

## 51 N.J.R. 1688(a)

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### RULE ADOPTIONS

#### Reporter

51 N.J.R. 1688(a)

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RULE ADOPTIONS > LAW AND PUBLIC SAFETY -- DIVISION OF CONSUMER AFFAIRS

#### Agency

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LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > BOARD OF MASSAGE  
AND BODYWORK THERAPY

#### Administrative Code Citation

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Readoption with Amendments: N.J.A.C. 13:37A

Adopted Repeals and New Rules: N.J.A.C. 13:37A-2.2, 2.4, and 2.5

Adopted New Rules: N.J.A.C. 13:37A-2.2A, 3.8, 3.9, 3.10, 5.4, and 6.3

#### Text

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##### Rules of the Board of Massage and Bodywork Therapy

Proposed: July 15, 2019, at 51 N.J.R. 1157(a).

Adopted: September 24, 2019, by the Board of Massage and Bodywork  
Therapy, David Bank, Chair.

Filed: October 17, 2019, as R.2019 d.117, **without change**.

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

Effective Dates: October 17, 2019, Readoption;

November 18, 2019, Amendments, Repeals, and New Rules.

Expiration Date: October 17, 2026.

**Summary** of Public Comment and Agency Response:

The official comment period ended September 13, 2019. The Board received one comment from Mary Botteon.

COMMENT: The commenter does not believe it is appropriate to require a licensee to notify the Board of any criminal, civil, administrative, or employment action against the licensee. The commenter believes that the criminal, civil, administrative, or employment entity that initiated such action should be required to notify the Board.

RESPONSE: The Board believes that requiring licensees to notify the Board of criminal, civil, administrative, or employment actions will help to protect the health, safety, and welfare of individuals who receive services from licensees by ensuring that the Board is aware of adverse actions against such licensees. The Board points out that it does not have the authority to require criminal, civil, administrative, or employment entities to report actions to it.

#### **Federal Standards Statement**

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the rules readopted with new rules, amendments, and repeals.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:37A.

**Full text** of the adopted new rules and amendments follows:

#### SUBCHAPTER 1. PURPOSE AND DEFINITIONS

##### 13:37A-1.2 Definitions

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

...

"Employer" means a person seeking to obtain individuals to perform services, tasks, or labor for which a salary, wage, or other compensation or benefits are to be paid.

<...>

#### SUBCHAPTER 2. LICENSURE

##### 13:37A-2.1 Application for licensure

(a) (No change.)

(b) An applicant shall have completed the course of study required by (a) above no more than five years prior to submitting an application

for licensure to the Board. A course of study completed more than five years prior to submission shall not qualify an applicant for licensure.

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

1. (No change.)

2. An official transcript, which indicates that the applicant has completed an associate degree in massage and bodywork or a course of study outlined in (d) below from a school accredited or approved by:

i.-iv. (No change.)

3.-6. (No change.)

(d) (No change in text.)

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

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

(g) (No change in text.)

### 13:37A-2.2 Licensure by reciprocity

(a) Upon receipt of a completed application, application fee, consent to a criminal history record background check, and requisite fee for such a check, the Board shall issue a license to any person who holds a valid, current license in good standing issued by another state, if:

1. The Board determines that the state that issued the license has, or had at the time of issuance, education, training, and examination requirements for licensure substantially equivalent to the current Board standards;

2. The applicant has been practicing massage and bodywork therapy for a period of at least three years within the five years prior to the date of application; and

3. The requirements of (b) below are satisfied.

(b) Prior to the issuance of the license, the Board shall have received:

1. Documentation from any state in which the applicant is, or was ever, licensed or certified that the applicant's license(s) is in good standing;

2. The results of a criminal history record background check of the files of the Criminal Justice Information Services Division in the Federal Bureau of Investigation and the State Bureau of Identification in the Division of State Police that does not disclose a conviction for a disqualifying crime; and

3. Designation of an agent in New Jersey for service of process if the applicant is not a New Jersey resident or does not have an office in New Jersey.

(c) For purposes of this section, "good standing" means that:

1. No action has been taken against the applicant's license by any licensing board;

2. No action adversely affecting the applicant's privileges to practice massage and bodywork therapy has been taken by any out-of-State institution, organization, or employer;

3. No disciplinary proceeding is pending that could affect the applicant's privileges to practice massage and bodywork therapy;

4. All fines levied by any out-of-State board have been paid; and

5. There is no pending or final action by any criminal authority for violation of law, rule, or regulation, or any arrest or conviction for any criminal or quasi-criminal offense under the laws of the United States, New Jersey, or any other state, including: criminal homicide; aggravated assault; sexual assault, criminal sexual contact, or lewdness; or any offense involving any controlled dangerous substance or controlled dangerous substance analog.

(d) For purposes of this section, a "substantially equivalent" examination need not be identical to the current examination requirements of New Jersey, but such examination shall be nationally recognized and of comparable scope and rigor.

(e) The Board, after the licensee has been given notice and an opportunity to be heard, may revoke any license based on a license issued by another state obtained through fraud, deception, or misrepresentation.

(f) The Board may grant a license to an applicant seeking reciprocity who does not meet the good standing requirement of (a) above due to a pending action by a licensing board, a pending action by an out-of-

State institution, organization, or employer affecting the applicant's privileges to practice, a pending disciplinary proceeding, or a pending criminal charge or arrest for a crime provided the alleged conduct of the applicant that is the subject of the action, proceeding, charge, or arrest does not [page=1689] demonstrate a serious inability to practice massage and bodywork therapy, adversely affect the public health, safety, or welfare, or result in economic or physical harm to a person, or create a significant threat of such harm.

13:37A-2.2A Abandonment of application for licensure

(a) An application for a license submitted to the Board will be deemed abandoned if:

1. The individual applying for the license has not submitted to the Board all of the information and documentation required to obtain a license; and

2. Two years have elapsed since the first notice to the applicant was sent by the Board informing him or her that the Board had not received all of the information and documentation required for licensure.

(b) If an application for licensure is deemed abandoned pursuant to (a) above, the Board shall administratively close the application without notice to the applicant and shall dispose of any information or documentation submitted by the applicant pursuant to the Division of Consumer Affairs' record retention plan.

(c) An individual whose application for licensure has been administratively closed by the Board pursuant to (a) above may reapply for licensure pursuant to N.J.A.C. 13:37A-2.1.

13:37A-2.3 Renewal of license

(a) (No change.)

(b) The Board shall send a notice of renewal to each licensee at the address registered with the Board, at least 60 days prior to the expiration of the license. The notice of renewal shall explain inactive renewal and advise the licensee of the option to renew as inactive. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the holder for any unlicensed practice during the period following the licensure expiration, provided that the license is renewed within 60 days from the date the notice is sent or within 30 days following the date of license expiration, whichever is later.

(c) The licensee shall submit the renewal application and pay the renewal fee pursuant to N.J.A.C. 13:37A-7.1 prior to the date of expiration of the license.

(d) A licensee may renew his or her license by choosing inactive status. A licensee electing to renew as inactive shall not engage in the practice of massage and bodywork therapy, or hold him- or herself out as eligible to engage in the practice of massage and bodywork therapy, in New Jersey until such time as the license is returned to active status.

(e) If a licensee does not renew the license prior to its expiration date, the licensee may renew the license within 30 days of its expiration by submitting a renewal application, a renewal fee, and a late fee as set forth in N.J.A.C. 13:37A-7.1. During this 30-day period, the license shall be valid and the licensee shall not be deemed practicing without a license.

(f) A licensee who fails to submit a renewal application within 30 days of license expiration shall have his or her license suspended without a hearing.

(g) Individuals who continue to practice or hold themselves out as State-licensed massage and bodywork therapists with a suspended license shall be deemed to be engaging in the unlicensed practice of massage and bodywork therapy and shall be subject to action consistent with N.J.S.A. 45:1-14 et seq., even if no notice of suspension had been provided to the person.

#### 13:37A-2.4 License reactivation

(a) A licensee who holds an inactive license pursuant to N.J.A.C. 13:37A-2.3(d) may apply to the Board for reactivation of an inactive license. A licensee seeking reactivation of an inactive license shall submit:

1. A renewal application;
2. A certification of employment listing each job held during the period of inactive license, which includes the name, address, and telephone number of each employer;
3. The active renewal fee set forth in N.J.A.C. 13:37A-7.1; and
4. Evidence of having completed all continuing education credits for the current biennial registration period, consistent with the requirements set forth in N.J.A.C. 13:37A-4.1.

(b) An applicant who holds a valid, current license in good standing issued by another state to engage in the practice of massage and bodywork therapy and submits proof of having satisfied that state's continuing education requirements, shall be deemed to have satisfied the requirements of (a)4 above. If the other state does not have any continuing education requirements, the requirements of (a)4 above apply.

(c) If a Board review of an application establishes a basis for concluding that there may be practice deficiencies in need of remediation prior to reactivation, the Board may require the applicant to submit to and successfully pass an examination or an assessment of skills, a refresher course, or other requirements as determined by the Board prior to reactivation of the license. If that examination or assessment identifies deficiencies or educational needs, the Board may require the applicant as a condition of reactivation of licensure to take and successfully complete education or training, or to submit to supervision, monitoring, or limitations, as the Board determines necessary to assure that the applicant practices with reasonable skill and safety. The Board may restore the license subject to the applicant's completion of training within a period of time prescribed by the Board following the restoration of the license. In making its determination whether there are practice deficiencies requiring remediation, the Board shall consider the following factors including, but not limited to:

1. Length of time license was inactive;
2. Employment history;
3. Professional history;
4. Disciplinary history and any action taken against the applicant's license or registration by any professional or occupational board;
5. Actions affecting the applicant's privileges taken by any institution, organization, or employer related to the practice of massage and bodywork therapy or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction;
6. Pending proceedings against a professional or occupational license issued to the licensee by a professional or occupational board in New Jersey, any other state, the District of Columbia, or in any other jurisdiction; and
7. Civil litigation related to the practice of massage and bodywork therapy or other professional or occupational practice in New Jersey,

any other state, the District of Columbia, or in any other jurisdiction.

13:37A-2.5 License reinstatement

(a) A licensee who has had his or her license suspended pursuant to N.J.A.C. 13:37A-2.3(f) may apply to the Board for reinstatement. A licensee applying for reinstatement shall submit:

1. A reinstatement application;
2. A certification of employment listing each job held during the period of suspended license, which includes the name, address, and telephone number of each employer;
3. The renewal fee set forth in N.J.A.C. 13:37A-7.1 for the biennial period for which reinstatement is sought;
4. The past due renewal fee for the biennial period immediately preceding the renewal period for which reinstatement is sought;
5. The reinstatement fee set forth in N.J.A.C. 13:37A-7.1; and
6. Evidence of having completed all continuing education credits for the current biennial registration period, consistent with the requirements set forth in N.J.A.C. 13:37A-4.1.

(b) An applicant who holds a valid, current license in good standing issued by another state to engage in the practice of massage and bodywork therapy and submits proof of having satisfied that state's continuing education requirements, shall be deemed to have satisfied the requirements of (a)6 above. If the other state does not have any continuing education requirements, the requirements of (a)6 above apply.

(c) If a Board review of an application establishes a basis for concluding that there may be practice deficiencies in need of remediation prior to reinstatement, the Board may require the applicant to submit to and successfully pass an examination or an assessment of skills, a refresher course, or other requirements as determined by the Board prior to reinstatement of the license. If that examination or assessment identifies deficiencies or educational needs, the Board may require the applicant as a condition of reinstatement of licensure to take and successfully complete education or training, or to submit to supervision, monitoring, or limitations, as the Board determines necessary to assure that the applicant practices with reasonable skill and safety. The Board may restore the [page=1690] license subject to the applicant's completion of training within a period of time prescribed by the Board following the restoration of the license. In



making its determination whether there are practice deficiencies requiring remediation, the Board shall consider the following factors including, but not limited to:

1. Length of time license was suspended;
2. Employment history;
3. Professional history;
4. Disciplinary history and any action taken against the applicant's license by any professional or occupational board;
5. Actions affecting the applicant's privileges taken by any institution, organization, or employer related to the practice of massage and bodywork therapy or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction;
6. Pending proceedings against a professional or occupational license issued to the licensee by a professional or occupational board in New Jersey, any other state, the District of Columbia, or in any other jurisdiction; and
7. Civil litigation related to the practice of massage and bodywork therapy or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction.

### SUBCHAPTER 3. PROFESSIONAL PRACTICE

#### 13:37A-3.8 Reporting of misconduct

(a) A licensee shall report to the Board any incident or series of incidents that the licensee, in good faith, believes is in violation of the Massage and Bodywork Therapist Licensing Act, N.J.S.A. 45:11-53 et seq., 45:1-14 et seq., N.J.A.C. 13:45C, or this chapter.

(b) Pursuant to N.J.A.C. 13:45E-3.2, a licensee who is in possession of information that reasonably indicates that another licensee or other health care professional has demonstrated an impairment, gross incompetence, or unprofessional conduct that would present an imminent danger to an individual or to the public health, safety, or welfare shall file a report with the Division of Consumer Affairs Health Care Professional Information Clearing House Coordinator and the Board.

#### 13:37A-3.9 Duty to report

(a) The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

"Conviction" means a judgment of conviction entered following plea agreement or trial on an arrest, indictment, accusation, or bill of particulars in a state or Federal criminal proceeding, or the resolution of such charges, whether by a plea of no contest or *nolo contendere* or by pre-trial diversion program.

"Disciplinary order" means a disposition suspending or revoking licensure privileges or imposing civil penalties or ordering the restoration of money or ordering corrective action or medical or other professional treatment or monitoring, or censuring or reprimanding a licensee.

"Licensing authority" means any professional or occupational licensing board charged with granting, suspending, or revoking licensure or certification privileges.

"Medical condition" includes physiological, mental, or psychological conditions or disorders, such as, but not limited to, orthopedic, visual, speech, or hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional or mental illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction, and alcoholism.

(b) A licensee shall provide notice to the Board in writing within 10 days regarding any of the following:

1. If the licensee is incapable, for medical condition or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety, and welfare;

2. Pending or final actions by criminal authorities for violations of law, rule, or regulation, or any arrest or conviction for any criminal or quasi-criminal offense pursuant to the laws of the United States, this State, or another state, including, but not limited to, being indicted or convicted of a crime involving moral turpitude or a crime adversely relating to his or her practice;

3. Being named as a defendant or respondent in a civil, criminal, or administrative investigation, complaint, or judgment involving alleged malpractice, negligence, or misconduct relating to his or her practice;

4. Actions by an employer grounded, in whole or in part, upon client care concerns that actions condition, curtail, limit, suspend, or revoke employment;

5. Disciplinary actions by state licensing authorities including, but not limited to, being the subject of any voluntary license or certification surrender or any disciplinary action or order by any state or Federal agency, board, or commission, including any order of limitation or preclusion;

6. Actions by the Department of Health; or

7. Actions by professional review organizations or utilization review organizations.

(c) For each item listed in (b) above, the licensee shall provide an explanation therefor.

(d) Failure by a licensee to provide the Board with notice of any information required pursuant to this section within the required time period of the change or the event necessitating the filing of the notice may be deemed professional misconduct within the meaning of N.J.S.A. 45:1-21.e.

13:37A-3.10 Client age

(a) If a client is under the age of 18, a licensee shall provide massage and bodywork services only when the client's parent or legal guardian has provided written consent to the licensee providing services to the client.

(b) If a client is under the age of 16, a licensee shall provide massage and bodywork services only when the client's parent or legal guardian is in the room while services are being provided.

SUBCHAPTER 5. BUSINESS PRACTICES

13:37A-5.1 Advertising and solicitation practices

(a) - (b) (No change.)

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

1. (No change.)

2. Any promotion of a professional service for which:

i. (No change.)

ii. The licensee claims to have developed, unless the licensee developed such service and it is taught, or has been taught, in a course offered by a provider approved by the NCBTMB, NCCAOM, American Massage Therapy Association (AMTA), Associated Bodywork and Massage

Professionals (ABMP), FSMTB, American Nurse Credentialing Center (ANCC), American Organization for Bodywork Therapies of Asia (AOBTA), American Polarity Therapy Association (APTA), American Physical Therapy Association (APTA), American Medical Association (AMA), International Association of Structural Integrators (IASI), Ida P. Rolf Research Foundation, a state board of massage, a state board of massage and bodywork, a state board of physical therapy, or a state board of chiropractic;

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

4. Any offer to provide services that would qualify as sexual misconduct pursuant to N.J.A.C. 13:37A-3.5.

(d)-(h) (No change.)

#### 13:37A-5.2 Recordkeeping

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

1.-6. (No change.)

(b) (No change.)

#### 13:37A-5.4 Use of computer to prepare client records

(a) A licensee who prepares a patient record maintained solely on a computer shall use a write-protected program that:

[page=1691] 1. Contains an internal permanently activated date and time recordation for all entries;

2. Automatically prepares a back-up copy of the file; and

3. Is designed in such a manner that, after the licensee "signs" by means of a confidential personal code (CPC), the entry cannot be changed in any manner.

(b) The licensee shall include in the client record at least two forms of identification; for example, name and record number of the patient or any other specific identifying information.

(c) The licensee shall finalize or "sign" the entry by means of a CPC. Where more than one individual is authorized to make entries into

the computer file of any client record, each such person shall obtain a CPC and uses the program in the same manner.

(d) The licensee shall generate a hard copy of the complete client record, or a portion thereof, upon request.

(e) A licensee who generates a hard copy of a patient record pursuant to (d) above shall ensure that the hard copy is paginated with each page being a specified number of the total number of pages in the record.

#### SUBCHAPTER 6. BUSINESS REGISTRATION

##### 13:37A-6.3 Duty to report

(a) A registration holder shall provide notice to the Board in writing, on such forms as the Board may require and within 10 days, of any changes, additions, or deletions pertaining to the following information last provided by the registration holder on the biennial renewal form or initial application:

1. The name and address of the business locations;
2. The owner/responsible party of the registration holder; and
3. Pending or final actions by criminal authorities for violations of law, rule, or regulation, or any arrest or conviction for any criminal or quasi-criminal offense pursuant to the laws of the United States, this State, or any other state, including, but not limited to, being indicted or convicted of a crime involving moral turpitude or a crime adversely relating to his or her practice.

(b) For each item listed in (a) above, the registration holder shall provide an explanation therefor.

(c) Failure by a registration holder to provide the Board with notice of any information required pursuant to this section within the required time period of the change or the event necessitating the filing of the notice may be deemed professional misconduct within the meaning of N.J.S.A. 45:1-21.e.