

VOLUME 44, ISSUE 17

ISSUE DATE: **SEPTEMBER** 4, 2012

RULE ADOPTIONS

**LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY BOARD OF MASSAGE AND BODYWORK THERAPY
NEW JERSEY BOARD OF NURSING**

44 N.J.R. 2185(b)

Adopted New Rules: N.J.A.C. 13:37A

Adopted Repeals: N.J.A.C. 13:37-16

Board of Massage and Bodywork Therapy Rules

Proposed: November 7, 2011 at 43 N.J.R. 2721(a).

Adopted: February 29, 2012 by Deborah Overholt, President, New Jersey Board of Massage and Bodywork Therapy and May 4, 2012 by Patricia Ann Murphy, Ph.D, APN, President, New Jersey Board of Nursing.

Filed: July 31, 2012 as R.2012 d.150, **with substantial and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:1-32, 45:11-67, and P.L. 2007, c. 337.

[page=2186] Effective Date: September 4, 2012.

Expiration Date: September 4, 2019.

Summary of Public Comments and Agency Responses:

The official comment period ended January 6, 2012. The Board received 20 comments from the following individuals:

1. Daniel McCullough, AMTA
2. Deirdre Best, Institute for Therapeutic Massage, Inc.
3. Kimberly Hansen, ABMP
4. Paul Macecsko
5. Jean Robinson, Government Relations Director, Associated Bodywork & Massage Professionals

6. Libby Eason, President, Chair, Law & Legislation Committee, International Association of Structural Integrators
7. Stephen C. Parker, Esq., CMT, NJ Legislative Representative, American Organization for Bodywork Therapies of Asia
8. La Rose Daniels, Legislative Coordinator, American Polarity Therapy Association
9. Rena Margulis, NJ Legislative Liaison, Associated Bodywork and Massage Professionals
10. Kevin McCoy, Board Chair, Rolf Institute of Structural Integration
11. Lori Keith, AMTA NJ, Chapter President
12. Joel Horowitz
13. Rosa Tavares, NCTMB
14. Jeanne M. Torian
15. Corinne Orlando, Director, Government Relations, American Heart Association
16. Rose Anne Davis
17. Spiridoula Riley, PT, Director of Practice, American Physical Therapy Association of New Jersey
18. Marilyn Ladson, CMT
19. Evonda Timbers, CMT
20. Bernadette Viespi

1. COMMENT: Several commenters commend the New Jersey Board of Massage and Bodywork Therapy (Board) for the new regulations.

RESPONSE: The Board thanks the commenters for their support.

2. COMMENT: A commenter asks if the public can read the comments submitted to the Board.

RESPONSE: The comments submitted to the Board are public documents and will be made available to any individual who submits a written request to the Board.

3. COMMENT: Two commenters who are currently certified as massage, bodywork, and somatic therapists by the Massage, Bodywork, and Somatic Therapy Examining Committee question whether their certification will automatically become licensure.

RESPONSE: Pursuant to N.J.S.A. 45-11:74 and N.J.A.C. 13:37A-2.4, anyone who is currently certified as a massage, bodywork, and somatic therapist by the Massage, Bodywork, and Somatic Therapy Examining Committee will be issued a license as a massage and bodywork therapist by the Board.

4. COMMENT: A commenter understood that P.L. 2007, c. 337, prohibited unlicensed individuals from providing massage to anyone even if there is no charge. The commenter points out that the notice of proposal Summary of N.J.A.C. 13:37A-1.2 indicates that the definition of "massage and bodywork therapies" applies only to therapies that are offered to the public. The commenter asks if the law has changed.

RESPONSE: N.J.S.A. 45:11-55 defines "massage and bodywork therapies" "as systems of activity of structured touch . . . [that] are designed to affect the soft tissue of the body for the purpose of promoting and maintaining the health and well-being of the client." The definition does not distinguish between massage and bodywork therapies that are provided for a charge and those for which there is no charge. The law has not been changed. The definition of "massage and bodywork therapies" in N.J.A.C. 13:37A-1.2 limits therapies to those "offered or provided to the public." This limitation recognizes that it was not the intent of P.L. 2007, c. 337, to regulate private actions between non-professionals. The intent of this law was to address massage and bodywork services that are provided by professionals to clients, whether or not a fee is charged to these clients.

5. COMMENT: One commenter points out that the notice of proposal Summary of N.J.A.C. 13:37A-1.2 states that structured touch of soft tissues that affect energy fields is included in the definition of "massage and bodywork therapies." The commenter asks if this means that non-touch modalities, such as Reiki are covered by this definition.

RESPONSE: If touching is not part of a specific modality, that modality does not fall under the definition of "massage and bodywork therapies."

6. COMMENT: A commenter contends that the education required to obtain a license is not sufficient to prepare a massage and bodywork therapist to provide treatment of illness, disease, impairment, or disability. The commenter recognizes that P.L. 2007, c. 337, removed a statutory prohibition on massage and bodywork therapists providing treatments, but believes that permitting licensed massage and bodywork therapists to provide treatments poses an extreme public safety issue. The commenter recommends that N.J.A.C. 13:37A-1.2 be amended to include a definition for "treatment" as "massage focused on enhancing well being provided by a licensed massage therapist to a client."

RESPONSE: The Board does not believe it is appropriate to amend N.J.A.C. 13:37A-1.2 as the commenter recommends. As the commenter pointed out, the statutory prohibition on massage and bodywork therapists providing treatments was removed by P.L. 2007, c. 337. The Board does not have the authority to impose such a prohibition in rules when the Legislature indicated it was appropriate for licensees to provide treatments by removing the prohibition.

7. COMMENT: A commenter contends that requiring applicants for licensure to obtain certification in first aid is burdensome and will not provide a benefit for consumers. The commenter recommends that the Board remove this requirement from N.J.A.C. 13:37A-2.1, 2.2, and 2.5.

RESPONSE: The Board does not believe that obtaining certification in first aid is unduly burdensome as courses to obtain certification are only a few hours long. Ensuring that licensed massage and bodywork therapists are able to provide first aid to clients if necessary is a benefit to consumers. The Board will not change N.J.A.C. 13:37A-2.1, 2.2, and 2.5 as the commenter recommends.

8. COMMENT: A commenter commends the Board for requiring licensees to complete Cardio

Pulmonary Resuscitation (CPR) and an automated external defibrillator (AED) course. The commenter points out that the American Heart Association no longer offers Heartsaver CPR certification. This certification has been replaced with the Heartsaver CPR AED.

RESPONSE: The Board thanks the commenter for his support. The Board has changed N.J.A.C. 13:37A-2.1, 2.2, 2.3, and 2.5 to remove reference to "Heartsaver." Using the generic term "CPR" indicates the course applicants for licensure and licensed massage and bodywork therapists must complete. Using specific terms for these courses may become outdated as entities change course names.

9. COMMENT: One commenter believes it is inappropriate to impose the same education requirements for non-deep tissue, clothed chair massages as for medical or deep tissue massages. The commenter recommends that the Board adopt different education, examination, and registration requirements for these differing types of massage and bodywork therapies or that it exempt some modalities. The commenter contends that most other states have more exemptions than just those for ear, hand, and foot massage and bodywork therapies.

RESPONSE: P.L. 2007, c. 337 does not differentiate between "non-deep tissue, clothed massages" and "medical or deep tissue massages." Absent such differentiation in the statute, the Board cannot create differing education, examination, and registration requirements as the commenter suggests. The Board points out that it does not have the authority to create exemptions to the licensing requirements of P.L. 2007, c. 337.

10. COMMENT: A few commenters recommend that the Board amend N.J.A.C. 13:37A-2.1(a)2 to recognize other psychometrically sound bodywork certification examinations.

RESPONSE: As the commenters have not identified the bodywork certification examinations that they believe should be recognized by the Board, the Board cannot comment on whether these examinations should be recognized. If the Board is presented with specific examinations, it will review them to determine whether they provide a valid assessment of [page=2187] an individual's ability to practice massage and bodywork therapy in a safe and effective manner and, therefore, whether they should be recognized as licensing examinations.

11. COMMENT: One commenter requests that the Board recognize the Certification Exam for Structural Integration (CESI) as an examination that qualifies an applicant for licensure. The commenter contends that the CESI is the only examination that qualifies an individual to perform structural integration. The commenter is concerned that, if the Board does not recognize the CESI, structural integration practitioners will have to pass one of the examinations recognized by N.J.A.C. 13:37A-2.1. The commenter contends that the CESI is psychometrically sound and was developed through the same process as the examinations recognized by N.J.A.C. 13:37A-2.1. The commenter contends that no background in massage therapy is needed to train in structural integration and that there are no questions on massage therapy on the CESI.

RESPONSE: The Board does not believe that the CESI provides a broad-based assessment of an individual's ability to provide massage and bodywork therapies in a safe and effective manner and it is, therefore, inappropriate to recognize the CESI as a licensing examination. If there is additional information that indicates that the CESI does provide such a broad-based assessment, the Board invites the commenter to supply it with this information and it will reconsider its position.

12. COMMENT: Several commenters are concerned with N.J.A.C. 13:37A-2.1(b)2, which requires that applicants who seek licensure based on the completion of a course of study to submit an official transcript from an accredited or approved massage and bodywork school. The commenters contend that many applicants will be unable to provide an official transcript because the schools they have attended have closed. One commenter contends that schools may not be State accredited and that the curriculum of some schools may not match the requirements of N.J.A.C. 13:37A-2.1(d). The commenters recommend that the Board amend this rule so that applicants who cannot submit an official transcript from an accredited school may provide alternative evidence that they have completed the required education. One commenter recommends that the accreditation requirement be waived for those who completed their education prior to the adoption of N.J.A.C. 13:37A.

RESPONSE: The Board needs to establish standards to ensure the validity of the education an applicant for licensure has completed. If an applicant is unable to provide an official transcript because a school has closed, the Board will not be able to accurately evaluate the validity of such education. The Board has the same issue with the validity of an education that was provided by a school that does not meet the requirements of N.J.A.C. 13:37A-2.1(b). An education that does not cover the topics required by N.J.A.C. 13:37A-2.1(d) does not adequately prepare an individual to practice massage and bodywork therapy in a safe and effective manner. The Board will not amend the N.J.A.C. 13:37A-2.1 as the commenter requests. The Board points out that any applicant whose education does not meet the requirements of N.J.A.C. 13:37A-2.1(a)1 may obtain a license by passing a licensing examination.

13. COMMENT: Several commenters recommend that N.J.A.C. 13:37A-2.3(e) and (h) be amended to incorporate renewal, reinstatement, and reactivation provisions that are part of A4384, which was introduced in the Assembly on November 28, 2011.

RESPONSE: The Board cannot adopt the new standards for renewal, reinstatement, and reactivation that were in A4384 as the bill was not enacted.

14. COMMENT: Several commenters contend that reinstatement requirements for those whose licenses have been suspended for more than five years in N.J.A.C. 13:37A-2.3(f) are burdensome.

RESPONSE: The Board is required to impose these standards pursuant to N.J.S.A. 45:1-7.1.

15. COMMENT: Several commenters point out that N.J.A.C. 13:37A-2.3(f) does not address individuals who obtained their licenses pursuant to N.J.A.C. 13:37A-2.2.

16. COMMENT: A few commenters recommend that N.J.A.C. 13:37A-2.3(f) be amended so that an individual who is licensed in another state while his or her license is suspended in New Jersey will not be required to satisfy the requirements of N.J.A.C. 13:37A-2.3(f) in order to reinstate his or her New Jersey license.

17. COMMENT: Several commenters recommend that N.J.A.C. 13:37A-2.3(f)1 be amended so that an individual who completed an education in order to obtain licensure will be able to reinstate a license by completing a licensing examination. The commenter contends that, given a choice, an individual would prefer to reinstate a license by completing an examination as it is significantly cheaper than completing the education required by N.J.A.C. 13:37A-2.3(f)1.

18. COMMENT: A few commenters recommend that N.J.A.C. 13:37A-2.3(f)2 be amended to

include the Federation of State Massage Therapy Boards examination.

19. COMMENT: A few commenters recommend that N.J.A.C. 13:37A-2.3(f)2 be amended to permit individuals who passed a licensing examination that is no longer offered to complete another examination.

RESPONSE TO COMMENTS 15 THROUGH 19: N.J.S.A. 45:1-7.1 establishes the requirements for reinstating a suspended license. This statute does not authorize reinstatement of a license based on practice in another state during the period of New Jersey suspension and the Board does not have the authority to make such a change, as the commenter recommends.

The Board has reviewed the requirements of N.J.A.C. 13:37A-2.3(f) in light of the concerns raised by the commenters, who appear to believe that reinstatement of a license should be made less burdensome on licensees. After this review, the Board has decided that reinstatement should be less burdensome on licensees and has changed N.J.A.C. 13:37A-2.3(f) so that every individual seeking reinstatement may choose to either complete a course designed to prepare an individual to pass the Federation of State Massage Therapy Boards (FSMTB), the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB), or the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination or by successfully passing one of those examinations. These changes will address how a licensee that obtained a license pursuant to N.J.A.C. 13:37A-2.2 can be reinstated after five years or more of suspension based on non-renewal.

20. COMMENT: Several commenters contend that the intent of the grandfathering provision in P.L. 2007, c. 337, was to permit those practicing massage and bodywork for a long time to obtain licensure without meeting the formal training required of individuals who recently completed their education. According to the commenters, N.J.A.C. 13:37A-2.5 contradicts this intent by requiring applicants to submit evidence that they completed formal, accredited massage and bodywork programs. The commenters contend that many programs that massage and bodywork therapists attended in the past were not accredited and have since closed and that it would not be possible to provide formal evidence of completion from such programs. The commenters recommend that N.J.A.C. 13:37A-2.5 be amended so that applicants who cannot show that they completed an accredited massage and bodywork program can demonstrate that they have completed an education in massage and bodywork therapy by alternative methods such as affidavits from supervisors or colleagues, or through an appearance in front of the Board.

RESPONSE: The Board points out that there is no "grandfathering" provision in P.L. 2007, c. 337. "Grandfathering" is a process whereby current practitioners are provided a license based solely on their status as practitioners. P.L. 2007, c. 337 provides for an alternative educational requirement for applicants who are currently practicing massage and bodywork therapy. As this process focuses on an applicant's education, the Board needs to establish standards to ensure the validity of this education. If an applicant is unable to provide evidence of completing formal education, the Board will not be able to accurately evaluate the validity of such education. The Board will not change the N.J.A.C. 13:37A-2.5 as the commenters request. The Board points out that any applicant whose education does not meet the requirements of N.J.A.C. 13:37A-2.5 may obtain a license by passing a licensing examination.

21. COMMENT: Several commenters contend that no other state requires applicants applying through grandfathering to show that they have attended approved schools.

RESPONSE: As discussed in the Response to Comment 20, P.L. 2007, c. 337, does not provide for licensing through "grandfathering." The law provides for alternative educational requirements for applicants who are currently practicing.

[page=2188] 22. COMMENT: An applicant contends that N.J.A.C. 13:37A-2.5 is too specific as to the education an applicant who is currently engaged in the practice of massage and bodywork must complete in order to obtain licensure and is concerned that the rule will prevent anyone from qualifying for licensure. The commenter contends that most schools that provided the 200 hours of education required by the rule are no longer operating as the national standard is now 500 hours of education. The commenter contends that the statute was worded to ensure that current practitioners would be able to obtain licensure without completing additional education or passing an examination. The commenter recommends that the Board amend N.J.A.C. 13:37A-2.5 to delete subsection (b).

RESPONSE: As discussed in the Response to Comment 20, the Board needs to establish standards as to the validity of the education an applicant completed. If an education does not meet the requirements of N.J.A.C. 13:37A-2.5(b), it does not prepare an individual to practice massage and bodywork therapy in a safe and effective manner.

23. COMMENT: A commenter asks if applicants for licensure pursuant to N.J.A.C. 13:37A-2.5 who did not attend State-accredited schools would have to return to school to obtain a license.

RESPONSE: N.J.A.C. 13:37A-2.5 requires that a training program be either accredited or approved by the New Jersey Department of Education, the New Jersey Department of Labor and Workforce Development, the New Jersey Commission on Higher Education, or an agency of another state that substantially meets the requirements of these New Jersey agencies. If the training program an applicant attended did not meet this requirement, that education does not satisfy the requirements of N.J.A.C. 13:37A-2.5 and the applicant cannot obtain licensure through N.J.A.C. 13:37A-2.5. The Board points out that such an applicant could qualify for licensure by passing an examination pursuant to N.J.A.C. 13:37A-2.1(a)2.

24. COMMENT: Several commenters contend that N.J.A.C. 13:37A-3.1 should not prohibit licensees with proper training from providing manual lymphatic drainage. One of the commenters contends that most lymphatic drainage is performed by massage therapists or physical therapists, not nurses or doctors and that massage therapists with the proper training and certification should be permitted to perform manual lymph drainage.

RESPONSE: N.J.A.C. 13:37A-3.1 does not prohibit licensed massage and bodywork therapists from providing manual lymphatic drainage.

25. COMMENT: One commenter contends that the legal name for the entity that governs rolfing is the "Ida P. Rolf Research Foundation" and recommends that N.J.A.C. 13:37A-3.1 and 4.2 be amended to use the proper term for this entity.

RESPONSE: The Board has changed N.J.A.C. 13:37A-3.1 and 4.2 upon adoption to use the correct name for the Ida P. Rolf Research Foundation.

26. COMMENT: Three commenters are concerned with N.J.A.C. 13:37A-3.1, which limits licensees to performing those forms of massage and bodywork therapy that they learned during their initial training, learned during an approved continuing education course or which they developed and which are taught in approved courses. The commenters contend that many massage and bodywork therapists use skills and techniques that they learned outside of formal courses. A commenter asks if the rule prohibits a licensee from combining different methods of massage and bodywork therapy and if a licensee is prohibited from performing methods that he or she developed but which are not taught in approved courses. One of the commenters contends that no other health care profession in New Jersey, or in any other state, has similar limitations on scope of practice. The commenter contends that practitioners will not be able to remember which techniques they learned in approved courses, that the nature of massage and bodywork therapy is that methods diverge from training over time, and that massage and bodywork therapy varies depending on the client. A commenter is concerned that this provision would prevent licensed massage and bodywork therapists from learning new techniques from employers. The commenter contends that this provision cannot be enforced and will discourage licensed massage and bodywork therapists from publishing new techniques. The commenter also contends that the provision allows those with minimal education to perform techniques and would set a bad precedent for other health care professions. The commenters recommend that N.J.A.C. 13:37A-3.1 be amended to permit licensees to perform any technique that they have the necessary knowledge, training, or skill to competently execute.

RESPONSE: Given that licensed massage and bodywork therapists are not required to complete an education that covers every aspect of massage and bodywork therapy practice, it is necessary to ensure that licensees are only practicing those forms of massage and bodywork therapy that they have the appropriate education and training to perform. The standards in N.J.A.C. 13:37A-3.1 establish these standards in such a way to allow the most flexibility for professional practice while ensuring the validity of the education a licensee receives in specific forms of massage and bodywork therapy. The rule does not prohibit a licensee from combining different methods of massage and bodywork therapy. The rule prohibits the use of a method that a licensee developed that is not taught in approved courses. Requiring that a method be taught in approved courses provides some level of assurance as to the validity of that method. While other health care professions in New Jersey may not have similar limitations on practice, the Board points out that no other health care profession permits individuals to obtain a license to practice without a broad-based education that covers all aspects of that professional practice. As licensed massage and bodywork therapists are not required to have such a broad-based education, it is necessary to have a scope of practice that recognizes the limited educational background of some licensees. The Board does not share the commenter's concerns as to licensees remembering the techniques they learned in approved courses. The Board believes that licensees will be able to appropriately provide the methods they learned during approved courses. N.J.A.C. 13:37A-3.1 would prohibit an employer from teaching new techniques if the employer is not providing this education in an approved course. The Board does not anticipate issues with enforcing N.J.A.C. 13:37A-3.1. If a licensee cannot document that his or her education included the methods of massage and bodywork therapy he or she is employing, the licensee would be subject to discipline. The rule establishes a minimum amount of education to perform a technique and the Board does not believe it is appropriate to establish stricter standards that would prevent licensees from providing methods of massage and bodywork that they have learned during approved courses. The commenters' recommended amendments are too subjective as they would allow anyone to determine what is "necessary" in order to practice. This would essentially permit any licensee to perform any method of massage and bodywork that he or she wanted to perform.

27. COMMENT: A commenter points out that N.J.A.C. 13:37A-3.1(a)3 only covers methods of massage and bodywork that are currently being taught and does not cover those that were taught in the past. The commenter recommends that the rule be amended to allow licensees to practice methods that they developed if those methods have been taught in a course offered by an approved provider in the past.

RESPONSE: The Board has changed N.J.A.C. 13:37A-3.1(a)3 upon adoption to permit licensees to perform a method of massage and bodywork therapy that they have developed if that method has been taught in a course offered in the past by an approved provider.

28. COMMENT: One commenter contends that three months is not a long enough period between the end of a client-therapist relationship and the beginning of a romantic relationship. The commenter recommends that N.J.A.C. 13:37A-3.5 be amended to increase this time frame to six months.

RESPONSE: The Board believes that three months provides enough time prior to the commencement of a romantic relationship and will not change N.J.A.C. 13:37A-3.5 as the commenter recommends. Other professional Boards that have sexual misconduct rules impose a similar time frame.

29. COMMENT: A commenter commends the Board for language in N.J.A.C. 13:37A-3.7 that emphasizes the wellness nature of massage and bodywork therapy.

RESPONSE: The Board thanks the commenter for his support.

30. COMMENT: Several commenters contend that completing 20 hours of continuing education every two years could be an economic burden for licensees. The commenters recommend that N.J.A.C. 13:37A-[page=2189] 4.1 be amended to reduce the required continuing education credit hours to 12.

RESPONSE: The Board does not believe that requiring licensees to complete 20 hours of continuing education is an undue burden. Given the large number of opportunities for completing continuing education recognized in N.J.A.C. 13:37A-4.2, it should not be difficult for licensees to find valid and affordable continuing education offerings.

31. COMMENT: A commenter contends that continuing education courses regarding a licensee's personal care, such as yoga or Tai Chi, should count towards continuing education requirements. The commenter contends that the NCBTMB recognizes such courses.

RESPONSE: The Board agrees that some aspects of personal care, such as yoga or Tai Chi, may be appropriate topics for continuing education courses and will propose to add these aspects in a future rulemaking.

32. COMMENT: N.J.A.C. 13:37A-4.1(b) establishes that continuing education courses that are related solely to business practices do not count towards continuing education requirements. One commenter contends that NCBTMB recognizes that continuing education in business practices contributes to a massage and bodywork therapist's economic success and, as the Board recognizes NCBTMB as an approval entity for continuing education sponsors, the Board should permit licensees to count business courses towards continuing education requirements.

RESPONSE: Continuing education courses related solely to business practices do not

address the competency of a licensee to provide massage and bodywork therapy in a safe and effective manner and therefore are not courses that should be recognized for continuing education credits.

33. COMMENT: N.J.A.C. 13:37A-4.1(c) limits the number of continuing education credit hours a licensee may complete through on-line or DVD courses to six. Several commenters are concerned with this limitation. They contend that in-person continuing education courses are more expensive than continuing education obtained through on-line or DVD courses and that on-line and DVD courses are more convenient for licensees. The commenters contend that the Board's intention of encouraging hands-on education is not realistic as in-person courses do not necessarily involve hands-on demonstrations. The commenters contend that, even when in-person courses include hands-on demonstrations, if the course is given to a large group of students, they do not gain much from these demonstrations. One of the commenters contends that in-person continuing education courses do not provide feedback on the application of massage and bodywork techniques. One of the commenters is concerned that N.J.A.C. 13:37A-4.1(c) will encourage continuing education sponsors to provide distance learning through methods outside of internet or DVD courses. The commenters recommend that the Board not adopt N.J.A.C. 13:37A-4.1(c).

RESPONSE: Given the hands-on nature of massage and bodywork therapy, it is important that continuing education provide the opportunity for clinical experience. While every in-person course may not involve hands-on demonstrations, the opportunity for such interaction exists at any in-person course. Such opportunities do not exist with internet or DVD courses. If the Board becomes aware of continuing education courses being offered as distance learning via methods outside of internet or DVD courses, it will amend its rules at that time to limit those courses.

34. COMMENT: A commenter contends that most continuing education offered to licensees constitutes professional development, which the commenter identifies as learning new techniques or methods of massage and bodywork therapy, as opposed to continuing competency, which the commenter identifies as a review of contraindications. The commenter contends that the Board should not require licensees to complete continuing education in professional development.

RESPONSE: The distinctions posited by the commenter are not recognized in statute or rule and it is not apparent that they are recognized by continuing education providers. Outside of the requirement that two credits of continuing education be in ethics, the Board does not require licensees to complete specific types of continuing education.

35. COMMENT: A commenter recommends that the Board amend N.J.A.C. 13:37A-4.2 to add the phrase "or any other entity approved by the Board" to the list of entities that may provide continuing education credit hours. The commenter believes that there are entities that offer continuing education courses that are not recognized in N.J.A.C. 13:37A-4.2.

RESPONSE: The list in N.J.A.C. 13:37A-4.2 constitutes every entity that has been approved by the Board as continuing education providers. If the Board becomes aware that there are other entities that should be added to this list, the Board will amend its rules at that time to include those entities in N.J.A.C. 13:37A-4.2.

36. COMMENT: A commenter commends the Board for listing the American Physical Therapy Association and state boards of physical therapy as entities that may approve continuing education courses.

RESPONSE: The Board thanks the commenter for his support.

37. COMMENT: Several commenters contend that the list of entities recognized in N.J.A.C. 13:37A-5.1(c)2ii is not the same as that in N.J.A.C. 13:37A-4.2(a)1. The commenters recommend that the list in N.J.A.C. 13:37A-5.1 be amended to correspond to that in N.J.A.C. 13:37A-4.2, or that N.J.A.C. 13:37A-5.1 be amended to cite to N.J.A.C. 13:37A-4.2.

RESPONSE: The Board has changed N.J.A.C. 13:37A-5.1(c)2ii upon adoption so that it includes the same entities recognized by N.J.A.C. 13:37A-4.2(a)1.

38. COMMENT: N.J.A.C. 13:37A-5.1(c)2ii allows a licensee to advertise a professional service the licensee developed as long as the service is taught in a course offered by an approved provider. A commenter asks if she may advertise a service that she developed if it was taught in an approved course in the past but the course is no longer provided. The commenter contends that N.J.A.C. 13:37A-5.1 would allow licensees who took this course in the past to advertise these services, but would prohibit her from doing so. The commenter recommends that N.J.A.C. 13:37A-5.1(c)2ii be amended so that a licensee can advertise a professional service that he or she developed as long as the service has been taught in an approved course.

RESPONSE: The Board has changed N.J.A.C. 13:37A-5.1(c)2ii upon adoption to permit licensees to advertise a professional service that they developed if the service has been taught in an approved course.

39. COMMENT: Several commenters were concerned with provisions in N.J.A.C. 13:37A-5.1(g) that require the retention of audio, video, and internet advertising. The commenters contend that this could be difficult to comply with. The commenters recommend that N.J.A.C. 13:37A-5.1(g) be amended so that licenses could document audio, video, or internet advertising by retaining a copy of a screen shot of a webpage or a transcript of an audio or video advertisement.

RESPONSE: The Board will not change N.J.A.C. 13:37A-5.1(g) so that transcripts of audio or video advertising may be maintained as opposed to the actual audio or video recordings. The Board points out that requiring the maintenance of actual recordings is standard for other boards within the **Division of Consumer Affairs**. This requirement helps to prevent falsification of records that would be easier with transcripts of audio or video advertising. The Board has changed N.J.A.C. 13:37A-5.1(g) to allow licensees to document internet advertising by maintaining screen shots of internet advertising.

40. COMMENT: Several commenters are concerned with provisions in N.J.A.C. 13:37A-5.3(a)3 that require licensees to provide a typed transcript of a record if the original record is illegible and a translation of a record if it is in a language other than English. The commenters are concerned that any client or other health care professional could claim a record is illegible and require a licensee to provide a transcript. The commenters recommend that N.J.A.C. 13:37A-5.3 be amended so that licensees could charge a fee of five dollars per page for typing up or translating a record. This fee would ensure that typing or translating a record would only be requested when a record is truly illegible.

RESPONSE: Requiring licensees to provide transcripts of illegible records and translations of records kept in languages other than English provides protection to consumers who need to review records kept by licensed massage and bodywork therapists. The Board will not change N.J.A.C. 13:37A-5.3 as the commenter recommends.

41. COMMENT: A commenter asks if N.J.A.C. 13:37A-7.1 requires a solo practitioner operating as a limited liability company (LLC) to pay an application fee, initial license fee, and employer registration fee.

RESPONSE: Any individual obtaining a license as a massage and bodywork therapist is required to pay an application fee and an initial [page=2190] license fee. Any entity that employs another to provide massage and bodywork therapy services will be required to pay the employer registration fee. A solo practitioner, who does not employ anyone else to provide massage and bodywork therapy services, will not be required to pay the business registration fee.

Summary of Agency-Initiated Changes Upon Adoption:

1. The Board has become aware that the American Heart Association does not approve courses in CPR and use of an automated external defibrillator (AED). The American Heart Association provides such courses. The Board has changed N.J.A.C. 13:37A-2.1, 2.2, 2.3, and 2.5 upon adoption to recognize that such courses are provided, and not approved, by the American Heart Association. These changes also recognize that the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute, or EMP International Inc. may either approve or provide such courses.

2. During its discussion on the adoption of N.J.A.C. 13:37A, the Board noticed that N.J.A.C. 13:37A-3.1 did not recognize the American Organization for Bodywork Therapies of Asia (AOBTA) as an entity that approves providers of continuing education. As this entity is recognized at N.J.A.C. 13:37A-4.2, pertaining to approval of continuing education providers, the Board has changed N.J.A.C. 13:37A-3.1 upon adoption to include reference to the AOBTA.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted new rules.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 37A

NEW JERSEY BOARD OF MASSAGE AND BODYWORK THERAPY RULES

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

13:37A-1.1 Purpose

(a) The purpose of this chapter is to implement the provisions of P.L. 2007, c. 337 (N.J.S.A. 45:11-53 et seq.), which created the New Jersey Board of Massage and Bodywork Therapy.

(b) This chapter shall apply to all applicants who seek licensure by the Board as a massage and bodywork therapist and to all persons who are licensed by the Board as massage and bodywork therapists in this State.

(c) This chapter does not apply to any person who is:

1. Licensed to practice in this State under any other law and is practicing or using titles consistent with the practice for which he or she is licensed;
2. A student enrolled in a program of massage and bodywork therapies, which meets the requirements of N.J.A.C. 13:37A-2.1 when that student is performing massage and bodywork therapies that are necessary to his or her course of study;
3. Licensed, certified, or registered to practice massage and bodywork therapy in another state or the District of Columbia if that person is performing massage and bodywork therapy in this State for 45 days or less in a calendar year and no more than 30 days in any 60 consecutive-day period;
4. Manipulating the soft tissue of the human body contained on hands, feet, or ears, as long as the client receiving such services does not remove any clothing other than shoes or socks;
5. A teacher who is demonstrating massage and bodywork techniques while teaching a class or workshop. If such a teacher is a resident of a state or possession of the United States, which requires a license in order to practice massage and bodywork therapies, or is a resident of the District of Columbia, he or she shall be licensed in that state or possession or in the District of Columbia; and
6. Using touch, words, and directed movement to deepen awareness of existing patterns of movement in the body, or to suggest new possibilities of movement provided that these services are not designated or implied to be massage and bodywork therapy and the client receiving such services is fully clothed.

13:37A-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Act" means the Massage and Bodywork Therapist Licensing Act, N.J.S.A. 45:11-53 et seq. and 45:11-68 et seq.

"Board" means the New Jersey Board of Massage and Bodywork Therapy.

"FSMTB" means the Federation of State Massage Therapy Boards.

"Full-time practice" means a person has provided a minimum of 500 hours of massage and bodywork therapies to clients and/or students during a year.

"License" means the document, issued by the Board, which authorizes a person to practice massage and bodywork therapies pursuant to the Act.

"Licensee" means any person who holds a license from the Board as a massage and bodywork therapist.

"Massage and bodywork therapies" or "massage and bodywork" means systems of activity of structured touch offered or provided to the public that includes holding, applying pressure, positioning, and mobilizing soft tissue of the body by manual technique and use of visual, kinesthetic, auditory, and palpating skills to assess the body for purposes of applying therapeutic massage or bodywork principles. Such application may include the use of

therapies such as heliotherapy or hydrotherapy, the use of moist, hot, and cold external applications, explaining and describing myofascial movement, self-care, and stress management as it relates to massage and bodywork therapies. Massage and bodywork therapy practices are designed to affect the soft tissue of the body, including practices of structured touch of the soft tissues that affect energy fields of the body, for the purpose of promoting and maintaining the health and well-being of the client. Massage and bodywork therapies do not include the diagnosis of illness, disease, impairment, or disability.

"NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

"NCCAOM" means the National Certification Commission for Acupuncture and Oriental Medicine.

"Part-time practice" means a person has provided a minimum of 250 hours of massage and bodywork therapies to clients and/or students during a year.

SUBCHAPTER 2. LICENSURE

13:37A-2.1 Application for licensure

(a) An applicant for licensure shall qualify for licensure by either:

1. Successfully completing a course of study of at least 500 hours in massage and bodywork therapies; or
2. Successfully passing either:
 - i. An examination offered by NCBTMB;
 - ii. The NCCAOM Asian Bodywork Therapy examination; or
 - iii. The Massage and Bodywork Licensing Examination (MBLEx) offered by the FSMTB.

(b) An individual who applies for a license under (a)1 above shall submit to the Board:

1. A completed application;
2. An official transcript, which indicates that the applicant has completed an associate degree in massage and bodywork or a course of study outlined in (d) below from a school accredited or approved by:
 - i. The New Jersey Department of Education;
 - ii. The New Jersey Department Labor and Workforce Development;
 - iii. The New Jersey Commission on Higher Education; or
 - iv. An agency of another state, which substantially meets the requirements of the New Jersey Department of Education, the New Jersey Department of Labor and Workforce Development or the New Jersey Commission on Higher Education;
3. A completed Criminal History Certification of Authorization form;

4. Proof that the applicant has current certification in *[Heartsaver]* CPR, Firstaid, and use of an automated external defibrillator (AED) from courses *[approved]* ***offered*** by the American Heart Association or a substantially similar course approved ***or offered*** by the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute, or EMP International Inc.; and

5. The application fee set forth in N.J.A.C. 13:37A-7.1.

(c) An individual who applies for a license under (a)2 above shall submit to the Board:

1. A completed application;

[page=2191] 2. Proof that the applicant has successfully passed the written examination offered by the FSMTB, NCBTMB, or NCCAOM;

3. A completed Criminal History Certification of Authorization form;

4. Proof that the applicant has current certification in *[Heartsaver]* CPR, Firstaid, and use of an automated external defibrillator (AED) from courses *[approved]* ***offered*** by the American Heart Association or a substantially similar course approved ***or offered*** by the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute, or EMP International Inc.; and

5. The application fee set forth in N.J.A.C. 13:37A-7.1.

(d) A course of study in massage and bodywork therapy of at least 500 hours shall include:

1. At least 90 hours of anatomy/physiology/pathophysiology;

2. Ethics and law;

3. Theory and practice (in-class instruction as to massage and bodywork theory and modalities and in-class demonstration and practice of massage and bodywork modalities);

4. Electives directly related to the practice of massage and bodywork therapy; and

5. At least 100 hours of clinical practice that is supervised by a faculty member who is present on-site while services are being performed and is either a licensed massage and bodywork therapist or is legally authorized to perform massage and bodywork in the state in which the school exists.

(e) For purposes of (d) above, one credit in a course taken in a college or university shall constitute 15 hours of course study.

(f) Hours completed during one area of a course of study in massage and bodywork therapy shall not be counted towards completion of another area of that course. For example, one hour spent performing massage, bodywork and somatic therapy that is completed as part of theory and practice pursuant to (d)3 above shall not be counted towards the 100 hours of clinical practice required by (d)5 above.

(g) The Board shall issue a license to an applicant who qualifies pursuant to (a)1 or 2 above if the applicant is not disqualified for licensure pursuant to the provisions of N.J.S.A. 45:1-14 et seq.

13:37A-2.2 License without examination based on licensure in another state

(a) A person who is licensed or certified in another state as a massage and bodywork therapist shall be eligible for licensure in this State if the educational requirements of the state in which he or she is licensed or certified are substantially similar to the educational requirements of this State.

(b) An applicant for license who is licensed or certified in another state shall submit to the Board:

1. A completed application form;
2. Written or electronic verification of status of licensure or certification from every state, territory of the United States, or the District of Columbia, in which the applicant was ever licensed or certified. The verification shall either be forwarded directly to the Board from the applicable state board or committee, if written, or, if electronic, issued by the applicable state board or committee;
3. A completed Criminal History Certification of Authorization form;
4. Proof that the applicant has current certification in *[Heartsaver]* CPR, Firstaid, and use of an automated external defibrillator (AED) from courses *[approved]* ***offered*** by the American Heart Association or a substantially similar course approved ***or offered*** by the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute, or EMP International Inc.; and
5. The application fee set forth in N.J.A.C. 13:37A-7.1.

(c) The Board shall determine if the educational requirements of the state in which the applicant is licensed or certified are substantially similar to the educational requirements in this State, and whether the applicant meets the other requirements for license set forth in (b) above. If the Board finds that the educational requirements are substantially similar and that the applicant meets the requirements for license set forth in (b) above, it shall issue a license to the applicant if the applicant is not disqualified for licensure pursuant to the provisions of N.J.S.A. 45:1-14 et seq.

13:37A-2.3 Renewal of license

(a) Licenses shall be renewed biennially on a form provided by the Board. Each applicant shall attest that the continuing education requirements of N.J.A.C. 13:37A-4.1 have been completed during the prior biennial period and that the applicant is currently certified in *[Heartsaver]* CPR and use of an automated external defibrillator (AED) from courses *[approved]* ***offered*** by the American Heart Association or a substantially similar course approved ***or offered*** by the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute, or EMP International Inc.

(b) The Board shall send a notice of renewal to each licensee at least 60 days prior to the expiration of the license. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the holder for any unlicensed practice during the period following the licensure expiration, not to exceed the number of days short of 60 before the renewal was issued.

(c) The licensee shall submit the renewal application and pay the renewal fee pursuant to N.J.A.C. 13:37A-7.1 prior to the date of expiration of the license. A licensee who fails to renew the license within 30 days after the expiration date of the license shall be administratively suspended without a hearing.

(d) Individuals who continue to practice or hold themselves out as State-licensed massage and bodywork therapists after being suspended shall be deemed to have violated N.J.S.A. 45:11-73, even if no notice of suspension had been provided to the person.

(e) A person seeking reinstatement within five years following the suspension of a license shall submit the following to the Board:

1. A completed reinstatement application;
2. Payment of the past delinquent renewal fees as set forth in N.J.A.C. 13:37A-7.1;
3. Payment of a reinstatement fee as set forth in N.J.A.C. 13:37A-7.1;
4. A certification verifying completion of the continuing education credits for each biennial period that the applicant was suspended; and
5. An affidavit of employment listing each job held during the period of suspension that includes the names, addresses, and telephone numbers of each employer.

(f) A person seeking reinstatement after more than five years following the suspension of a license shall satisfy the requirements of (e) above and *[for a person who obtained his or her initial license pursuant to]* ***shall either***:

1. *[N.J.A.C. 13:37A-2.1(a)1 or 2.5, shall successfully]* ***Successfully*** complete a course designed to prepare a person to pass the FSTMB, NCBTMB, or NCCAOM examination from a school that meets the requirements of N.J.A.C. 13:37A-2.1(b)2; or
2. *[N.J.A.C. 13:37A-2.1(a)2, shall retake]* ***Take*** and successfully pass the ***FSMTB,*** ***NCBTMB,*** or NCCAOM examination.

(g) Renewal applications for all licenses shall provide the licensee with the option of either active or inactive renewal. Licensees electing to renew as inactive shall not practice or hold themselves out to the public as State-licensed massage and bodywork therapists.

(h) Upon application to the Board, the Board may permit a licensee who has been on inactive status to return to active status provided such applicant completes the continuing education credits that are required per biennial period for each biennial period that the applicant is on inactive status and holds current certification in *[Heartsaver]* CPR, Firstaid, and use of an automated external defibrillator (AED) from courses *[approved]* ***offered*** by the American Heart Association or a substantially similar course approved ***or offered*** by the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute, or EMP International Inc.

13:37A-2.4 Licensure for individuals certified by the Massage, Bodywork, and Somatic Therapy Examining Committee

An individual who was certified as a massage, bodywork, and somatic therapist by the Massage, Bodywork, and Somatic Therapy Examining Committee on *[the effective date of

this rule)]* **September 4, 2012***, will be issued a license as a massage and bodywork therapist by the Board.

13:37A-2.5 License without education or examination

(a) Prior to *[(360 days from the effective date of this rule)]* **August 30, 2013***, a person may apply for license without satisfying the education or examination requirements of N.J.A.C. 13:37A-2.1, if the person has completed a minimum of 200 hours of education and training as required in (b) below and the person has:

1. Practiced full-time as a massage and bodywork therapist for at least two years prior to *[(the effective date of this rule)]* **September 4, 2012***; or

[page=2192] 2. Practiced part-time as a massage and bodywork therapist for five years prior to *[(the effective date of this rule)]* **September 4, 2012***.

(b) The 200 hours of education and training required pursuant to (a) above shall consist of anatomy and physiology, theory and practice (in-class instruction as to massage and bodywork theory and modalities and in-class demonstration and practice of massage and bodywork modalities), and ethics, of which at least 150 hours shall be in theory and practice.

(c) The 200 hours of education and training required pursuant to (a) above shall be taken in a massage and bodywork training program that is accredited or approved by:

1. The New Jersey Department of Education;
2. The New Jersey Department of Labor and Workforce Development;
3. The New Jersey Commission on Higher Education; or
4. An agency of another state or a program, which substantially meets the approval requirements of the New Jersey Department of Education, the New Jersey Department of Labor and Workforce Development, or the New Jersey Commission on Higher Education.

(d) An applicant shall submit to the Board a completed application, which shall include:

1. A statement that the applicant has worked full-time for the past two years or part-time for the past five years and indicating what methods of massage and bodywork therapy the applicant practiced;
2. Evidence that the applicant has completed 200 hours of education or training in massage and bodywork therapies consistent with (b) and (c) above;
3. A completed Criminal History Certification of Authorization form;
4. Proof that the applicant has current certification in *[Heartsaver]* CPR, Firstaid, and use of an automated external defibrillator (AED) from courses *[approved]* **offered*** by the American Heart Association or a substantially similar course approved **or offered*** by the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute, or EMP International Inc.; and
5. The application fee set forth in N.J.A.C. 13:37A-7.1.

(e) The Board shall issue a license to an applicant who qualifies pursuant to (a), (b), (c), and (d) above if the applicant is not disqualified for licensure pursuant to the provisions of N.J.S.A. 45:1-14 et seq.

SUBCHAPTER 3. PROFESSIONAL PRACTICE

13:37A-3.1 Scope of practice

(a) A licensee shall practice only those methods of massage and bodywork therapy that:

1. The licensee learned during his or her initial training as outlined in N.J.A.C. 13:37A-2.1 or 2.5;

2. The licensee learned during a course offered by:

i. A provider approved by the NCBTMB, NCCAOM, American Massage Therapy Association (AMTA), Associated Bodywork and Massage Professionals (ABMP), FSMTB, American Nurse Credentialing Center (ANCC), ***American Organization for Bodywork Therapies of Asia (AOBTA)***, American Polarity Therapy Association (APTA), American Physical Therapy Association (APTA), American Medical Association (AMA), International Association of Structural Integrators (IASI), ***Ida P.* Rolf *Research* Foundation**, a state board of massage, a state board of massage and bodywork, a state board of physical therapy, or a state board of chiropractic;

ii. A school that is approved by an agency recognized by the United States Department of Education; or

iii. A school that is accredited or approved by the New Jersey Department of Education, the New Jersey Department of Labor and Workforce Development, the New Jersey Commission on Higher Education, or an agency of another state with requirements substantially similar to the requirements of the New Jersey Department of Education, the New Jersey Department of Labor and Workforce Development, or the New Jersey Commission on Higher Education; or

3. The licensee developed and which are taught*, **or have been taught,*** in a course offered by a provider approved by the NCBTMB, NCCAOM, AMTA, ABMP, FSMTB, ANCC, ***American Organization for Bodywork Therapies of Asia (AOBTA)***, American Polarity Therapy Association (APTA), American Physical Therapy Association (APTA), AMA, IASI, ***Ida P.* Rolf *Research* Foundation**, a state board of massage, a state board of massage and bodywork, a state board of physical therapy, or a state board of chiropractic.

(b) Notwithstanding any training received as permitted by (a) above, a licensee shall not perform:

1. Vaginal or penile massages;

2. Animal therapies prohibited by the Veterinary Medical Act, N.J.S.A. 45:16-1 et seq.;

3. Any application of electrical current to the body (Transcutaneous Electronic Nerve Stimulation, TENS, machine); and

4. Diagnosis of illness, disease, impairment, or disability.

13: 37A-3.2 Infection control precautions

(a) Licensees shall wash hands and any part of his or her body that comes in contact with a client's body with liquid disinfectant soap and water, or hand sanitizer, in the following instances:

1. Before and after providing massage and bodywork therapies for each client; or
2. Immediately upon contact with blood, body fluids, secretions, or any item that has touched a patient or that has been contaminated with blood, bodily fluids, or secretions, not including sweat.

(b) If hand washing facilities are not available, licensees shall disinfect their hands with a bactericidal agent.

(c) Clean linens and drapes or disposable coverings shall be used for each client.

(d) Soiled disposable items shall be discarded into a container lined with a plastic bag, securely fastened, and disposed of daily into the regular trash disposal, unless otherwise specified by State and local health regulations.

(e) A broad spectrum anti-microbial disinfectant shall be used to disinfect:

1. Any equipment that comes in contact with a client, prior to the provision of massage and bodywork therapies for a client;
2. Exposed surfaces, such as counter tops, tables, and sinks on a daily basis;
3. Any implements or tools used during massage and bodywork therapy;
4. Face cradles and arm rests on all massage chairs and tables, prior to the provision of massage and bodywork therapies for a client;
5. All ice and heat pack equipment;
6. Any tool or utensil used to transfer a lubricant from one container to another or from a container to a client, which is not disposed of after use; and
7. Any portion of a lubricant pump dispenser or lubricant tube touched by the licensee during the provision of massage and bodywork therapy services.

(f) If a licensee uses massage lubricants, the licensee shall:

1. Store massage lubricants in sanitary containers;
2. Keep lubricant containers free of debris; and
3. Store lubricants according to manufacturer's recommendations and separately from cleaning supplies.

(g) If a licensee uses a massage lubricant that is contained in a pump dispenser, tube, or squeeze bottle the licensee shall, after completion of services to every client, disinfect

pursuant to (e) above, any portion of the container that he or she has touched during the provision of massage and bodywork therapy services.

(h) If a licensee uses a massage lubricant that is not contained in a pump dispenser, tube, or squeeze bottle, the licensee shall, for every client, remove the lubricant from the main container with a disposable instrument or an instrument that is disinfected pursuant to (e) above after each use and place the lubricant in a separate container, which shall be discarded or disinfected pursuant to (e) above after the completion of services.

(i) Licensees shall store all single service materials and linens off the floor in shelves, containers, cabinets, or closets.

(j) Soiled linens and draping materials shall be commercially laundered or washed in a clothes washing machine, in hot water with detergent and at least one cup of bleach or an antibacterial agent, and dried on the high heat setting in a clothes dryer.

(k) Clean linens and dirty linens shall be stored separately.

(l) Clean linens and trash shall be stored separately.

(m) When a licensee is providing massage and bodywork therapy in a temporary location, such as a sporting event, the licensee shall sanitize all equipment in accordance with this section.

[page=2193] (n) Licensees shall maintain a clean environment in the massage and bodywork therapy establishment and shall ensure that the massage and bodywork therapy establishment is well-lit and ventilated. Licensees shall maintain the area where massage and bodywork therapy is being performed free of animals, except as permitted by law.

(o) Licensees shall provide access to a restroom for clients in the massage and bodywork therapy establishment.

(p) Licensees shall repair any holes and tears in the treatment surface so as to maintain the surface integrity of the treatment surface.

13: 37A-3.3 Designations for licensed persons, prohibitions on unlicensed persons

(a) An active licensee shall use the titles "licensed massage and bodywork therapist" or "licensed massage therapist" or the acronyms "LMBT" or "LMT."

(b) Unless actively licensed pursuant to the provisions of this chapter, no person or business entity shall use:

1. The titles "massage and bodywork therapist" or "licensed massage and bodywork therapist";

2. Any title or designation that includes the words "massage," "bodywork," "masseur," "masseur," "shiatsu," "acupressure," "accupressure," "accu-pressure," "nuad bo'rarn," "amma," "anma," "chi nei tsang," "tuina," "polarity educator," "polarity therapist," "polarity therapy," or "polarity practitioner" or

3. The abbreviations "AB," "ABT," "BT," "CMT," "CMBT," "COBT," "LABT," "LBT," "LMBST," "LMBT," "LMT," "LOBT," "MBST," "MBT," "MP," "MT," "OB," or "RPP."

(c) Notwithstanding (b) above, an individual who is licensed or certified by another New Jersey State entity shall be permitted to use any title or abbreviation that describes a practice that the individual is permitted to engage in pursuant to his or her license or certification.

13: 37A-3.4 Display of license

(a) Licensees shall display their license in view of clients whenever providing massage and bodywork services in their place of business or office.

(b) Whenever licensees provide massage and bodywork services outside of their place of business or office they shall produce their licenses for clients or other members of the public upon request.

(c) A licensee shall display either the original license or a duplicate license obtained from the Board.

13: 37A-3.5 Sexual misconduct

(a) The purpose of this section is to identify for licensees conduct that shall be deemed sexual misconduct.

(b) As used in this section, the following terms have the following meanings:

"Client" means any person who is the recipient of massage or bodywork therapy.

"Client-therapist relationship" means a relationship between a licensee and a client in which the licensee owes a continuing duty to the client to render massage or bodywork therapy services consistent with his or her training and experience.

"Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes, but is not limited to, the imposition of a part of the licensee's body upon a part of the client's body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or client's body into or near the genital, anal or other opening of the other person's body. "Sexual contact" does not include the touching of a client's body that is necessary during the performance of a generally accepted and recognized massage and bodywork therapy procedure.

"Sexual harassment" means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, which occurs in connection with a licensee's activities or role as a provider of massage and bodywork therapy services that is unwelcome or offensive to a reasonable person, or creates a hostile workplace environment, and the licensee knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. "Sexual harassment" may consist of a single extreme or severe act or of multiple acts and may include, but is not limited to, conduct of a licensee with a client, co-worker, employee, student, or supervisee whether or not such individual is in a subordinate position to the licensee.

"Spouse" means the husband, wife, civil union partner, domestic partner or fiancée of the licensee or an individual involved in a long-term committed relationship with the licensee.

For purposes of this definition, a long-term committed relationship means a relationship that is at least six months in duration.

(c) A licensee shall not engage in sexual contact with a client with whom he or she has a client-therapist relationship. The client-therapist relationship is ongoing for purposes of this section, unless more than three months has elapsed since the last massage and bodywork therapy was rendered.

(d) A licensee shall not seek or solicit sexual contact with a client with whom he or she has a client-therapist relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a person with whom the licensee has a client-therapist relationship, unless that discussion is directly related to a proper massage and bodywork therapy purpose. Such discussion shall not include disclosure by the licensee of his or her own sexual relationships.

(f) A licensee shall provide privacy and therapy conditions that prevent the exposure of the unclothed body of the client. Appropriate draping measures shall be employed to protect client privacy.

(g) A licensee shall not engage in sexual harassment either within or outside of the professional setting.

(h) A licensee shall not engage in any other activity that would lead a reasonable person to believe that the activity serves the licensee's personal prurient interests or which is for the sexual arousal, or sexual gratification, of the licensee or client or which constitutes an act of sexual abuse.

(i) Violation of any of the prohibitions or directives set forth in (c) through (h) above shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(j) Nothing in this section shall be construed to prevent a licensee from rendering massage or bodywork therapy to a spouse, providing that the rendering of such massage or bodywork therapy is consistent with accepted standards of massage or bodywork therapy and that the performance of therapy is not utilized to exploit the spouse for the sexual arousal or sexual gratification of the licensee.

(k) It shall not be a defense to any action under this section that:

1. The client solicited or consented to sexual contact with the licensee; or
2. The licensee is in love with or held affection for the client.

13:37A-3.6 Change in address of record or name

(a) A licensee shall notify the Board in writing within 30 days of changes to:

1. The licensee's address of record. Service to the address of record registered with the Board shall constitute effective notice pursuant to N.J.A.C. 13:45-3.2; or
2. The licensee's legal name. Notification of a name change shall include a copy of the marriage license or a court order that authorized the legal name change.

13: 37A-3.7 Patient acknowledgement

Prior to providing an initial service to a client, a licensee shall have the client read and sign a patient acknowledgement form, which includes the following statement:

"Massage and bodywork therapy practices are designed to promote and maintain the health and well-being of the client. Massage and bodywork therapies do not include the diagnosis of illness, disease, impairment or disability. If I experience any pain or discomfort during this session, I will immediately inform the therapist so that the pressure and/or manipulations may be adjusted to my level of comfort. Because massage and bodywork therapy may be contraindicated due to certain medical conditions, I affirm that I have informed the therapist of all my known medical conditions and will keep the therapist updated as to any changes in my medical condition."

[page=2194] SUBCHAPTER 4. CONTINUING EDUCATION

13: 37A-4.1 Continuing education

(a) Upon biennial license renewal, licensees shall attest that they have completed courses of continuing education of the types and number of credit hours specified in (b), (c), (d) and (e) below and N.J.A.C. 13:37A-4.2. Falsification of any information submitted on the renewal application may require an appearance before the Board and may subject a licensee to penalties and/or suspension or revocation of the license pursuant to N.J.S.A. 45:1-21 through 25.

(b) Each applicant for biennial license renewal shall be required to complete during the preceding biennial period 20 credit hours of continuing education related to the practice of massage and bodywork therapy, except as provided in (d) below. These 20 credit hours shall include at least two hours in ethics. Courses that are related solely to the business practices of licensees and courses in practices in which licensees are prohibited from engaging pursuant to N.J.A.C. 13:37A-3.1(b) shall not satisfy continuing education requirements.

(c) Licensees shall be limited to completing a total of six credit hours through courses presented on-line or through DVDs.

(d) A licensee who is licensed in the second year of a biennial renewal period shall be required to complete 10 credit hours of continuing education, of which at least two hours shall be in ethics.

(e) A licensee who completes more than the minimum continuing education credit hours set forth in (b) or (d) above in any biennial registration period may carry no more than 18 of the additional credit hours into a succeeding biennial period. A licensee who carries over credits into a biennial period shall complete, during that biennial period, at least two hours of ethics.

13: 37A-4.2 Continuing education programs

(a) A licensee may obtain continuing education credit hours from the following:

1. Successful completion of continuing education courses or programs related to the practice of massage and bodywork therapy, one credit hour for each hour of instruction. Courses and

programs shall be approved by, or offered by providers approved by:

- i. NCBTMB;
- ii. NCCAOM;
- iii. The American Massage Therapy Association (AMTA);
- iv. The American Organization for Bodywork Therapies of Asia (AOBTA);
- v. The Association of Bodywork and Massage Professionals (ABMP);
- vi. The American Nurses Credentialing Center (ANCC);
- vii. The American Polarity Therapy Association (APTA);
- viii. The American Physical Therapy Association (APTA);
- ix. FMSTB;
- x. The International Association of Structural Integrators (IASI);
- xi. The American Medical Association (AMA);
- xii. The ***Ida P.* Rolf *Research*** Foundation; or
- xiii. A state board of massage, massage and bodywork, physical therapy, or chiropractic;

2. Successful completion of a course, related to the practice of massage and bodywork therapy, given by a school, college, or university, one credit hour for each hour of instruction. A school, college, or university shall be:

- i. Accredited by the New Jersey Department of Education;
- ii. Approved by the New Jersey Department of Labor and Workforce Development;
- iii. Approved by the New Jersey Commission on Higher Education; or
- iv. Approved by an agency of another state with requirements substantially similar to the requirements of the New Jersey Department of Education, the New Jersey Department of Labor and Workforce Development, or the New Jersey Commission on Higher Education;

3. Teaching a new continuing education program related to massage and bodywork therapy that is approved pursuant to (a)1 or 2 above. As used in this paragraph, "new" means that the licensee has never taught or developed curriculum for that course or program in any educational setting; one credit hour for each hour taught;

4. Authorship of a published textbook or a chapter of a textbook directly related to the practice of massage and bodywork therapy; four credit hours for each chapter up to 20 credit hours;

5. Authorship of a published article, which has been referred through peer review, related to the practice of massage and bodywork therapy, in a medical or health related journal; four

credit hours; and

6. Presenting a new seminar or lecture to professional peers, provided the seminar or lecture is at least one hour long; as used in this paragraph, "new" means that the licensee has never presented the seminar or lecture before; one credit hour for each hour of presentation.

13: 37A-4.3 Continuing education audits; records of continuing education

(a) The Board shall perform audits on randomly selected licensees to determine compliance with continuing education requirements.

(b) A licensee shall maintain the following documentation for a period of four years after completion of the credit hours and shall submit such documentation to the Board upon request:

1. For attendance at programs or courses: a certificate of completion from the sponsor;
2. For publication of textbook or article: the published item, including the date of publication;
3. For developing curriculum or teaching a course or program: documentation, including a copy of the curriculum, location, date, and time of course, duration of course by hour, and letter from sponsor confirming that the licensee developed or taught the course or program; and
4. For presenting a lecture or seminar: documentation including the location, date, and duration of the lecture or seminar.

13: 37A-4.4 Waiver of continuing education requirements

(a) The Board may waive the continuing education requirements of this subchapter on an individual basis for reasons of hardship, such as severe illness, disability, or military service.

1. A licensee seeking a waiver of the continuing education requirements shall apply to the Board in writing at least 90 days prior to license renewal and set forth in specific detail the reasons for requesting the waiver. The licensee shall provide the Board with supplemental materials that support the request for waiver.

2. A waiver of continuing education requirements granted pursuant to this section shall be effective only for the biennial period in which such waiver is granted. If the condition(s) which necessitated the waiver continue(s) into the next biennial period, a licensee shall apply to the Board for the renewal of such waiver for the new biennial period.

13: 37A-4.5 Additional continuing education requirements

(a) The Board may direct or order a licensee to complete continuing education credit hours:

1. As part of a disciplinary or remedial measure in addition to the required 20 hours of continuing education; or
2. To correct a deficiency in the licensee's continuing education requirements.

(b) Any continuing education credit hours completed by the licensee in compliance with an order or directive from the Board as set forth in (a) above shall not be used to satisfy the minimum continuing education requirements as set forth in this subchapter.

SUBCHAPTER 5. BUSINESS PRACTICES

13:37A-5.1 Advertising and solicitation practices

(a) A licensee may provide information to the public by advertising in print or electronic media pursuant to this section.

(b) The following words and terms, when used in this subchapter shall have the following meanings:

"Advertisement" means any attempt directly or indirectly by publication, dissemination, or circulation in print or electronic media that directly or indirectly induces or attempts to induce any person or entity to purchase or enter into an agreement to purchase services from a licensee.

"Electronic media" means radio, telephone, television, and internet.

"Print media" means newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers, billboards, [page=2195] signs, business cards, matchbook covers, and other similar items, documents, or comparable publications.

(c) A licensee who engages in the use of advertising that contains any of the following shall be deemed to be engaged in professional misconduct:

1. Any statement, claim, or format which is false, fraudulent, misleading, or deceptive;

2. Any promotion of a professional service for which:

i. The licensee has not received education or training to perform; or

ii. The licensee claims to have developed, unless the licensee developed such service and it is taught*, **or has been taught,*** in a course offered by a provider approved by the NCBTMB, NCCAOM, American Massage Therapy Association (AMTA), *[or]* Associated Bodywork and Massage Professionals (ABMP)*, **FSMTB, American Nurse Credentialing Center (ANCC), American Organization for Bodywork Therapies of Asia (AOBTA), American Polarity Therapy Association (APTA), American Physical Therapy Association (APTA), American Medical Association (AMA), International Association of Structural Integrators (IASI), Ida P. Rolf Research Foundation, a state board of massage, a state board of massage and bodywork, a state board of physical therapy, or a state board of chiropractic***; or

3. The communication of any fact, data, or information that may personally identify a client without that client's signed written permission obtained in advance.

(d) The Board may require a licensee to substantiate the truthfulness of any assertion or representation in an advertisement. Failure of a licensee to provide factual substantiation to support a representation or assertion when requested shall be deemed professional misconduct.

(e) All advertisements shall include:

1. The licensee's first name, or first initial of the first name, and the licensee's full last name;
2. The licensee's address or telephone number; and
3. The terms "N.J. Lic. #" followed by the licensee's license number.

(f) If an entity advertises under a professional name the entity must identify at least one licensee's first name, or first initial of the first name, and the licensee's full last name, license number and telephone or address.

(g) A video or audio tape, or other permanent recording for an internet advertisement, ***which may include screen shots of a webpage,*** of every advertisement communicated by electronic media shall be retained by the licensee and shall be made available for review upon request by the Board or its designee. A copy of any advertisement appearing in the print media shall also be retained by the licensee and made available for review. The tapes and print media copies required to be retained under this subsection shall be kept for a minimum period of three years from the date of the last authorized publication or dissemination of the advertisement.

(h) Licensees who are on inactive status pursuant to N.J.A.C. 13:37A-2.3(h) shall not hold themselves out to the public as State-licensed massage and bodywork therapists.

13:37A-5.2 Recordkeeping

(a) Licensees shall make contemporaneous, permanent entries into client records that shall accurately reflect the massage and bodywork services rendered. Client records shall be maintained for a period of seven years from the date of the most recent entry. The client record shall contain, at a minimum:

1. Intake record;
2. The dates of each service;
3. Reasons for visits, including a physician's prescription, if there is one;
4. The name of the licensee who provided services if there is more than one licensee practicing at the office;
5. Modalities used and areas of focus on the body; and
6. Any referral to another healthcare professional.

(b) A licensee may make corrections and/or additions to a client record, provided that each change is clearly identified as such, dated and initialed by the licensee.

13:37A-5.3 Client access to records; confidentiality

(a) Licensees shall provide access to client records to a client or an authorized representative in accordance with the following:

1. No later than 30 days from receipt of a written request from a client or an authorized representative, the licensee shall provide a copy of the client record, and/or billing records as may be requested;
2. The licensee may charge a fee for the reproduction of records, which shall be no greater than \$ 1.00 per page or \$ 100.00 for the entire record, whichever is less; and
3. If the client or a subsequent treating health care professional is unable to read the client record, because it is illegible, the licensee, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the licensee shall also provide a translation.

(b) Licensees shall maintain the confidentiality of client records, except that:

1. The licensee shall release client records as directed by a subpoena issued by the Board or the State Attorney General, or by a demand for a statement in writing under oath, pursuant to N.J.S.A. 45:1-18. Such records shall be originals, unless otherwise specified, and shall be unedited, with full client names; and
2. The licensee shall release information as required by statute or rule.

(c) Where the client has requested the release of all or a portion of a client record to a specified individual or entity, in order to protect the confidentiality of the records the licensee shall:

1. Secure and maintain a current written authorization, bearing the signature of the client or an authorized representative;
2. Assure that the scope of the release is consistent with the request;
3. Forward the records to the attention of the specific individual identified in the request; and
4. Mark the material "Confidential."

SUBCHAPTER 6. BUSINESS REGISTRATION

13:37A-6.1 Registration of employers

(a) Pursuant to N.J.S.A. 45:11-76, an individual or entity that employs another person to engage in, or an individual or entity that employs another and advertises or holds itself out as providing, massage and bodywork therapies shall register with the Board.

(b) An individual or entity that employs another person to engage in, or an individual or entity that employs another person and advertises or holds itself out as providing, massage and bodywork services shall not be required to register with the Board if the individual or entity is:

1. A school approved by the New Jersey Department of Education, the New Jersey Department of Labor and Workforce Development, or the New Jersey Commission on Higher Education; or
2. A health care institution licensed by the New Jersey Department of Health and Senior

Services.

(c) An applicant for registration shall submit to the Board a completed application that includes:

1. The name and residence of the individual or the owner or operator of the entity;
2. The municipality and location of the owner or operator's primary place of business and the location of any branches of the business;
3. A certification attesting that the individual or entity will employ only massage and bodywork therapists licensed by the Board to provide massage and bodywork services;
4. The criminal history background of the individual or the owner or operator of the entity; and
5. The registration fee required pursuant to N.J.A.C. 13:37A-7.1.

(d) Registration will be valid for two years and shall be renewed by submitting the information and fees required by (c) above.

(e) If any of the information submitted pursuant to (c) above changes, the employer shall notify the Board within 30 days of the change.

13:37A-6.2 Suspension or revocation of registration

(a) The Board shall either suspend or revoke the registration of an entity that has:

1. Submitted false or misleading information in its application submitted pursuant to N.J.A.C. 13:37A-6.1(c) or (d); or

[page=2196] 2. Failed to demonstrate that every employee who is engaged in providing massage and bodywork therapy services is licensed to practice by the Board.

SUBCHAPTER 7. FEES

13:37A-7.1 Fee schedule

(a) The following fees shall be charged by the Board:

- | | |
|--|-----------|
| 1. Application fee..... | \$ 75.00 |
| 2. Initial license fee | |
| i. If paid during the first year of a biennial renewal period.... | \$ 120.00 |
| ii. If paid during the second year of a biennial renewal period... | \$ 60.00 |
| 3. Renewal of license..... | \$ 120.00 |
| 4. Late license renewal..... | \$ 50.00 |

Plus the applicable biennial
license renewal fee set
forth in (a)3 above

5. Reinstatement fee.....	\$ 100.00
Plus the applicable biennial license renewal fee set forth in (a)3 above	
6. Duplicate license.....	\$ 35.00
7. Inactive license fee.....	\$ 60.00
8. Verification of license for endorsement.....	\$ 30.00
9. Written verification of license.....	\$ 25.00
10. Employer registration.....	\$ 150.00