14 Cooperate with the Division of Professional Regulation in the investigation of complaints.
- 11.1.15 Maintain massage records for at least 3 years from the last date that services were provided to the client.
- 11.1.16 Educate clients about maintaining the beneficial effect of massage treatment when indicated by a massage treatment plan.
- 11.1.17 Know and comply with the Board's licensing law, Chapter 53 of Title 24 of the **Delaware Code**, and Rules and Regulations.

### 11.2 A licensee shall not:

- 11.2.1 Misrepresent professional credentials, qualifications, education or affiliations.
- 11.2.2 Knowingly engage in or condone behavior that is fraudulent, dishonest, or deceitful ~~of~~ or involves moral turpitude.
- 11.2.3 Psychologically or physically abuse a client.
- 11.2.4 Violate a client's boundaries with regard to exposure, privacy or disclosure.
- 11.2.5 Utilize techniques that are contraindicated based on the client's condition.
- 11.2.6 Falsify or knowingly make incorrect entries into the client's record or other related documents.
- 11.2.7 Intentionally expose a client's genitals, gluteal cleft or the breasts of a female client.
- 11.2.8 Engage in sexual harassment, sexual impropriety, sexual violation or sexual abuse.
- 11.2.9 Engage in sexual intimacies during the professional relationship.
- 11.2.10 Perform or offer to perform any services for clients other than those connected with the practice of massage and bodywork, as defined in 24 **Del.C.** §5302(6), unless the licensee has additional training and licensure to perform those services.
- 11.2.11 Knowingly permit another individual to use the licensee's license for any purpose.
- 11.2.12 Knowingly aid, abet or assist another person to violate the Board's licensing law or Rules and Regulations.
- 11.2.13 Misappropriate equipment, materials, property or money from a client.
- 11.2.14 Refuse a client's request for a refund of the unearned portion of prepaid or packaged massage therapy services. This provision does not apply to gift certificate purchases.

- 11.3 Any licensee who has knowledge that another licensee has violated the Standards of Professional Conduct set forth in section 11.0, or any other Board law, Rule or Regulation, shall present that information by complaint to the Division of Professional Regulation for investigation.

## **12.0 Fines for Unlicensed Practice**

- 12.1 Pursuant to 29 ~~Del.C.~~ §10161(d), any person who, after a hearing, is found to have violated a cease and desist order issued by the Board pursuant to 29 ~~Del.C.~~ §10161(c) shall be fined:
- 12.1.1 \$200 for each offense.
- 12.1.2 Each day a violation continues may be deemed a separate offense.
- 12.2 Nothing in this Regulation precludes the Board from seeking injunctive relief to prevent unauthorized practice, pursuing criminal prosecution against any person engaging in unauthorized practice, or pursuing any other remedy available by law.

## **13.0 ~~12.0~~ Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

- 13.4 ~~12.1~~ If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 13.2 ~~12.2~~ The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 13.3 ~~12.3~~ In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 13.4 ~~12.4~~ A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 13.5 ~~12.5~~ Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 9.8 of this section.
- 13.6 ~~12.6~~ The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 13.6.1 ~~12.6.1~~ Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- 13.6.2 ~~12.6.2~~ Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
- 13.6.3 ~~12.6.3~~ Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

- ~~13.6.4~~ 12.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- ~~13.6.5~~ 12.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/ her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- ~~13.6.6~~ 12.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- ~~13.7~~ 12.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- ~~13.8~~ 12.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- ~~13.9~~ 12.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- ~~13.10~~ 12.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- ~~13.11~~ 12.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- ~~13.12~~ 12.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

**~~14.0~~ 13.0 Crimes Substantially Related to the Practice of Massage and Bodywork:**

- ~~14.1~~ 13.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of massage and bodywork in the State of Delaware without regard to the place of conviction:
- ~~14.1.1~~ 13.1.1 ~~Aggravated menacing; 11 Del.C. §602(b)~~
- ~~14.1.2~~ 13.1.1 Reckless endangering in the first degree. 11 Del.C. §604
- ~~14.1.3~~ 13.1.2 Abuse of a pregnant female in the first degree. 11 Del.C. §606.
- ~~14.1.4~~ 13.1.3 Assault in the second degree. 11 Del.C. §612
- ~~14.1.5~~ 13.1.4 Assault in the first degree. 11 Del.C. §613.
- ~~14.1.6~~ 13.1.4 ~~Abuse of a sports official; felony. 11 Del.C. §614.~~
- ~~14.1.7~~ 13.1.4 ~~Terroristic threatening; felony. 11 Del.C. §621.~~
- ~~14.1.8~~ 13.1.5 Unlawfully administering drugs. 11 Del.C. §625.
- ~~14.1.9~~ 13.1.6 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.
- ~~14.1.10~~ 13.1.7 Murder by abuse or neglect in the second degree. 11 Del.C. §633.
- ~~14.1.11~~ 13.1.8 Murder by abuse or neglect in the first degree. 11 Del.C. §634.
- ~~14.1.12~~ 13.1.9 Murder in the second degree. 11 Del.C. §635.
- ~~14.1.13~~ 13.1.10 Murder in the first degree. 11 Del.C. §636.
- ~~14.1.14~~ 13.1.11 Incest. 11 Del.C. §766.

44.1.15 13.1.12 Unlawful sexual contact in the third degree. 11 **Del.C.** §767.

44.1.16 13.1.13 Unlawful sexual contact in the second degree. 11 **Del.C.** §768.

44.1.17 13.1.14 Unlawful sexual contact in the first degree. 11 **Del.C.** §769.

44.1.18 13.1.15 Rape in the fourth degree. 11 **Del.C.** §770.

44.1.19 13.1.16 Rape in the third degree. 11 **Del.C.** §771.

44.1.20 13.1.17 Rape in the second degree. 11 **Del.C.** §772.

44.1.24 13.1.18 Rape in the first degree. 11 **Del.C.** §773.

44.1.22 13.1.19 Sexual extortion. 11 **Del.C.** ~~§776~~774.

44.1.23 ~~Bestiality.~~ 11 **Del.C.** ~~§777.~~

44.1.24 13.1.20 Continuous sexual abuse of a child. 11 **Del.C.** ~~§778~~776.

44.1.25 13.1.21 Dangerous crime against a child. 11 **Del.C.** ~~§779~~777.

13.1.22 Sex offender unlawful sexual conduct against a child. 11 **Del.C.** §777A.

13.1.23 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree; penalties. 11 **Del.C.** §778.

13.1.24 Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree; penalties. 11 **Del.C.** §778A.

44.1.26 13.1.25 Female genital mutilation. 11 **Del.C.** §780.

44.1.27 13.1.26 Kidnapping in the second degree. 11 **Del.C.** §783.

44.1.28 13.1.27 Kidnapping in the first degree. 11 **Del.C.** §783A.

13.1.28 Trafficking an individual, forced labor and sexual servitude; class D felony; class C felony; class B felony; class A felony. 11 **Del.C.** §787.

44.1.29 13.1.29 Acts constituting coercion. 11 **Del.C.** §791.

44.1.30 13.1.30 Arson in the first degree. 11 **Del.C.** §803.

44.1.31 ~~Burglary in the third degree.~~ 11 **Del.C.** §824.

44.1.32 13.1.31 Burglary in the second degree. 11 **Del.C.** §825.

44.1.33 13.1.32 Burglary in the first degree. 11 **Del.C.** §826.

44.1.34 ~~Robbery in the second degree.~~ 11 **Del.C.** ~~§831.~~

44.1.35 13.1.33 Robbery in the first degree. 11 **Del.C.** §832.

44.1.36 13.1.34 Carjacking in the second degree. 11 **Del.C.** §835.

44.1.37 13.1.35 Carjacking in the first degree. 11 **Del.C.** §836.

44.1.38 ~~Theft; felony.~~ 11 **Del.C.** ~~§841.~~

44.1.39 ~~Theft; lost or mislaid property; mistaken delivery.~~ 11 **Del.C.** ~~§842.~~

44.1.40 ~~Extortion.~~ 11 **Del.C.** ~~§846.~~

44.1.41 ~~Receiving stolen property.~~ 11 **Del.C.** ~~§851.~~

44.1.42 ~~Identity theft.~~ 11 **Del.C.** ~~§854.~~

44.1.43 ~~Criminal impersonation of a police officer.~~ 11 **Del.C.** ~~§907B.~~

44.1.44 ~~Securing execution of documents by deception.~~ 11 **Del.C.** ~~§909.~~

44.1.45 13.1.36 Insurance fraud. 11 **Del.C.** §913.

44.1.46 13.1.37 Health care fraud. 11 **Del.C.** §913A.

44.1.47 13.1.38 Dealing in children. 11 **Del.C.** ~~§4409~~1100A.

44.1.48 13.1.39 Endangering the welfare of a child; class E or G felony. 11 **Del.C.** §1102.

44.1.49 13.1.40 Sexual exploitation of a child. 11 **Del.C.** §1108.

44.1.50 13.1.41 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.

44.1.54 13.1.42 Possession of child pornography. 11 **Del.C.** §1111.

44.1.52 13.1.43 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.

44.1.53 13.1.44 Sexual solicitation of a child. 11 **Del.C.** §1112A.

44.1.54 ~~Improper influence.~~ 11 **Del.C.** ~~§1207.~~

44.1.55 ~~Terroristic threatening of public officials or public servants.~~ 11 **Del.C.** ~~§1240.~~

44.1.56 ~~Assault in a detention facility.~~ 11 **Del.C.** ~~§1254.~~

44.1.57 ~~Promoting prison contraband; felony.~~ 11 **Del.C.** ~~§1256.~~

44.1.58 ~~Tampering with a witness.~~ 11 **Del.C.** ~~§1263.~~

44.1.59 13.1.45 Hate crimes; felony. 11 **Del.C.** §1304.

- 14.1.60 Aggravated harassment. 11 ~~Del.C.~~ §1312.
- 14.1.64 13.1.46 Stalking. 11 ~~Del.C.~~ §1312A1312.
- 14.1.62 13.1.47 Cruelty to animals; felony. 11 ~~Del.C.~~ §1325.
- 14.1.63 Maintaining a dangerous animal; felony. 11 ~~Del.C.~~ §1327.
- 14.1.64 Abusing a corpse. 11 ~~Del.C.~~ §1332.
- 14.1.65 Violation of privacy. 11 ~~Del.C.~~ §1335.
- 14.1.66 13.1.48 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 ~~Del.C.~~ §1338.
- 14.1.67 13.1.49 Adulteration. 11 ~~Del.C.~~ §1339.
- 14.1.68 13.1.50 Lewdness. 11 ~~Del.C.~~ §1341.
- 14.1.69 13.1.51 Prostitution. 11 ~~Del.C.~~ §1342.
- 14.1.70 13.1.52 Patronizing a prostitute prohibited. 11 ~~Del.C.~~ §1343.
- 14.1.74 13.1.53 Promoting prostitution in the third degree. 11 ~~Del.C.~~ §1351.
- 14.1.72 13.1.54 Promoting prostitution in the second degree. 11 ~~Del.C.~~ §1352.
- 14.1.73 13.1.55 Promoting prostitution in the first degree. 11 ~~Del.C.~~ §1353.
- 14.1.74 13.1.56 Permitting prostitution. 11 ~~Del.C.~~ §1355.
- 14.1.75 Obscenity. 11 ~~Del.C.~~ §1361.
- 14.1.76 Possessing a destructive weapon. 11 ~~Del.C.~~ §1444.
- 14.1.77 Unlawfully dealing with a dangerous weapon; felony. 11 ~~Del.C.~~ §1445.
- 14.1.78 Possession of a deadly weapon during commission of a felony. 11 ~~Del.C.~~ §1447.
- 14.1.79 Possession of a firearm during commission of a felony. 11 ~~Del.C.~~ §1447A.
- 14.1.80 Possession and purchase of deadly weapons by persons prohibited. 11 ~~Del.C.~~ §1448.
- 14.1.84 Giving a firearm to person prohibited. 11 ~~Del.C.~~ §1454.
- 14.1.82 Engaging in a firearms transaction on behalf of another. 11 ~~Del.C.~~ §1455.
- 14.1.83 Removing a firearm from the possession of a law enforcement officer. 11 ~~Del.C.~~ §1458.
- 14.1.84 Organized Crime and Racketeering. 11 ~~Del.C.~~ §1504.
- 14.1.85 Victim or Witness Intimidation. 11 ~~Del.C.~~ §§3532 & 3533.
- 14.1.86 13.1.57 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 ~~Del.C.~~ §1136(a), (b) and (c).
- 14.1.87 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 ~~Del.C.~~ §4753A (a)(1)-(9).
- 14.1.88 Prohibited acts E under the Uniform Controlled Substances Act. 16 ~~Del.C.~~ §4755.
- 14.1.89 Prohibited acts under the Uniform Controlled Substances Act. 16 ~~Del.C.~~ §4756(a)(1)-(5) and (b).
- 14.1.90 Breaking and Entering, etc. to Place or Remove Equipment 11 ~~Del.C.~~ §2410
- 14.1.94 Attempt to Intimidate. 11 ~~Del.C.~~ §3534
- 14.1.92 13.1.58 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 ~~Del.C.~~ §3913(a), (b) and (c).
- 44.2 13.2 Crimes substantially related to the practice of massage and bodywork shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

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

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

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

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

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

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

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

12 DE Reg. 75 (07/01/08)

16 DE Reg. 222 (08/01/12)

17 DE Reg. 342 (09/01/13)

20 DE Reg. 545 (01/01/17) (Prop.)