



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: Professional Practice Committee
FROM: Valerie Grey *Valerie Grey*
SUBJECT: Proposed Addition to the Regulations of the
Commissioner of Education Relating to the Mandatory
Continuing Education in Massage Therapy
DATE: June 10, 2011
AUTHORIZATION(S):

Michael F. Trentino *John J. [Signature]*

SUMMARY

Issue for Discussion

Should the Board of Regents add section 78.5 to the Regulations of the Commissioner of Education to implement mandatory continuing education requirements for massage therapists?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

The proposed rule will come before the Professional Practice Committee for discussion in June 2011 and will be submitted for action at the July 2011 Regents meeting.

Procedural History

None.

Background Information

Chapter 463 of the Laws of 2010 enacted section 7807 of the Education Law to require professional licensees of massage therapy to complete continuing education as a prerequisite to re-registering to practice each triennial registration period. Chapter 463 specifically authorized the State Education Department ("Department") to

promulgate regulations to implement Education Law §7807, which will take effect on January 1, 2012. The proposed rule is therefore necessary to implement these statutory requirements by their effective date.

The proposed rule would require that massage therapists complete a minimum of 36 hours of acceptable formal continuing education, a maximum of 12 hours of which may be self-instructional coursework acceptable to the Department. This requirement would not apply during the first three-year registration period, and would be implemented on a pro-rated basis for licensed massage therapists who re-register to practice on or after January 1, 2012, but less than three years from such date. In conformity with statutory authority, the proposed rule provides for the issuance of a conditional registration for up to a one-year period for those licensees who, for reasons of health certified by a health care practitioner, extended active duty with the armed forces, or other acceptable good cause, are unable to complete the continuing education requirement. Licensed massage therapists who have placed their registration on an inactive status will be required to complete specific continuing education as prescribed by the Department if they return to practice during a registration period. The regulations provide that massage therapists must maintain adequate documentation verifying that they have met these requirements.

Education Law §7807(4), as added by Chapter 463, provides, in pertinent part, that "acceptable formal continuing education may mean and include formal programs of learning which contribute to the professional practice in massage therapy that are offered by sponsors of such continuing education approved by the Department in consultation with the State Board for Massage Therapy." The proposed rule would provide a description of the acceptable coursework, including the content areas of such courses and educational activities. For example, the proposed rule would provide that acceptable formal continuing education would include subjects that enhance and expand knowledge and skill in the theory, technique and methods that fall within the practice of massage therapy; subjects that are fundamental to the practice of the profession, including the core sciences; coursework that includes, but is not limited to, activities and skills needed for practice, e.g., communication, assessment and evaluation, and treatment plans; and subjects relating to health care, professional rules and regulations, standards of good practice and ethics.

The proposed rule would also identify types of learning activities that would be acceptable as continuing education. These activities would include, but not be limited to, courses offered by a sponsor approved by the Department; credit and non-credit courses offered by universities and colleges, courses offered by programs registered by the Department as licensure-qualifying in the profession of massage therapy; and other learning activities for which the content, duration and completion of the coursework could be verified. This proposed rule would also describe other educational activities that would be accepted as formal continuing education, all of which would require conditions and documentation acceptable to the Department, including: preparing and teaching a course offered by a sponsor of continuing education; preparing and teaching a course in an educational institution registered by the Department as licensure-qualifying in the profession of massage therapy; making a presentation at a professional conference sponsored by an organization that is an approved sponsor; authoring an article or report of research published in a peer-reviewed journal or published book;

completing a review course in CPR or First Aid; completion of a Department developed online test on ethics, precautions, standards of practice and the Rules of the Board of Regents on unprofessional conduct; achieving a specialty certification from an entity acceptable to the Department; or completion of a self-study program of structured study provided by an approved sponsor.

The proposed rule would provide for modes of study other than in classroom instruction, which would include distance learning and other forms of visual and auditory learning activities. The rule would also provide that a maximum of six hours of 12 hours of self-instruction would be permitted to be completed online if approved by another jurisdiction for formal education in massage therapy. A licensee would be provided continuing education credit for the preparation and teaching of a course, but such activity would only be counted for as one course, unless significant changes were included in subsequent courses instructed by the licensee. All study would require documentation detailing the content, duration and outcome/completion of the course.

It is anticipated that a Notice of Proposed Rule Making will be published in the State Register on June 14, 2011. Supporting materials for the proposed amendments are available upon request from the Secretary to the Board of Regents.

Recommendation

N/A

Timetable for Implementation

If the Board of Regents approves the proposed rule at its September 2011 meeting, the effective date of the amendment would be January 1, 2012.

Attachment

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507 and 7807 of the Education Law and section 2 of Chapter 463 of the Laws of 2010.

1. Section 78.5 of the Regulations of the Commissioner of Education is added, effective January 1, 2012, as follows:

§78.5. Continuing education for massage therapists.

(a) Definitions. As used in this section:

(1) Acceptable accrediting agency means an organization accepted by the Department as a reliable authority for the purpose of accreditation at the postsecondary level, applying its criteria for granting accreditation in a fair, consistent and nondiscriminatory manner, such as an agency recognized for this purpose by the Council for Higher Education Accreditation.

(2) Higher education institution means a degree-granting postsecondary institution registered by the Department or accredited by an acceptable accrediting agency.

(b) Applicability of requirement.

(1) Each licensed massage therapist, required under Article 155 of the Education Law to register with the Department to practice in New York State, shall comply with the mandatory continuing education requirements as prescribed in subdivision (c) of this section, except those licensees exempt from the requirement or who obtain an adjustment to the requirement pursuant to paragraph (2) of this subdivision or who are subject to a different requirement pursuant to this section.

(2) Exemptions and adjustments to the requirement.

(i) Exemptions. The following licensees shall be exempt from the continuing education requirements, as prescribed in subdivision (c) of this section:

(a) licensees for the triennial registration period during which they are first licensed to practice as a massage therapist in New York State; and

(b) licensed massage therapists who are not engaged in the practice of massage therapy, as evidenced by not being registered to practice in New York State, except as otherwise prescribed in subdivision (e) of this section to meet the requirements for the resumption of practice in New York State.

(ii) Adjustments to the requirement. An adjustment to the continuing education requirement, as prescribed in subdivision (c) of this section, may be made by the Department, provided that the licensee documents good cause that prevents compliance or the Department determines otherwise that there is good cause that prevents compliance, which shall include, but not be limited to, any of the following reasons: poor health or a specific physical or mental disability certified by an appropriate health care professional; or extended active duty with the Armed Forces of the United States; or other good cause beyond the licensee's control which in the judgment of the Department, makes it impossible for the licensee to comply with the continuing education requirements in a timely manner.

(c) Mandatory continuing education requirement.

(1) General requirement.

(i) During each triennial registration period, meaning a registration period of three years' duration, an applicant for registration shall complete at least 36 hours of

continuing education, acceptable to the Department, as defined in paragraph (2) of this subdivision, a maximum of 12 hours of which may be self-instructional coursework acceptable to the Department. Any licensed massage therapist whose first registration date following January 1, 2012 occurs less than three years from that date, shall complete continuing education hours on a prorated basis at the rate of one hour of acceptable formal continuing education per month for each full calendar month completed between January 1, 2012 and the licensee's first registration date thereafter. Such continuing education shall be completed during the period beginning January 1, 2012 and ending before the first day of the new registration period.

(ii) Proration. Unless otherwise prescribed in this section, during each registration period of less than three years' duration, an applicant for registration shall complete acceptable continuing education, as defined in paragraph (2) of this subdivision and within the limits prescribed in such paragraph, on a prorated basis at a rate of one hour of continuing education per month for such registration period.

(2) Acceptable formal continuing education. To be acceptable to the Department, continuing education shall meet the requirements of this paragraph. Such continuing education must be coursework in subjects prescribed in subparagraph (i) of this paragraph and be the types of learning activities prescribed in subparagraph (ii) of this paragraph and subject to the prohibition contained in subparagraph (iii) of this paragraph.

(i) Subjects. Acceptable continuing education shall be coursework that contributes to the professional practice of massage therapy and shall have as its focus one or more of the following content areas, provided, however, that any coursework including the practical application of modalities or techniques shall only be accepted if such

coursework provides instruction on the application of modalities or techniques legally authorized to be practiced within the scope of practice of massage therapy:

(a) Subjects that enhance knowledge and skill in the theory, technique, and methods that fall within or are related to the practice of massage therapy, including, but not limited to, instruction in Swedish massage; medical massage; Shiatsu; connective tissue massage; Tui Na; reflexology; acupressure; polarity; myofascial massage; neuromuscular massage; craniosacral techniques; manual lymphatic drainage; infant massage; pregnancy massage; stretching; exercises to facilitate, enhance or perpetuate the benefits of massage therapy; Thai massage; sports massage; and courses related to specific physical conditions, such as cancer, that may require massage therapy;

(b) Subjects that are fundamental to the practice of the profession, including, but not limited to, pathology, myology, neurology, anatomy, physiology, or subjects that are ancillary to the practice, such as effects of massage therapy on medication regimes;

(c) Subjects that include, but not limited to, activities and skills needed for practice, such as communication, intake procedures, assessment and evaluation, treatment planning, prevention, recordkeeping, First Aid, CPR, and knowledge of the chemical ingredients and safety of products and tools used in the practice of massage therapy;

(d) Clinical interventions/evidence-based models;

(e) Philosophy and principles of massage therapy;

(f) Subjects relating to health care, professional rules and regulations, standards of good practice, precautions, law, and/or ethics which contribute to professional practice in massage therapy and the health, safety, and/or welfare of the public.

(ii) Types of learning activities. Acceptable continuing education shall be the types of learning activities prescribed in this subparagraph and shall be subject to the limitations prescribed in this subparagraph and subparagraph (iii) of this paragraph.

(a) Courses of learning. Acceptable continuing education may be courses of learning offered by a sponsor, approved by the Department pursuant to subdivision (i) of this section, which may include, but need not be limited to, courses offered by such an approved sponsor; university and college credit and non-credit courses; or courses offered by programs registered by the Department as licensure-qualifying for the profession of massage therapy. Acceptable formal classes may be presented in various modes of instruction, including distance learning, but massage therapists must have documentation acceptable to the Department, verifying his or her completion of the coursework and detailing the duration and content of the course;

(b) Other educational activities. Acceptable continuing education shall include the following other educational activities:

(1) preparing and teaching a course offered by a sponsor of continuing education to massage therapists, approved pursuant to subdivision (i) of this section, provided that such teaching shall not be acceptable where the licensee has taught the course on more than one occasion without presenting new or revised material. Continuing education hours that may be credited for this activity may include actual instructional time plus preparation time which may be up to two additional hours for each hour of presentation;

(2) preparing and teaching a course acceptable to the Department, at a higher education institution or at a program registered by the Department as licensure-qualifying for the profession of massage therapy and relating to the practice of massage therapy,

provided that such teaching shall not be acceptable where the licensee has taught the course on more than one occasion without presenting new or revised material.

Continuing education hours that may be credited for this activity may include actual instructional time plus preparation time which may be up to two additional hours for each hour of presentation;

(3) making a presentation at a professional conference sponsored by an organization that is a sponsor of continuing education to massage therapists and that is approved pursuant to subdivision (i) of this section, provided that such presentation shall not be acceptable where the licensee has presented on the topic on more than one occasion without presenting new or revised material. Continuing education hours that may be credited for this activity shall include actual presentation time, plus preparation time which may be up to two additional hours for each hour of presentation;

(4) authoring an article or report of research published in a peer-reviewed journal or a published book, provided that the amount of continuing education credit awarded for such activity shall be an amount prescribed by the Department;

(5) renewing a course in First Aid or CPR leading to a certificate for a maximum of three hours in each renewal period for each subject;

(6) completion of an online test, developed by the State Board for Massage Therapy and the Department, on ethics, precautions, standards of practice, and the Rules of the Board of Regents and the Regulations of the Commissioner of the Commissioner of Education relating to the practice of massage therapy for a maximum of three hours;

(7) achieving a specialty certification or recertification from an entity acceptable to the Department, provided that the amount of continuing education credit awarded for such certification or recertification shall be an amount prescribed by the Department;

(8) completing a self-study program, meaning structured study, provided by a sponsor approved pursuant to subdivision (i) of this section, that is based on audio, audio-visual, written, on-line, and other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students; or

(9) completing a maximum of 12 hours of self-instructional coursework to meet the continuing education requirement, including, but not limited to, online coursework in any of the areas identified in subparagraph (i) of paragraph (2) of this subdivision, to the extent that the content of such coursework and hours completed can be verified by documentation. A maximum of six hours of study in online courses that have been approved by other jurisdictions for formal education in massage therapy, including continuing education may be included in such self-instructional coursework.

(iii) Prohibition.

(1) Any continuing education designed for the sole purpose of maximizing profits for the practice of a massage therapist shall not be acceptable as continuing education.

(2) Coursework in techniques that do not fall in the practice of the profession of massage therapy, such as, but not limited to, Reiki, Feldenkrais Method, the Alexander Technique, or appearance enhancement practices as defined by the New York State Department of State shall not be acceptable as continuing education.

(d) Renewal of registration. At each triennial registration period following the first period in which the individual was licensed, a licensed massage therapist shall certify to the Department that he or she has either complied with the continuing education requirements, as prescribed in this section, or is subject to an exemption or adjustment to such continuing education requirements, as prescribed in subdivision (b) of this section.

(e) Requirement for lapse in practice.

(1) A licensee returning to the practice of massage therapy in this State after a lapse in practice, as evidenced by not being registered to practice in this State, whose first registration date after such lapse in practice and following January 1, 2012 occurs less than three years from January 1, 2012, shall be required to complete:

(i) at least one hour of acceptable continuing education for each month beginning with January 1, 2012 until the beginning of the new registration period, which shall be completed for a licensee who has not lawfully practiced massage therapy continuously in another jurisdiction throughout such lapse period, in the 12-month period before the beginning of the new registration period; and for the licensee who has lawfully practiced as a massage therapist continuously in another jurisdiction throughout such lapse period, in the new registration period or at the option of the licensee in the period beginning 36 months before the commencement of the new registration period and ending at the conclusion of such new registration period; and

(ii) for a licensee who has not lawfully practiced as a massage therapist continuously in another jurisdiction throughout such lapse period, at least 12 hours of acceptable continuing education in each successive 12-month period of the new

registration period; and for a licensee who has lawfully practiced massage therapy continuously in another jurisdiction throughout such lapse period, the regular continuing education requirement during the new registration period.

(2) Except as prescribed in paragraph (1) of this subdivision for registrations therein specified, a licensee who returns to practice as a massage therapist after a lapse in practice in which the licensee was not registered to practice in New York State and did not lawfully practice continuously in another jurisdiction throughout the lapse period, shall be required to complete:

(i) the continuing education requirement applicable to the period of time the licensee was registered in the licensee's last registration period;

(ii) at least one hour of acceptable continuing education for each month of lapsed registration up to a maximum 36 hours, which shall be completed in the 12 months before the beginning of the new registration period; and

(iii) at least 12 hours of acceptable continuing education in each succeeding 12-month period, after such registration is reissued, until the next registration date.

(3) Except as prescribed in paragraph (1) of this subdivision for registrations therein specified, a licensee who returns to the practice of massage therapy after a lapse in practice in which the licensee was not registered to practice in New York State but did lawfully practice massage therapy continuously in another jurisdiction throughout the lapse period, shall be required to complete:

(i) the continuing education requirement applicable to the period of time the licensee was registered in the licensee's last registration period; and

(ii) at least one hour of acceptable continuing education for each month of lapsed registration up to a maximum of 36 hours, which shall be completed in the new registration period, or at the option of the licensee in the period beginning 36 months before the commencement of the new registration period and ending at the conclusion of the new registration period; and

(iii) the regular continuing education requirement during the new registration period.

(f) Conditional registration.

(1) The Department may issue a conditional registration to a licensee who attests to or admits to noncompliance with the continuing education requirements of this section, provided that such licensee meets the following requirements:

(i) the licensee agrees to remedy such deficiency within the conditional registration period;

(ii) the licensee agrees to complete the regular continuing education requirement at the rate of one hour of acceptable continuing education per month during such conditional registration period; and

(iii) the licensee agrees to complete additional continuing education during such conditional registration period, which the Department may require to ensure the licensee's proper delivery of professional massage therapy services.

(2) The duration of such conditional registration shall not exceed one year and shall not be renewed or extended.

(g) Licensee records. Each licensee subject to the requirements of this section shall maintain, or ensure access by the Department to, a record of completed continuing

education, which includes: the title of the course if a course, the type of educational activity if an educational activity, the subject of the continuing education, the number of hours of continuing education completed, the sponsor's name and any identifying number (if applicable), attendance verification if a course, participation verification if another educational activity, a copy of any article or book for which continuing education credit is claimed with proof of publication, and the date and location of the continuing education. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the Department in the administration of the requirements of this section

(h) Measurement of continuing education study. Continuing education credit shall be granted only for acceptable continuing education, as prescribed in subdivision (c) of this section. For continuing education courses, a minimum of 50 minutes shall equal one continuing education hour of credit. Continuing education credit for other educational activities shall be awarded as prescribed by the Department. A 50 minute period for a course shall not include time taken for lunch or break periods.

(i) Sponsor approval.

(1) To be approved by the Department, sponsors of continuing education to licensed massage therapists in the form of courses of learning or self-study programs shall meet the requirements of either paragraph (2) or (3) of this subdivision.

(2) The following entities shall be deemed approved by the Department as a sponsor of continuing education to licensed massage therapists in the form of courses of learning or self-study programs:

(i) a national massage therapy organization or other professional organization, acceptable to the Department, that fosters good practice in the profession of massage therapy, in the nation as a whole and/or a region of the nation;

(ii) a New York State massage therapy organization, acceptable to the Department, that is incorporated or otherwise organized in New York State that fosters good practice in the profession of massage therapy in the State of New York as a whole and/or a region of the State of New York;

(iii) a national organization of jurisdictional boards of massage therapy that promotes and protects the health, safety and welfare of the public and fosters good practice in the profession of massage therapy;

(iv) affiliates of international massage therapy conferences at which massage therapy is a major component of such conferences;

(v) an entity, hospital or health facility defined in section 2801 of the Public Health Law; and

(vi) a higher education institution.

(3) Department review of sponsors.

(i) The Department shall conduct a review of sponsors that apply for approval to offer continuing education to licensed massage therapists that are not otherwise deemed approved pursuant to the provisions of paragraph (2) of this subdivision.

(ii) An organization seeking approval to offer continuing education, subject to a Department review under this paragraph, shall submit, together with the fee as set forth in subdivision (j) of this section, an application for advance approval as a sponsor at

least 90 days prior to the date of the commencement of such continuing education that documents that the organization:

(a) will offer courses of learning or self-study programs in one or more of the subjects prescribed for acceptable continuing education in subparagraph (c)(2)(i) of this section;

(b) is an organized educational entity, or an entity that has expertise in the professional areas that will be taught, including but not limited to, postsecondary institutions that are not already deemed approved pursuant to subparagraph (2)(v) of this subdivision;

(c) provides course instructors who are qualified to teach the courses which will be offered, including but not limited to, faculty of a massage therapy program offered by a higher education institution; or instructors who are specially qualified authorities in massage therapy, as determined by the Department with assistance from the State Board for Massage Therapy, to conduct such courses;

(d) has a method of assessing the learning of participants, and describes such method; and

(e) will maintain records for at least six years from the date of completion of coursework, which shall include, but shall not be limited to, the name and curriculum vitae of the faculty, a record of attendance of licensed massage therapists in the course if a course, a record of participation of licensed massage therapists in the self-instructional coursework if self-instructional coursework, an outline of the course, date and location of the course, and the number of hours for completion of the course. In the

event an approved sponsor discontinues operation, the governing body of such sponsor shall notify the Department and shall transfer all records as directed by the Department.

(iii) Sponsors that are approved by the Department pursuant to the requirements of this paragraph shall be approved for a three-year term.

(iv) The Department may conduct site visits of, or request information from, a sponsor approved pursuant to the requirements of this paragraph to ensure compliance with such requirements, and a sponsor shall cooperate with the Department in permitting such site visits and in providing such information.

(v) A determination by the Department that a sponsor approved pursuant to the requirements of this paragraph is not meeting the standards set forth in this paragraph shall result in the denial or termination of the approved status of the sponsor.

(vi) Prohibition: Presenters of didactic instruction may be provided by persons who are not licensed by the State of New York as massage therapists. The practical application of such modalities and techniques must be done by licensed massage therapists, or those otherwise authorized, when the continuing education occurs in the State of New York.

(j) Fees.

(1) At the beginning of each registration period, a mandatory continuing education fee of \$45 shall be collected from licensees engaged in the practice of massage therapy in New York State, except for those exempt from the requirement pursuant to subparagraph (b)(2)(i) of this section. This fee shall be in addition to the any applicable registration fees required by sections 7804 of the Education Law.

(2) Licensees applying for a conditional registration, pursuant to the requirements of subdivision (f) of this section, shall pay a fee that is the same as and in addition to, any applicable fee for the triennial registration required by section 7804 of the Education Law. In addition, such licensees shall pay the \$45 mandatory continuing education fee.

(3) Organizations seeking approval to offer continuing education to licensed massage therapists, subject to a Department review, pursuant to paragraph (i)(3) of this section, shall submit an application fee of \$900 with the application requesting the issuance of a permit from the Department to become an approved sponsor of a formal continuing education program. A fee of \$900 shall accompany an application for a three-year renewal of the permit.