

NEW JERSEY REGISTER
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MONDAY, NOVEMBER 15, 2004
RULE ADOPTION
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY BOARD OF NURSING
MESSAGE, BODYWORK AND SOMATIC THERAPY EXAMINING COMMITTEE

Adopted New Rules: N.J.A.C. 13:37-16

Adopted Amendment: N.J.A.C. 13:37-5.5 Proposed: October 20, 2003 at 35 N.J.R. 4819(a).

Adopted: June 15, 2004 by the Board of Nursing, Maris Lown, President.

Filed: October 20, 2004 as R.2004 d.432, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30- 3.6).

Authority: N.J.S.A. 45:11-67.

Effective Date: November 15, 2004.

Expiration Date: January 13, 2005.

Summary of Public Comments and Agency Responses:

The official comment period ended December 19, 2003. The Board received 308 comments from the following individuals:

1. Ann Chellman, ABMP
2. Valerie Keating, ABMP
3. Valerie Olsen, ABMP, NCBTMB
4. Yigal Goldshtrom, ABMP
5. John Deltuvia, ABMP, ACM
6. Richard Sazoff, ABMP
7. Karen Strand, LMT, New York
8. Lisa Bell, ABMP
9. Kelli Quinn
10. John Napolitano, ABMP
11. Andrew Spearance, ABMP
12. Lois Harrison, ABMP
13. Munn Eic, ABMP, AMTA, NCBTMB, Director, Massage Therapy Program, Berdan Institute
14. Robyn Zappy, Director, Atlantic Healing Arts Institute, LLC
15. Sally Petrie

16. Diane Hearn, ABMP
17. Robert Harris, Director, Dr. Voder School--North America
18. Brian Amerson
19. Merelin Ramos, ABMP, AMTA
20. Christopher Frazer, Moorestown VNA Hospital
21. Francine Krause
22. Lorayne Didodo
23. Joan Glunk, MLDT, CDT, Director, Lymphatic Care Specialists, LLC
24. Marsh Buchanan
25. Ann Richman, RN
26. Shirley Glick
27. Cynthia DiGeso
28. Carolyn Schwebel, Ed.D., Co-Chairperson, The Equalizers
29. Bernard M. Kramer
30. Ann B. Krueger
31. Evelyn Watkins
32. Eileen Betancourt
33. Barbara Piotrowski, AOBTA, NCCAOM
34. Doreen Marino, International Massage Association
35. Maria Dvorak, AMTA, NCBTMB
36. Carmela Furia, COTA
37. Susan Hetrick, AMTA
38. Dorothea Atkins, Lourdes Institute of Wholistic Studies
39. Roberta Ellen
40. Guenter Klose, MT, MLD/CDT Certified Instructor, CLT-LANA
41. Lisa Deimer, AMTA
42. Julie Han, NCBTMB
43. Denise Ostopo-Gliozzi, AMTA
44. Cynthia Turkoz, NCBTMB

45. Clare Wargaski, AMTA, NCBTMB
46. Angelina-Dibenedetto Wilkinson, AMTA
47. Donna Spears, AMTA
48. Eileen Newsome, AMTA, NYSSMMT
49. Marilyn Sweeney
50. Barb Richmond, Director of Community Relations, The Upledger Institute, Inc.
51. Melanie Davis, Reiki Master
52. Patricia Miller
53. Linda Bahr, NCBTMB
54. Brandi Young
55. Robin Bornstein, AMTA
56. Elaine Ashton
57. Barbara Simkin
58. Robert Weiss, Lymphedema Treatment Advocate
59. Vicki Wheeler, ABMP, NAVALT, Hopewell Massage Therapy
60. Catharine J. Mayson
61. Edward Smith, AMTA
62. Kathleen Smith, AMTA
63. Joey Raines, ABMP
64. Elizabeth DiVaccaro
65. Dennis Sprick, Heartful Touch Massage and CranioSacral Therapy
66. Sally Jenkins
67. Mary M. Luongo
68. Charlene Vivian-Granville
69. Eleanor LaPointe, ABMP, CMT
70. Pamela Mehes
71. Marie Rosa
72. Arthur Argiriou

73. Debra Daugherty, OTR, CLT-LANA
74. Assemblyman Joe Azzolina
75. Kristine Lindahl, Director of Education , Laban/Bartenieff Institute of Movement Studies
76. Ken Maily, PT
77. Mary Elen Rada, D.C., President, State Board of Chiropractic Examiners
78. Patricia Edwards, AMTA
79. Melissa Rodgers, AMTA
80. Ronald Diana, International Massage Association, Somerset School of Massage Therapy
81. Shruti Balawalli, AMTA, OMERI, RYT
82. Pamela Streisel, NCBTMB
83. Dustin Blanchard, Healing Kneads Massage Therapy
84. Donna Amato-Salvacion
85. Sheryl Markley, New Jersey Physical Therapy Association, American Physical Therapy Association, Associated Bodywork & Massage Professionals, CranioSacral Therapy Association, Zero Balancing Health Association, Intl Alliance of Allied Healthcare Professionals
86. Barbara Price
87. Gail A. Moore
88. Rebecca Givens-Bickerstaff, RD, LDN, MPH
89. Susan Gelb
90. Richard G. Griswold, Executive Director, Board of Cosmetology and Hairstyling
91. Suzanne Newman, Massage Therapist
92. Cyndi Chirco
93. Christine Cuzzo
94. Jeff Shevell, NCBTMB
95. Charlie Behm, Chairperson, NJ Coalition of Massage, Bodywork & Somatic Therapies
96. Marilyn Eppolite, NCBTMB, ABMP
97. Steven Clarke
98. Dana Cartin, PT, Director of Government Relations, American Physical Therapy Association
99. Kathleen K. Mairella, PT, President, American Physical Therapy Association
100. Patricia M. Osmun, Massage Therapist, Centre for Well Being, LLC

101. Jane L. Berrigan, NCBTMB, EFT-CC
102. Christine Frederick, Massage Therapist
103. Arlene Farmer, MA, RN, Instructional Designer, Lincoln Educational Services, Inc.
104. Ruth Dalphin, AOBTA, NCCAOM
105. Joe Garolis, DC, NJCS, NNJCS
106. Steve Parker, AOBTA
107. Joey George
108. Joyce Hernandez
109. Richard Carroll, ABMP
110. Kenneth Manning, O.D.
111. Maren Good
112. Richard Santucci, D.C.
113. William Cirino Jr., D.C.
114. Rena Margulis, AOBTA
115. James Atieh, Northern New Jersey Chiropractic Society
116. Susan Ring, AMTA, NCBTMB, IAHP, ITT
117. Michael Grego, AMTA
118. Eve Sicurella
119. Savitiri-Frizzell, President, AMTA NJ Chapter
120. Bettejeanne Hammond, AMTA
121. Linda Koch, Healing Touch International
122. Shelli Brosch, AMTA, IAHA
123. C. Paterno, UPR-United Reiki Practitioners, NJSP
124. Catherine Pinto, United Reiki Practitioner's Board
125. Elsi Kerns, Wellness Workers, Inc.
126. Evelyn Lagattuta, CMT, Reiki Master
127. Thomas Long, ABMP, NCBTMB
128. Victoria Andalucia

129. Kathleen Holt-Conklin, U.S. Association of BodyPsychotherapists
130. Anne Giblin, International Association of Reiki Professionals
131. Erin Carruth
132. Christine Dattolo, President, AOBTA New Jersey Chapter
133. Phillip J. Pollot, LMT
134. Diane Hayes-Sosa
135. Margaret Keene
136. Forrest Robleto, NAEMT, NAEMSE, AHA, ASHI, NSC
137. Kenny Shinn, Heart and Soul Holistic Center
138. Pamela M. Cofinas, RN, CMP
139. Jennifer Anna
140. Carol Ilick
141. Joseph Nicastro
142. Chris Froelich
143. Adrienne F. Asta
144. S.L. McCormack
145. Christine Spagnetti
146. Sabrina Fusco
147. Karen Lauria
148. Thiemba Ferguson
149. Lorraine Ippolito
150. Keri L. Zyskowski
151. Jo-Anne Musarra
152. J. Denise Kodray
153. Ka-Yi Cheung
154. Lorraine Gabay
155. Amorфина L. Muhi
156. Terrina R. Jones
157. Stephanie R. Horowitz

158. Joanna N. McKendrick
159. Bonnie L. Smith
160. Marissa Panten
161. Patricia Borckerdeintz
162. Stacy Albenice
163. Helia Farth Roberson
164. Diana Amador
165. Neil Campbell Tucker
166. Darcy Levy
167. Donna M. Lowles
168. Dan Milliam
169. Joseph C. Goriski
170. Judy Lapelosa
171. Annette Capella
172. Michelle Baker
173. Brian J. Critchley
174. Shona Zeek
175. Christine A. Valentino II
176. Sarah Skidmore
177. Martin Eick
178. Gretena Lutz-O'Leary
179. Melissa Ryan
180. Laura Hearn
181. Deanna Casanovas
182. Odalis Pain
183. Kristen Curnan
184. Diane Dembrowski
185. Robert Trevino

186. Michele Milevoi
187. Heather Volkman
188. Michelle De Fremenery
189. Catis Deat
190. Tara Jackovino
191. Kimberly Bullen
192. Stan Ebel
193. Anna Niepla
194. Sherry Ann de Cheaver
195. Elysa Bellomo
196. Meryl Brusser
197. Teresa Silva
198. Susanne Valle
199. Jin Feng
200. William H. Deveara
201. Meg Sheppard
202. Jenny Caba
203. Leanne Darby
204. Walter Paulikowski
205. Jennson Wang
206. Amy Edge
207. Shirlee Collins
208. Timothy A. Kapp
209. Natasha Mersenberg
210. Rony Yogensberry
211. Julissa Caba
212. Karen Choi
213. Melissa Boubly
214. Marilyn Velez

215. Tiffany Reap
216. Linda Roberts
217. Vicki Mitto
218. Phillip Sheng Parker
219. Lisa A. Rivera
220. Pamela Davis
221. Gail Laboard
222. Amy Jackson
223. Michelle Maldondo
224. Jacquie Faust
225. Marie Khuan
226. Carmine Ruggerio
227. Eric Himsell
228. Mary McNally
229. Michelle Toakar
230. Erin Kipe
231. Jon DeGeorge
232. Kimberly Santarieso
233. S. Diane Hathaway
234. Naomi Pagidos
235. Dolores Dalielo
236. Kristina Caligula
237. Kaitlyn O'Malloery
238. Carol M. Smith
239. Anned Halekeds
240. Kristine Davis
241. Pam Pelliccio
242. Michele Garbowski

243. Andria R. Squiteri
244. Chaerd Perlises
245. Elizabeth Wetter
246. Jessica Scamoraz
247. David M. Zimmerly
248. Debra A. DelPrete
249. Lissa Whitley
250. Krystal Klummp
251. Dave Goldstar
252. Kayauna Gulmehter
253. Veronica Ruth
254. Kimberly L. Bishop
255. Dana Campisi
256. Tajuana Guilmette
257. Sherew Blanchard
258. Claudia Ribeiro
259. Valerie Knust
260. Clara Yenttha
261. Lena Alfieri
262. Kathleen Ambrosio
263. Vickie Blinski
264. Pamela Broadbent
265. Ian Fortune
266. Jessica Haines
267. James Hammell
268. Margaret Holmes
269. Debra Kelly
270. Louise Lees
271. Brooke Lera

272. Tracy Manzi
273. Barbara Marino
274. Christopher Mierta
275. Lisa Pipitone
276. Joyce Railey
277. Linda M. Gilbert, BA, RMT (ON)
278. Dr. Nicholas DiCiccio, MA, CSCS
279. Helen Owens, OSF, RN, MSN
280. Theresa P. Johnson, BS, MA
281. Christine Ermert Bortner, BA, ACE
282. Elizabeth Moeller, BA, HHC, AADP
283. Brian Anderson, RN, BSN, MT
284. Brenda Sorrentino, RN, MA
285. Betty Burke, RN, M.Ed., CR
286. Dr. Ronald P. Ciccone, MD
287. David Egan, BA, CNTMB, CSCS
288. Carolyn C. Pinkston, BA
289. Beverly Chabalowski
290. Michele Piccinini
291. Alicai Brill, MS, SPHR
292. Barbara Moeller, MA, RYT
293. Susan C. Drummond, NCTMB
294. Sharon Gibson, RN, BSN, CMT
295. Christina C. Dutcher, CMT
296. Donna Heddel, BA
297. Kathryn Friedman, BS, CHHC
298. Amanda Bennett, MT
299. Monica Pauro, MT

300. Carol A. Perry, MT

301. Yvonne Lombardo Brown, BSP, ACSM

302. Corinne Corcoran, Ed.D., NCMP, NCR

303. Morris L. Siegel, RN, MA

304. Rita J. Biancosino, CMT, CR

305. Pamela West, BFA, M.Ed.

307. Victoria R. Lee, CSP

308. Marianne Hieb, RSM, ATR, MFA

1. COMMENT: Many commenters expressed approval of the regulations and the certification of massage, bodywork and somatic therapists. They believe that the proposal is a positive development for legitimizing massage professionals and that massage therapy professionals need to have regulations.

RESPONSE: The Committee thanks the commenters for their support and points out that N.J.S.A. 45:11-67 requires the Committee to adopt regulations.

2. COMMENT: One commenter commends the Committee for its attention to consumer protection.

RESPONSE: The Committee thanks the Commenter for her support.

3. COMMENT: One commenter argues that it will be good to be certified since it will set a therapist apart from those who are not certified.

RESPONSE: The Committee recognizes that certification will differentiate between massage therapists who are certified by the State and those who are not.

4. COMMENT: One commenter appreciates the work of the Committee, but believes that more focus groups among practitioners should be conducted and that the challenging and punitive tone of the regulations should be changed.

RESPONSE: The Committee thanks the commenter for her support, but does not agree that focus groups should be conducted. These rules were drafted based upon the expertise of the Committee and in the interest of protecting consumer interests. The use of practitioner focus groups in drafting these rules is unnecessary. The Committee also disagrees that the rules have a punitive tone. The rules set forth standards for practice for certificants. The rules do, however, include disciplinary standards which may be imposed when a certificant violates the rules.

5. COMMENT: One commenter contends that it is important for the regulations to include a statement encouraging the public to take advantage of massage and indicating that massage is a viable complement to traditional medicine. The commenter believes this is appropriate as it would reflect similar statements made in P.L. 1999, c.19.

RESPONSE: It is inappropriate for rules to contain such language. The Committee rules deal with standards for certificants and the Committee.

6. COMMENT: One commenter suggests that the Committee review regulations from other states. The commenter believes that the proposed regulations were developed without any reflection on what is done in other states. The commenter contends that there was little thought given to the impact these regulations would have on massage therapy and that some of the regulations are in direct conflict with the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) codes of ethics.

RESPONSE: The commenter's contention that these rules were developed without consideration of other states and

that little thought was given to the impact of these rules is incorrect. The Committee spent a great deal of time considering how the rules would impact both massage, bodywork and somatic therapists and the public. As the commenter did not indicate how these rules conflict with NCBTMB code of ethics, the Committee cannot respond specifically except to say that it does not believe that there is any such conflict. The Committee points out that, while it considered the standards set by many national organizations including the American Massage Therapy Association (AMTA), NCBTMB, the Associated Bodywork and Massage Professionals (ABMP), the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), the American Organization for Bodywork Therapies of Asia (AOBTA) and others, it is not required to follow any of the standards developed by the national organizations. The Committee is required to follow the dictates of the Act, P.L. 1999, c.19 (N.J.S.A. 45:11-53 et seq.).

7. COMMENT: One commenter suggests that the comment period be extended by 60 days since so few massage therapists are aware of the proposal.

RESPONSE: N.J.S.A. 52:14B-4 requires an agency to provide a 30-day period during which it will accept comments regarding proposed rules. The Committee extended this 30-day comment period to sixty days pursuant to N.J.A.C. 17:27-3.3(a)5. The Committee does not believe it is necessary to extend the comment period beyond this 60-day period, particularly since the volume of the comments received indicates that a large number of massage therapists were aware of the proposal.

8. COMMENT: One commenter is concerned that all massage therapists working in New Jersey did not have the opportunity to review the proposal and respond to it. The commenter contends that she was on the State notification list, but was never sent a copy of the proposal.

RESPONSE: Every individual and organization that is on the Committee's list of interested parties was sent a copy of the proposal. The proposal was published in the New Jersey Register, sent to the State House Press Corps and posted on the Committee's website. The Committee points out that it would not be possible to send the proposal to every massage therapist working in New Jersey because the Committee has no way of knowing every massage therapist practicing in the State.

9. COMMENT: One commenter contends that the phrase "massage, bodywork and somatic therapies" should be changed throughout the proposal to "massage, bodywork or somatic therapies."

RESPONSE: The phrase "massage, bodywork and somatic therapies" is used throughout N.J.S.A. 45:11-53 et seq. and it is the phrase that the Committee must use in its rules.

10. COMMENT: One commenter contends that the phrase "American Oriental Bodywork Therapist Association" should be changed to "American Organization for Bodywork Therapies of Asia."

RESPONSE: The Committee agrees that the phrase "American Organization for Bodywork Therapies of Asia" is the correct phrase and has amended N.J.A.C. 17:27-16.11 upon adoption to reflect this.

11. COMMENT: One commenter claims that the regulations cater to a limited special interest group, AMTA. The commenter contends that the regulations do not recognize other legitimate groups and programs. The commenter contends that the education of bodyworkers is varied and that it is unacceptable that the AMTA is allowed to control the entire bodywork and energy work service industry.

RESPONSE: The Committee does not believe that these rules cater to any special interest group. The Committee agrees that the education massage, bodywork and somatic therapists receive is varied and has recognized this in these rules. The rules recognize a wide variety of massage, bodywork and somatic therapy groups including NCBTMB, NCCAOM, AMTA, AOBTA and ABMP. If the Committee becomes aware of other organizations that should be recognized in the rules, it will amend the rules to include such recognition.

12. COMMENT: One commenter asks how the Committee can think that it has the right to expect her to meet the requirements of the regulations after the years she has dedicated to being a massage therapist. The commenter asks what nurses have to do with a massage therapist's title or work. The commenter contends that an individual would need

a law degree to read the regulations.

RESPONSE: The Committee neither has the authority nor the intent to require that anyone meet the requirements of these regulations. N.J.S.A. 45:11-65 specifically states that the Act does not "prohibit any person from rendering massage, bodywork and somatic therapy services" as it is a titling act. The Committee does not expect that all persons providing services will meet the requirements of these rules and only those individuals who seek certification will be required to meet all of the requirements. N.J.S.A. 45:11-56 set up the Committee under the authority of the Board of Nursing and these regulations must conform to that statutory authority. The Committee points out that the Board of Nursing is the administrative organization under which it exists and that the Board does not have control over the titles a massage, bodywork and somatic therapist uses or the work a massage, bodywork and somatic therapist performs. The Committee believes that the rules are clear.

13. COMMENT: One commenter asks why massage therapists are under the control of nurses, who are themselves under the control of doctors. The commenter asks why the Department of Health does not have jurisdiction over massage like it does in Florida. The commenter is concerned that the public will be harmed if massage therapy is burdened by individuals who are looking to increase their own revenue. The commenter claims that individuals can obtain money from insurance companies for operations on sore and clogged bodies that are not necessary when a bodyworker is allowed to work with the patient. The commenter argues that if other health professionals are concerned about losing money to massage therapists, then these professionals are operating for the wrong reasons and that they should not be cutting into a person when a massage could alleviate the pain. The commenter contends that doctors and nurses should be upset with themselves. The commenter argues that doctors and nurses are in the health profession for the wrong reason if they are unhappy that a patient can have his or her pain lessened or relieved completely due to a massage.

RESPONSE: The Committee points out that it is administratively organized under the auspices of the Board of Nursing but that nurses do not control the Committee or massage, bodywork and somatic therapists. Likewise, the Committee also points out that nurses are not under the control of doctors. The Legislature determined that the Committee and the regulation of massage, bodywork and somatic therapists would be organized within the Division of Consumer Affairs, like every other professional and occupational board or committee in New Jersey. Massage, bodywork and somatic therapists will not be "burdened by" individuals who, as the commenter claims, may be looking to increase their own revenue. The regulation of massage, bodywork and somatic therapists will be administered by the Committee, which is made up of massage, bodywork and somatic therapists. The Committee will not address the commenters unsupported contentions that other health care professionals are concerned about losing money to massage, bodywork and somatic therapists.

14. COMMENT: One commenter points out that over 2,000 individuals graduate from massage schools in New Jersey every year and question the benefit these regulations will provide.

RESPONSE: The Act and the rules were created to protect consumers in New Jersey. The benefit the Act and rules provide is that consumers are able to identify those individuals who have met the certification standards for education and practice that are set forth in the Act and the rules.

15. COMMENT: One commenter claims that certification was intended to set professionals apart from those who are engaged in the sex trade. The commenter contends that the regulations, in attempting to ferret out illegitimate activities like massage parlors, prostitutes and unqualified and uneducated massage therapists, undercut and hobble massage professionals.

RESPONSE: State certification was not created by the Legislature in order to set apart professionals from those engaged in the sex trade. Certification was created to set apart those individuals who choose to obtain certification and who have met the requirements for certification from those who choose not to obtain certification. The regulations set forth criteria that certificants must comply with in their practice. These practice standards will not undercut or hobble massage professionals.

16. COMMENT: One commenter asks if State law supersedes local ordinances that differ from the State law.

RESPONSE: The Act supersedes local ordinances whenever a local ordinance addresses subjects that are the purview of the Committee pursuant to the Act, specifically, the certification of massage, bodywork and somatic therapists and regulating the practice of certificants.

17. COMMENT: One commenter asks that every massage therapist who has graduated from a New Jersey accredited school be notified of changes in the regulations.

RESPONSE: The Committee has no way of knowing who has graduated from an accredited school. Any individual or organization that wishes to be notified of changes in the rules should contact the Committee and ask to be included on the Committee's interested parties list. The schools are also encouraged to keep students apprised of the Committee's regulations if they intend to become certified.

18. COMMENT: One commenter contends that she did not receive notification from the Committee of the proposal even though she was on the Committee's interested parties distribution list.

RESPONSE: Notification of the proposal was sent to every individual who was on the Committee's interested parties list.

19. COMMENT: One commenter asks if graduates from her school will need to apply to the Committee to obtain certification.

RESPONSE: Yes, individuals who are interested in obtaining certification must apply to the Committee; however, certification is not required in order to practice massage, bodywork and somatic therapy.

20. COMMENT: One commenter contends that the word "not" has been omitted from page 3, paragraph 4, line seven of the proposal.

RESPONSE: It appears that the commenters meant to refer to the summary of proposed N.J.A.C. 13:37-16.7. There is no such omission in the proposal as it was printed in the New Jersey Register on October 20, 2003 at 35 N.J.R. 4819(a) or as it appears on the Committee's website.

21. COMMENT: One commenter contends that the proposal will impose hardships on residents and was only drafted to provide the State with money. The commenter asks if the regulations will stop individuals from practicing outside of their education and certification requirements. The commenter contends that the only people affected by these regulations will be those who are already certified and have adequate training. The commenter contends that the Committee will have no way of finding people who are self-taught and without certification. The commenter argues that individuals seeking treatment will not go to a person who is not educated about massage and that clients will not tolerate low-grade massages. The commenter asks who will benefit from the regulations.

RESPONSE: The Committee disagrees that the proposal will impose hardships on residents. The rules will ensure that consumers will be able to easily identify qualified massage, bodywork and somatic therapists. The rules were not drafted to provide money for the State. N.J.S.A. 45:1-3.2 requires all professional boards and committees to charge fees that cover the costs of operation. Professional boards and committees are not allowed to retain funds in excess of that which is necessary to cover expenses. Fees are continually reassessed to determine if they are appropriate to raise the necessary funds and are either raised or lowered accordingly. The fees imposed by the proposal were developed by estimating the cost of operation for the Committee and by estimating the number of individuals who are expected to apply for certification. Once the Committee begins to certify individuals it will have a clearer idea as to its costs and the number of certificants and will adjust the fees at that time, if necessary. The Committee points out that individuals who choose to obtain certification are submitting themselves to the statutory and regulatory authority of the Committee. This authority prohibits individuals from practicing outside of their education, either their initial education or what they learn after obtaining certification. The Committee wishes to ensure that certificants are only using those modalities of massage, bodywork and somatic therapy that they have been educated to perform so that they do not harm consumers. There is no reason for the Committee to locate uncertified individuals. N.J.S.A. 45:11-65 states that anyone may perform massage, bodywork and somatic therapy services as long as they do not refer to themselves by the titles that are reserved for those who hold certification. The Committee does not maintain that individuals who seek

massage, bodywork and somatic therapy will be looking for a knowledgeable therapist; but merely points out that a consumer will know if an individual is properly educated by determining whether or not that individual is certified. Certification is a confirmation of the therapist's ability to provide massage, bodywork and somatic therapies. The benefit of the rules will be for consumers, who will be able to verify a massage, bodywork and somatic therapist's education and qualifications, by determining whether or not the therapist is certified.

22. COMMENT: One commenter asks if there will be a possibility of licensing massage, bodywork and somatic therapists in the future.

RESPONSE: The decision to create licensure for massage, bodywork and somatic therapists, as opposed to certification that currently exists, will have to be made by the Legislature.

23. COMMENT: One commenter asks when the proposal will become effective.

RESPONSE: The proposed rules will become effective on November 15, 2004.

24. COMMENT: One commenter asks if the proposal will have any impact on registered nurses.

RESPONSE: If a nurse qualifies for certification as a massage, bodywork and somatic therapist and chooses to obtain certification, then these rules will apply to that nurse. Otherwise, the rules are not applicable. Nurses will not be able to use the terms reserved for certificants pursuant to N.J.A.C. 13:37-16.9 unless they hold certification.

25. COMMENT: One commenter argues that the proposal is unfair, especially to therapists who are not currently working.

RESPONSE: The Committee does not believe that this proposal is unfair. The proposal will only affect those individuals who choose to obtain certification. The proposal will not affect any other individuals, as long as they do not use the terms reserved for certificants pursuant to N.J.A.C. 13:37-16.9.

26. COMMENT: One commenter asks how the regulations will protect massage therapists from individuals who perform massage but are not trained to do so. The commenter contends that physical therapists, chiropractors and others identify themselves as massage therapists.

RESPONSE: The rules are not designed to protect massage, bodywork and somatic therapists. They are designed to protect consumers who use the services of massage, bodywork and somatic therapists. Pursuant to the Act, anyone may render massage, bodywork and somatic therapies but only those who are certified may use the terms reserved for certificants pursuant to N.J.A.C. 13:37-16.9.

27. COMMENT: Two commenters ask how large spas will handle uncertified massage therapists and how the Committee will deal with facialists and nail technicians that perform massage in a spa. The commenters point out that there is no mention of these massage businesses in the regulations.

RESPONSE: The Committee has no authority to determine how spas, large or otherwise, will handle uncertified individuals. Neither does it have authority over facialists or nail technicians who perform massage. The Act allows anyone to render massage, bodywork and somatic therapies so long as these individuals are not using the terms reserved for certificants pursuant to N.J.A.C. 13:37-16.9. The Committee has no authority over massage businesses, only massage, bodywork and somatic therapists which is why there was no mention of massage businesses in the rules.

28. COMMENT: One commenter asks who will make up the Massage, Bodywork and Somatic Therapy Advisory Committee and asks if it is different than the Massage, Bodywork and Somatic Therapy Examining Committee. The commenter also asks who appoints individuals to this new committee and suggests that massage therapists be included on this new committee.

RESPONSE: Reference to the "Massage, Bodywork and Somatic Therapy Advisory Committee" was a typographical error in the proposal, the term should have been "Massage, Bodywork and Somatic Examining Committee."

Appointments to the Massage, Bodywork and Somatic Therapy Examining Committee are made by the Governor.

29. COMMENT: One commenter asks what is in Subchapter 15 and where can this subchapter be found.

RESPONSE: Subchapter 15 is a reserved subchapter in N.J.A.C. 13:37. There are no rules in this subchapter.

30. COMMENT: One commenter asks what happens if the regulations are violated and points out that the regulations do not set forth consequences for violations.

RESPONSE: The Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq., sets forth the consequences for violations of the rules of any professional board or committee, including violations of N.J.A.C. 13:37-16.

31. COMMENT: One commenter contends that there are a number of spelling errors in the proposal.

RESPONSE: The commenter did not indicate where these alleged spelling errors are. If the Committee becomes aware that there are spelling errors in the text of the rules, it will amend the rules to correct these errors.

32. COMMENT: One commenter asks if massage schools have to register with the State and if there is a fee for this.

RESPONSE: A massage school does not have to register with the Committee; however, a massage school may have to obtain approval from the New Jersey Department of Education and any inquiry may be directed to the Department of Education.

33. COMMENT: One commenter believes that there should be high standards for certifying and regulating massage therapists.

RESPONSE: The Committee believes that it has created high standards for certifying and regulating massage, bodywork and somatic therapists.

34. COMMENT: One commenter asks if the Committee had nothing better to do than dream up P.L. 1999, c.19.

RESPONSE: The Committee did not create P.L. 1999, c.19. The Legislature enacted this law and the Committee is responsible for its implementation.

35. COMMENT: A majority of the commenters refer to the proposed regulations as "P.L. 1999, c.19," the "Act," the "law" or "legislation."

RESPONSE: The Committee points out that there is a difference between the proposed rules and the law that governs massage, bodywork and somatic therapists. "Legislation," "law," "Act" and "P.L. 1999, c.19" all refer to the Massage, Bodywork and Somatic Therapist Certification Act, N.J.S.A. 45:11-53 et seq. N.J.A.C. 13:37-16 are the rules that effectuate the provisions of the Act.

36. COMMENT: One commenter believes that the standards set by the regulations are too lax. The commenter contends that professionals need stricter requirements than the ones in the proposal. The commenter contends that massage as a body art does not take much anatomical knowledge but that massage as healthcare depends on anatomical knowledge. The commenter contends that the proposal will not result in massage therapy being recognized by insurance companies. The commenter believes that national certification is a higher level of professionalism than the State certification.

RESPONSE: The Committee disagrees that the standards are too lax. The Committee believes that the commenter's distinction between massage as a body art and massage as healthcare is artificial and that any application of massage, bodywork and somatic therapy should be based upon anatomical knowledge. These rules were not drafted to result in the recognition of massage, bodywork and somatic therapy by insurance companies. They were drafted to protect consumers who receive massage, bodywork and somatic therapy. The Committee disagrees that any national certification sets a higher standard of professionalism than State certification.

37. COMMENT: One commenter sees no difference between State certification and national certification, except for higher fees. The commenter asks if massage therapists will need to maintain national certification. The commenter contends that, if State certification was created to differentiate those individuals who pursue continuing education and hold themselves out as professionals, the State certification process has failed. The commenter argues that letters after an individual's name and paying fees means nothing unless the public is educated as to the nature of massage, bodywork and somatic therapy.

RESPONSE: The Committee believes that there is a vast difference between State certification and national certification. State certification is issued by a government to protect consumers. National certification is issued by a private organization whose motivation is the protection of certificants. Only State certificants may use the titles set forth in N.J.A.C. 13:37-16.9, national certificants who do not hold State certification may not use these titles in New Jersey. An individual's national certification status is irrelevant to State certification. The rules were drafted to establish education and practice standards. It is not the Committee's responsibility to educate the public as to certification. It is the Committee's responsibility to issue certification to those individuals who qualify and to ensure that these individuals practice in a safe and effective manner.

38. COMMENT: One commenter suggests that the State offer the choice of being either State licensed or nationally certified. The commenter contends that this is appropriate as there is no difference between the two, except that a State licensed therapist may be eligible for insurance reimbursement.

RESPONSE: There is a vast difference between State and national certification, as outlined in previous responses. An individual's national certification status is irrelevant to State certification and the Committee will not recognize national certification as a substitute for meeting the certification requirements of N.J.A.C. 13:37-16.3 and 16.4. The Committee points out that it has no authority over insurance reimbursement.

39. COMMENT: One commenter contends that there are issues that should be dealt with in the regulations such as health insurance, prescription medication, crime, fear and anger.

RESPONSE: The issues cited by the commenter are outside of the Committee's purview as articulated by the Legislature in N.J.S.A. 45:11-53.

40. COMMENT: One commenter points out that the proposed regulations do not include a section that explains the benefits of being State certified. The commenter asks how certification will help massage become more acceptable to insurance companies. The commenter also asks why a client would care if a massage therapist is certified or not.

RESPONSE: The purpose of the proposed rules is to set forth qualifications for certification and practice requirements. The rules are not intended to explain the benefits of certification. The Committee has no jurisdiction over insurance reimbursement and certification is unrelated to such reimbursement. The Committee believes that certification allows consumers to identify those individuals who have met standards established by the State to provide massage, bodywork and somatic therapies.

41. COMMENT: One commenter realizes that the regulations do not require an individual to obtain certification in order to practice massage, bodywork and somatic therapy, but contends that liability insurance will require massage therapists to conform to standards of practice in New Jersey. This standard of practice will be certification, once the regulations have been adopted.

RESPONSE: The Committee points out that it has no jurisdiction over insurance, including liability insurance. The decision whether or not to obtain certification is a decision that every massage, bodywork and somatic therapist has to make for him- or herself.

42. COMMENT: One commenter would like support to be covered by insurance companies since massage services are invaluable for the benefit of healing.

RESPONSE: Issues related to insurance reimbursement are not within the purview of the Committee.

43. COMMENT: One commenter asks how the Committee can say that the fees and regulations will not impact the massage profession. The commenter contends that many massage therapists are solo practitioners who do not charge high fees. The commenter contends that the initial fee and two-year renewal fee will be a hardship for many massage therapists, contrary to the Committee's contentions.

RESPONSE: The Economic Impact statement in the proposal did indicate that the fees imposed by the proposal will impact massage, bodywork and somatic therapists. Furthermore, the proposal indicated that the rules will impact massage, bodywork and somatic therapists. The Committee has no control over the fees a massage, bodywork and somatic therapist charges for his or her services. The Committee points out that, pursuant to N.J.S.A. 45:1-3.2, it must charge a fee that covers the expenses it incurs.

44. COMMENT: Several of the commenters claim that the fees charged pursuant to N.J.A.C. 13:37-5.5 are restrictively high. The commenters point out that they already pay fees for licensure in other states and for NCBTMB certification, continuing education, professional memberships, malpractice insurance and liability insurance. The commenters are concerned that these high fees will discourage massage therapists from obtaining certification.

RESPONSE: N.J.S.A. 45:1-3.2 requires all professional boards and committees to charge fees that cover the costs of operation. Fees are continually reassessed to determine if they are appropriate to raise the necessary funds and are either raised or lowered accordingly. The fees imposed by the proposal were developed by estimating the cost of operation for the Committee and by estimating the number of individuals who are expected to apply for certification. Once the Committee begins to certify individuals it will have a clearer idea as to its costs and the number of certificants and will adjust the fees if necessary. The Committee points out that the fees the commenters cite to are the cost of becoming a certified professional and believes that the commenter's claim that massage, bodywork and somatic therapists will be discouraged from obtaining certification because of these fees is speculative.

45. COMMENT: One commenter asks if the \$75.00 application fee is included in the \$120.00 fee. The commenter asks if an individual who is rejected for certification will receive a refund of the application fee.

RESPONSE: The \$75.00 application fee is in addition to the \$120.00 certification fee. The application fee is charged to cover the cost of processing the application and will not be refunded if an applicant is rejected.

46. COMMENT: One commenter asks if the fees include all present and future requirements such as pictures and fingerprinting.

RESPONSE: The fees set forth in N.J.A.C. 13:37-5.5 only cover the expenses of what is currently required by the rules. If new requirements are imposed in the future that result in new expenses for the Committee, the fees may need to be amended to cover those expenses.

47. COMMENT: One commenter contends that the fees for continuing education sponsors should be higher since sponsors are making money and cornering the market for continuing education in New Jersey.

RESPONSE: Pursuant to N.J.S.A. 45:1-3.2, the Committee must charge a fee that covers the expenses it incurs. The fee charged to continuing education sponsors covers the expenses the Committee will incur in processing the continuing education sponsor's application. The Committee cannot charge continuing education sponsors more just because the commenter makes an unsupported claim that these sponsors are better able to pay these fees.

48. COMMENT: One commenter argues that requiring continuing education sponsors to pay a fee will place an unfair financial burden on massage therapists who will bear the cost of these fees.

RESPONSE: N.J.S.A. 45:1-3.2 requires the Committee to charge a fee that covers the costs it incurs.

49. COMMENT: Two commenters were concerned with the inactive fee. The commenters want to see the Committee set an inactive fee now and not later. They suggest that the inactive fee be set at 25 percent of the active fee. The commenters ask that certificants be allowed to resume active status easily and suggest that the Committee require a maximum of 24 continuing education hours and a minimum of 250 hours of clinical practice over the past three years.

RESPONSE: The Division of Consumer Affairs is currently reviewing this issue to determine what every board and committee should charge those in an inactive status. Once the Division has made this determination, the Committee will propose an inactive fee. The procedure for return to active status from inactive status is set forth in N.J.A.C. 13:37-16.6(h). That rule states that the Committee may permit a certificant to return to active status provided the applicant completes continuing education requirements and the applicant holds certification in Basic Life Support.

50. COMMENT: One commenter contends that the fees should be half of the amount proposed and that the Committee does not need to take in much money considering their activities. The commenter asks what studies were done to justify this fee structure.

RESPONSE: N.J.S.A. 45:1-3.2 requires the Committee to charge a fee that covers the cost it incurs. The fees were determined after an analysis was performed by the Division of Consumer Affairs financial officer.

51. COMMENT: One commenter questions why the Committee requires posting of certificates at off-site locations and charges \$35.00 for copies of certificates. The commenter questions why it would cost so much to copy a certificate.

RESPONSE: The Committee requires that a certificate be posted to ensure that consumers will be able to verify that an individual is certified. The copy of the certificate is not a photocopy. The certificate issued by the Committee is a newly issued duplicate certificate from the central licensing division. The fee charged is the cost involved in issuing the certificate by the State entity and the Committee has no control over that fee.

52. COMMENT: One commenter claims that the AMTA website stated that there would be a different fee for a person who holds a certificate as a chiropractor's assistant or chiropractor's assistant for massage. The commenter asks why there are different fees for these individuals and asks why this is not posted on the Committee's website.

RESPONSE: The information the commenter claims to have found on the AMTA site is incorrect. The fees will be the same for all applicants. The Committee points out that individuals should be getting their information from the Committee, not from outside sources.

53. COMMENT: Several commenters contend that the regulations were only proposed as a way to make money and that the fee schedule is exorbitant. They are concerned because they do not know what justifies these fees.

RESPONSE: These regulations were proposed to effectuate the certification and regulation of massage, bodywork and somatic therapists pursuant to the Act, N.J.S.A. 45:11-65 et seq. N.J.S.A. 45:1-3.2 prohibits the Committee from charging more than it needs to meet the costs it incurs.

54. COMMENT: One commenter points out that it costs \$220.00 for membership in AMTA each year, that NCBTMB costs \$200.00 for renewal and that each course costs anywhere from \$100.00 to \$600.00.

RESPONSE: The Committee has not investigated the fees charged by these private organizations, so it does not dispute the commenter's claim that these are the fees charged. The fees charged by private organizations are unrelated to the fees the Committee must charge in order to pay for its expenses.

55. COMMENT: One commenter agrees that a distinction should be made between illegal sex workers and legitimate massage therapists, but points out that the proposed fee is 10 times greater than the fee paid in New York.

RESPONSE: These rules were not drafted to differentiate between illegal sex workers and legitimate massage, bodywork and somatic therapists. These rules were drafted to effectuate the certification and regulation of massage, bodywork and somatic therapists. The Committee points out that New York charges \$100.00 for licensure; this amount is \$20.00 less than the fee proposed by the Committee.

56. COMMENT: One commenter argues that the high fees are troublesome considering the lack of value provided to certificants under the regulations.

RESPONSE: The Committee charges the fees necessary to cover its costs. The Committee points out that these rules were not drafted to provide certificants with value but to protect consumers who avail themselves of the services of certificants.

57. COMMENT: One commenter contends that the regulations must restrict the use of all the permutations of the term "massage" to certificants. The commenter contends that the Committee has done a woefully poor job of enforcing these regulations since they were enacted in 1999. The commenter demands that the Committee enforce these regulations in the future. The commenter contends that some schools are telling their graduates that they can call themselves "certified massage therapists" based on their diploma.

RESPONSE: The Committee points out that N.J.S.A. 45:11-65 sets forth the terms that are reserved solely for certificants. This statute does not reserve all permutations of the term "massage" to certificants and, absent such statutory authority, the Committee cannot restrict the use of the term "massage" as the commenter suggests. The Committee points out that these rules did not exist in 1999. The commenter obviously meant to contend that the Committee has not enforced the Act, which was enacted in 1999. The Committee could not enforce the Act until rules that effectuated the provisions of the Act were adopted. The Committee will enforce the Act now that these rules have been adopted. The Committee points out that the rules preclude someone from calling themselves "certified massage therapists" unless they are certified by the Committee.

58. COMMENT: One commenter contends that N.J.A.C. 13:37-16.1 should state that these regulations apply to all persons engaged in the massage business. If they are not applied to all, the regulations will only be a burden for certificants.

RESPONSE: N.J.S.A. 45:11-65 specifically states that "nothing in this Act shall be construed to prohibit any person from rendering massage, bodywork and somatic therapy services." This statute prohibits the Committee from amending N.J.A.C. 13:37-16.1 as the commenter suggests.

59. COMMENT: One commenter argues that making certification voluntary and failing to control the use of the terms "massage," "massage therapy" or "therapeutic massage" to a professional environment is a disservice to everyone. The commenter will not pay the certification fee because he believes his scope of practice will be restricted by certification while uncertified individuals may practice as they wish.

RESPONSE: N.J.S.A. 45:11-65 makes certification voluntary and does not control the use of the terms "massage," "massage therapy" or "therapeutic massage" to the extent the commenter suggests is appropriate. The Committee points out that this statute does not require that any one obtain certification, so the commenter need not obtain certification or pay the certification fee as long as he does not use any of the titles reserved to certificants pursuant to N.J.A.C. 13:37-16.9. The Committee also points out that certification entails the State's imprimatur and indicates that a certificant is recognized by the State as a professional who will conduct his or her practice in a professional and safe manner. The practice of certificants will be restricted to the extent that consumer safety requires such restrictions so that consumers can be reasonably sure that those who are recognized by the State as professionals are practicing safely and effectively. Each therapist is free to choose whether they will be certified by the Committee or not and the advantages and/or disadvantages of being certified.

60. COMMENT: One commenter is concerned with the blurred lines in the designations of the different therapies. The commenter is concerned that this blurriness could start a turf war like those that have affected other professions and asks that the regulations clarify the distinctions between the designations of different therapies.

RESPONSE: The Committee is not in a position to make such distinctions due to the nature of massage, bodywork and somatic therapies and the frequent overlap between modalities. These regulations were drafted to recognize that many modalities have such overlap and that the massage, bodywork and somatic therapy community does not recognize clear distinctions between different modalities. N.J.A.C. 13:37-16.7 allows a certificant to practice any modality that the certificant is educated to perform.

61. COMMENT: Some of the commenters ask if the Committee will prohibit individuals from using the NCBTMB designation and the term "nationally certified" if they have passed the national certifying examination. One commenter

argues that a therapist who has graduated from an approved school and has passed the NCBTMB examination should be allowed to use the term "certified massage therapist" and should only be prohibited from using the term "State certified." The commenters also ask if individuals will be required to pay fees to both NCBTMB and the Committee.

RESPONSE: An individual who is certified by a national organization will be permitted to indicate this certification, as long as they clearly indicate by what organization they are certified by and do not indicate that they are State certified if they are not certified by the Committee. The term "certified massage therapist" is reserved for certificants pursuant to N.J.S.A. 45:11- 65 and only individuals who are certified by the Committee may use this term. The Committee does not require that certificants pay fees to NCBTMB or any other national organization.

62. COMMENT: Several commenters point out that N.J.A.C. 13:37-16.1 does not include the terms "massage therapist," "MT" or "bodyworker." The commenters contend that these terms are commonly used, that their absence will cause confusion and that they should be included.

RESPONSE: These terms are not included in N.J.S.A. 45:11-65 or 45:11-66 and the Committee, therefore, cannot include them in N.J.A.C. 13:37-16.1.

63. COMMENT: One commenter asks why there are so many confusing designations. The commenter contends that the public would not learn these designations and asks who is helped by having so many different designations.

RESPONSE: The designations that are listed in N.J.A.C. 13:37-16.1 and 16.9 are those terms that are recognized by the Legislature pursuant to N.J.S.A. 45:11-65 and 45:11-66. The Committee is required to recognize these terms in rules. The Committee does not believe that the public will be confused by these designations.

64. COMMENT: One commenter asks if a massage therapist who is not certified by the State, but is certified in a specific modality such as myofascial or craniosacral, can use the terms "certified myofascial" or "certified craniosacral therapist."

RESPONSE: These terms are not prohibited by N.J.S.A. 45:11-65 and the certification issued by the Committee pursuant to N.J.S.A. 45:11-53 et seq. does not provide for certification of specialties such myofascial or craniosacral. An individual who is not certified by the State may use these terms. The Committee points out that anytime the term "certified" is used by an individual who is not State certified, there is a possibility that it could cause confusion for consumers. Clearly identifying what is meant when the term "certified" is used will benefit consumers who are attempting to find State certified massage, bodywork and somatic therapists.

65. COMMENT: One commenter asks if a massage therapist who is not certified by the State can use the term "massage therapist" on a business card.

RESPONSE: The term "massage therapist" is not included in N.J.S.A. 45:11-65 or 45:11-66 and may be used by individuals who are not certified by the Committee.

66. COMMENT: One commenter points out that the term "CST" can refer to certified craniosacral therapist. The commenter asks if a person who is a certified craniosacral therapist may use the term "CST" if they are not certified by the State.

RESPONSE: The term "CST" could stand for "certified somatic therapist," a reserved title and therefore cannot be used unless the individual is certified by the Committee.

67. COMMENT: One commenter points out that many individuals use the term "massage therapist" and that, if the Committee does not allow them to use this term, these individuals will call themselves "body rubbers," which the Committee does not want.

RESPONSE: The term "massage therapist" is not reserved for certificants by statute; uncertified individuals may use this term. The Committee has no control over the terms that uncertified individuals use as long as they do not use the terms reserved for certificants pursuant to N.J.A.C. 13:37-16.1 and 16.9.

68. COMMENT: One commenter argues that the Committee should not prohibit individuals who are not certified by the State from using the term "certified" in their title. The commenter points out that there are many practicing massage therapists who are nationally certified and asks if such therapists will have to stop referring to themselves as certified. The commenter is disturbed that therapists who have been previously responsible for their credentials will be affected by an arbitrary decision on the part of the Committee to control these individuals through its State certification "whims."

RESPONSE: As stated above, the Committee will not prohibit an individual from indicating that they are nationally certified as long as the individual indicates which organization has certified them and does not incorrectly indicate that they are State certified. The decision by the Committee is not arbitrary, it is based upon the legislative intent evidenced in N.J.S.A. 45:11-65 and 66.

69. COMMENT: Several commenters suggest that the Committee exclude energy body workers who practice Qi Gong, Integrated Therapy, Reiki and Bowen from the regulations. The commenters point out that the regulations do not specifically mention Reiki, but that their wording could be interpreted as including Reiki. The commenters argue that energy workers would not be eligible for certification because they deal with mind-body healing. The commenters believe that the education requirements in the regulations are not appropriate for energy workers. The commenters point out that Reiki takes only a day to learn and that master status in Reiki can take between two days and a year. The commenters argue that energy workers do not manipulate the body, apply pressure or do any invasive procedures. The commenters state that Reiki practitioners do not look for signs of physical injuries or disease and therefore do not need knowledge of anatomy or physiology. The commenters argue that requiring energy workers to spend hundreds of hours in a classroom would be wasted time and would encourage some energy workers to believe that they can diagnose and treat. The commenters ask the Committee to define what therapies fall into the somatic category and to amend the education requirements if energy workers are included in the definition of "somatic."

RESPONSE: The Committee points out that no one is required to meet its certification requirements. Certification is voluntary for any individual who provides massage, bodywork and somatic therapy services, including those individuals who perform energy bodywork. The Committee also points out that, if energy workers were specifically exempted from these regulations, then no energy worker could ever obtain certification. The Committee points out that knowledge of anatomy and physiology is not required so that certificants can identify physical injuries or diseases. It is required so that certificants have the knowledge to safely and effectively provide massage, bodywork and somatic therapy services. No certificant may diagnose or treat, and the Committee does not believe that meeting the certification requirements in any way encourages an individual to diagnose or treat. The Committee does not believe it is necessary or appropriate to define the modalities that fall into somatic therapy. The Act and these rules treat massage, bodywork and somatic therapy as one professional practice which should not be divided into separate categories. The Committee will not amend the education requirements for certification as these requirements are the same for all certificants and are based on statutory requirements.

70. COMMENT: One commenter argues that Reiki can do no harm since a Reiki practitioner is not directing any healing or healing any part of the body. The commenter argues that this means that Reiki practitioners should not be required to obtain licensure or pay fees.

RESPONSE: No massage, bodywork and somatic therapist is required to obtain certification or pay certification fees.

71. COMMENT: One commenter asks the Committee to acknowledge and embrace the many training modalities that healers may undergo to master their field. The commenter contends that she does not practice nursing or diagnose physical illness. The commenter sees no need for training in the area of nursing since the commenter does not practice nursing. The commenter urges the Committee to accept her certification process and support her right to practice as a Certified Healing Touch Practitioner.

RESPONSE: The Committee does acknowledge different modalities pursuant to N.J.A.C. 13:37-16.7(a). No one may practice nursing without holding a nursing license from the Board of Nursing. These rules do not impose any nursing requirements on certificants. N.J.S.A. 45:11-55 provides that massage, bodywork and somatic therapies do not include the diagnosis or treatment of illness, disease, impairment or disability, so no certified massage, bodywork and somatic

therapist should be diagnosing a physical illness. An uncertified individual may practice any form of massage, bodywork and somatic therapy they choose to perform. A certified massage, bodywork and somatic therapist may perform any form of massage, bodywork and somatic therapy that they are educated to perform pursuant to N.J.A.C. 13:37-16.7.

72. COMMENT: One commenter is concerned that certified laban movement analysts will be required to obtain certification. The commenter contends that this technique falls under the definition of massage, bodywork and somatic therapy as defined in N.J.A.C. 13:37-16.2. The commenter contends that laban movement analysts are trained very differently than massage therapists.

RESPONSE: No one is required to obtain certification. If a certified laban movement analyst meets the requirements of certification, and chooses to obtain certification, they may do so.

73. COMMENT: Two commenters ask the Committee to provide definitions for "full-time" and "part-time." One commenter states that, if "full-time" is 40 hours per week, it is too much. This commenter asks if the 40-hour work week would include paperwork and commuting and how this time will be verified.

RESPONSE: N.J.A.C. 13:37-16.2 provides definitions for both "full-time" and "part-time." "Full-time" is defined as providing "a minimum of 750 hours of massage, bodywork and somatic therapies to clients during a year." "Part-time" is defined as providing "a minimum of 300 hours of massage, bodywork and somatic therapies to clients during a year." The definition of "full-time" does not equal 40 hours a week, it equals 15 hours a week. The definition of "full-time" does not include paperwork or commuting time, it includes only hours spent providing massage, bodywork and somatic therapies to clients. The Committee will require applicants to attest to the truth of their statements regarding the hours they have spent providing massage, bodywork and somatic therapy. If an individual makes untruthful statements about these hours on their application, they may be subject to disciplinary action.

74. COMMENT: Several commenters were concerned with the definitions of "full-time" and "part-time" in N.J.A.C. 13:37-16.2. They argue that these definitions set the number of hours for both full-time and part-time practice at too high a level. Some of the commenters contend that the Committee should adopt NCBTMB standards and set full-time at 400 hours a year. Others claim that full-time should be set at 450 hours a year. One commenter recommends that part-time be set at 100 hours a year. Another commenter contends that AMTA states that part-time massage therapists work an average of 1.6 hours a week. The commenter points out that the definition of "part-time" in the N.J.A.C. 13:37-16.2 requires over three and a half times more than this.

RESPONSE: The Committee believes that the standards for full-time and part-time set forth in N.J.A.C. 13:37-16.2 ensure that applicants for certification pursuant to N.J.A.C. 13:37-16.3 have sufficient knowledge and skill regarding the practice of massage, bodywork and somatic therapy to qualify for certification without meeting the education or examination requirements of N.J.A.C. 13:37-16.4. The Committee does not believe that setting full-time at 400 to 450 hours a year ensures that applicants for certification are sufficiently familiar with the practice of massage, bodywork and somatic therapy. The Committee also does not believe that setting part-time at 100 hours a year adequately prepares an applicant for certification. The Committee points out that it is not required to follow either NCBTMB standards or AMTA standards for full-time and part-time. The Committee is required to adopt standards that will provide for sufficiently prepared certificants who can safely and effectively practice massage, bodywork and somatic therapy.

75. COMMENT: One commenter asks, in reference to part-time practice, what will happen to a massage therapist who works less than 300 hours per year. The commenter asks if such an individual could obtain State certification and, if not, would they still be allowed to be a massage therapist.

RESPONSE: An individual who does not meet the requirements for part-time practice will not qualify for certification pursuant to N.J.A.C. 13:37-16.3. Such an applicant would have to apply for certification pursuant to N.J.A.C. 13:37-16.4. The Committee points out that an individual who does not qualify for certification through grandfathering or regular certification may continue to perform massage, bodywork and somatic therapy as long as that individual does not refer to him- or herself by the terms reserved to certificants pursuant to N.J.A.C. 13:37-16.1 and 16.9.

76. COMMENT: One commenter claims that the inclusion of the term "massage, bodywork and somatic therapies do not include the diagnosis or treatment of illness, disease, impairment or disability" in N.J.A.C. 13:37-16.2 and 16.16 indicated that the Committee is protecting consumers.

RESPONSE: The Committee thanks the commenter for his support of the proposed rules.

77. COMMENT: Several commenters believe that N.J.A.C. 13:37-16.2 and 16.6 should not state that "massage, bodywork and somatic therapies do not include the diagnosis or treatment of illness, disease, impairment or disability." The commenters argue that this ignores the work of therapists in a medical setting. The commenters claim that complementary therapeutic treatments as directed by qualified medical professionals for impairment and dysfunction is within a massage therapist's scope of practice. The commenters argue that massage therapists directly and indirectly contribute to the treatment of impairments and dysfunction. The commenters also point out that a physician will prescribe a massage, bodywork or somatic treatment for a specific illness, disease, impairment or disability. One commenter contends that this rule was requested by the Physical Therapy Association and that it is intended to protect physical therapy territory and not to serve the public. The commenters request that the Committee remove the word "treatment" from N.J.A.C. 13:37- 16.2 and 16.16 and that the Committee clarify what illness, disease, impairment or disability may be treated by a certificant.

RESPONSE: N.J.S.A. 45:11-55 states that "massage, bodywork and somatic therapies do not include the diagnosis or treatment of illness, disease, impairment or disability." The legislative intent that massage, bodywork and somatic therapies not include diagnosis or treatment is not altered by the fact that the commenter believes that massage, bodywork and somatic therapy is a treatment or that the commenter believes that physicians prescribe massage, bodywork and somatic therapy. The inclusion of this language in the rules comes directly from the Act and was not requested by the Physical Therapy Association. This Association had no input when these rules were being drafted.

78. COMMENT: One commenter agrees that massage, bodywork and somatic therapy does not include diagnosis but requests that consumers who are ill, suffering from a medical condition, impairment or disability be able to receive treatments from certificants. The commenter believes that certificants be required to obtain additional certifications in rehabilitation and medically focused massage in order to ensure quality of care for the sick and suffering.

RESPONSE: N.J.S.A. 45:11-55 specifically states that "massage, bodywork and somatic therapies do not include the diagnosis or treatment of illness, disease, impairment or disability." A certificant cannot diagnose or treat, but may still provide massage, bodywork and somatic therapy to individuals who are ill or suffer from a medical condition. The Committee is not authorized to adopt differing certification standards for certificants who work with sick and suffering clients as the commenter suggests.

79. COMMENT: One commenter contends that the term "treatment" should not be used anywhere in the regulations as P.L. 1999, c.19 does not refer to massage as a treatment and use of the term "treatment" is misleading to the public. The commenter points out that the phrase "application of massage" is used in the statute.

RESPONSE: The Committee agrees that the term "treatment" should not be used in the regulations. The Committee has amended N.J.A.C. 13:37-16.8 and 16.14 upon adoption to either remove the phrase "treatment" or to change it to "provision of massage."

80. COMMENT: One commenter contends that the medical definition of "heliotherapy" is "the treatment of disease by the use of sun and fresh air." The commenter argues that this is in conflict with the prohibition on treatment of illness or disease.

RESPONSE: N.J.S.A. 45:11-55 includes the word "heliotherapy" in its definition of "massage, bodywork and somatic therapies." Regardless of the commenter's interpretation of this term, the Legislature has clearly indicated that heliotherapy is within the scope of practice of certified massage, bodywork and somatic therapists.

81. COMMENT: One commenter contends that massage therapy often involves treatment and that many massage therapists specialize in chronic pain and injury clients. The commenter contends that massage therapists collect third party reimbursements for services. The commenter is concerned that the statement in the regulations that massage does

not include treatments could prevent massage therapists from receiving insurance payments.

RESPONSE: N.J.S.A. 45:11-55 clearly indicates that massage, bodywork and somatic therapists cannot engage in treatments of chronic pain, injury or any other illness, disease, disability or impairment. The Committee has no jurisdiction over third party reimbursements or insurance payments. The rules do not prohibit such reimbursement or payments.

82. COMMENT: One commenter suggests that the Committee read the code of ethics of the NCBTMB which includes many references to massage therapy and treatment.

RESPONSE: The Committee is familiar with the NCBTMB code of ethics and recognizes that the NCBTMB code of ethics refers to therapy and treatment. The Committee is bound by the definition in the statute in formulating its rules, which provides that massage, bodywork and somatic therapy practices are designed for the purpose of promoting and maintaining the health and well-being of the client, but do not include the diagnosis and treatment of illness, disease, impairment or disability

83. COMMENT: One commenter argues that she was taught in school that performing massage was treating a client's medical problems. The commenter contends that she is often used by a chiropractor or neurologist as a supportive source of treatment. The commenter also contends that in school she was taught to include a section for treatment as part of Subjective data, Objective data, Assessment, Plan (SOAP) charting.

RESPONSE: N.J.S.A. 45:11-55 clearly states that treatment is not part of massage, bodywork and somatic therapy. The Committee points out that a certificant's scope of practice stems from the Act and these rules.

84. COMMENT: One commenter believes that the regulations should clearly define the distinction between massage, bodywork and somatic therapies. The commenter believes that it is not clear whether the three disciplines are equal to one another or whether bodywork and somatic therapies are sub-specialties of massage.

RESPONSE: The term "massage, bodywork and somatic therapies" encompasses every modality that a certificant may practice. As used in the Act and these rules, this term refers to one practice, not three separate practices. There is no distinction to be made between massage, bodywork and somatic. Bodywork and somatic therapies are not sub-specialties of massage.

85. COMMENT: Several commenters contend that the definition of "massage, bodywork and somatic therapy" must be amended to clarify what services a massage therapist can perform and to prevent an over-extension of the scope of practice or an overlap with the scope of practice of licensed chiropractic physicians, medical doctors, doctors of osteopathy and doctors of podiatric medicine. The commenters suggest that the Committee adopt a new definition of "massage therapy" that states that:

"Massage therapy" means the use of manual (not mechanical) techniques that involves a system of structured, skillful touching of the soft tissues of the human body including effleurage (stroking), petrissage (kneading), tapotement (tapping), non specific stretching, rules compression, vibration, and friction of the body with the hands, forearms, elbows, with or without the aid of heat limited to hot packs and heating pads, cold water, or non-prescription topical applications, for the purpose of improving circulation, enhancing muscle relaxation, and improving muscular tone.

The commenters argue that this definition reflects the true scope of practice for massage therapists.

RESPONSE: The definition of "massage, bodywork and somatic therapy" in N.J.A.C. 13:37-16.2 is taken from N.J.S.A. 45:11-55. The Committee is limited to use the definition provided by that statute. The Committee believes that the rules clearly indicate what services a certificant may perform. The Committee points out that there could be legitimate overlap between the scope of practice for certified massage, bodywork and somatic therapists and licensees and certificants from other Boards and Committees.

86. COMMENT: One commenter contends that, in the definition of "massage, bodywork and somatic therapy," the phrase "the energetic systems of the body" is so vague that it can encompass anything. The commenter asks if there are

any limitations to "the energetic systems of the body." The commenter is also concerned that the phrase "positioning and mobilizing soft tissue of the body by manual technique" sounds too much like chiropractic and physical therapy. The commenter argues that this is too broad and that kneading muscle tissue is very different than pulling, tugging, stretching tendons and ligamentous tissue or chiropractic adjustment. The commenter argues that the limited education a massage therapist receives would permit them to perform massage for the purpose of improving circulation, enhancing muscle relaxation and improving tone, but would not qualify them to practice beyond this and it would harm the public to allow them to do so. The commenter argues that the scope of practice in the regulations should be deleted and replaced with "the practice of massage therapy is the stroking and kneading of the muscle tissues of the body for the purpose of improving circulation, enhancing muscle relaxation and improving tone." The commenter believes that the limitation imposed by N.J.A.C. 13:37- 16.7(b) should be retained, with a new prohibition on thrusting into any joint.

RESPONSE: The term "energetic systems of the body" is taken from N.J.S.A. 45:11-55. It is necessary for the regulatory definition of "massage, bodywork and somatic therapy" to conform to this statutory definition. It is unclear what the commenter meant by asking if there are any limitations to the energetic systems of the body. To the extent that the energetic systems of the body are integral parts of the body, there is no limitation between that system and the rest of the body. The phrase "positioning and mobilizing soft tissues of the body by manual technique" is also taken from N.J.S.A. 45:11-55. The phrase is not too broad and accurately reflects the scope of practice recognized by the Legislature. The Committee points out that kneading muscle tissue is not the extent of a certificant's scope of practice as articulated by the Legislature and the commenters differentiation between kneading muscles and pulling, tugging, stretching tendons and ligamentous tissue is not accurate. The statutes and rules do not claim that certificants can perform chiropractic adjustments. The education certificants receive qualifies them to practice within the scope articulated by the Legislature and the Committee. This scope is not limited to improving circulation, enhancing muscle relaxation and improving tone as the commenter contends. The scope of practice articulated in N.J.A.C. 13:37-16.7 should not be deleted as the commenter suggests. This scope of practice accurately reflects the way that certified massage, bodywork and somatic therapists may practice. The Committee does not believe it is necessary to specifically prohibit a certificant from thrusting into a joint. Certificants can only perform those modalities for which they have received education to perform, if thrusting into a joint is not part of a valid modality, then no certificant can receive education to do this and should not be doing this.

87. COMMENT: One commenter is concerned with the definition of "massage, bodywork and somatic therapy" in N.J.A.C. 13:37-16.2 and the statement that "massage, bodywork and somatic therapy practices are designed to affect the energetic systems of the body." The commenter believes that only energy modalities target energetic systems. The commenter asks why the definition does not include reference to "affecting the muscular system of the body." The commenter is concerned that the current definition excludes that largest section of bodyworkers, those who work on the soft tissues of the muscular system, and focuses only on energy workers. The commenter contends that the current wording of the definition leaves Swedish, Neuromuscular Therapy (NMT) and myofascial techniques out of massage, bodywork and somatic therapy.

RESPONSE: This definition is taken from N.J.S.A. 45:11-55. The Committee does not believe that this phrase limits the definition of "massage, bodywork and somatic therapy" to only energy modalities because the rest of the definition, with its reference to "systems of activity of structured touch which include holding, applying pressure, positioning and mobilizing soft tissue of the body by manual technique and use of visual, kinesthetic, auditory and palpating skills" clearly indicates that those who work on soft tissues are included in "massage, bodywork and somatic therapy."

88. COMMENT: One commenter asks that N.J.A.C. 13:37-16.2 and 16.7 be amended to prohibit certificants from offering cosmetology and hairstyling services as defined in N.J.S.A. 45:5B-3 et seq.

RESPONSE: Cosmetology and hairstyling services are clearly not included in the definition of massage, bodywork and somatic therapy articulated in N.J.A.C. 13:37-16.2 or in the scope of practice of certificants articulated in N.J.A.C. 13:37-16.7. It is not necessary to specifically prohibit practices that are obviously not related to massage, bodywork and somatic therapy.

89. COMMENT: Two commenters contend that the grandfathering provisions of N.J.A.C. 13:37-16.3 will allow

untrained practitioners to obtain certification. They view this as unfair. One of the commenters agrees that regulations are necessary to provide certification to those who obtained their education before the current standards for education went into effect. Another commenter argues that the requirements for certification should be the same for everyone. RESPONSE: The provisions of N.J.A.C. 13:37-16.3 are based upon N.J.S.A. 45:11-61. In this provision, the Legislature determined that it was appropriate to certify individuals who are currently working as massage, bodywork and somatic therapists if they have completed at least 200 hours of education. The Committee must follow this requirement. The Committee believes that any individual who has been working full time for the past two years, or part-time for the past five years, and who has completed 200 hours of education in massage, bodywork and somatic therapy is adequately prepared to safely and effectively provide massage, bodywork and somatic therapy services.

90. COMMENT: One commenter suggests that N.J.A.C. 13:37-16.3 be amended to recognize licensure in Canada and licensure in states that have requirements that exceed New Jersey requirements.

RESPONSE: N.J.A.C. 13:37-16.3 deals with individuals who are currently practicing in New Jersey; it does not deal with licensure in other states. N.J.A.C. 13:37-16.5 deals with endorsement and recognizes that an individual licensed or certified in another state with educational requirements that are similar to this State should qualify for certification. This is based on N.J.S.A. 45:11-64 which recognizes licensure or certification in other states. The Committee points out that Canada is not a state within the United States of America and cannot be extended the same recognition.

91. COMMENT: Several commenters were concerned with the requirement in N.J.A.C. 13:37-16.3(c)1 that applicants submit Internal Revenue Service documentation or bank statements to the Committee when applying for certification. The commenters argue that the Committee should not be allowed to obtain copies of tax returns, bank statements or accounting records. The commenters contend that notarized affidavits that attest to hours spent working in massage should be sufficient for the Committee's needs. One commenter argues that financial records will not show the number of hours worked. The commenters suggest that this requirement be re-written to state that Internal Revenue Service documentation or bank statements could be one of the documents included to support an application and clarify that such documentation is not required.

RESPONSE: The commenters have misinterpreted N.J.A.C. 13:37-16.3(c)1. This rule does not require that applicants submit Internal Revenue Service documentation or bank statements. The rule requires an applicant to submit "a notarized affidavit stating 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, bodywork and somatic therapy the applicant practiced." The rule states that this affidavit must attest to the authenticity of supporting records provided by the applicant and lists examples of such supporting records. These examples include tax returns, bank statements and accounting records. The Committee is not requiring the submission of these records; it is requiring that any submitted documents be authentic. In order to clarify this intent, the Committee has amended N.J.A.C. 13:37-16.3(c)1 upon adoption to indicate that the affidavit shall attest to the authenticity of any records that may be attached to the affidavit. The amended rule will read: "A notarized affidavit stating 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, bodywork and somatic therapy the applicant practiced. The affidavit shall attest to the authenticity of supporting records such as tax returns, bank statements and accounting records, which may be attached to the affidavit."

92. COMMENT: One commenter points out that NCBTMB audits appointment books in order to determine work hours. The commenter argues that, since the Committee is using NCBTMB as the model for these regulations, the Committee should perform a similar audit if questions as to hours worked arise.

RESPONSE: The Committee is not using NCBTMB as a model for these rules. The Committee drafted these rules pursuant to the statutory dictate of N.J.S.A. 45:11-53 et seq. The Committee recognizes NCBTMB for its examination and continuing education courses, but NCBTMB is not the controlling authority for these rules. The Committee may audit appointment books, along with many other items, to verify the qualifications of applicants based on full-time or part-time practice.

93. COMMENT: Several commenters were concerned with requirements that applicants hold current certification in Basic Life Support (BLS) from a course approved by the American Heart Association. The commenters ask if the

American Red Cross, the National Safety Council and American Safety and Health Institute courses in BLS would satisfy this requirement. Several of the commenters contend that the American Red Cross CPR certification is recognized as equivalent to the American Heart Association BLS course. One commenter suggests that the Committee recognize any CPR course given by an agency approved by the New Jersey Office of Emergency Medical Services.

RESPONSE: The Committee has researched organizations that offer certification that is equivalent to the American Heart Association BLS course. It has determined that the State Department of Health and Senior Services recognizes courses given by the American Heart Association, the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute and EMP International Inc. The Committee has amended N.J.A.C. 13:37-16.3, 16.4, 16.5, 16.6 and 16.11 upon adoption in recognition that these organizations offer courses substantially similar to the American Heart Association's BLS course.

94. COMMENT: One commenter ask what "BLS" stands for.

RESPONSE: "BLS" stands for Basic Life Support.

95. COMMENT: One commenter argues that the Committee should allow any course that is equivalent to the American Heart Association course to count towards the BLS requirement.

RESPONSE: The Committee has amended N.J.A.C. 13:37-16.3, 16.4, 16.5, 16.6 and 16.11 upon adoption to recognize that other organizations approved courses that are substantially equivalent to the American Heart Association BLS course.

96. COMMENT: One commenter points out that the regulations do not indicate whether Heartsaver CPR or Healthcare provider CPR is required as part of the BLS certification.

RESPONSE: The Committee does not wish to dictate which CPR program must be taken during a BLS course. Any CPR program, Heartsaver, Healthcare provider or any other, that is part of the BLS course will satisfy the Committee's requirements.

97. COMMENT: One commenter believes applying for certification "will be a hassle," since he has already taken a BLS course to get into school. The commenter also believes that two letters of recommendation will be a hassle to submit. The commenter contends that it is expensive to get a letter notarized or to have an affidavit, since a lawyer must prepare the document.

RESPONSE: The Committee requires that applicants for initial certification and renewal of certification maintain current certification in BLS. The Committee does not believe that this presents the difficulty envisioned. The requirement that an applicant submit two affidavits attesting to his or her good moral character is not unduly burdensome and is commonly required by other boards and committees. These affidavits do not have to be drafted by an attorney. The Committee points out that it is relatively easy to obtain notarization.

98. COMMENT: One commenter claims that the term "successfully passing the NCBTMB or NCCAOM examination" in N.J.A.C. 13:37-16.4(a)2 should be changed to "successfully passing examination or holding certificate from NCBTMB or the NCCAOM examination."

RESPONSE: N.J.S.A. 45:11-60 requires that an applicant either complete a minimum of 500 hours of class study or successfully complete the NCBTMB examination or a substantially equivalent examination approved by the Committee. The Committee has found that the NCCAOM examination is substantially equivalent to the NCBTMB examination. This statute requires the Committee to recognize the examinations offered by these organizations, the Committee must follow the dictates of this statute and cannot refer to certification by these organizations as the commenter suggests.

99. COMMENT: One commenter provided the Committee with questions that have recently appeared on the NCE examination and argues that the NCE should not be used because these questions ignore how science obtains information. The questions the commenter submitted deal with meridians, manipulation of the occipital regions,

acupuncture, shiatsu, reflexology and the basic pattern of energy for the spleen channel. The commenter contends that these questions imply a State acceptance of mystical practices.

RESPONSE: The Committee assumes that the commenter is referring to the NCBTMB examination, which is sometimes referred to as the NCE. The Committee does not believe that this examination ignores how science obtains information. The Committee believes that this examination accurately tests an individual's knowledge as to massage, bodywork and somatic therapy. Regardless of the Committee's beliefs regarding this examination, N.J.S.A. 45:11-60 requires the Committee to recognize this examination as a pathway to certification. The Committee does not believe that the NCE examination implies a State acceptance of mystical practices.

100. COMMENT: One commenter asks if NCBTMB means anything and suggests that the Committee require everyone to take the NCBTMB examination so that everyone could obtain certification.

RESPONSE: NCBTMB is the national organization that provides an examination recognized by N.J.S.A. 45:11-60. The Committee cannot require that every applicant successfully complete this examination because N.J.S.A. 45:11-60 sets out two pathways to certification, completion of the examination or completion of a minimum of 500 hours of class study.

101. COMMENT: Several commenters are concerned with N.J.A.C. 13:37-16.4(b) 4 which requires applicants for certification to submit two affidavits of good moral character. The commenters ask what value such affidavits will be and argue that those without "good moral character" will easily be able to obtain such affidavits. The commenters ask for a definition of "moral character" and how the Committee will validate such affidavits. The commenters are concerned that the affidavits they prepare will not satisfy the Committee. One commenter points out that affidavits are sworn, written declarations made before public officials and asks if the Committee is so suspicious of its applicants that a signed letter of reference would not suffice.

RESPONSE: N.J.S.A. 45:11-60 requires the Committee to ensure that applicants are of good moral character. The optimal way for the Committee to assess an applicant's moral character is to require the submission of two affidavits of good moral character. The Committee does not believe it is necessary to provide a definition of "good moral character." The individuals who provide the affidavits of good moral character will supply their subjective determination of the applicant's moral character without such definition. The Committee will provide applicants with affidavit forms for individuals to fill out. The Committee is required by N.J.S.A. 45:11-60 to develop a mechanism to verify an applicant's good moral character.

102. COMMENT: One commenter asks if nurses can become massage therapists without meeting the educational requirements in the regulations.

RESPONSE: N.J.S.A. 45:11-60 states that applicants who complete 500 hours of class study or the examination shall qualify for certification. A nurse who has not met the educational requirements of the rules would have to successfully complete the examination, just like any other individual.

103. COMMENT: One commenter believes that massage schools should include courses that address therapist safety with regard to repetitive stress injury, tendinitis, carpal tunnel syndrome and other associated problems.

RESPONSE: The Committee has no authority to regulate massage schools; it only has the authority to determine what education an applicant must complete in order to qualify for certification. The Committee does not believe that such courses would prepare an individual to practice safely and effectively as a massage, bodywork and somatic therapist.

104. COMMENT: One commenter contends that many students and graduates of State approved schools will not meet the requirements of N.J.A.C. 13:37-16.4(d). The commenter contends that this rule will create an undue burden on individuals trying to enter the field. The commenter recognizes that an individual who does not meet the educational requirements of N.J.A.C. 13:37-16.4(d) could qualify for certification by passing the NCBTMB or NCCAOM examinations, but contends that this pathway to certification imposes financial burdens on applicants. The commenter suggests that the Committee amend the N.J.A.C. 13:37-16.4(d) for recent graduates and students so that they will not be burdened with additional certification requirements.

RESPONSE: The Committee is authorized to create one set of certification criteria for individuals who are not currently practicing. The Committee drafted its educational requirements to ensure that certificants are properly prepared to safely and effectively practice massage, bodywork and somatic therapy. As the commenter recognizes, there is a second pathway to certification for individuals whose education does not qualify for certification. The Committee does not believe that the cost of the examination is unduly burdensome and will not amend N.J.A.C. 13:37-16.4(d) as the commenter requests.

105. COMMENT: One commenter is concerned that graduates of massage schools will not meet the requirements of N.J.A.C. 13:37-16.4(d). The commenter suggests that the Committee create a provisional license for such individuals who completed massage programs that consisted of less than 500 hours. The commenter suggests that such a license should be valid for at least three years during which the provisional licensee could complete any education he or she is lacking.

RESPONSE: The Committee has no statutory authority to create a provisional license as the commenter suggests.

106. COMMENT: One commenter suggests that the Committee require applicants to take a State examination or a national examination that has been approved by the State.

RESPONSE: The Committee cannot require that every applicant complete an examination. N.J.S.A. 45:11-60 dictates that applicants can qualify for certification by completing either a minimum of 500 hours of education or the examination.

107. COMMENT: Several commenters are concerned with N.J.A.C. 13:37-16.5 which requires an applicant who is licensed in another state to submit a copy of that state's statutes and regulations. The commenters suggest that the Committee determine which other states have certification/licensure requirements that are equivalent to the ones in New Jersey so that applicants would not have to submit copies of the statutes and regulations.

RESPONSE: The Committee points out that statutes and regulations often change. As such, a review it performs today may not be relevant a year from now as to the equivalency of another state's requirements to New Jersey requirements. The Committee does not believe that it is unduly burdensome for applicants to submit copies of statutes and regulations.

108. COMMENT: Two commenters claim that N.J.A.C. 13:37-16.6 should not require suspended certificants to submit an affidavit listing every job held while suspended. The commenters argue that any non-massage employment is irrelevant to the concerns of the Committee. The commenters argue that such a request is an invasion of privacy.

RESPONSE: N.J.S.A. 45:1-7.2 requires that an affidavit of jobs held during suspension be submitted when applying for reinstatement. This requirement is imposed on the lapsed licensees or certificants of every Board and Committee.

109. COMMENT: One commenter contends that N.J.A.C. 13:37-16.6(d), which states that "individuals who continue to hold themselves out as State certified massage, bodywork and somatic therapists after being suspended shall be deemed to have violated N.J.A.C. 13:37-16.9, even if no notice of suspension had been provided to the person" relieves the Committee from any responsibility to inform certificants if they are suspended. The commenter contends that this is unacceptable.

RESPONSE: The Committee will notify a certificant whose certificate has been suspended for failure to renew. The rule puts all certificants on notice that, if they do not renew the certificate, it will automatically be suspended without prior notification.

110. COMMENT: One commenter is concerned with N.J.A.C. 13:37-16.6. The commenter asks what the Committee will do to an individual who has an advertisement that indicates that they are certified when the individual has not renewed certification.

RESPONSE: An individual who has had his or her certification suspended pursuant to N.J.A.C. 13:47-16.6(d) and

who continues to indicate in advertisements that he or she is certified will be in violation of N.J.S.A. 45:11-65. Such an individual will be treated like any other uncertified individual who violates the law.

111. COMMENT: One commenter contends that paying past due fees when renewing certification is a hardship due to the nature of massage therapists who tend, the commenter argues, to move often.

RESPONSE: N.J.S.A. 45:1-7.2 requires that any certificant suspended by operation of a failure to renew pay all past delinquent renewal fees when renewing certification. An individual who does not wish to pay renewal fees may register as inactive.

112. COMMENT: Two commenters contend that a scope of practice, as found at N.J.A.C. 13:37-16.7, is appropriate for a licensing statute and is not consistent with the certification statute that governs massage, bodywork and somatic therapists. The commenters suggest that the term "scope of practice" be replaced with "description of services."

RESPONSE: While N.J.S.A. 45:11-53 et seq. is a titling act that does not prohibit uncertified individuals from rendering massage, bodywork and somatic therapy services, N.J.A.C. 13:37-16.7 is not inconsistent with N.J.S.A. 45:11-53 et seq. Pursuant to N.J.S.A. 45:11-67, the Board, in consultation with the Committee, has the authority to adopt rules that effectuate the purposes of this Act. This authority includes the power to adopt standards that all certificants shall follow and these standards are referred to as a "scope of practice."

113. COMMENT: One commenter requests that the Committee provide the statutory authority for proposing a scope of practice. The commenter argues that P.L. 1999, c.19 provides for the titling of certificants, but did not create a practice act or authorize a scope of practice for certificants.

RESPONSE: N.J.S.A. 45:11-67 authorizes the Board of Nursing, after consultation with the Committee, to adopt regulations that effectuate the purposes of the Act. As the purpose of the Act is to certify and regulate massage, bodywork and somatic therapists, N.J.S.A. 45:11-67 authorizes the adoption of scope of practice regulations.

114. COMMENT: One commenter points out that the regulations recognize the different qualifications and scopes of practice that massage, bodywork and somatic therapists have.

RESPONSE: The Committee agrees that the rules do recognize different qualifications and scopes of practice.

115. COMMENT: One commenter argues that the Committee has the authority to regulate the training a massage therapist receives but that the Committee cannot restrict a massage therapist from receiving training.

RESPONSE: The Committee is not restricting the training a massage, bodywork and somatic therapist receives. The Committee is simply setting forth the education that applicants for certification must complete if they choose to obtain certification.

116. COMMENT: One commenter points out that the regulations do not address breast massage. The commenter contends that many states allow breast massage when there has been informed consent from the client.

RESPONSE: The commenter is correct that there is neither express recognition of permissibility nor a regulatory prohibition against performing breast massage.

117. COMMENT: One commenter asks the Committee to draft a rule that would allow a certificant to work outside of their house.

RESPONSE: The rules do not prohibit a certificant from working outside of their house. N.J.A.C. 13:37-16.8(n) and 16.10(b) specifically recognize that certificants may work in a setting outside of their place of business.

118. COMMENT: One commenter contends that certification is a process in which a recognized therapist is credentialed by an approved provider. The commenter also contends that massage courses are thorough and have rigorous testing procedures. The commenter suggests that the Committee accredit providers of courses as opposed to

limiting the scope of practice of massage therapists.

RESPONSE: The commenter's definition of "certification" is inaccurate. Certification is the process by which an individual receives authorization from the Committee to refer to themselves by the titles reserved to certificants pursuant to N.J.A.C. 13:37-16.9. Such authority stems from N.J.S.A. 45:11-53 et seq. The Committee has no authority to accredit providers of courses; the Committee's authority is limited to those who obtain certification as massage, bodywork and somatic therapists. Regulating certified massage, bodywork and somatic therapists inherently involves the adoption of regulatory guidelines and limitations in order to ensure safe and effective practice.

119. COMMENT: One commenter is concerned because the Committee is taking her work away from her. She does not charge clients for the services she provides and these services do not require the time consuming and costly training that massage therapy does.

RESPONSE: The Committee points out that no one is required to obtain certification and that N.J.S.A. 45:11-65 expressly allows non-certificants to provide massage, bodywork and somatic therapy. The Committee also points out that whether or not an individual charges for the services he or she provides is not relevant to certification.

120. COMMENT: One commenter contends that N.J.A.C. 13:37-16.7 should be amended to prohibit a certificant from applying a massage if a client experiences pain during the massage.

RESPONSE: The Committee is not sure what the commenter meant by the term "pain." As this term is so subjective, it is inappropriate to amend the rules as the commenter suggests. The Committee points out that N.J.A.C. 13:37-16.16 will ensure that clients are properly informed as to what they should do if they experience what they determine is "pain" during massage, bodywork and somatic therapy.

121. COMMENT: One commenter believes that massage therapists should never allege that they can perform curative treatments or state that they perform physiological therapy or modality therapy. The commenter argues that massage therapists should never use the term "diagnosis or treatment of an illness or disease." The commenter argues that massage therapy is not an integral part of the healing arts such as dentistry, medicine, chiropractic or optometry.

RESPONSE: N.J.S.A. 45:11-55 specifically states that massage, bodywork and somatic therapy does not include the diagnosis or treatment of illness, disease, impairment or disability. The commenter is correct that massage, bodywork and somatic therapists should never allege that they can perform curative treatments or use the term "diagnosis or treatment of an illness or disease." The Committee disagrees that massage, bodywork and somatic therapy is not part of the healing arts. N.J.S.A. 45:11-55 recognizes that massage, bodywork and somatic therapy promote and maintain the health and well-being of clients. The Committee points out that any physiological therapy or modality therapy that is part of massage, bodywork and somatic therapy may be performed by certificants.

122. COMMENT: One commenter contends that the scope of practice of massage, bodywork and somatic therapy should state that these therapies involve the use of manual (not mechanical) techniques through a system of structured, skillful touching of the soft tissues of the human body that includes effleurage (stroking), petrissage (kneading), tapotement (tapping), non specific stretching, compression, vibration, and friction of the body with the hands, forearms and elbows.

RESPONSE: The scope of practice articulated in N.J.A.C. 13:37-16.7 reflects the statutory definition of massage, bodywork and somatic therapy articulated in N.J.S.A. 45:11-55. The commenter's suggested scope does not conform to this statutory definition and the Committee will not amend N.J.A.C. 13:37-16.7 to incorporate the commenter's suggestions.

123. COMMENT: One commenter contends that the phrase "certificant will be permitted to" should be changed to "certificant will not be permitted to" in N.J.A.C. 13:37-16.7.

RESPONSE: The phrase "certificant will be permitted to" does not appear in N.J.A.C. 13:37-16.7. The phrase is used in the summary of this section, but it is preceded by the term "no." This indicates that certificants are not permitted to perform certain tasks and the commenter's suggested change is not necessary.

124. COMMENT: One commenter contends that much of the training he received was before NCBTMB existed. The commenter points out that some therapies, such as Reiki, do not require courses to get approvals and argues that they are still good courses. The commenter argues that N.J.A.C. 13:37-16.7(a)1 is too restrictive and that many therapists have taken training that would not be covered by this rule.

RESPONSE: The Committee must set a standard to ensure that the education an individual receives is adequate to prepare him or her to practice massage, bodywork and somatic therapy safely and effectively. The Committee believes that N.J.A.C. 13:37-16.7(a)1 appropriately sets forth a standard that ensures such adequacy without being unduly burdensome. The Committee points out that no one is required to obtain certification and that the commenter need not apply for certification or conform to the dictates of N.J.A.C. 13:37-16.7(a) 1 if the commenter believes that his or her education is not sufficient to meet the regulatory requirements.

125. COMMENT: One commenter was concerned that N.J.A.C. 13:37-16.7(a) would prevent certificants from practicing newly developed bodywork methods. This rule states that certificants shall only practice those methods of massage, bodywork and somatic therapy for which the certificant has received training during his or her initial training or has learned during a course offered by a provider approved by the NCBTMB or NCCAOM, or which is offered by a school which is approved by an agency recognized by the United States Department of Education or offered by a school which is approved by the New Jersey Department of Education, or an agency of another state with requirements substantially similar to the requirements of the New Jersey Department of Education as set forth in N.J.S.A. 18A:69-1 et seq. and N.J.A.C. 6A:18-1. Some of these commenters were individuals who had developed their own method of bodywork. These commenters point out that individuals whom they teach can practice these new techniques, but that the developer of the method could not practice as the rule is drafted. The commenter suggests that N.J.A.C. 13:37-16.7(a) be redrafted to allow certificants to practice methods that they have been trained in or which they have developed.

RESPONSE: The Committee agrees that individuals who develop new methods of massage that are recognized as valid should be allowed to practice these methods. The Committee has amended N.J.A.C. 13:37-16.7(a) upon adoption to allow individuals who develop methods of massage, bodywork and somatic therapy to practice these methods. The rule states in pertinent part: "A certificant shall only practice those methods of massage, bodywork and somatic therapy which . . . the certificant developed and which are taught in a course offered by a provider approved by the NCBTMB or NCCAOM."

126. COMMENT: One commenter believes the proposal will prove an impediment to developing new styles of massage because the rules only allow certificants to practice entrenched styles.

RESPONSE: The Committee disagrees that the rules require certificants to practice entrenched styles of massage, bodywork and somatic therapy. As drafted, N.J.A.C. 13:37-16.7(a) allows certificants to practice methods of massage, bodywork and somatic therapy that the certificant learned after his or her initial education. This rule was drafted to specifically recognize that massage, bodywork and somatic therapy is an evolving profession in which new methods of practice are being developed. As long as the new method is recognized by either NCBTMB or NCCAOM as legitimate methods, certificants are able to obtain education in this new method and apply it as part of their practice. As stated above, the Committee is amending N.J.A.C. 13:37-16.7(a) to allow certificants to practice methods of massage that they have developed and which are recognized as valid.

127. COMMENT: One commenter argues that therapists should be permitted to perform any therapies as long as they disclose the impact of such therapies to clients.

RESPONSE: N.J.S.A. 45:11-55 et seq. states that massage, bodywork and somatic therapy practices are designed for the purpose of promoting and maintaining the health and well-being of the client, but do not include the diagnosis and treatment of illness, disease, impairment or disability. Certificants cannot engage in such diagnosis or treatment. Other statutes reserve specific practices to other licensees and certificants. The Committee drafted N.J.A.C. 13:37-16.7 in order to ensure that those who hold State certification are not engaging in practices that are either unsafe or are outside of the scope of an individual who has completed the education required for certification. The Committee must ensure that an individual who holds State certification, and is representing to the public that they are professionals recognized

by the State, are practicing in a safe and effective manner. Disclosure to clients is not sufficient to protect clients from unsafe practices.

128. COMMENT: One commenter points out that many therapists are trained to perform procedures that are prohibited by N.J.A.C. 13:37-16.7 and that NCBTMB awards continuing education credits for training in these procedures.

RESPONSE: The Committee has prohibited certificants from performing methods of massage, bodywork and somatic therapy that are either prohibited by statutes or are unsafe. These prohibitions override any recognition by NCBTMB or any other organization when it comes to the practice of certificants in New Jersey.

129. COMMENT: One commenter contends that N.J.A.C. 13:37-16.7 should prohibit penis massage. The commenter believes that, without such a prohibition, the regulations will allow prostitution.

RESPONSE: The Committee agrees with the commenter and has amended N.J.A.C. 13:37-16.7(b)3 upon adoption. The amended rule reads in pertinent part: "Notwithstanding any training received as permitted by (a) above, a certificant shall not perform: . . . vaginal or penile massages."

130. COMMENT: One commenter contends that the use of physical modalities such as heat lamps, infrared, ultraviolet light, low-level laser therapy and mechanical traction should be prohibited.

RESPONSE: The Committee points out that the application of heat is a part of massage. The Committee does not believe that it is necessary to prohibit the use of any of the modalities that the commenter lists. As long as the use of these modalities is part of massage, bodywork and somatic therapy and does not constitute treatment of illness, disease, impairment or disability, certificants may be permitted to use them.

131. COMMENT: One commenter contends that certificants should be prohibited from using the terms physiotherapist, physiotherapy, physical modalities, chiropractic therapy and from making claims that are curative in nature.

RESPONSE: As none of these terms refer to massage, bodywork and somatic therapy, the Committee does not believe it is necessary to discuss them in these rules. There are many terms that do not refer to massage, bodywork and somatic therapy and that massage, bodywork and somatic therapists should not use. It is not possible to list all these terms as the commenter suggests. If the use of specific terms violates the statutes or rules that govern other professions, a certificant may be subjecting themselves to action by the Boards and Committees that regulate those professions. The Committee agrees that certificants should not make claims that are curative in nature as they are prohibited from treating or diagnosing illness, disease, impairment or disability.

132. COMMENT: Several commenters suggest that N.J.A.C. 13:37-16.7(b) be amended to include additional restrictions on a certificant's scope of practice. The commenters suggest that N.J.A.C. 13:37-16.7(b) prohibit: the diagnosis or treatment of illness, disease, impairment or disability; utilization of prescriptive or medicinal creams, lotions or fluids; utilization of heat lamps, hydrocolator packs; the discussion, recommendation or prescription of any over-the-counter or prescription drugs; spinal or other joint manipulations, chiropractic adjustments/manipulations of the spine, pelvis and related structures; and any other modality, procedure, or service for which a license to practice chiropractic medicine, osteopathic medicine, physical therapy or podiatric medicine is required by the law of New Jersey to perform. The commenters also suggest that the Committee adopt a definition of "prescription drug" as "those drugs which under Federal law are required prior to being dispensed or delivered to be labeled with either of the following statements: (i) 'Caution: Federal Law Prohibits Dispensing Without Prescription'; or (ii) 'Caution: Federal Law Restricts This Drug To Use By or On The Order Of A Licensed Veterinarian'; or (iii) a product which is required by any applicable Federal or state law regulation to be dispensed on prescription only." The commenters argue that this would limit the scope of practice of a certificant to be consonant with their training and expertise and would avoid conflict with the scope of practice of other medical professionals.

RESPONSE: The Committee agrees that the definition of "massage, bodywork and somatic therapies" articulated in N.J.S.A. 45:11-55 does not include treating and diagnosing illness, disease, impairment and disabilities. The Committee has amended N.J.A.C. 13:37-16.7(b) upon adoption to clarify that this in the rules. The amended rule states in pertinent part that: "Notwithstanding any training received as permitted by (a) above, a certificant shall not perform:

. . . treatment or diagnosis of illness, disease, impairment or disability." The Committee does not agree that certificants should be prohibited from utilizing prescriptive or medicinal creams, lotions or fluids. The statutory definition of "massage, bodywork and somatic therapies" found at N.J.S.A. 45:11-55 specifically states that the "external application of herbal or topical preparations not classified as prescription drugs" is part of massage, bodywork and somatic therapy. As long as the creams, lotions or fluids are being applied safely, there is no reason to prohibit their use in order to protect the safety of clients. The Committee does not agree that heat lamps or hydrocolator packs should be prohibited either. The use of heat is intrinsic to the practice of massage, bodywork and somatic therapy and, as long as these devices are not used in the treatment or diagnosis of illness, disease, impairment or disability, certificants should be allowed to use them. The Committee believes that certificants will need to understand what medications a client is taking before performing massage, bodywork and somatic therapy. It is necessary, therefore, to allow certificants to discuss any drug the client is taking. The Committee points out that certificants do not have prescriptive authority, so it is not necessary to prohibit certificants from prescribing or recommending drugs. The Committee points out that spinal or joint manipulations are within the scope of practice of licensed chiropractors and the chiropractic practice act, N.J.S.A. 45:9-41.4 et seq. prohibits non-licensees from performing these procedures. It is unnecessary to repeat this prohibition in these rules. Similarly, it is not necessary to prohibit certificants from performing procedures that require licensure to perform, since this prohibition is already firmly established by law. As certificants cannot prescribe medications, and there is no mention of prescription drugs in the rules, it is not necessary to define "prescription drug" as the commenters suggest.

133. COMMENT: One commenter contends that the scope of practice as set forth in N.J.A.C. 13:37-16.7 should prevent certificants from performing activities that are under the scope of practice of other licensed professionals. The commenter argues that certificants should be prohibited from performing spinal or joint or chiropractic manipulations and Grade II or V joint mobilizations. The commenter also believes that certificants should be specifically enjoined from providing any service or procedure for which a license to practice medicine, chiropractic, osteopathy, physical therapy or podiatry is required by law.

RESPONSE: Performing activities that require licensure by another Board or Committee would constitute unlicensed practice that would be subject to discipline by that Board or Committee. It is unnecessary to specifically state such a prohibition in these rules.

134. COMMENT: Several commenters were concerned that N.J.A.C. 13:37-16.7(b) 1 would prohibit certificants from performing colonic irrigation. The commenters contend that the nursing profession is attempting to prevent massage therapists who are properly trained from performing colonic irrigation.

RESPONSE: The Committee believes that colonic irrigations are intrusive procedures that are not part of the practice of massage, bodywork and somatic therapy. Performing colonic irrigation is not within the statutory definition of massage, bodywork and somatic therapy.

135. COMMENT: Some commenters argue that an individual needs to be certified as a colon therapist to perform colonic irrigation.

RESPONSE: Colonic irrigation is not included in the definition of "massage, bodywork and somatic therapy" in N.J.S.A. 45:11-55 and, therefore, is not included in the scope of practice of these rules.

136. COMMENT: One commenter points out that Florida requires that colonic irrigation be performed by trained massage therapists and argues that it is therefore nonsensical for New Jersey to prohibit massage therapists from performing colonic irrigation. The commenter points out that the Committee recognizes training received in other states but does not consider how other states regulate massage therapy.

RESPONSE: The Committee points out that Florida and New Jersey have different statutes governing massage, bodywork and somatic therapists. While Florida may require that colonic irrigation be performed by massage therapists, colonic irrigation is not included in the definition of "massage, bodywork and somatic therapy" in N.J.S.A. 45:11-55 and therefore is not included in the scope of practice of these rules. The Committee did consider how other states regulate massage therapy; however, the Committee is required to comply with the Act.

137. COMMENT: One commenter agrees that prostate and vaginal massages are troubling and that electrical stimulation and ultrasound should not be used by massage therapists.

RESPONSE: The Committee thanks the commenter for her support of the proposed prohibitions in N.J.A.C. 13:37-16.7(b).

138. COMMENT: Several commenters were concerned about N.J.A.C. 13:37-16.7(b)4 which prevents certificants from performing internal organ movement. The commenters believe that the Committee should define "internal organ movement." They ask if this prohibition refers to permanent organ reposition or to movement that occurs with deep massage. The commenters are concerned that, without definition, this prohibition could prevent the massage of the lower back, oblique and abdominal muscles. The commenters point out that abdominal and back massage involves moving internal organs. The commenters argue that abdominal massage is an alternative for individuals with constipation and sinus pressure and that the prohibition against internal organ movement would restrict massage to only the most simple of movements.

RESPONSE: The Committee drafted the prohibition against internal organ movement in N.J.A.C. 13:37-16.7(b)4 because it was concerned that some certificants would believe that they could permanently rearrange the position of organs in the body of a client. The Committee has determined that these concerns are unfounded. The Committee believes that the rule as proposed was being interpreted to broadly and agrees that the prohibition could prevent individuals from performing many valid forms of massage, bodywork and somatic therapy. The Committee is therefore not adopting N.J.A.C. 13:37-16.7(b)4.

139. COMMENT: Some of the commenters ask if visceral manipulation therapy is included in the prohibition against internal organ movement and point out that visceral manipulation is a modality practiced by massage therapists. The commenters also point out that visceral manipulation moves the fascia of organs and may move the organs themselves. They also point out that NCBTMB has accepted visceral manipulation for continuing education purposes. The commenters argue that certificants should be permitted to perform visceral manipulation if they have received specific training in this therapy. The commenters argue that visceral manipulation uses delicate palpation techniques to encourage mobility, tone and motion of the connective tissues surrounding the viscera. These improve the functioning of organs, the systems of organs and the structural integrity of the body. The commenters contend that visceral manipulation only works to assist natural body forces and that it does not include diagnosis or treatment of illness, disease, impairment or disability. The commenters ask why the Committee is prohibiting visceral manipulation when other states have not restricted such practice.

RESPONSE: The Committee did not intend to prohibit visceral manipulation and is not adopting the prohibition against internal organ movement in N.J.A.C. 13:37-16.7(b)4.

140. COMMENT: Several commenters were concerned that the prohibition against internal organ movement in N.J.A.C. 13:37-16.7(b)4 would prevent certificants from using specific modalities. The commenters were concerned that this rule would prohibit the use of neuromuscular therapy, Shiatsu, rolfing, psoas release, yoga, and craniosacral massage.

RESPONSE: The Committee is not adopting N.J.A.C. 13:37-16.7(b)4 which could have been seen as a prohibition against using these different modalities.

141. COMMENT: One commenter cites to N.J.A.C. 13:37-16.2 which allows certificants to mobilize soft tissues of the body. The commenter argues that such soft tissues must include the viscera and that working with these tissues does not constitute a medical treatment or treating a disease.

RESPONSE: The Committee agrees that soft tissues include the viscera and that working with the viscera is not treating an illness, disease, impairment or disability.

142. COMMENT: One commenter states that massage can relax the fascia and move organs back into place. The commenter contends that this is a good thing.

RESPONSE: As noted above, the Committee it is not adopting N.J.A.C. 13:37- 16.7(b)4.

143. COMMENT: Some commenters argue that all massage involves internal organ movement. The commenters contend that blood is an organ and that abdominal massage moves the abdominal viscera. The commenters contend that N.J.A.C. 13:37-16.7(b) outlaws massage. The commenters argue that massage schools teach techniques that are prohibited by N.J.A.C. 13:37-16.7(b).

RESPONSE: The Committee disagrees that N.J.A.C. 13:37-16.7(b) outlaws massage. N.J.A.C. 13:37-16.7(b) prohibits massage, bodywork and somatic therapists from engaging in activities that are not appropriate. Moreover, the Committee is not adopting N.J.A.C. 13:37-16.7(b)4.

144. COMMENT: One commenter suggests that N.J.A.C. 13:37-16.7(b)4 be amended to prohibit "intentional manipulation of internal organs."

RESPONSE: The Committee is not adopting N.J.A.C. 13:37-16.7(b)4.

145. COMMENT: One commenter asks why any massage therapist would obtain advanced education if the techniques they learn cannot be performed.

RESPONSE: Regardless of the education a massage, bodywork and somatic therapist receives, there are techniques and modalities that he or she should not engage in, either because they are not within the statutorily recognized scope of massage, bodywork and somatic therapy or because they would constitute the treatment or diagnosis of disease, illness, disability or impairment.

146. COMMENT: One commenter argues that any massage stimulates organs by increasing the flow of energy. The commenter argues that massage therapists do not actually move organs. The commenter points out that massage therapists have anatomical knowledge and argues that performing intestinal massage has been proven to encourage digestion. The commenter asks why the medical field is telling massage therapists that they cannot perform abdominal massage. The commenter posits that other professionals are threatened by massage therapists and asks if this has to do with insurance reimbursements.

RESPONSE: The Committee did not intend to prevent stimulating organs through massage or prohibit intestinal massage and it does not believe that N.J.A.C. 13:37-16.7(b)4 as proposed would have done so. The medical field is not telling massage, bodywork and somatic therapists what they can or cannot do; the Committee is setting forth an appropriate scope of practice for certificants. The Committee points out that it is not adopting N.J.A.C. 13:37-16.7(b)4. The Committee will not discuss the commenter's unsubstantiated claim that other professionals are threatened by massage, bodywork and somatic therapists. The Committee points out that it has no authority over insurance reimbursements.

147. COMMENT: One commenter contends that there should never be any entry into internal lower cavities unless a therapist is trained as a physician or physical therapist. The commenter believes that no massage, bodywork or somatic therapist should work internally on the lower body.

RESPONSE: The Committee agrees that massage, bodywork and somatic therapists should not be working internally on any part of the body.

148. COMMENT: Many of the commenters were concerned that N.J.A.C. 13:37- 16.7(b)5 prohibits a certificant from performing manual lymph drainage, also known as decongestive therapy. The commenters ask for the rationale behind prohibiting such practice. The commenters also ask if manual lymph drainage will be permanently prohibited or if it will be regulated by another board. The commenters argue that manual lymph drainage promotes and maintains health by increasing the body's ability to remove toxins and that it affects the energetic systems of the body. They also contend that any massage will affect the lymphatic system. Some of the commenters argue that manual lymph drainage is within the scope of practice for any massage therapist. These commenters point out that NCBTMB recognizes manual lymph drainage in its scope of practice and as valid continuing education courses. Other commenters argue that only massage therapists with advanced training and certification are properly trained to provide this treatment and

that these specially trained massage therapists should not be prohibited from performing manual lymph drainage. These commenters point out that specialized training in manual lymph drainage consists of a 160-hour training program and practical, written and oral examinations. Some of the commenters suggest that massage therapists be allowed to perform manual lymph drainage with the permission of a client's physician or that manual lymph drainage only be prohibited when a physician expresses a medical concern.

RESPONSE: As evidenced by the text of proposed N.J.A.C. 13:37-16.7(b)5, the Committee understood that manual lymph drainage and decongestive therapy were different names for the same treatment protocol. As the Committee understood it at the time of proposal, manual lymph drainage was a procedure by which massage, compression bandaging and other techniques were used to treat different types of swelling, in particular lymphedema. The Committee has come to understand that manual lymph drainage is not the same thing as decongestive therapy and that it is a massage modality that is used as part of decongestive therapy. This modality may also be used in and of itself as massage, bodywork and somatic therapy. The Committee has therefore amended N.J.A.C. 13:37- 16.7(b) upon adoption to recognize the manual lymph drainage may be performed by certificants as long as it is not being used as part of decongestive therapy or any other treatment. The Committee has amended N.J.A.C. 13:37-16.7(b)5 to state that certificants may not perform: "manual lymph drainage used as part of decongestive therapy." The Committee is also amending N.J.A.C. 13:37- 16.7(b)4 upon adoption to state that certificants may not perform: "decongestive therapy." Decongestive therapy is a treatment for lymphedema. N.J.S.A. 45:11-55 states that massage, bodywork and somatic therapies do not include the diagnosis and treatment of illness, disease, impairment or disability and decongestive therapy should not be performed by certified massage, bodywork and somatic therapists. The Committee will allow a certificant to perform manual lymph drainage as long as he or she has received education in manual lymph drainage that conforms to the dictates of N.J.A.C. 13:37-16.7(a). The Committee points out that a certificant need not hold certification with any organization to perform manual lymph drainage.

149. COMMENT: Several commenters contend that the Committee should create specific educational and practical requirements for manual lymph drainage but that it should not prohibit massage therapists from performing manual lymph drainage. They argue that manual lymph drainage certification is a stringent program.

RESPONSE: The Committee is not adopting the prohibition against performing manual lymph drainage. Any certificant who has received education in manual lymph drainage that conforms to the dictates of N.J.A.C. 13:37-16.7(a) may use this modality as long as it is not being used as part of decongestive therapy or any other treatment. The Committee will not require massage, bodywork and somatic therapists to hold certification from a manual lymph drainage certifying organization.

150. COMMENT: Many commenters point out that the training physical therapists, nurses, occupational therapists and massage therapists receive in manual lymph drainage is the same, provided by the same schools.

RESPONSE: The Committee does not dispute that the training physical therapists, nurses and occupational therapists receive in manual lymph drainage is the same as that which a certified massage, bodywork and somatic therapist receives. The Committee points out that it is amending N.J.A.C. 13:37-16.7 upon adoption to allow certified massage, bodywork and somatic therapists to perform manual lymph drainage as long as it is not used as part of decongestive therapy or as a treatment for illness, disease, impairment or disability.

151. COMMENT: Several commenters contend that the Board of Nursing, physical therapists and other groups have an agenda in preventing massage therapists from performing manual lymph drainage. They believe that these professionals initiated these regulations. They contend that the regulations would prevent teachers from practicing the procedures they taught to other professionals.

RESPONSE: The Committee is amending N.J.A.C. 13:37-16.7(b) to permit certified massage, bodywork and somatic therapists to perform manual lymph drainage as long as it is not used as part of decongestive therapy. There is no such "agenda" on the part of the Board of Nursing, physical therapists or any other group in preventing certified massage, bodywork and somatic therapists from performing any massage, bodywork and somatic therapy modality. The Committee points out that other professionals did not initiate these rules. These rules were drafted by the Committee, which is made up of massage, bodywork and somatic therapists.

152. COMMENT: One commenter points out that massage therapists perform manual lymph drainage under the supervision of physical therapists and occupational therapists in hospitals throughout the United States. The commenter contends that manual lymph drainage is a rehabilitation modality and that massage therapists are permitted to perform these services under medicare, workman's compensation and professional association guidelines. The commenter also points out that the Lymphology Association of North America (LANA) allows massage therapists to take their certifying examination. The commenter argues that it is inappropriate for the Committee to prevent massage therapists from performing manual lymph drainage in light of the fact that national organizations allow them to do so.

RESPONSE: The Committee has amended N.J.A.C. 13:37-16.7(b) to permit certified massage, bodywork and somatic therapists to perform manual lymph drainage as long as this modality is not used as a treatment for illness, disease, impairment or disability or as part of decongestive therapy.

153. COMMENT: Several commenters argue that prohibiting manual lymph drainage will harm many massage therapists who currently practice this therapy. They argue that this prohibition will impact a massage therapist's ability to make a living and will deny medically sound treatments to those in need.

RESPONSE: The Committee is amending N.J.A.C. 13:37-16.7(b) upon adoption so that certified massage, bodywork and somatic therapists can perform manual lymph drainage as long as this modality is not used as part of decongestive therapy or is not used as a treatment for illness, disease, impairment or disability.

154. COMMENT: Some of the commenters point out that manual lymph drainage is covered by insurance in New Jersey when performed by a physical therapist or massage therapist under a physician's direction.

RESPONSE: The amendments to N.J.A.C. 13:37-16.7(b) upon adoption allow certificants to perform manual lymph drainage as long as it is not used as part of decongestive therapy or as a treatment for illness, disease, impairment or disability.

155. COMMENT: Several commenters argue that manual lymph drainage is a component of decongestive therapy and that the Committee was incorrect when it drafted N.J.A.C. 13:37-16.7(b)5 to state that manual lymph drainage is also known as decongestive therapy. The commenters argue that manual lymph drainage is a massage technique that would never be used alone to treat lymphedema. The commenters contend that decongestive therapy is a therapy used to treat lymphedema and is only performed by advanced practitioners with specialized training and certification. The commenters ask why the Committee wants to prevent massage therapists from providing manual lymph drainage when they are the only individuals who can spend time providing this therapy. The commenter contends that the Board of Nursing is trying to have legislation passed on an issue on which they obviously do not have a complete understanding.

RESPONSE: The Committee agrees that manual lymph drainage is not decongestive therapy and has amended N.J.A.C. 13:37-16.7(b) to allow certified massage, bodywork and somatic therapists to perform manual lymph drainage as long as it is not being used as part of decongestive therapy or any other treatment. The Committee points out that the definition of "massage, bodywork and somatic therapies" in N.J.S.A. 45:11-55 does not include the diagnosis and treatment of illness, disease, impairment or disability. The Board of Nursing is not attempting to have legislation passed on this issue. Decisions regarding the scope of practice for certified massage, bodywork and somatic therapists were not made by the Board, they were made by the Committee.

156. COMMENT: Two commenters were concerned that the prohibition against manual lymph drainage would discourage massage therapists from obtaining certification. The commenters claim that this prohibition would force massage therapists to choose between obtaining certification or continuing to practice decongestive therapy. The commenters point out that anyone is permitted to practice decongestive therapy without proper training. One of the commenters contends that including manual lymph drainage with prostate and vaginal massage is counterproductive. The commenters contend that the Act appears to allow manual lymph drainage while the regulations prohibit it.

RESPONSE: The Committee has amended N.J.A.C. 13:37-16.7(b) upon adoption to allow certificants to perform manual lymph drainage as long as it is not used as a treatment for illness, disease, impairment or disability, such as decongestive therapy which is a treatment for lymphedema. The Committee has no control over individuals who do not

obtain certification, as long as these individuals do not refer to themselves by the titles reserved for certificants pursuant to N.J.A.C. 13:37-16.9.

157. COMMENT: One commenter was concerned that the prohibition against massage therapist performing manual lymph drainage would prevent them from performing lymph drainage therapy as well. The commenter contends that lymph drainage therapy is a light touch therapy that uses gentle maneuvers to aid in the re-circulation of body fluids. The commenter contends that it does not employ diagnosis. The commenter argues that lymph drainage therapy is not decongestive therapy, which he claims is only used by practitioners who have completed courses to care for lymphedema. The commenter asks that the prohibition against manual lymph drainage be removed or that it be clarified so that massage therapists can perform lymph drainage therapy.

RESPONSE: The Committee has amended N.J.A.C. 13:37-16.7(b) upon adoption to allow certified massage, bodywork and somatic therapists to perform manual lymph drainage as long as it is not used as part of decongestive therapy or as a treatment for illness, disease, impairment or disability.

158. COMMENT: Two commenters claim that manual lymph drainage can help individuals with sinus problems. The commenters claim that nurses and physical therapists only offer manual lymph drainage for lymphedema and that massage therapists are the only ones who will offer manual lymph drainage for sinuses. The commenters argue that this modality can treat all sorts of problems and asks what right the nursing profession has to corner the market on providing this service.

RESPONSE: The Committee points out that the nursing profession is in no way trying to corner a market or direct certified massage, bodywork and somatic therapists as to what they may do. Certified massage, bodywork and somatic therapists will be allowed to perform manual lymph drainage as long as it is not used as part of decongestive therapy or as a treatment for illness, disease, impairment or disability.

159. COMMENT: One commenter argues that manual lymph drainage falls under the definition of massage, bodywork and somatic therapy.

RESPONSE: The Committee agrees with the commenter. Manual lymph drainage falls under the definition of massage, bodywork and somatic therapy as long as it is not being used as part of decongestive therapy or any other treatment.

160. COMMENT: One commenter claims that manual lymph drainage is the most effective treatment used in conjunction with neuromuscular therapy for soreness. The commenter claims that no other state prohibits massage therapists from performing manual lymph drainage.

RESPONSE: Certified massage, bodywork and somatic therapists are permitted to perform manual lymph drainage as long as it is not used as part of decongestive therapy or as a treatment for illness, disease, impairment or disability.

161. COMMENT: One commenter contends that many plastic surgeons use massage therapists trained in manual lymph drainage as part of post-surgery recovery.

RESPONSE: Certified massage, bodywork and somatic therapists will be permitted to perform manual lymph drainage as long as it is not used as part of decongestive therapy or as a treatment for illness, disease, impairment or disability.

162. COMMENT: One commenter argues that Committee should not prohibit the performance of manual lymph drainage treatments or internal organ movement, but should prohibit the advertising of such services. The commenter would like to see the Committee's rationale for prohibiting such services.

RESPONSE: The Committee has amended N.J.A.C. 13:37-16.7(b) upon adoption so that internal organ movement is not prohibited and manual lymph drainage is not prohibited as long as it is not being used as part of decongestive therapy or any other treatment. Certificants may advertise any service that they are permitted to perform pursuant to N.J.A.C. 13:37-16.7(a).

163. COMMENT: One commenter suggests that the Committee adopt a regulation regarding advertising requirements for manual lymph drainage practitioners that would include a requirement for at least 120 hours of training.

RESPONSE: Pursuant to N.J.A.C. 13:37-16.7(a), a certificant may perform any massage, bodywork or somatic therapy modality in which he or she has received education. A certificant may advertise any modality which he or she is educated to perform. Any certificant who is permitted to perform manual lymph drainage pursuant to N.J.A.C. 13:37-16.7(a) may advertise these services. The Committee believes that the requirements of N.J.A.C. 13:37-16.7(a) ensure that certificants are properly prepared to perform a specific modality and that it is not necessary to require an additional 120 hours of training before a certificant may perform, or advertise, manual lymph drainage services.

164. COMMENT: One commenter states that she is a massage therapist and a registered nurse. The commenter has obtained certification in manual lymph drainage and asks if she can practice this type of therapy.

RESPONSE: These rules do not prohibit an individual from performing anything for which he or she is licensed by the State to perform. The Committee points out that any certified massage, bodywork and somatic therapist who has completed education in manual lymph drainage that conforms to N.J.A.C. 13:37-16.7(a) may perform manual lymph drainage as long as it is not being used as part of decongestive therapy or any other treatment.

165. COMMENT: One commenter agrees that massage therapists should not be working with edema unless trained to do so, but contends that massage therapists should be allowed to work with a lymphatic system that is not at the edema stage.

RESPONSE: Certified massage, bodywork and somatic therapists may use manual lymph drainage as long as it is not being used as part of decongestive therapy or any other treatment.

166. COMMENT: Two commenters suggest that the Committee create a new certification for lymphedema therapists, even though they recognize that there is no authorizing legislation for this.

RESPONSE: As the commenters recognize, the Committee has no authority to create certification for lymphedema therapists.

167. COMMENT: One commenter recommends that the Committee grandfather any qualified, licensed or specially trained therapist in manual lymph drainage. The commenter also recommends that the Committee offer an extensive certification process for newly certified therapists to ensure the quality of care and prevent inexperienced individuals from providing manual lymph drainage as treatment for lymphedema.

RESPONSE: Any individual who meets the requirements of N.J.A.C. 13:37-16.3 will qualify for certification through grandfathering. The Committee points out that no certificant may perform manual lymph drainage as treatment for lymphedema. The Committee believes that the certification procedure it has adopted will ensure that all certified massage, bodywork and somatic therapists are prepared to practice safely and effectively.

168. COMMENT: Some of the commenters suggest that the Committee recognize the medical treatment of lymphedema and the special training such practice requires. The commenters suggest that the Committee amend N.J.A.C. 13:37-16.7 to create a new subsection (c) that would permit a certificant to practice manual lymph drainage only after receiving training in lymphedema management equivalent to LANA certification requirements and require such therapists to maintain current certification from the training school or LANA. The commenters suggest a new subsection (d) that would allow a certificant to perform medically-required lymphatic therapy for which the therapist has received training. The commenters also suggest that N.J.A.C. 13:37-16.12 be amended to include "or lymphatic therapy procedure" in the definition of "sexual contact." Finally, the commenters suggest that N.J.A.C. 13:37-16.16 be amended to include the following phrase:

Lymphedema therapy is designed to reduce swelling by assisting a defective lymphatic system in transporting excess protein-rich fluid to other parts of the body which have properly functioning lymphatics and have been preconditioned to accept the excess lymph fluid. I may be asked to learn how to perform lymph drainage and wearing of compression bandages and garments at home and I understand that my treatment will be effective only if I am compliant with my

treatment plan.

RESPONSE: Any certified massage, bodywork and somatic therapist who has completed education in manual lymph drainage that conforms to the requirements of N.J.A.C. 13:37-16.7(a) will be permitted to perform manual lymph drainage as long as it is not being used as part of decongestive therapy or any other treatment. However, the definition of "massage, bodywork and somatic therapy" in N.J.S.A. 45:11-55 provides that massage, bodywork and somatic therapy practices are designed for the purpose of promoting and maintaining the health and well-being of the client, but do not include the diagnosis and treatment of any illness, disease, impairment or disability. As lymphedema is such an impairment, a certificant cannot use manual lymph drainage as a treatment for lymphedema. As the Act does not envision diagnosis or treatment as part of massage, bodywork and somatic therapy, the regulatory scope of practice for certificants does not include diagnosis or treatment. The Committee will not amend N.J.A.C. 13:37-16.7 to allow certificants to perform manual lymph drainage as a treatment for lymphedema, and it is therefore not appropriate to amend N.J.A.C. 13:37-16.12 or 16.16 as the commenters request.

169. COMMENT: Several commenters point out that LANA has set minimum acceptable training requirements and has created a certification examination to perform lymphedema treatments like manual lymph drainage. The commenters would support the certification of massage therapists who treat lymphedema, but point out that massage therapists who practice manual lymph drainage are already certified and State certification would only sanction and require this certification. One of the commenters suggests that the Committee adopt legislation that would require anyone who wishes to perform decongestive therapy for lymphedema to complete specific training recognized by LANA.

RESPONSE: The fact that a private certifying organization has adopted standards regarding the treatment of lymphedema does not alter the fact that N.J.S.A. 45:11-55 states that the treatment is not part of massage, bodywork and somatic therapies. The Committee points out that it has no authority to adopt legislation; this power is reserved solely for the Legislature.

170. COMMENT: Many commenters were individuals who suffer from lymphedema and who receive manual lymph drainage from massage therapists. These commenters argue that their massage therapists are well educated in treating lymphedema with manual lymph drainage. They state that manual lymph drainage has provided them with great benefits, allowing them to live unimpaired by lymphedema. They state that manual lymph drainage and compression therapy are the mainstays of medical treatment for lymphedema. The commenters state that without manual lymph drainage treatments, lymphedema patients' conditions will worsen. Many of these commenters asked for the Committee to recommend someone who can provide manual lymph drainage treatments if massage therapists are prohibited from providing them. The commenters point out that hospitals do not offer long-term maintenance treatment of lymphedema patients. Several of the commenters argue that other healthcare professionals do not provide manual lymph drainage because it is not lucrative for them to do so or because they do not have the requisite training. One of the commenters posits that the impact of prohibiting massage therapists from performing manual lymph drainage was not anticipated by the Committee when it drafted the regulations. One commenter states that without manual lymph drainage treatments from a massage therapist, she will be sentenced to a life of illness, pain and hospitalization. Another commenter argues that severe lymphedema patients will need State financial assistance if they cannot receive manual lymph drainage treatments.

RESPONSE: The Committee points out that N.J.S.A. 45:11-55 states that massage, bodywork and somatic therapy does not include the diagnosis or treatment of illness, disease, impairment or disability. Lymphedema clearly constitutes an illness, disease, impairment or disability. It is not within the Committee's purview to recommend individuals who can perform treatments for lymphedema patients. The Committee cannot ignore the clear legislative intent of leaving treating of illness, disease, impairment or disability outside of the scope of massage, bodywork and somatic therapies.

171. COMMENT: Several commenters argue that there are more lymphedema patients than there are therapists that provide manual lymph drainage services. The commenters argue that, by prohibiting massage therapists from providing manual lymph drainage, the Committee is further limiting access to this needed treatment and doing an injustice to lymphedema patients. The commenters contend that the issue should be whether an individual is qualified

to treat lymphedema, not whether they are a nurse, a physical therapist or a massage therapist.

RESPONSE: The Act defines "massage, bodywork and somatic therapy" as not including diagnosis or treatment of illness, disease, impairment or disability. The Committee cannot draft rules that are in contravention of the Act.

172. COMMENT: Several commenters were concerned that, if manual lymph drainage is not permitted, massage, bodywork and somatic therapists and lymphedema patients would not be able to obtain insurance reimbursement for treatment of lymphedema. One commenter believes that, if the regulations are adopted, her therapist will not be able to provide her with a CPT code for manual lymph drainage. The commenter also believes that her insurance company cannot reimburse for manual lymph drainage care without a CPT code. One commenter points out that many insurance companies reimburse for the manual lymph drainage treatments performed by a massage therapist and physical therapist under a physician's direction or referral. The commenters encourage the Committee to fight for the lymphedema community and require insurance payments for manual lymph drainage treatments.

RESPONSE: The Committee has no authority with respect to insurance reimbursement.

173. COMMENT: Two commenters contend that it is nonsensical to assume that physicians assistants, physical therapists or other healthcare professionals who have not been trained can care for a lymphedema patient. The commenters contend that preventing a qualified therapist from performing manual lymph drainage is medical malpractice. They claim that the Committee is denying medical treatment of lymphedema by the only method currently accepted and by the practitioners who are best trained to perform the treatment. The commenters argue that manual lymph drainage does not fall into the same category as colonic irrigations, prostate massage or vaginal massage and that manual lymph drainage cannot cause bodily harm.

RESPONSE: The Committee is not assuming that any particular professional will treat lymphedema patients. It is only following the legislative dictates of N.J.S.A. 45:11-55 which states that the treatment of illness, disease, impairment or disability is not massage, bodywork and somatic therapies. The Committee has amended N.J.A.C. 13:37-16.7(b) upon adoption so that certified massage, bodywork and somatic therapists may perform manual lymph drainage as long as it is not used as part of decongestive therapy or any other treatment for illness, disease, impairment or disability.

174. COMMENT: Several commenters contend that the proposal will have a social impact on lymphedema patients because thousands of such patients will not have access to qualified treatment of their diagnosed medical condition.

RESPONSE: The Committee does not believe that the rules will result in the denial of treatment to any person and points out that the Act excludes the treatment of illness, disease, impairment or disability from the definition of "massage, bodywork and somatic therapy" and therefore from the scope of these rules.

175. COMMENT: Some of the commenters contend that the prohibition on massage therapists performing manual lymph drainage will have an economic impact on certificant, who will be prohibited from practicing lymphedema treatments that they have been specially trained to perform. These commenters also contend that the proposal will have an economic impact on health care providers. The commenters contend that a small number of physicians, nurses, physical therapists and occupational therapists will have to assume the burden of performing labor-intensive manual lymph drainage because massage therapists will be prevented from doing so.

RESPONSE: The Committee is amending N.J.A.C. 13:37-16.7(b) upon adoption to permit certified massage, bodywork and somatic therapists to perform manual lymph drainage when it is not used as part of decongestive therapy or as a treatment for illness, disease, impairment or disability. Regardless of the commenter's unsubstantiated claims regarding the economic impact on therapists, therapists cannot treat illness, disease, impairment or disability. When manual lymph drainage is used as a treatment, it can only be performed by individuals who are permitted to treat illness, disease, impairment or disability such as the physicians, nurses, physical therapists and occupational therapists referred to by the commenter.

176. COMMENT: Some of the commenters argue that manual lymph drainage is not designed to affect the energetic systems of the body for the purpose of promoting and maintaining the health and well-being of the client. The commenters argue that manual lymph drainage is the recommended medical treatment of illness, disease, impairment

or disability, specifically the impairment of the lymphatic system. The commenters argue that this prohibition will prevent trained lymphedema therapists from practicing their profession, prevent lymphedema patients from having access to medical treatment and increase the cost of these treatments if they are available at all.

RESPONSE: The commenters are stating that manual lymph drainage does not fall under the definition of "massage, bodywork and somatic therapies." If this were the case, no certified massage, bodywork and somatic therapist could ever perform this modality. The Committee disagrees with the commenter's contention and believes that manual lymph drainage is a valid form of massage, bodywork and somatic therapy. The amendments to N.J.A.C. 13:37-16.7(b) upon adoption recognize that certificants may perform this modality as long as it is not used as part of decongestive therapy or as treatment of illness, disease, impairment or disability. N.J.S.A. 45:11-55 does not include the treatment of illness, disease, impairment or disability as part of massage, bodywork and somatic therapies. If lymphedema therapists are certified by the Committee as massage, bodywork and somatic therapists, they are subject to the dictates of the Act and cannot perform manual lymph drainage as part of decongestive therapy or a treatment.

177. COMMENT: One commenter claims that she receives referrals from physicians for patients with post-surgical edema, chronic pain and lymphedema who need manual lymph drainage. The commenter also claims that very few people in New Jersey offer this service and that insurance does not usually cover the therapy.

RESPONSE: A certified massage, bodywork and somatic therapist can perform manual lymph drainage as long as it is not used as part of decongestive therapy or as a treatment for illness, disease, impairment or disability. This prohibition will prevent therapists from performing treatments regardless of whether they have referrals from physicians.

178. COMMENT: Several commenters were concerned with N.J.A.C. 13:37-16.7(b) 6 which prohibits certificants from performing animal therapies prohibited by the Veterinary Medical Act, N.J.S.A. 45:16-1 et seq. The commenters point out that massage therapists have specialized in working with pets and horses and have taken courses that cover animal anatomy. The commenters contend that massage and bodywork has been recognized as increasing the trainability and usefulness of animals that serve the public in various capacities. They claim that prohibiting certificants from performing animal massage denies the public a cost effective treatment for their animals. The commenters believe that certificants should be permitted to perform animal massage.

RESPONSE: The Act refers only to massage therapists working with human beings and as such it should be understood that the Legislature did not envision that massage, bodywork and somatic therapists would be working with animals. Pursuant to N.J.S.A. 45:16-1 et seq., the State Board of Veterinary Medical Examiners has sole authority to regulate any professional who works with animals. Since the Act does not envision certificants working with animals, and N.J.S.A. 45:16-1 et seq. states that only licensees of the State Board of Veterinary Medical Examiners can work with animals, N.J.A.C. 13:37- 16.7(b)6 appropriately prohibits certificants from working with animals.

179. COMMENT: One commenter asks how animal massage differs from petting an animal besides the fact that massage lengthens sore and injured muscles.

RESPONSE: The Committee believes that there is a significant difference between an individual petting an animal and a massage, bodywork and somatic therapist providing professional services for an animal. The professional implements the techniques that he or she learned during his or her education and which vary greatly from simple "petting." Regardless of this differentiation, only licensees of the State Board of Veterinary Medical Examiners are permitted to provide professional services for animals.

180. COMMENT: One commenter argues that prohibiting massage therapists from working with cats, dogs and horses will have an impact on the income of many massage therapists. The commenter cannot conceive of a reason for this restriction. The commenter contends that hygiene requirements will prevent the transmission of disease between animals and the massage therapist. The commenter suggests that the Committee allow animal massage, but require that it occur in a separate room from the one where human massage is performed.

RESPONSE: The Committee is prohibiting massage, bodywork and somatic therapists from working with animals because the only individuals who may provide professional services for animals are those who hold licensure from the State Board of Veterinary Medical Examiners. The impact that this prohibition may have on a massage, bodywork and

somatic therapist's income does not change the fact that any professional who works with animals must be licensed by the State Board of Veterinary Medical Examiners. The prohibition was not adopted due to concerns over hygiene and the Committee will not amend the rules as the commenter suggests.

181. COMMENT: One commenter claims that prohibiting massage therapists from working with farm and service animals may have an economic impact on agriculture in New Jersey and asks how this impact will be measured.

RESPONSE: The Committee does not believe that N.J.A.C. 13:37-16.7(b)6 will have an impact on agriculture. This rule reflects the fact that only individuals licensed by the State Board of Veterinary Medicine may work with animals. As the commenter did not indicate how she believes this prohibition will impact agriculture, the Committee is not in a position to address her unsubstantiated claim.

182. COMMENT: One commenter claims that therapeutic touch is a modality that has been proven to work on animals.

RESPONSE: The commenter's claim that therapeutic touch has been used on animals is not relevant to the fact that N.J.S.A. 45:16-1 et seq. requires that only licensees of the State Board of Veterinary Medical Examiners work with animals.

183. COMMENT: One commenter contends that NCBTMB has stated that they will sometime in the future approve of animal massage.

RESPONSE: Recognition of animal massage at some future date by NCBTMB is not relevant to the fact that any individual who works with an animal in New Jersey must hold licensure from the State Board of Veterinary Medical Examiners.

184. COMMENT: Two commenters ask what massage therapies are prohibited by N.J.S.A. 45:16-1 et seq. The commenters assume that this Act specifically refers to massaging animals and ask how they can receive a copy of this Act.

RESPONSE: N.J.S.A. 45:16-1 et seq. does not specifically refer to massaging animals. N.J.S.A. 45:16-1 et seq. requires that any individual who works with animals hold licensure from the State Board of Veterinary Medical Examiners. The commenters may obtain a copy of the Act from the State Board of Veterinary Medical Examiners, PO Box 45020, Newark, NJ 07101, (973) 504-6500.

185. COMMENT: One commenter asks what is wrong with a massage therapist helping to heal a person on one day and an ailing pet the next day.

RESPONSE: Only licensees of the State Board of Veterinary Medical Examiners may work with animals. The Committee points out that massage, bodywork and somatic therapists cannot treat illness, disease, impairment or disability so they are not able to heal a person as the commenter contends.

186. COMMENT: One commenter contends that animal massage is an adjunctive therapy to veterinary care and is not intended to replace veterinary care. The commenter contends that American Veterinary Medical Association (AVMA) codicils allow a person to perform a modality on animals if there is no AVMA certification in that modality and the person is certified to work with humans in that modality. The commenter believes that massage therapists should be allowed to work with animals, but that those who do should be required to meet the AVMA requirements and obtain training in quadruped structural and motion anatomy.

RESPONSE: The AVMA has no authority to determine professional practice in New Jersey; that authority vests solely with State boards and committees like the State Board of Veterinary Medical Examiners and the Committee. N.J.S.A. 45:16-1 et seq. requires that any individual who works with an animal hold licensure from the State Board of Veterinary Medical Examiners. The Committee cannot allow massage, bodywork and somatic therapists to work with animals in violation of this statutory dictate.

187. COMMENT: Two commenters are concerned that the Committee is prohibiting massage therapists from working with horses. The commenters contend that massage for horses has been practiced for a very long time, that it is respected in the horse community and that it has proven effective. The commenters argue that horse massage is a natural off-shoot of massage therapy and can see no reason for prohibiting massage therapists from working with horses.

RESPONSE: Any individual who works with an animal must hold licensure from the State Board of Veterinary Medical Examiners. The commenters' contentions do not change the fact that a massage, bodywork and somatic therapist cannot work with an animal if they are not licensed by the State Board of Veterinary Medical Examiners.

188. COMMENT: One commenter is concerned that N.J.A.C. 13:37-16.7(b)7 will prevent certificants from applying electrical current to the body. The commenter has been trained to perform such applications. The commenter argues that microcurrent therapy has been proven to be beneficial for patients with pain, notably fibromyalgia pain, which is difficult to treat. The commenter contends that microcurrent therapy should not be denied to New Jersey residents at the reasonable rates charged by massage therapists. The commenter argues that, unless the Committee has information that microcurrent therapy is dangerous, it should be permitted. The commenter points out that many Asian therapeutic approaches use electrical stimulation of acupuncture points and that such techniques are taught in seminars for Asian bodywork therapists.

RESPONSE: The definition of "massage, bodywork and somatic therapies" in N.J.S.A. 45:11-55 does not include the use of electrical stimulation. Since the use of electrical stimulation is not statutorily part of massage, bodywork and somatic therapy, certificants should not be using electrical stimulation as part of their practice.

189. COMMENT: One commenter argues that N.J.A.C. 13:37-16.7(b)7, which prohibits the application of electrical current to the body, could be interpreted as precluding any energy work, like Reiki and therapeutic touch. The commenter is concerned because these therapies can induce or change electrical current in the body. The commenter points out that energy work is common in the practice of massage.

RESPONSE: The Committee believes that N.J.A.C. 13:37-16.7(b)7, which prohibits "any application of electrical current to the body," clearly refers to the application of electricity to the body and not to the induction of electrical current within the body due to physical application of massage, bodywork and somatic modalities to the body. N.J.S.A. 45:11-55 specifically refers to affecting the "energetic systems of the body" so energy work like Reiki and therapeutic touch are included in the practice of massage, bodywork and somatic therapy and are not precluded by N.J.A.C. 13:37-16.7(b)7.

190. COMMENT: One commenter asks if an individual who went to school to apply electrical current to the body and to perform ultrasound therapy would be allowed to use such equipment without losing State certification.

RESPONSE: A massage, bodywork and somatic therapist who holds State certification may not apply electrical current to the body or perform ultrasound therapy.

191. COMMENT: One commenter states that she uses infrasonic QGM, which is a machine that uses low frequency sound to alleviate pain and facilitate healing, on her clients. The commenter argues that the machine is safe and effective. The commenter asks why the Committee will not allow her to use this machine on her clients.

RESPONSE: As the commenter has described infrasonic QGM, it is ultrasound and is prohibited by N.J.A.C. 13:37-16.7(b)8. Certificants are prohibited from using ultrasound as such practice constitutes the treatment of illness, disease, impairment or disability.

192. COMMENT: One commenter asks if a massage therapist who used to be in another profession like physical therapy, nursing or medicine, but who now only works as a massage therapist, would be allowed to perform internal organ movement, perform manual lymph drainage, use ultrasound and apply electrical currents to the body.

RESPONSE: A certified massage, bodywork and somatic therapist is not permitted to use ultrasound or apply electrical currents to the body. As discussed above, prohibitions on internal organ movement are not being adopted;

neither are prohibitions on manual lymph drainage as long as it is not being used as part of decongestive therapy or any other treatment. If a certified massage, bodywork and somatic therapist is licensed as a physical therapist, nurse, physician or any other professional who is permitted to use ultrasound or apply electrical current, then he or she could perform these services pursuant to that other licensure status if such performance is within that profession's scope of practice.

193. COMMENT: Two commenters contend that N.J.A.C. 13:37-16.7 should be amended to allow certificants to perform those tasks listed in N.J.A.C. 13:37-16.7(b)4, 5, 7 and 8 if the certificant has received training in those tasks.

RESPONSE: As discussed above, the Committee is not adopting the prohibition on internal organ movement proposed at N.J.A.C. 13:37-16.7(b)4. The Committee is also not adopting the prohibition on manual lymph drainage proposed at N.J.A.C. 13:37-16.7(b)5, as long as it is not being used as part of decongestive therapy or any other treatment. The Committee does not think that massage, bodywork and somatic therapists should be using ultrasound or applying electrical currents to the body and is adopting the prohibitions against these practices proposed at N.J.A.C. 13:37-16.7(b)7 and 8. The Committee does not believe that using ultrasound or applying electrical currents falls within the definition of "massage, bodywork and somatic therapies" and their use should not be part of a certificant's practice.

194. COMMENT: One commenter asks if adding a drop of lavender in a base oil would be something that certificants would need certification in. The commenter points out that not every therapist has been certified as an herbalist.

RESPONSE: The Committee is not clear what the commenter was referring to when she discussed "certification" in using a drop of lavender in a base oil. The Committee points out that it has not placed any prohibitions on using massage lubricants and that using a drop of lavender is not something that a certificant would need to obtain education to perform pursuant to N.J.A.C. 13:37-16.7(a).

195. COMMENT: One commenter points out that massage therapists do not work in hospital settings and usually go to the homes of people where they do not have control over germ free, EPA approved conditions. The commenter posits a situation in which a certificant is performing a massage in a client's home and the client's cat enters the area in which a massage is being performed. The commenter asks if the certificant would have to cease the massage if this occurs.

RESPONSE: The Committee is not requiring that massage, bodywork and somatic therapists work only in hospital settings or in germ free, EPA approved conditions. The Committee points out that N.J.A.C. 13:37-16.8(o) refers to a massage, bodywork and somatic therapy establishment. A client's home would not be a massage, bodywork and somatic therapy establishment and the provisions of N.J.A.C. 13:37-16.8(o) would not apply.

196. COMMENT: One commenter has just gone through a Joint Commission on Accreditation of Healthcare Organizations (JCAHO) survey and contends that the sanitation requirements in N.J.A.C. 13:37-16.8 are stricter than those imposed on outpatient physical therapy facilities.

RESPONSE: The Committee has adopted sanitary requirements that it believes protects clients and ensures that certified massage, bodywork and somatic therapists maintain their establishments in a professional manner. Whether or not these standards are stricter than JCAHO standards is not relevant.

197. COMMENT: One commenter suggests that the Committee develop an amendment that covers standards of practice and codes of ethics and that N.J.A.C. 13:37-16.8 should only refer to these documents and not set forth the Committee's requirements for infection control. The commenter argues that this would allow the Committee to update and modify standards without having to go through the proposal process. The commenter contends that sexual misconduct provisions should also be part of this code of ethics and not part of the rules.

RESPONSE: The Committee, like every other regulatory body in the State, is required by law to set forth its policies in regulation in order to avoid arbitrariness and to allow for public review of such policies before they are adopted as final rules. The commenter's suggestion would violate this legal mandate. Standards of practice and codes of ethics must be codified in rules and undergo the regulatory process so that the public has the opportunity to review these policies and provide comment on them.

198. COMMENT: One commenter contends that liquid disinfectant soaps and bactericidal agents are causative agents in the proliferation of common bacteria and that washing with hot water and soap is generally accepted as adequate precaution against infection.

RESPONSE: The Committee points out that requiring hand washing with liquid disinfectant soaps is the standard process for sanitary purposes and will require certificants to follow this process.

199. COMMENT: Some of the commenters ask why N.J.A.C. 13:37-16.8 prohibits a certificant from refilling soap containers. They believe it is inappropriate that they are not allowed to buy liquid soap in bulk and refill containers.

RESPONSE: The Committee understands that preventing the refilling of soap containers is the standard process set forth by the Centers for Disease Control to prevent infections. The Committee has adopted N.J.A.C. 13:37-16.8(d) as proposed.

200. COMMENT: Several commenters were concerned with the requirements of N.J.A.C. 13:37-16.8(h) and (i). These rules require certificants to store massage lubricants in sanitary containers, keep containers free of debris and sanitize containers, and store lubricants according to manufacturers recommendations. The rules also require certificants to use disposable containers for lubricant creams that are used during a massage, bodywork and somatic therapy session. The commenters are concerned that these requirements will be unduly burdensome and expensive for certificants. One commenter believes that these rules will impact the environment because they will require massage therapists to use a large number of plastic bottles. Another was concerned that the Committee was requiring certificants to throw away refillable tubes of lubricant creams. This commenter contends that there is no backup of germs or impurities into dispensers and that refillable containers should be exempt from any "throw away" rules. The commenters argue that the rules should not require that lubricant creams be placed in disposable containers that are discarded after use. They contend that separate containers should be used, but that they need not be disposable as long as certificants sanitize the container after each use. The commenters ask what should be done when a certificant uses bottles of cream and if such bottles need to be disposed of after a session. One commenter asks if these rules mean that he must drain, clean and refill a container between clients.

RESPONSE: The Committee did not intend to require certificants to throw away a bottle of cream after every client nor did it intend to require that massage, bodywork and somatic therapists drain, clean and refill a container between provision of services to clients. It is apparent from the comments that there is confusion regarding the requirements of N.J.A.C. 13:37-16.8(h) and (i) and that certificants may act in an unduly restrictive matter if these rules are not clarified. The Committee has decided to not adopt N.J.A.C. 13:37-16.8(h) and (i) at this time. The Committee will repropose these provisions at a later date in order to resolve issues regarding how massage lubricants and lubricant creams should be dispensed and used by certificants, and how the containers used for such creams must be sanitized in between client services.

201. COMMENT: One commenter asks if there is a word missing in N.J.A.C. 13:37-16.8(f) and asks if these items should be disposed as trash or soiled linens.

RESPONSE: There is no word missing in N.J.A.C. 13:37-16.8(f). Soiled disposable items should be thrown out as trash.

202. COMMENT: One commenter claims that the term "soiled disposable items" is missing in the summary of N.J.A.C. 13:37-16.8.

RESPONSE: The word "disposable" should have appeared in the summary of N.J.A.C. 13:37-16.8 and was left out due to a typographical error. The summary clearly indicates the intent of the rule even with this typographical error and need not be corrected upon adoption.

203. COMMENT: One commenter is concerned with N.J.A.C. 13:37-16.8(k) and claims that it is an example of the State regulating the minutia of his practice. The commenter argues that washing sheets with a full cup of bleach would lead to his linens wearing out earlier than they should. The commenter also argues that sheets will not be any more sanitary when washed with a cup of bleach than they would be if washed with 1/4 to 1/2 cup of bleach.

RESPONSE: The Committee points out that the Centers for Disease Control recognizes that a commercial laundry uses bleach when washing linens. This standard should be followed when a certificant is washing linens. This ensures that linens are properly cleaned. It is the Committee's understanding that using one cup of bleach is the standard used when washing linens to ensure that they are adequately sanitized. The Committee wants to ensure that certified massage, bodywork and somatic therapists are conducting their practice in a safe, clean and professional manner.

204. COMMENT: One commenter believes that N.J.A.C. 13:37-16.8(k) requires a massage therapist to either commercially launder soiled linens and draping materials or to wash them with one cup of bleach. The commenter contends that the rule imposes no hygiene requirements for commercial laundry and asks why sanitization is required at all. The commenter contends that most massage therapists use colored patterned sheets and that the rule will require massage therapists to have these sheets commercially laundered or to buy white sheets instead.

RESPONSE: The commenter is correct that massage, bodywork and somatic therapists will either have to have linens commercially laundered or wash linens themselves. The Committee points out that certificants may use one cup of bleach or one cup of an antibacterial agent when washing linens. The Committee did not need to impose hygiene requirements for commercial laundries as these businesses already follow an industry standard for sanitization. The Committee is requiring sanitization in order to ensure that certificants are practicing in a safe, clean and professional environment. The Committee also points out that the rule does not require certificants to use white sheets. Both bactericidal agents and color safe bleach can be used on color sheets.

205. COMMENT: One commenter believes it is ridiculous for the Committee to dictate what type of detergent a massage therapist must use to wash sheets. The commenter asks how such a regulation will be enforced.

RESPONSE: The Committee is not dictating what type of detergent a massage, bodywork and somatic therapist must use. The Committee is only requiring that certificants wash linens with one cup of bleach or bactericidal agent.

206. COMMENT: One commenter asks what N.J.A.C. 13:37-16.8(l) means. The commenter asks for definitions. The commenter also asks whether clean and dirty linens can be in the same room and by what distance they must be separated.

RESPONSE: N.J.A.C. 13:37-16.8(l) states that clean linens and dirty linens shall be stored separately. This means that dirty and clean linens cannot be stored together. The Committee is confident that everyone will understand that this rule requires that clean and dirty linens be stored in a way so that they are not touching. It is unnecessary to dictate the distance that must separate clean and dirty linens.

207. COMMENT: One commenter asks what must be done when a massage is being performed at a sporting event where conditions are not sterile.

RESPONSE: The Committee has drafted regulations to set sanitary standards for certificants when they perform massage, bodywork and somatic therapy services outside of a massage, bodywork and somatic therapy establishment. N.J.A.C. 13:37-16.8(c) states that, if hand washing facilities are not available, certificants shall disinfect their hands with a bactericidal agent. N.J.A.C. 13:37-16.8(n) states that when a certificant is providing massage, bodywork and somatic therapy in a temporary location, such as a sporting event, the certificant shall sanitize all equipment.

208. COMMENT: One commenter points out that N.J.A.C. 13:37-16.8(o) will have to be amended if the Committee changes its position on animal massage.

RESPONSE: The Committee is not changing its position on animal massage and does not need to amend N.J.A.C. 13:37-16.8(o).

209. COMMENT: Several commenters ask what is meant by "well lit" in N.J.A.C. 13:37-16.8(o) and ask if lights can be dimmed during a massage. One of the commenters asks how many lumens are required by the rule.

RESPONSE: The Committee used the phrase "well lit" in N.J.A.C. 13:37-16.8(o) to ensure that the massage,

bodywork and somatic therapy establishment is safe for clients. The Committee did not intend to prohibit certificants from dimming lights during a massage and points out that N.J.A.C. 13:37-16.8(o) allows certificants to dim lights during a massage. The Committee does not believe it is necessary to dictate the lumens that are required.

210. COMMENT: One commenter asks if N.J.A.C. 13:37-16.8(o) means that he cannot keep fish in his office. The commenter also asks if he is required to get rid of his cat if he works at home. The commenter argues that notifying a client as to the presence of an animal should suffice and that the requirements of N.J.A.C. 13:37-16.8(o) are unnecessary and invasive.

RESPONSE: For sanitary reasons, the Committee wishes to ensure that the area in which massage, bodywork and somatic therapy is being performed is free from animals. However, the Committee did not intend to prohibit animals from the establishment altogether. The Committee has amended N.J.A.C. 13:37-16.8(o) upon adoption to clarify that the area in which massage, bodywork and somatic therapy is being performed must remain free of animals. The amended rule reads: "Certificants shall maintain a clean environment in the massage, bodywork and somatic therapy establishment and shall ensure that the massage, bodywork and somatic therapy establishment is well-lit and ventilated. Certificants shall keep the area where massage, bodywork and somatic therapy is being performed free of animals except as provided by law."

211. COMMENT: One commenter is concerned with the requirement in N.J.A.C. 13:37-16.8(p) that massage therapists provide access to a restroom for clients. The commenter points out that the rule will prevent massage therapists from working in a location where a restroom is not readily available. The commenter asks that this requirement be clarified.

RESPONSE: The Committee has amended N.J.A.C. 13:37-16.8(p) upon adoption to clarify that access to a restroom must be provided in the massage, bodywork and somatic therapy establishment. The amended rule will read: "Certificants shall provide access to a restroom for clients in the massage, bodywork and somatic therapy establishment."

212. COMMENT: One commenter argues that N.J.A.C. 13:37-16.8(p) does not allow for situations when the certificant is not in control of the restroom.

RESPONSE: N.J.A.C. 13:37-16.8(p) requires that massage, bodywork and somatic therapists provide for access to restrooms for clients in a massage, bodywork and somatic therapy establishment. If a certificant cannot ensure that clients could use a restroom in the massage, bodywork and somatic therapy establishment, he or she would be in violation of this rule.

213. COMMENT: One commenter asks the Committee to amend N.J.A.C. 13:37-16.9 to include the term "certified bodywork therapist" and the abbreviation "CBT."

RESPONSE: The Committee points out that the terms "certified bodywork therapist" and "CBT" appear in N.J.A.C. 13:37-16.9(b). These terms are missing from N.J.A.C. 13:37-16.9(a) as it was proposed, but the Committee intended for these terms to be included in this rule when it was proposed. The Committee has amended N.J.A.C. 13:37-16.9(a) upon adoption to include these terms. The amended rule reads: "An active certificant may use the title "massage, bodywork and somatic therapist" or "certified massage, bodywork and somatic therapist," "massage and bodywork therapist," "registered massage, bodywork and somatic therapist," "certified massage therapist," "certified oriental bodywork therapist," "certified Asian bodywork therapist," "certified bodywork therapist," "certified massage therapist" or the abbreviations "MBT," "CMBT," "RMBT," "CMBST," "COBT," "CABT," "CBT" or "CMT."

214. COMMENT: One commenter contends that N.J.A.C. 13:37-16.9 should be amended to allow certificants to use the abbreviation "MT."

RESPONSE: The abbreviation "MT," or any derivation of this term, is not included in either N.J.S.A. 45:11-65 or 45:11-66, which set forth the terms that are reserved for use by certificants. Absent the inclusion of this term in the statute, the Committee cannot limit the use of the term to certificants.

215. COMMENT: One commenter is concerned that N.J.A.C. 13:37-16.9 will prevent uncertified individuals from using certain terms. The commenter contends that many therapists received a limited education in the past and have worked for several years as therapists. The commenter concedes that no one should indicate that they hold certification when they do not, but argues that these individuals should be allowed to use the term "massage therapist." The commenter contends that it is the public's responsibility to educate themselves as to what "certification" means. The commenter argues that therapists should not be made to feel inferior because they lack the qualifying education.

RESPONSE: The commenter is correct that N.J.A.C. 13:37-16.9 will prohibit uncertified individuals from using certain terms. N.J.S.A. 45:11-65 specifically states that uncertified individuals cannot use terms that are reserved for certificants. The Legislature intended for certain terms to only be used by certificants to ensure that only those individuals who have the requisite education and skill would identify themselves as professionals. The rule does not prohibit uncertified individuals from using the term "massage therapist." The Committee points out that N.J.S.A. 45:11-53 et seq. was enacted so that consumers would not need to educate themselves as to the qualifications of massage, bodywork and somatic therapists. The Act ensures that consumers can identify these individuals due to the titles that only certified individuals may use. The Committee does not believe that any individual is being made to feel inferior by these rules. An individual who lacks the requisite education is not eligible for certification and may not use those terms that are reserved for certificants.

216. COMMENT: Some of the commenters argue that it is unrealistic to require certificants to display their certificates of certification when providing massage, bodywork and somatic therapy. The commenters ask how this requirement should be met when they provide services in different rooms in their establishment or if they hold multiple part-time jobs. The commenters also ask if they can display a photocopy of the certificate. The commenters want permission to display a wallet card or copy of the certificate when they perform services outside of an office and ask if the Committee is demanding that certificants carry their certificate with them when they have a mobile practice. The commenters believe that this regulation was only proposed in order to generate revenue for the State. Many of the commenters suggested that the Committee provide travel-sized versions of certificates to all certificants. They believe a travel-sized certificate could be easily displayed.

RESPONSE: The Committee believes it is necessary to require certificants to display certificates of certification so that consumers will easily be able to verify an individual's certification status. As long as a certificate of certification is displayed prominently in a massage, bodywork and somatic therapy establishment, the requirements of this rule will be met. The Committee will issue a wallet-sized certificate of certification along with the primary certificate of certification. Individuals who work in multiple part-time jobs or off-site should bring either certificate of certification with them and display it where the massage, bodywork and somatic therapy is being performed. Certificants may not display a photocopy of a certificate of certification as the Committee is concerned that the use of photocopies would encourage uncertified individuals to counterfeit certificates. The Committee will issue a wallet-sized copy of the certificate of certification. The Committee is requiring that certificants carry the certificate of certification with them when they have a mobile practice. As discussed above, the State is not over- generating any revenue from the certification of massage, bodywork and somatic therapists. The Committee adopted this requirement in order to ensure that the public will be able to easily identify certificants versus non-certificants.

217. COMMENT: One commenter asks why certificants have to carry an original or purchased copy of a certificate when therapists cannot use the term "certified" unless they have certification from the State. The commenter argues that individuals who refer to themselves as "certified" already indicate that they hold certification without the need to display the certificate.

RESPONSE: Requiring certificants to display their certificate of certification to the public ensures that the public can easily identify certified massage, bodywork and somatic therapists.

218. COMMENT: One commenter argues that certificants who work outside of an office may not have a place where they can display a certificate.

RESPONSE: The Committee does not believe that a certificant who works outside of an office would have no place to display a certificate. Certificants can hang certificates off massage tables, or place a framed copy next to where the

massage, bodywork and somatic therapy is taking place, among other places.

219. COMMENT: One commenter asks how a certificant can display a framed certificate when providing services at a sporting event. The commenter suggests that the Committee issue a laminated identification that can be carried around, but is concerned that certificants would have to submit a request to the Committee for such a document.

RESPONSE: The Committee will issue a wallet-sized certificate of certification that certificants can have laminated, if they choose. The Committee does not require that certificants frame certificates and will not dictate how the certificant must display the certificate. As long as the certificate is prominently displayed, the requirement of this rule will be met.

220. COMMENT: One commenter claims that there is a spelling error in N.J.A.C. 13:37-16.10(b).

RESPONSE: There is a typographical error in N.J.A.C. 13:37-16.10(b) as it was proposed, the phrase "or their place of business" should be "of their place of business." The Committee is amending N.J.A.C. 13:37-16.10(b) upon adoption to correct this typographical error.

221. COMMENT: One commenter agrees that the Committee should require continuing education.

RESPONSE: The Committee thanks the commenter for her support of the rules.

222. COMMENT: One commenter suggests that continuing education be mandatory due to the extremely limited education certificants receive.

RESPONSE: Continuing education is required pursuant to N.J.S.A. 45:11-59 and not due to any deficiency in the education that certificants receive.

223. COMMENT: Several commenters were concerned with the continuing education requirements of N.J.A.C. 13:37-16.11. These commenters argue that the Committee should not base its continuing education requirement on a two-year schedule, because NCBTMB uses a four-year schedule and the two differing standards for continuing education will be too confusing for certificants. The commenters were particularly concerned since NCBTMB is recognized in N.J.A.C. 13:37-16.11.

RESPONSE: N.J.S.A. 45:1-7 requires that certification be renewed every two years. Continuing education requirements must be met pursuant to this two-year renewal cycle for certification, regardless of any private organization's requirements. The Committee points out that NCBTMB is only referred to by the rules as an organization that recognizes continuing education sponsors and that NCBTMB does not have any authority to determine education or practice standards in New Jersey.

224. COMMENT: Several commenters disputed the continuing education hours allocation of N.J.A.C. 13:37-16.11(e) which allows certificants to count hours spent teaching a new course towards continuing education requirements. The commenters contend that certificants should receive credit for hours spent teaching any course, regardless of whether the course is new or not. The commenters argue that teachers learn every time they teach and demand that hours be allocated for time spent preparing and presenting any course.

RESPONSE: The Committee believes that certificants should only receive continuing education credit for time spent learning new information regarding massage, bodywork and somatic therapy. Teaching the same course repeatedly does not increase an individual's knowledge about massage, bodywork and somatic therapy and the Committee will only recognize new courses for continuing education credit. The Committee points out that this is consistent with the standards for continuing education imposed by other professional boards and committees.

225. COMMENT: One commenter asks the Committee to define "publishing media" and "peer review" as those terms are used in N.J.A.C. 13:37-16.11.

RESPONSE: The term "publishing media" is not used in N.J.A.C. 13:37-16.11. The term "peer review" is commonly

understood to mean that professionals in the field have reviewed a study or paper and determined its validity. It is not necessary to define this term in the rules.

226. COMMENT: One commenter asks if all continuing education, including courses approved by NCCAOM and NCBTMB, needs to be halted until the Committee approves the course and sponsor.

RESPONSE: N.J.A.C. 13:37-16.11(e) states that the Committee will recognize many courses for continuing education credit. Any continuing education courses approved by NCBTMB, NCCAOM, AMTA, AOBTA, ABMP or the American Nurse Credentialing Center (ANCC) are recognized. The rule also states that courses that have been pre-approved by the Committee pursuant to N.J.A.C. 13:37-16.11(h) are acceptable as well. The rule clearly indicates that only those courses that are not recognized by these organizations need to be pre-approved by the Committee. Any course that is recognized by any of these organization, including NCCAOM and NCBTMB, need not be pre-approved or be halted.

227. COMMENT: One commenter asks why the Committee limits the number of credits that can be transferred from one biennial period to the next. The commenter believes that limiting certificants to transferring 20 hours is not fair to certificants who take courses when they can.

RESPONSE: The Committee wishes to ensure that any continuing education credits that a certificant completes are current. Limiting the amount of credits a certificant may transfer ensures that the education certificants are receiving is related to current practice.

228. COMMENT: One commenter contends that N.J.A.C. 13:37-16.11(b) is inappropriate. This regulation states that courses that are related solely to business practices shall not satisfy continuing education requirements. The commenter points out that NCBTMB recognizes these courses as partially satisfying its continuing education requirements and argues that the Committee should encourage certificants to take such courses.

RESPONSE: The fact that NCBTMB recognizes such courses is irrelevant to State continuing education standards. The Committee drafted these continuing education standards to ensure that certificants maintain current knowledge about the practice of massage, bodywork and somatic therapy to ensure the safety of clients. Business courses do not add to a certificant's knowledge base as to massage, bodywork and somatic therapy and should not be recognized for continuing education credits.

229. COMMENT: One commenter contends that N.J.A.C. 13:37-16.11 is a mistake. The commenter argues that certificants should be required to attend classes that make sure a certificant's hand technique is correct. The commenter contends that home schooling and writing books and papers do not correct inappropriate hand technique. The commenter argues that writing a paper or book should not count for continuing education credit or that it should be limited to one credit.

RESPONSE: The Committee believes that any information that increases a certificant's knowledge base regarding massage, bodywork and somatic therapy augment a certificant's ability to practice safely and effectively. Certificants should not be limited to only those courses that make sure that hand technique is correct.

230. COMMENT: One commenter asks if certificants can attend nursing classes.

RESPONSE: Certificants may attend any course that is related to massage, bodywork and somatic therapy and which is given by a sponsor qualified pursuant to N.J.A.C. 13:37-16.11(e).

231. COMMENT: One commenter contends that N.J.A.C. 13:37-16.11(i)1 and 2 need to be explained more.

RESPONSE: N.J.A.C. 13:37-16.11(i) states that the Committee may require a certificant to complete continuing education credit hours as part of a disciplinary or remedial measure or to correct a deficiency in the certificant's continuing education requirements. This regulation means that the Committee can require a certificant to complete additional continuing education credits as part of the requirements the Committee imposes when a certificant is subject to disciplinary action or because a certificant did not complete the 20 continuing education credit hours required for

each biennial renewal period.

232. COMMENT: One commenter believes that the sexual misconduct regulations are in line with ABMP and AMTA codes of ethics. The commenter claims that the regulation reaches too far into a massage therapist's personal life.

RESPONSE: The Committee does not follow either ABMP or AMTA codes of ethics. The Committee follows the dictates of N.J.S.A. 45:11-53 et seq. and the standards of conduct that it deems are appropriate for professionals to follow. N.J.A.C. 13:37-16.12 was drafted to prevent certificants from engaging in inappropriate and unprofessional behavior.

233. COMMENT: One commenter agrees that there is no place for sexual misconduct in massage therapy.

RESPONSE: The Committee thanks the commenter for her support.

234. COMMENT: One commenter argues that any rules on sexual misconduct are insulting. The commenter contends that massage therapists are not interested in prostitution because they spent time training in massage schools and taking certification examinations. The commenter claims that the sexual harassment rules for physical therapists are more respectful to a therapist.

RESPONSE: The Committee does not agree that sexual misconduct rules are insulting. The rules recognize that professionals should not be engaged in sexual misconduct. The Committee is not claiming that massage, bodywork and somatic therapists are interested in prostitution. It wishes to ensure that certificants practice in a professional manner and that they do not engage in inappropriate behavior with clients. The Committee points out that the wording of N.J.A.C. 13:37-16.12 is substantially the same as that of N.J.A.C. 13:39A-3.10, the State Board of Physical Therapy Sexual Misconduct rule, and it is as respectful as N.J.A.C. 13:37-16.12.

235. COMMENT: One commenter is concerned with the references to sex on the job and prostitution in the proposal.

RESPONSE: There are no references to "sex on the job" or "prostitution" in the proposal. N.J.A.C. 13:37-16.12 prohibits certificants from engaging in inappropriate behavior with clients.

236. COMMENT: One commenter argues that massage therapists commonly date clients. The commenter believes that this is permissible according to the rules as long as the two parties do not engage in sexual activity. The commenter finds it hard to believe that two people who are dating would cease having a therapist/client relationship for 90 days prior to engaging in sexual activity. The commenter argues that massage therapy is performed for health benefits and not sexual pleasure. The commenter agrees that sexual contact during a massage session would be inappropriate and believes that it is important for the credibility of certification that all regulations be easily abided by and upheld. The commenter argues that anything done outside of a professional practice, especially in the privacy of a certificant's bedroom, is the personal business of the certificant.

RESPONSE: The Committee is not aware that massage, bodywork and somatic therapist commonly date clients, nor does this argument diminish from the need to have a sexual misconduct rule that prohibits certificants from engaging in inappropriate behavior. The Committee believes it is necessary to require a clear separation between a professional and a romantic relationship. This is the reason why certificants must wait at least three months prior to engaging in sexual contact with a former client. The Committee recognizes that massage, bodywork and somatic therapies are not performed for sexual pleasure. The Committee believes that these rules are easily abided by and easy to uphold and points out that any inappropriate behavior by a certificant is within the purview of the Committee.

237. COMMENT: One commenter is confused by N.J.A.C. 13:37-16.12(c) and its reference to three months.

RESPONSE: N.J.A.C. 13:37-16.12(c) ensures that there is a clear demarcation between a professional and a romantic relationship between a certificant and a former client.

238. COMMENT: One commenter contends that N.J.A.C. 13:37-16.12 reinforces a stereotype that all massage therapists are involved in sexual innuendo or solicitation. The commenter contends that many massage therapists are

concerned with detecting sexual predators who prey upon them. The commenter asks if nurses have similar requirements that refer to relations with spouses. The commenter also asks how the Committee decided that there should be a three- month cooling off period before dating a client and what precedent or guideline this is based on. The commenter asks if such regulation is within the Committee's purview.

RESPONSE: The Committee points out that many professional boards and committees in New Jersey have similar sexual misconduct rules. The Committee is not reinforcing a stereotype but is trying to ensure that certificants act in a professional manner. The Committee points out that this rule will provide certificants with some protection against the sexual predators. The Board of Nursing has a substantially similar rule dealing with sexual misconduct, including reference to spouses. The Committee based its three-month cooling off period on the standards used by other boards and committees and its own expertise in the field of massage, bodywork and somatic therapy. The regulation of a certificant's professional practice, including prohibitions on sexual misconduct, are within the Committee's purview.

239. COMMENT: One commenter was concerned with N.J.A.C. 13:37-16.12(e) and believes that the rule will allow massage therapists to discuss with their client what occurs in their sexual relationships with a spouse. The commenter suggests that the word "relationship" in N.J.A.C. 13:37-16.12(e) be replaced with "orientation."

RESPONSE: The Committee did not intend to prohibit a certificant from discussing sexual relationships with a spouse. The Committee has amended N.J.A.C. 13:37-16.12(e) upon adoption to clarify that the rule only applies to individuals with whom the certificant has an ongoing client-therapist relationship. The amended rule will state: "A certificant shall not engage in any discussion of an intimate sexual nature with a person with whom the certificant has a client-therapist relationship, unless that discussion is directly related to a proper massage, bodywork and somatic therapy purpose. Such discussion shall not include disclosure by the certificant of his or her own sexual relationships." The term relationship is the proper term in N.J.A.C. 13:37-16.12(e), as the Committee wishes to prevent certificants from discussing their own sexual experiences with clients.

240. COMMENT: Many commenters were concerned with N.J.A.C. 13:37-16.12(j) which states that: "Nothing in this section shall be construed to prevent a certificant from rendering massage, bodywork or somatic therapy to a spouse, providing that the rendering of such massage, bodywork or somatic therapy is consistent with accepted standards of massage, bodywork or somatic therapy and that the performance of therapy is not utilized to exploit the spouse for the sexual arousal or sexual gratification of the certificant." The commenters believe that the Committee is overstepping its legal authority by trying to regulate what occurs between spouses. The commenters point out that money is not exchanged when spouses give each other massages and argue that the Committee therefore has no jurisdiction. They ask what the public concern this regulation is trying to address and ask if the Committee is attempting to regulate intimacy between spouses. The commenters contend that no other state regulates massage therapists in this way. The commenters argue that this provision has no place in New Jersey State rules and that it is intrusive. The commenters also argue that, as long as a certificant do not violate any laws and do not abuse their spouses, the State has no business in regulating private conduct of a certificant. The commenters argue that these rules should only refer to professional services in a professional environment. They question how the Committee will enforce this rule and claim that it will only be aware of violations of this rule when a massage therapist goes through a divorce.

RESPONSE: N.J.A.C. 13:37-16.12(j) permits a certificant to perform massage, bodywork and somatic therapy on a spouse, as long as the certificant is not exploiting his or her spouse. It is within the Committee's purview to allow certificants to perform professional services for his or her spouse, but to prohibit the certificant from abusing his or her spouse. The fact that a certificant is not paid for services does not mean that the certificant is no longer a professional who must follow professional standards regulated by the Committee. The Committee is not trying to regulate intimacy; it is simply clarifying that certificants may provide services to spouses, as long as they do not abuse their spouse. The Committee points out that many other State boards and committees have similar language that allows licensees and certificants to work with spouses, so long as the spouse is not exploited by the licensees or certificants. The Committee points out that this rule will be enforced whenever it is made aware that a certificant has used massage, bodywork and somatic therapy to exploit or abuse his or her spouse.

241. COMMENT: One commenter suggests that N.J.A.C. 13:37-16.12(j) be rewritten to state: "Nothing in this section shall be construed to prevent a certificant from rendering massage, bodywork or somatic therapy to a spouse."

RESPONSE: The Committee wishes to ensure that certificant do not abuse their spouse. The rule was adopted as proposed in order to prohibit such abuse.

242. COMMENT: Some commenters contend that language in N.J.A.C. 13:37-16.12 that deal with spouse massage seems to be more appropriate for massage parlor codes and not State rules.

RESPONSE: The Committee wishes to clarify that a certificant may provide services to his or her spouse as long as the certificant is not abusing his or her spouse.

243. COMMENT: One commenter claims that N.J.A.C. 13:37-16.12(j) is vague but could be interpreted as prohibiting the use of massage as a form of foreplay for massage therapists. The commenter believes that such a prohibition has no place in regulations. The commenter suggests that "client" should be defined as "any person who is paying for massage, bodywork and somatic therapy services and receiving said services in a professional or promotional setting" so that this rule would not apply when a massage therapist is giving a massage to a friend or family member.

RESPONSE: N.J.A.C. 13:37-16.12(j) specifically allows certificant to provide services to a spouse, as long as the spouse is not exploited. The rule is not vague and does not prohibit the use of massage, bodywork and somatic therapy as a form of foreplay. The Committee believes that a professional should act professionally at all times, regardless of whether or not he or she is being paid, and will not amend the definition of "client" as the commenter suggests.

244. COMMENT: One commenter objects to the fact that these regulations prevent massage from leading to sex between married people. The commenter contends that what happens between couples privately should stay private.

RESPONSE: N.J.A.C. 13:37-16.12(j) specifically allows a certificant to provide massage, bodywork and somatic therapy services to a spouse as long as the spouse is not exploited by the certificant. The rule does not prevent massage from leading to sex between married people.

245. COMMENT: One commenter suggests that the Committee amend N.J.A.C. 13:37-16.12(j) to remove any mention of conduct with a spouse. In the alternative, the commenter suggests that the Committee only include those actions that constitute an illegal activity.

RESPONSE: The Committee points out that the entirety of N.J.A.C. 13:37-16.12(j) deals with conduct with a spouse. The rule clarifies that certificant can provide services to spouses, as long as the spouse is not abused by the certificant. The Committee will not amend the rule as the commenter requests.

246. COMMENT: One commenter claims that N.J.A.C. 13:37-16.12(j) infringes on the privacy rights of individuals as defined by the United States and New Jersey Supreme Courts. The commenter argues that it is absurd to forbid certificant from engaging in practices that are legal for non-certificant. The commenter argues that N.J.A.C. 13:37-16.12(c) adequately guards against a relationship that results from the misuse of a therapist's training to initiate a relationship that would not have occurred absent the therapist-client relationship.

RESPONSE: N.J.A.C. 13:37-16.12(j) does not infringe on privacy rights. It is appropriate for the Committee to forbid certificant from engaging in activities that are unprofessional and inappropriate. By becoming certified, individuals are agreeing to conduct themselves in a professional manner. The Committee agrees that N.J.A.C. 13:37-16.12(c) guards against a relationship that results from the misuse of a certificant's training. The Committee believes that N.J.A.C. 13:37-16.12(j) is necessary to ensure that a certificant does not misuse this training when engaged in normal relations with his or her spouse by exploiting the spouse.

247. COMMENT: One commenter asks if it is all right for him to work on his wife as long as he keeps the integrity of his office separate.

RESPONSE: N.J.A.C. 13:37-16.12(j) specifically allows a certificant to work on a spouse, as long as the certificant is not abusing the spouse.

248. COMMENT: One commenter argues that other professions, such as physical therapists, nurses and estheticians,

must be prohibited from advertising their services as massage.

RESPONSE: N.J.S.A. 45:11-65 does not prohibit uncertified individuals from using the term "massage." Absent such a statutory prohibition, the Committee cannot draft a regulation to prohibit the use of this term in advertisements by individuals who are not certified by the Committee.

249. COMMENT: One commenter believes that it is inappropriate to require massage businesses to list the name and certificate number of at least one massage therapist in advertisements. The commenter points out that, if the advertised certificant leaves an establishment, advertisements would be inaccurate. The commenter also argues that including one massage therapist in an advertisement would be unfair to all the other massage therapists in the establishment, as one would be promoted over all the rest. The commenter points out that cosmetologists are not required to list license numbers in advertisements. The commenter suggests that it would be sufficient to require that an establishment claim they have a certificant on staff in advertisements without listing names or license numbers. In the alternative, the commenter suggests that the Committee require businesses that are not owned by massage therapists to apply for a separate certification.

RESPONSE: The Committee wishes to ensure that, when an advertisement claims that a facility has a certificant on staff, it is not making a false claim. This requirement also ensures that the Committee and the public will be able to identify the certificant who is working at a facility. The Committee believes that the benefits of easily identifying the certificant outweighs the burden facilities will bear because of this requirement. The commenter is correct that advertisements would be inaccurate if a certificant leaves the staff of the facility. Again, the burden this would impose on facilities is outweighed by the benefit of being able to identify the certificant who works at the facility. The Committee does not believe that it would be unfair to identify one certificant in an advertisement, or that this would promote one certificant over the others who work in the facility. The Committee points out that N.J.A.C. 13:37-16.13(f) does not require that only one certificant be identified in an advertisement. If the facility wishes to include the name of more than one certificant, it may do so. The commenter is correct that cosmetologists do not have to list license numbers in advertisements. This fact is not relevant to the regulations the Committee has adopted regarding advertising. The Committee points out that it has no authority over businesses and cannot require them to obtain a separate certification as the commenter suggests.

250. COMMENT: One commenter requests that the Committee focus on regulations that would prevent untrained individuals from advertising massage when they are not performing massage.

RESPONSE: The Committee is required to focus on those who obtain certification and the practice of such individuals. The only authority the Committee has over uncertified individuals is to ensure that they do not use the terms reserved for certificants pursuant to N.J.S.A. 45:11-65. The Committee cannot act as the commenter suggests.

251. COMMENT: One commenter points out that P.L. 1999, c. 19 states that massage, bodywork and somatic therapies do not include the diagnosis or treatment of illness, disease, impairment or disability. The commenter believes that the public needs to be informed of this restriction and suggests that the Committee amend N.J.A.C. 13:37-16.13 to require that any advertisement or solicitation include this language.

RESPONSE: The commenter is correct that P.L. 1999, c.19 states that massage, bodywork and somatic therapies do not include the diagnosis or treatment of illness, disease, impairment or disability. These rules clearly prevent certificants from engaging in such practices. The Committee does not believe that it is necessary to require that this language appear in every advertisement as the commenter suggests. Such a provision would be costly for certificants and would not benefit the public.

252. COMMENT: One commenter is concerned that certificants will be required to include their name in any advertisement. The commenter contends that many massage therapists do not use their name in advertisements for safety reasons. The commenter also contends that it is costly to include a certificant in an advertisement for a business due to high turnovers in the industry. The commenter agrees that business cards should contain an individual's certification number, but suggests that advertisements only include a statement that the business employs a certified therapist. The commenter also suggests that the Committee require certificants to wear State issued identification badges whenever they are working.

RESPONSE: The Committee wishes to ensure that it and the public will easily be able to identify a certificant when a facility claims that certified massage, bodywork and somatic therapists work at the facility. The Committee does believe, however, that the interests of identification can be served by simply requiring that a certificant use the first initial in his or her first name, which would decrease the chances of possible risk to certificants. The Committee has therefore amended N.J.A.C. 13:37-16.13(e) and (f) upon adoption to allow certificants to use their first name or the first initial of their first name in advertisements. Amended N.J.A.C. 13:37-16.13(e) reads: "All advertisements shall include: 1. The certificant's first name, or first initial of the first name, and the certificant's full last name; 2. The certificant's address or telephone number; and 3. The terms "N.J. Cert. #" followed by the certificant's certificate number." Amended N.J.A.C. 13:37-16.13(f) reads: "If an entity advertises under a professional name the entity must identify at least one certificant's first name, or first initial of the first name, and the certificant's full last name, certificant number and telephone or address." The Committee does not believe that it is appropriate to only require a facility to identify if it employs certificants in advertisements. It is necessary to identify the certificant in order to ensure that such statements are true and so that the Committee and the public can easily identify the certificant. The Committee will not issue identification badges and will not require certificants to wear State issued identification badges, as the commenter suggests. The Committee points out that N.J.A.C. 13:37-16.10 requires certificants to display the certificate of certification whenever providing massage, bodywork and somatic therapy services.

253. COMMENT: One commenter points out that recordkeeping requirements will eat into the amount of time a massage therapist has to work with clients.

RESPONSE: The Committee does not believe that the fact that massage, bodywork and somatic therapists will need to devote a portion of their time to recordkeeping outweighs the benefits of maintaining such records. The Committee needs to ensure that certificants maintain accurate records of professional practice in order to resolve disciplinary issues that arise. The Committee believes that maintaining such records is a professional practice that all certified massage, bodywork and somatic therapists should follow.

254. COMMENT: Some of the commenters were concerned with the recordkeeping requirements of N.J.A.C. 13:37-16.14. These commenters believe that this regulation imposes too much work for certificants. They believe the recordkeeping requirements are too detailed for certificants and that the requirements are more appropriate for physical therapists or physicians. The commenters contend that certificants will not be able to maintain such records and ask why the Committee has set up a system that will force certificants to fail to comply with regulations.

RESPONSE: The Committee believes that certified massage, bodywork and somatic therapists should maintain professional records. These records will be necessary whenever the Committee performs a review of a certificant's practice pursuant to a disciplinary action. The Committee does not believe that the recordkeeping requirements are too detailed for certificants. The Committee believes that the requirements of N.J.A.C. 13:37-16.14 reflect the information that every certificant should maintain in his or her records.

255. COMMENT: One commenter argues that, since he is not treating a specific injury, it does not make sense to require him to keep detailed notes on how he conducts sessions.

RESPONSE: The Committee points out that N.J.A.C. 13:37-16.14 does not require detailed notes on how a massage, bodywork and somatic therapy session is conducted. The Committee does not agree that the fact that the treatment or diagnosis of illness, disease, impairment or disability is not part of massage, bodywork and somatic therapies impacts the need for a certificant to keep professional records of his or her practice.

256. COMMENT: One commenter argues that requiring initial client intake forms to indicate limitations or medical conditions are appropriate for a certificant to maintain. The commenter also believes that certificants should maintain income tax records. The commenter argues that requiring specific treatment protocols for each treatment is not appropriate.

RESPONSE: The Committee points out that it is not requiring certificants to maintain income tax records. The Committee also points out that certificants cannot treat illnesses, diseases, impairments or disabilities and that N.J.A.C. 13:37-16.14 does not require recordkeeping of specific treatment protocols. N.J.A.C. 13:37-16.14 requires that

certificants maintain as part of their records: the intake record; the dates of each service; the reasons for visits; the name of the certificant who provided services; the modalities used and areas of focus on the body; any referral to another healthcare professional; and fees charged and paid.

257. COMMENT: One commenter asks if the new rules are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and, if so, what Federal analysis is required.

RESPONSE: The Committee believes that any records kept by a certificant would be subject to HIPAA and that certificants would have to follow these Federal rules regarding the privacy of records. The Committee does not believe that certificants will need to perform a Federal analysis as long as they follow the Federal rules.

258. COMMENT: Two commenters ask how HIPAA will affect certificants. The commenters want to know if certificants will be required to inform clients of HIPAA requirements and if they would be required to comply with HIPAA when releasing records. The commenters ask what legal services certificants will need to employ to comply with HIPAA.

RESPONSE: The Committee believes that certificants will be required to follow HIPAA. The Committee believes that certificants will have to inform clients of HIPAA requirements and comply with HIPAA when releasing records. The Committee does not believe that certificants will need to employ any legal services in order to comply with HIPAA.

259. COMMENT: One commenter asks if N.J.A.C. 13:37-16.14(f) refers to HIPAA and asks that the rule specifically refer to HIPAA.

RESPONSE: N.J.A.C. 13:37-16.14(f) does not refer to HIPAA. The requirements of this rule are imposed by the Committee and are not related to HIPAA requirements.

260. COMMENT: One commenter contends that the recordkeeping requirements are addressed to large, multi-therapist settings. The commenter argues that mandating computer standards is draconian for a small business. The commenter asks if the Committee's intent is to ensure that client records are maintained for reference.

RESPONSE: The requirements of N.J.A.C. 13:37-16.14 are not addressed to a large, multi-therapist setting. These requirements are addressed to all certificants, regardless of size. The requirements of N.J.A.C. 13:37-16.14(c) were adopted to ensure that any records kept on a computer system are not altered. The recordkeeping requirements of N.J.A.C. 13:37-16.14 were adopted in part to ensure that client records are maintained for reference, but also because maintaining client records is a practice that all professionals should follow.

261. COMMENT: One commenter argues that a permanently activated date and time recordation and automatic back-up preparation are not typical features of a standard computer.

RESPONSE: The Committee wishes to ensure that any records kept on a computer are not altered. The requirements of permanently activated date and time recordation and automatic back-up preparation are necessary to ensure that records are not altered. The Committee points out that this requirement is similar to computer recordkeeping requirements imposed by other boards and committees. The Committee understands that the individuals licensed or certified by these boards and committees have been able to comply with these requirements.

262. COMMENT: One commenter contends that he should be allowed to keep records on a computer without having to purchase a program that automatically dates records and backs records up. The commenter argues that backing up his records once a week is sufficient.

RESPONSE: The Committee wishes to ensure that records kept on a computer are not altered. If a computer recordkeeping program does not automatically date records and back up records, the Committee believes that these computer records could be altered.

263. COMMENT: One commenter asks for the justification for N.J.A.C. 13:37-16.14(c)2 through 4 and wants to be assured that the system described by this rule does not comprise a patented business process and sole-source provider

of computer software. The commenter points out that the Association for Computing Machinery archives does not use the term "confidential personal code" and argues that the industry standard term is "personal identification number."

RESPONSE: The Committee wishes to ensure that any records kept on computers are not altered. That is the justification for N.J.A.C. 13:37-16.14(c)2 through 4. The Committee does not believe that the system described by the rule comprises a patented business process or sole-source provider of computer software. The term "confidential personal code" is the term used by other boards and committees in their rules dealing with computer recordkeeping requirements. The two terms, "personal identification number" and "confidential personal code," refer to the same concept, but "confidential personal code" conveys the fact that this number protects the confidentiality of records.

264. COMMENT: One commenter asks if the Committee has checked to see if software that conforms to the requirements of N.J.A.C. 13:37-16.14(c) exists. The commenter has looked for such software, has been unable to find it and contends that the Committee should not impose requirements that cannot be met.

RESPONSE: The Committee points out that other boards and committees have similar requirements for their licensees and certificants regarding computer recordkeeping. The licensees and certificants of these other boards and committees are able to comply with these requirements. It, therefore, believes that certificants will be able to find software that complies with the requirements of N.J.A.C. 13:37-16.14(c).

265. COMMENT: One commenter contends that N.J.A.C. 13:37-16.14(e)1 requires massage therapists to provide confidential and personal information about clients without the clients' permission in violation of client privacy.

RESPONSE: Release of records pursuant to a subpoena issued by the Board, the Committee, or the Office of the Attorney General, or by a demand for statement in writing under oath, pursuant to N.J.S.A. 45:1-18 would be appropriate authority for the release of records which would not infringe on a client's privacy.

266. COMMENT: One commenter believes that a small business would not be able to invest in a system that would meet the requirements of N.J.A.C. 13:37- 16.14(c)3.

RESPONSE: The Committee points out that N.J.A.C. 13:37-16.14(c) does not require certificants to maintain computer records. This rule requires that, when a certificant uses a computer to maintain records, those records are kept in such a manner that they cannot be altered.

267. COMMENT: Two commenters ask the Committee to draft a recordkeeping provision that would cover individuals who perform chair massage in a corporate or event setting. The commenters believe that this provision should curtail the recordkeeping requirements for such individuals so that they would not need to meet the full recordkeeping requirements of N.J.A.C. 13:37-16.14. The commenters believe that these requirements are burdensome for such individuals due to time constraints. The commenters contend that massages in such situations usually only last between five and 15 minutes and that, without such a provision, these massages will no longer be performed in New Jersey due to recordkeeping requirements.

RESPONSE: The Committee does not believe that it is appropriate to impose differing recordkeeping standards for differing settings. The same record must be maintained whenever a certificant provides massage, bodywork and somatic therapy in order to ensure the professional provision of such services. The Committee does not believe that maintaining a record of the intake record, the date of service, the reasons for service, the name of the certificant, the modalities used, areas of focus on the body, any referrals and fees charged will be unduly burdensome for certificants when they are providing chair massages. These items may be entered into a record very quickly and need not be overly detailed.

268. COMMENT: One commenter argues that there should be no recordkeeping requirements imposed when a massage session is less than 15 minutes long.

RESPONSE: The Committee believes that certificants must maintain professional records whenever they are providing massage, bodywork and somatic therapy services.

269. COMMENT: One commenter believes that clients should know that massage, bodywork and somatic therapies do not include the diagnosis or treatment of illness, disease, impairment or disability and suggests that the Committee require certificants to inform clients of these limitations. The commenter also believes that certificants should be required to inform clients that massage should not be applied when the client is in pain and that certificants be required to cease a massage session if a client reports pain and refer that client to a licensed health care professional. The commenter suggests that N.J.A.C. 13:37-16.16(a) be amended to include: "If I experience any pain or discomfort during this session, I will immediately inform the therapist, who will then refer me to a licensed health care professional."

RESPONSE: N.J.A.C. 13:37-16.16 requires that certificants inform clients that massage, bodywork and somatic therapy does not include the diagnosis or treatment of illness, disease, impairment or disability. The Committee believes that pain is subjective and that the presence of pain should not automatically end the provision of massage, bodywork and somatic therapy. N.J.A.C. 13:37- 16.16 requires certificants to inform clients that they should let the certificant know if they are experiencing pain, so that the certificant may adjust the services to the client's comfort level. The Committee does not believe it is appropriate to amend N.J.A.C. 13:37-16.16 as the commenter suggests.

270. COMMENT: One commenter is concerned that the regulations will impact her ability to practice as a body psychotherapist. The commenter is disturbed by having to pay additional fees. The commenter would like to see the Committee recognize training that has not been approved by the Department of Education.

RESPONSE: The Committee does not believe that the rules will impact the commenter's ability to practice as a body psychotherapist. N.J.S.A. 45:11-65 specifically states that the Act does not prohibit any person from rendering services, as long as they do not use terms that are specifically reserved for certificants. Since "body psychotherapist" is not a term that is reserved for certificants, the regulations should have no effect on the commenter. As the commenter need not obtain certification, she will not need to pay any additional fees. The Committee believes that the education a certificant receives must be from a school approved by the Department of Education in order to ensure that the school is valid and is providing an education that prepares a certificant to practice safely and effectively as a massage, bodywork and somatic therapist.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rules are governed by N.J.S.A. 45:11-23 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows :

<< NJ ADC 13:37-5.5 >>

13:37-5.5 Fee schedule

(a)-(e) (No change.)

<<-(e)->><<+(f)+>> The following fees shall be charged by the Board in connection with certification of massage, bodywork and somatic therapists:

1. Application fee \$75.00
 2. Initial certification 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 certification \$120.00
 4. Late certification renewal \$50.00
- Plus the applicable biennial certification renewal fee set forth in (d)3 above
5. Lapsed certificate fee \$100.00
- Plus the applicable biennial certification renewal fee set forth in (d)3 above
6. Continuing education sponsor fee \$100.00

7. Duplicate certificate \$35.00
8. Inactive license fee (to be established by the Committee by rule)

SUBCHAPTER 15. (RESERVED)

SUBCHAPTER 16. MASSAGE, BODYWORK AND SOMATIC THERAPY EXAMINING COMMITTEE

<< NJ ADC 13:37-16.1 >>

13:37-16.1 Purpose and scope

- (a) The purpose of this subchapter is to implement the provisions of P.L. 1999, c.19 (N.J.S.A. 45:11-53 et seq.), which created the "Massage, Bodywork and Somatic Therapy Examining Committee" under the Board of Nursing.
- (b) This subchapter shall apply to all applicants who seek certification by the Committee as a massage, bodywork and somatic therapist and to all persons who are certified by the Committee as a massage, bodywork and somatic therapist in this State.
- (c) This subchapter does not apply to any person who renders massage, bodywork and somatic therapy as long as the person does not use the title "massage, bodywork and somatic therapist," "registered massage, bodywork and somatic therapist," or "certified massage, bodywork and somatic therapist," "certified massage therapist," "certified bodywork therapist," "certified somatic therapist," "massage and bodywork therapist," "registered massage and bodywork therapist," "certified massage and bodywork therapist," "certified oriental bodywork therapist," "certified Asian bodywork therapist," "certified somatic therapist," "certified bodywork therapist," or the abbreviations "MBT," "RMBT," "CMBT," "CMBST," "COBT," "CABT," "CST," "CBT," or "CMT."
- (d) This subchapter does not govern the application or practice of "alternative medicines" that do not constitute massage, bodywork and somatic therapy.

<< NJ ADC 13:37-16.2 >>

13:37-16.2 Definitions

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

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

"Board" means the New Jersey Board of Nursing.

"Certificate" means the document, issued by the Committee, which authorizes a person to utilize the titles set forth in N.J.S.A. 45:11-65 and 66 and N.J.A.C. 13:37-16.9.

"Certificant" means any person who holds a certificate from the Committee as a massage, bodywork and somatic therapist.

"Committee" means the Massage, Bodywork and Somatic Therapy Examining Committee established pursuant to N.J.S.A. 45:11-56.

"Full time practice" means a person has provided a minimum of 750 hours of massage, bodywork and somatic therapies to clients during a year.

"Massage, bodywork and somatic therapies" or "massage, bodywork and somatic" means systems of activity of structured touch which include 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, bodywork or somatic principles. Such application may include the use of therapies such

as heliotherapy or hydrotherapy, the use of moist hot and cold external applications, external application of herbal or topical preparations not classified as prescription drugs, explaining and describing myofascial movement, self-care and stress management as it relates to massage, bodywork and somatic therapies. Massage, bodywork and somatic therapy practices are designed to affect the energetic systems of the body for the purpose of promoting and maintaining the health and well-being of the client. Massage, bodywork and somatic therapies do not include the diagnosis or treatment 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 300 hours of massage, bodywork and somatic therapies to clients during a year.

<< NJ ADC 13:37-16.3 >>

13:37-16.3 Certification without education or examination

(a) Prior to <<-(720 days from the effective date of the rules)->> <<+ November 5, 2006,+>> a person may apply for certification without satisfying the education or examination requirements of N.J.A.C. 13:37-16.4 if the person has completed a minimum of 200 hours of education and training as provided in (b) below and the person has:

1. Practiced full-time as a massage, bodywork and somatic therapist for at least two years prior to <<-(the effective date of the rules)->> <<+ November 15, 2004+>>; or
2. Practiced part-time as a massage, bodywork and somatic therapist for five years prior to <<-(the effective date of the rules)->> <<+November 15, 2004+>>.

(b) The 200 hours of education and training required pursuant to (a) above shall be taken in a massage, bodywork and somatic training program which is approved by the New Jersey Department of Education, a Department of Education of another state or a program which substantially meets the requirements of the New Jersey Department of Education as set forth in N.J.S.A. 18A:69-1 et seq. and N.J.A.C. 6A:18-1 and shall consist of:

1. Anatomy and physiology: 45 hours or three credits in a college or university accredited by an accrediting agency recognized by the United States Department of Education;
2. Theory and practice: 150 hours; and
3. Ethics: five hours, which shall include:
 - i. Confidentiality/privacy;
 - ii. Sexual misconduct;
 - iii. Financial misconduct;
 - iv. Boundary issues;
 - v. Conflicts of interest; and
 - vi. Appropriate referrals.

(c) The applicant shall submit to the Committee a completed application which shall include:

1. A notarized affidavit stating 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, bodywork and somatic therapy the applicant practiced. The

affidavit shall attest to the authenticity of supporting records such as tax returns, bank statements and accounting records, which <<-shall->> <<+ may+>> be attached to the affidavit;

2. Evidence that the applicant has completed 200 hours of education or training in massage, bodywork and somatic therapies consistent with (b) above;

3. Proof that the applicant has current certification in Basic Life Support (BLS) from a course approved by the American Heart Association <<+or a substantially similar course approved by the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute or EMP International Inc.+>>;

4. Two affidavits of good moral character; and

5. The application fee set forth in N.J.A.C. 13:37-5.5(e).

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

<< NJ ADC 13:37-16.4 >>

13:37-16.4 Application for certification

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

1. Completing a course of study in massage, bodywork and somatic therapies; or

2. Successfully passing either the NCBTMB or the NCCAOM examination.

(b) An applicant who qualifies for certification pursuant to (a)1 above shall submit to the Committee:

1. A completed application;

2. A transcript from a school of massage, bodywork and somatic therapies approved by the New Jersey Department of Education, a Department of Education of another state or which substantially meets the requirements of the New Jersey Department of Education as set forth in N.J.S.A. 18A:69-1 et seq. and N.J.A.C. 6A:18-1 which indicates that the applicant has completed the course of study outlined in (d) below;

3. Proof that the applicant has current certification in Basic Life Support (BLS) from a course approved by the American Heart Association <<+or a substantially similar course approved by the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute or EMP International Inc.+>>;

4. Two affidavits of good moral character; and

5. The application fee set forth in N.J.A.C. 13:37-5.5(e).

(c) An applicant who qualifies for certification pursuant to (a)2 above shall submit to the Committee:

1. A completed application;

2. Proof that the applicant has successfully passed the written examination offered by the NCBTMB or the NCCAOM;

3. Proof that the applicant has current certification in Basic Life Support (BLS) from a course approved by the American Heart Association <<+or a substantially similar course approved by the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute or EMP International Inc.+>>;

4. Two affidavits of good moral character; and

5. The application fee set forth in N.J.A.C. 13:37-5.5(e).

(d) A course of study in massage, bodywork and somatic therapy shall include:

1. Anatomy/Physiology/Pathophysiology: 100 hours;

2. Ethics: six hours, which includes:

i. Confidentiality/privacy;

ii. Sexual misconduct;

iii. Financial misconduct;

iv. Boundary issues;

v. Conflicts of interest; and

vi. Appropriate referrals;

3. Law: six hours, which shall include local, State and Federal law and regulations regarding the practice of massage, bodywork and somatic therapy;

4. Theory and Practice: 225 hours;

5. Supervised clinical practice: 100 hours; and

6. Electives directly related to the practice of massage, bodywork and somatic therapy: 70 hours.

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

<< NJ ADC 13:37-16.5 >>

13:37-16.5 Certification without examination based on licensure in another state

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

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

1. A completed application form;

2. Verification of licensure or certification in good standing in another state;

3. Proof that the applicant has current certification in Basic Life Support (BLS) from a course approved by the American Heart Association <<+or a substantially similar course approved by the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute or EMP International Inc.+>>;

4. Two affidavits of good moral character;

5. A copy of the current statutes and regulations regarding massage, bodywork and somatic therapy from the state in which the applicant is certified or licensed; and

6. The application fee set forth in N.J.A.C. 13:37-5.5(e).

(c) The Committee shall review the statutes and regulations of the other state to determine if the educational requirements of that state are substantially similar to the certification requirements in this State, and the applicant otherwise meets the other requirements for certification set forth in (b) above. If the Committee finds that the educational requirements are substantially similar, and that the applicant meets the requirements for certification set forth in (b) above, it shall issue a certificate to the applicant if the applicant is not disqualified for certification pursuant to the provisions of N.J.S.A. 45:1-14 et seq.

<< NJ ADC 13:37-16.6 >>

13:37-16.6 Renewal of certification

(a) Certifications shall be renewed biennially on a form provided by the Committee. Each applicant shall attest that the continuing education requirements of N.J.A.C. 13:37-16.11 have been completed during the prior biennial period.

(b) The Committee shall send a notice of renewal to each certificant, at least 60 days prior to the expiration of the certificate. 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 failure to renew.

(c) The certificant shall submit the renewal application and pay the renewal fee pursuant to N.J.A.C. 13:37-5.5(e) prior to the date of expiration of the certificate. If the certificant does not renew the certificate prior to its expiration date, the certificant may renew it no later than 30 days after its expiration date by submitting a renewal application and paying a renewal fee and a late fee pursuant to N.J.A.C. 13:37-5.5(e). A certificant who fails to renew the certificate within 30 days after the expiration date of the certificate shall be suspended without a hearing.

(d) Individuals who continue to hold themselves out as State certified massage, bodywork and somatic therapists after being suspended shall be deemed to have violated N.J.A.C. 13:37-16.9, even if no notice of suspension had been provided to the person.

(e) A person seeking reinstatement within five years following the suspension of certification shall submit the following to the Committee:

1. A complete reinstatement application;
2. Payment of all past delinquent renewal fees as set forth in N.J.A.C. 13:37-5.5(e);
3. Payment of a reinstatement fee as set forth in N.J.A.C. 13:37-5.5(e);
4. A certification verifying completion of the continuing education credits required pursuant to N.J.A.C. 13:37-16.11 for the renewal of a certificant certification; and
5. An affidavit of employment listing each job held during the period of suspension which 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 certification shall satisfy the requirements of (e) above and shall successfully complete the examination required for initial certification as set forth in N.J.A.C. 13:37-16.4(a)2.

(g) Renewal applications for all certificates shall provide the certificant with the option of either active or inactive renewal. Certificants electing to renew as inactive shall not hold themselves out to the public as State certified massage, bodywork and somatic therapists.

(h) Upon application to the Committee, the Committee may permit a certificant 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 Basic Life Support (BLS) from a course approved by the American Heart Association <<+or a substantially similar course

approved by the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute or EMP International Inc.++>>.

<< NJ ADC 13:37-16.7 >>

13:37-16.7 Scope of practice

(a) A certificiant shall only practice those methods of massage, bodywork and somatic therapy <<-for which the certificiant has received training->> which:

1. The certificiant learned during his or her initial training as outlined in N.J.A.C. 13:37-16.3(b); <<-or->>
2. The certificiant learned during a course offered by a provider approved by the NCBTMB or NCCAOM, or which is offered by a school which is approved by an agency recognized by the United States Department of Education or offered by a school which is approved by the New Jersey Department of Education, or an agency of another state with requirements substantially similar to the requirements of the New Jersey Department of Education as set forth in N.J.S.A. 18A:69-1 et seq. and N.J.A.C. 6A:18-1<<-.->><<+; or+>>

<<+3. The certificiant developed and which are taught in a course offered by a provider approved by the NCBTMB or NCCAOM.+>>

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

1. Colonic irrigations;
2. Prostate massages;
3. Vaginal <<+or penile+>> massages;
4. <<-Internal organ movement->> <<+Decongestive therapy+>>;
5. Manual lymph drainage<<- , also known as decongestive therapy->> <<+ used as part of decongestive therapy+>>;
6. Animal therapies prohibited by the Veterinary Medical Act, N.J.S.A. 45:16-1 et seq.;
7. Any application of electrical current to the body (Transcutaneous Electronic Nerve Stimulation, TENS, machine); <<-and->>
8. Ultrasound therapy<<-.->><<+; and+>>
- <<+9. Treatment or diagnosis of illness, disease, impairment or disability.+>>

<< NJ ADC 13:37-16.8 >>

13:37-16.8 Infection control precautions

(a) Certificants shall comply with the standard precautions for infection control as set forth in this section.

(b) Certificants shall wash hands with liquid disinfectant soap and water in the following instances:

1. Before and after <<-treatment of->> <<+providing massage, bodywork and somatic 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.

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

- (d) Liquid soap containers shall not be refilled and shall be disposed of when empty.
- (e) Clean linens and drapes or disposable coverings shall be used for each client.
- (f) Soiled disposable items shall be discarded into a container lined with a plastic bag, securely fastened, and disposed daily into the regular trash disposal, unless otherwise specified by State and local health regulations.
- (g) A hospital-grade disinfectant registered with the Environmental Protection Agency (EPA) shall be used to disinfect:
1. Any equipment, that comes in contact with a client, prior to the <<- treatment of->> <<+provision of massage, bodywork and somatic therapies for+>> a client;
 2. Exposed surfaces such as counter tops, tables and sinks on a daily basis;
 3. Any implement or tools used during massage, bodywork and somatic therapy;
 4. Face cradles and arm rests on all massage chairs and tables; and
 5. All ice and heat pack equipment.
- <<-(h) If a certificant uses massage lubricants, the certificant shall:->>
- <<-1. Store massage lubricants in sanitary containers;->>
 - <<-2. Keep lubricant containers free of debris and sanitize containers between each client use and before refilling; and->>
 - <<-3. Store lubricants according to manufacturers recommendations and separately from cleaning supplies.->>
- <<-(i) If a certificant uses lubricant creams, the certificant shall, for every client, remove the cream from the main container with a disposable instrument and place the cream in a separate container which shall be discarded after the treatment.->>
- <<+(h)-(i) (Reserved)+>>
- (j) Certificants shall store all single service materials and linens off the floor in shelves, containers, cabinets or closets.
- (k) Soiled linens and draping materials shall be either 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.
- (l) Clean linens and dirty linens shall be stored separately.
- (m) Clean linens and trash shall be stored separately.
- (n) When a certificant is providing massage, bodywork and somatic therapy in a temporary location, such as a sporting event, the certificant shall sanitize all equipment pursuant to this section.
- (o) Certificants shall maintain a clean environment in the massage, bodywork and somatic therapy establishment and shall ensure that the massage, bodywork and somatic therapy establishment is well-lit<<-,->> <<+and+>> ventilated <<-and->><<+. Certificants shall maintain the area where massage, bodywork and somatic therapy is being performed+>> free of animals except as provided by law.
- (p) Certificants shall provide access to a restroom for clients <<+in the massage, bodywork and somatic therapy establishment+>>.

13:37-16.9 Designations for certified persons, prohibitions on uncertified persons

(a) An active certificant may use the title "massage, bodywork and somatic therapist" or "certified message, bodywork and somatic therapist," "massage and bodywork therapist," "registered massage, bodywork and somatic therapist," "certified massage therapist," "certified oriental bodywork therapist," "certified Asian bodywork therapist," <<+ "certified bodywork therapist," +>> "certified massage therapist" or the abbreviations "MBT," "CMBT," "RMBT," "CMBST," "COBT," "CABT," "CBT," or "CMT."

(b) No person, business entity or its employees, agents or representatives shall use the titles "message, bodywork and somatic therapist," "registered massage, bodywork and somatic therapist," "certified massage, bodywork and somatic therapist," "certified massage therapist," "certified bodywork therapist," or "certified somatic therapist" or the abbreviations "MBT," "RMBT," "CMBT," "CMBST," "COBT," "CABT," "CST," "CBT," or "CMT," unless actively certified pursuant to the provisions of this subchapter.

(c) No person may use the term "licensed massage therapist" or the abbreviation "LMT," unless they are licensed by another state and indicate the state by which they are licensed when identifying themselves.

(d) A person who has a certification from a school, has passed a certifying examination or is certified by an agency, but is not certified by New Jersey pursuant to this subchapter, shall not hold himself or herself out as being certified.

(e) Nothing in this subchapter shall be construed to prohibit any person from rendering massage, bodywork and somatic therapy services as defined in N.J.A.C. 13:37-16.2 provided that person is not represented by the titles, abbreviations or designations referred to in (a) above.

(f) No certificant shall use a title which does not accurately reflect the certificant's education and areas of expertise.

13:37-16.10 Display of certification

(a) Certificants shall display their certificate of certification in view of clients whenever providing massage, bodywork and somatic services in their place of business or office.

(b) Whenever certificants provide massage, bodywork and somatic services outside <<-or->> <<+of+>> their place of business or office they shall display the certificate of certification while providing services.

(c) A certificant shall display either the original certificate of certification or a duplicate certificate obtained from the Committee.

13:37-16.11 Continuing education, programs, standards

(a) Upon biennial certification renewal, certificants 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. Falsification of any information submitted on the renewal application may require an appearance before the Committee and may subject a certificant to penalties and/or suspension or revocation of the certification pursuant to N.J.S.A. 45:1-21 through 25.

(b) Each applicant for biennial license renewal shall be required to obtain current certification in Basic Life Support (BLS) from a course approved by the Red Cross or American Heart Association<<+, or a substantially similar course approved by the American Red Cross, the National Safety Council, Coyne First Aid, Inc., the American Safety and Health Institute or EMP International Inc.,+>> and to complete during the preceding biennial period, except as provided in (c) below, a minimum of 20 credit hours of continuing education related to the practice of massage,

bodywork and somatic therapy. Courses that are related solely to the business practices of certificants shall not satisfy continuing education requirements.

(c) A certificant who is certified in the second year of a biennial renewal period shall be required to complete 10 credit hours of continuing education.

(d) A certificant who completes more than the minimum continuing education credit hours set forth above in any biennial registration period may carry no more than 20 of the additional credit hours into a succeeding biennial period.

(e) A certificant may obtain continuing education credit hours from the following:

1. Successful completion of continuing education courses or programs related to the practice of massage, bodywork and somatic therapy, approved by, or offered by providers approved by: the NCBTMB; the NCCAOM; the American Massage Therapy Association (AMTA); the American <<-Oriental->> <<+Organization for+>> Bodywork <<-Therapist Association->> <<+Therapies of Asia+>> (AOBTA); the Association of Bodywork and Massage Professionals (ABMP); and the American Nurses Credentialing Center (ANCC): one credit hour for each hour of attendance;

2. Successful completion of continuing education courses or programs related to the practice of massage, bodywork and somatic therapy provided the presentation of the courses or programs are pre-approved by the Committee pursuant to (h) below, prior to the presentation of the course: one credit hour for each hour of attendance;

3. Successful completion of continuing education courses or programs related to the practice of massage, bodywork and somatic therapy given by a school of massage, bodywork or somatic therapy that meets the requirements of N.J.A.C. 13:37-16.3(b): one credit hour for each hour of attendance;

4. Successful completion of a course, related to the practice of massage, bodywork and somatic therapy, given by a school, college or university accredited by the New Jersey Department of Education or an agency of another state with requirements substantially similar to the requirements of the New Jersey Department of Education: one credit hour for each hour of attendance;

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

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

7. Authorship of a published article, which has been refereed through peer review related to the practice of massage, bodywork and somatic therapy, in a medical or health related journal: four credit hours; and

8. Presenting a new seminar or lecture to professional peers, provided the seminar or lecture is at least one hour long; "new" means that the certificant has never presented the seminar or lecture before: one credit hour for each hour of presentation.

(f) The Committee should perform audits on randomly selected certificants to determine compliance with continuing education requirements. A certificant shall maintain the following documentation for a period of four years after completion of the credit hours and shall submit such documentation to the Committee 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 certificant

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.

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

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

2. A waiver of continuing education requirements granted pursuant to this subsection shall only be effective 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 certificant shall apply to the Committee for the renewal of such waiver for the new biennial period.

(h) Sponsors of continuing education programs or courses seeking Committee approval shall:

1. Obtain Committee approval prior to representing that any course, seminar or program fulfills the requirements of this section;

2. Submit the following for each course or program offered, for evaluation by the Committee, at least 90 days prior to presenting the course:

i. A detailed description of course content and the hours of instruction; and

ii. A curriculum vitae of each lecturer, including specific background which qualifies the individual as a lecturer in the area of instruction;

3. Submit a fee pursuant to N.J.A.C. 13:37-5.5(e) for each submission of course or program offering(s) for which Committee approval is sought.

(i) The Committee may direct or order a certificant 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 certificant's continuing education requirements.

(j) Any continuing education credit hours completed by the certificant in compliance with an order or directive from the Committee as set forth in (i) above shall not be used to satisfy the minimum continuing education requirements as set forth in this section.

<< NJ ADC 13:37-16.12 >>

13:37-16.12 Sexual misconduct

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

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

"Certificant" means any person who holds a certificate from the Committee as a massage, bodywork and somatic therapist.

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

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

"Sexual conduct" 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 certificant'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 certificant'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 certificant 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 which is necessary during the performance of a generally accepted and recognized massage, bodywork and somatic therapy procedure.

"Sexual harassment" means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, and which occurs in connection with a certificant's activities or role as a provider of massage, bodywork and somatic therapy services, and that either: is unwelcome, is offensive to a reasonable person, or creates a hostile workplace environment, and the certificant 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 certificant with a client, co-worker, employee, student or supervisee whether or not such individual is in a subordinate position to the certificant.

"Spouse" means the husband, wife or fiancée of the certificant or an individual involved in a long-term committed relationship with the certificant. For purposes of the definition of "spouse," a long-term committed relationship means a relationship which is at least six months in duration.

(c) A certificant 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 the last massage, bodywork and somatic therapy was rendered more than three months ago.

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

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

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

(h) A certificant shall not engage in any other activity which would lead a reasonable person to believe that the activity serves the certificant's personal prurient interests or which is for the sexual arousal, or sexual gratification of the certificant 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 certificant from rendering massage, bodywork or somatic therapy to a spouse, providing that the rendering of such massage, bodywork or somatic therapy is consistent with accepted standards of massage, bodywork or somatic therapy and that the performance of therapy is not utilized to exploit the spouse for the sexual arousal or sexual gratification of the certificant.

(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 certificant; or
2. The certificant is in love with or held affection for the client.

<< NJ ADC 13:37-16.13 >>

13:37-16.13 Advertising and solicitation practices

(a) A certificant 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 section, shall have the following meanings unless the content clearly indicates otherwise:

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

"Print media" means newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers, billboards, signs, business cards, matchcovers and other similar items, documents or comparable publications, the content of which is disseminated by means of the printed work.

"Electronic media" means radio, television and internet.

(c) A certificant who engages in the use of advertising which 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 the certificant has not received education or training to perform; or
3. The communication of any fact, data or information which may personally identify a client without that client's signed written permission obtained in advance.

(d) The Committee may require a certificant to substantiate the truthfulness of any assertion or representation set forth in an advertisement. Failure of a certificant to provide factual substantiation to support a representation or assertion shall be deemed professional misconduct.

(e) All advertisements shall include:

1. The certificant's <<+first+>> name<<+, or first initial of the first name, and the certificant's full last name+>>;
2. The certificant's address or telephone number; and
3. The terms "N.J. Cert. #" followed by the certificant's certificate number.

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

(g) A video or audio tape of every advertisement communicated by electronic media shall be retained by the certificant and shall be made available for review upon request by the Committee or its designee. A copy of any advertisement appearing in the print media shall also be retained by the certificant and made available for review. The tapes and print

media copies required to be retained by 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) Certificants who are on inactive status pursuant to N.J.A.C. 13:37- 16.6(g) shall not hold themselves out to the public as State certified massage, bodywork and somatic therapists.

<< NJ ADC 13:37-16.14 >>

13:37-16.14 Recordkeeping

(a) Certificants shall make contemporaneous, permanent entries into client records which shall accurately reflect the massage, bodywork and somatic 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;
4. The name of the certificant who provided services if there is more than one certificant practicing at the office;
5. Modalities used and areas of focus on the body;
6. Any referral to another healthcare professional; and
7. Fees charged and paid.

(b) Corrections and/or additions may be made to a client record, provided that each change is clearly identified as such, dated and initialed by the certificant.

(c) A client record which is prepared and maintained on a personal or other computer shall be prepared and maintained as follows:

1. The client record shall contain at least two forms of identification, for example, name and record number or any other specific identifying information;
2. The entry made by the certificant shall be made contemporaneously with the service and shall contain the date of service, date of entry, and full printed name of the certificant. The certificant shall finalize or "sign" the entry by means of a confidential personal code (CPC) and include the date of the "signing";
3. The computer system shall contain an internal permanently activated date and time recordation for all entries, and shall automatically prepare a back-up copy of the file; and
4. Where more than one certificant is authorized to make entries into the computer file of any <<-client treatment->> <<+provision of massage, bodywork and somatic therapies+>>, the certificant responsible for the practice shall assure that each such person obtains a CPC and uses the file program in the same manner.

(d) Certificants 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 certificant shall provide a copy of the client record, and/or billing records as may be requested;
2. The certificant 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 certificant, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the certificant shall also provide a translation.

(e) Certificants shall maintain the confidentiality of professional <<- treatment->> records, except that:

1. The certificant shall release client records as directed by a subpoena issued by the Board, the Committee, or the Office of the Attorney General, or by a demand for 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 certificant shall release information as required by statute or regulation.

(f) Where the client has requested the release of a client record or a portion thereof to a specified individual or entity, in order to protect the confidentiality of the records, the certificant 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."

<< NJ ADC 13:37-16.15 >>

13:37-16.15 Change in address or record or name

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

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

<< NJ ADC 13:37-16.16 >>

13:37-16.16 Informed consent

(a) Prior to providing an initial service to a client, a certificant shall have the client read and sign an informed consent form which includes the following statement:

"Massage, bodywork and somatic therapy practices are designed to promote and maintain the health and well-being of the client. Massage, bodywork and somatic therapies do not include the diagnosis or treatment 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 strokes may be adjusted to my level of comfort. Because massage, bodywork and somatic 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."

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