



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Nursing, Department of Health Professions
VAC Chapter Number:	18 VAC 90-50-10 et seq.
Regulation Title:	Regulations Governing the Certification of Massage Therapists
Action Title:	Periodic review
Date:	10/3/02

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Board is recommending amendments to its regulations for the certification of massage therapists in order to address concerns about competency of certificate holders by requiring recertification by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or obtaining at least 25 hours of continuing education in the biennium before renewal. The Board will also amend regulations to further specify the requirements for licensure by endorsement, to delete outdated “grandfathering” provisions, and to incorporate by reference the code of ethics of the NCBTMB.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

The Board has made the following changes in 18 VAC 90-50-10 et seq:

Section 60: In response to comment on the proposed regulation, the Board has reinserted language for provisional certification. That section had been repealed in the proposed regulation.

Section 90: In response to comment on the proposed regulation, the Board has deleted in the section on unprofessional conduct a requirement to practice in accordance with the Standards of Practice of the NCBTMB, as incorporated by reference. It has retained the Code of Ethics of the NCBTMB, but added an exception to the requirement that massage therapists “follow all policies, procedures, guidelines, regulations, codes and requirements promulgated by the NCBTMB.” To require that requirement in the Code of Ethics was considered excessive and would re-insert the Standards of Practice that the Board chose to delete.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On September 24, 2002, the Board of Nursing adopted final amendments to 18 VAC 90-50-10 et seq., Regulations Governing the Certification of Massage Therapists.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

18 VAC 90-50-10 et seq. Regulations Governing Certification of Massage Therapists was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.
2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.
3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.
4. To establish schedules for renewals of registration, certification and licensure.
5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.
6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.

Chapter 1 of Title 54.1 authorizes health regulatory boards to impose additional requirements on certificate holders seeking renewal.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

Chapter 30 of Title 54.1 authorizes the Board of Nursing to regulate massage therapists:

§ 54.1-3000. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Nursing.

"Certified nurse aide" means a person who meets the qualifications specified in this article and who is currently certified by the Board.

"Clinical nurse specialist" means a person who is registered by the Board in addition to holding a license under the provisions of this chapter to practice professional nursing as defined in this section. Such a person shall be recognized as being able to provide advanced services according to the specialized training received from a program approved by the Board, but shall not be entitled to perform any act that is not within the scope of practice of professional nursing.

"Certified massage therapist" means a person who meets the qualifications specified in this chapter and who is currently certified by the Board.

"Massage therapy" means the treatment of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body. The terms "massage therapy" and "therapeutic massage" do not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic therapy, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

§ 54.1-3029. Qualifications for a certified massage therapist.

A. In order to be certified as a massage therapist, the applicant shall furnish evidence satisfactory to the Board that the applicant:

1. Is at least 18 years old;
2. Has successfully completed a minimum of 500 hours of training from a massage therapy program, having received programmatic approval from the Virginia Board of Education, Division of Proprietary Schools, or certified or approved by the Virginia Board of Education, Division of Proprietary Schools; the State Council of Higher Education; or an agency in another state, the District of Columbia or a United States territory which approves educational programs, notwithstanding the provisions of § 22.1-320;
3. Has passed the National Certification Exam for Therapeutic Massage and Bodywork or an exam deemed acceptable to the Board of Nursing leading to national certification; and
4. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in this chapter.

B. The Board may certify any applicant who has been practicing massage therapy for up to ten years prior to July 1, 1997, and has completed at least 200 hours of training in an education program. Such programs may be, but shall not be required to be, certified or approved by the Virginia Board of Education, Division of Proprietary Schools; the State Council of Higher Education; or an agency in another state, the District of Columbia or a United States territory which approves educational programs, or has been in practice for ten years or more prior to July 1, 1997, and has completed 20 hours of such training; or has passed the National Certification Exam for Therapeutic Massage and Bodywork prior to 1994.

C. The Board may issue a provisional certification to an applicant prior to passing the National Certification Exam for Therapeutic Massage and Bodywork for such time and in such manner as prescribed by the Board. No more than one provisional certification shall be issued to any applicant.

D. The Board may certify without examination any applicant who is licensed or certified as a massage therapist in another state, the District of Columbia, a United States possession or territory, or another country, and, in the opinion of the Board, meets the requirements for certified massage therapists in this Commonwealth.

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the final amended regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the amended regulation is to clearly state in regulation the qualifications necessary for a person to become certified as a massage therapist and the requirements necessary to demonstrate continuing competency. The qualifications for initial certification are set forth in the Code of Virginia, but the Board determined that persons practicing massage therapy are still uncertain or unaware of the need to be certified. Therefore, it is proposed that the requirements be specified in regulation and that the provisions for “grandfathering” be deleted since those avenues to certification expired in June of 1998. It has not been required for certification by endorsement that applicants have credentials substantially equivalent to those required in Virginia. Without such a regulation, the Board had no criteria on which to base a decision on endorsement, so it was possible for less qualified individuals to become certified in Virginia. To assure the public that massage therapy is being delivered ethically and competently by persons certified by the Board, regulations must consistently provide minimal education and examination standards.

As an emerging profession, massage therapy is being utilized more and more for therapeutic purposes to alleviate the symptoms of disease or injury. Patients are seeking relief from symptoms of fibromyalgia, cancer, arthritis and other conditions. It is essential for public safety for massage therapists to remain current in their knowledge and technique to appropriately treat consumers and to be able to recognize the indications that a person should be referred to a health care practitioner. Virginia requires only 500 hours of education for certification whereas some states have adopted 1,000 hours as the minimum requirement. In addition, many massage therapists were initially certified under a “grandfather” provision that required only 200 hours of training and practice or 20 hours of training and at least 10 years of practice prior to July 1, 1997. Since the initial education of a certified massage therapist may have been minimal, the massage therapy advisory committee with the Board’s concurrence recommended some evidence of continuing competency for renewal of certification as means of protecting the public health and safety.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action’s detail.

Amendments will specify in regulation the qualifications for certification that are currently in the Code of Virginia and delete the provisions for “grandfathering” that are no longer applicable. It will also be clarified that to be certified by endorsement, a massage therapist must have met requirements substantially equivalent to those in Virginia.

The Board is also proposing as a condition of renewal that massage therapists demonstrate evidence of continuing competency by holding current certification from the National Certification Board for Therapeutic Massage and Bodywork, the credentialing body for the profession, or complete at least 25 hours of continuing education or learning activities within the biennium. Finally, the Code of Ethics of the NCBTMB have been incorporated by reference into this chapter as standards of conduct for massage therapists.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Issues in the regulation of massage therapists and the alternatives to dealing with those issues were addressed by the massage therapy advisory committee and the Board as following:

1) **Limitations of Certification.** The major issue for massage therapy in Virginia involves the potential risk to the public of massage therapy services being delivered by persons with little or no training and no regulatory oversight. Legislation passed in 1997 instituted a certification program with title protection for "massage therapist" or "certified massage therapist." Certification does not ensure that an insufficiently trained person cannot perform the service; it only protects the use of certain titles. Therefore, experience has shown that persons with considerably less training have adopted other titles, such as "massage therapy practitioner" and are engaged in practicing massage therapy on the public.

There were a number of alternatives discussed by the Committee, none of which involve a change in regulations since this is primarily a statutory issue. Without a change in the Code, the board has no authority to restrict the practice of massage therapy to only those persons it certifies. The Code would need to be amended to provide for licensure or mandatory certification for the practice of massage therapy, as it is currently defined in § 54.1-3000. A legislative initiative is not being recommended by the Board of Nursing at this time, but may be undertaken by other interested parties. In addition, massage therapists are working with the localities to restrict the practice of massage therapy to those persons who hold certification from the Board of Nursing. That has already occurred in the City of Richmond and other localities, and the effort to expand those restrictions is underway.

2) **Continuing competency requirements.** Comments received on the periodic review raised the issue of continuing competency for practitioners. Massage therapists, as with other health care practitioners, need to learn new information and techniques in order to remain minimally competent to treat the public. Massage therapists benefit from learning experiences that improve their skills, further their knowledge about the clinical indicators that suggest a referral to a physician, and remind them of ethical dilemmas. In the opinion of the Advisory Committee and

others in the profession, the basic 500-hour course required for certification is not adequate to ensure that a practitioner continues to be competent throughout his profession.

Alternatives discussed include:

- a) Continued certification or recertification by the national certifying body, the National Certification Board for Therapeutic Massage and Bodywork. Continued certification requires 50 hours of continuing education, both approved and non-approved course, over a four-year period.
- b) Hours of continuing education similar to that required by the certifying agency or 25 hours for each biennial renewal cycle. A further issue with this alternative would be the determination of approved courses. To avoid having the Board become the accrediting body for all continuing education in massage therapy, regulations would need drafted to recognize the NCBTMB or other credentialing bodies.
- c) Other types of learning experiences or requirements that would provide some assurance that certified massage therapists continue to be minimally competent. That could include practical experience, re-examination, or self-directed learning.

It was suggested that NCBMTB recertification be the standard for demonstrating continuing competency, but the Board determined that other alternatives must be available for those who had allowed their national certification to lapse or had been initially certified by the Board without NCBMTB certification. Based on review of the requirements of NCBMTB, the Board determined that a combination of the alternatives was the most reasonable and least burdensome approach. Regulations offer the massage therapist a variety of options including recertification by either retesting or acquiring continuing education or participation in approved and non-approved CE courses or activities.

1) Type and amount of continuing competency requirements

It was suggested during comment on regulations that the Board adopt one standard for demonstrating continuing competency for those who held NCBMTB certification and another standard for those who were certified with lesser credentials during the “grandfathering” period prior to 1998. Such a differential standard would be impossible to enforce without tagging the records of all certified therapists with some indication of their credentials for certification. That methodology has never been adopted by the Board and would discriminate against those who are legitimately certified, all be it by a less stringent standard. Therefore, the Board chose to offer options for recertification or CE, based on what the practitioner determines is the most advantageous method for maintaining his skills and competencies.

The massage therapist who holds national certification by NCBTMB may chose to maintain that certification which would suffice to demonstrate continued competency for renewal of a Virginia certificate. He may do so by acquiring 50 hours of CE over a four-year period - half in Category A from approved sponsors and half in Category B from non-approved sponsors. He also has the option of being recertified by NCBTMB by retesting to determine currency in massage technique and knowledge.

For those who do not want to recertify with NCBTMB, the Board requires 25 hours divided into two types: (1) In Category A continuing learning activities, the 12.5 hours required biennially must be offered by a sponsor or organization which is sanctioned by the NCBTMB and which provides documentation of hours to the practitioner; and (2) In Category B continuing learning activities, a maximum of 12.5 hours earned biennially may or may not be offered by an approved sponsor or organization but must be activities that expand the skills and knowledge related to the clinical practice of massage therapy; certificate holders document and record their own participation. Examples of Category A activities would be conferences, workshops, home study, video or computer programs with a required examination. Category B activities may include formal programs by non-approved sponsors, teaching or authoring an article.

The NCBTMB requires two hours of professional ethics during each four-year certification period. The Board believes that ethical principles are essential for public health and safety in the practice of massage therapy. Topics such as boundary issues, client confidentiality, and legal guidelines are accepted for hours in ethics and may be incorporated into other courses, provided there is documentation from the provider stating the amount of time that was devoted to the topic.

Advantages to massage therapists:

The continuing competency requirements are intended to provide some assurance to the public that certified massage therapists are maintaining current knowledge and skills, while providing the maximum amount of flexibility and availability to certificate holders. Massage therapists believe that many of their colleagues are currently certified by NCBTMB or already engage in enough learning activities to meet the requirements and should only have to maintain documentation of those activities and hours. Half of the 25 hours may be earned by the practitioner on his own time and schedule and may be hours that are useful to the therapist but not accredited or documented by an organization. The resources for earning the hours and engaging in the required learning are numerous and readily available in all parts of Virginia.

Disadvantages to massage therapists:

For those practitioners who do not currently engage in any continuing learning in their profession, these requirements will represent an additional burden. While opportunities for obtaining continued competencies exist that are at a minimal cost, there will be some additional expense associated with renewal of a certificate. However, it was determined by enactment of the statute and by the Board's concurrence that those practitioners and their patients would greatly benefit from continuing learning requirements, and that the public is better protected if there is some assurance of that effort.

Advantages or disadvantages to the public:

There are definite advantages of the amended regulations to the public, which will have greater assurance that the massage therapists certified by the Board are engaged in activities to maintain and improve their knowledge and skills in providing care to their patients. There are also

definite advantages to the public that at least one hour in ethics is required as a part of the continuing education. That requirement coupled with the Code of Ethics incorporated by reference will give the public assurance that persons who hold the title of certified massage therapist have a high standard by which they should conduct their practice.

Advantages or disadvantages to the agency:

As with the regulation of other health professions, there is some additional burden for the Department in administering a continuing education requirement. After each renewal cycle, there may be an audit of a percentage of the certificate holders, who will be required to submit documentation of compliance. Those documents (NCBTMB certification, certificate of completion from a provider, or transcript from a massage therapy education program) must be reviewed to determine hours of completion in each category. For those who are found out of compliance or who have not indicated compliance on their renewal form, some remedial action will be required. If the practitioner fails to comply with requirements within a given time frame, a disciplinary action will begin.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Proposed regulations were published in the Virginia Register of Regulations on July 1, 2002. Public comment was requested for a 60-day period ending August 30, 2002. The following written comment has been received:

- Director of a Massage Therapy School: Objection to the deletion of the provisional certification in regulation. Certification is often a requirement of a locality, so provisional certification is an essential tool enabling massage therapists to be self-employed or placed with establishments awaiting examination results.

Board response:

Since the law permits a person to practice massage therapy provided he does not use the title of “massage therapist” or “certified massage therapist”, the provisional certification appeared to be unnecessary. With provisional certification, a person may practice massage therapy but may not use one of the restricted titles. However, since certification is often a requirement to practice in a locality, the Board decided to retain the current language for provisional certification to enable a person to be employed while awaiting the results of the national examination.

- Director of a Massage Therapy School: Entry-level education should be strengthened above the 500 hours currently required, and continuing education should be required for re-certification by the Board. Supports a requirement of 25 hours of continuing education every 2 years.

Board response:

The 500-hour educational requirement is established in law (§ 54.1-3029) and cannot be changed by an amendment to regulations.

- Representatives of the New River Valley Massage Therapy Association: 1) Opposed to requirement for continuing education (25 hours each biennium), because massage therapy associations already require CE for members to remain certified with their organizations, so Board requirement is redundant. 2) Supported removal of “grandfathering” provisions but would like some reciprocity with other states that have similar certification requirements. 3) Need a temporary certification for therapists working in Virginia with sports teams or other group. 4) Should be some credit given for similar training in another profession. 5) Opposed to adopting a Code of Ethics and standards of practice of the NCBTMB. Opposed to ethical standards of having to wait 2 years before a therapist can date a client and of reporting misconduct of another therapist. Supported code of ethics of the Associated Bodywork and Massage Professionals. (See response below)

A Public Hearing before the Board of Nursing was held on July 16, 2002 at which public comment was received from two individuals representing the New River Valley Massage Therapy Association (see summary above) and one massage therapist speaking for herself.

Board response:

1) Regulations do not require a certified massage therapists to maintain certification by a professional organization, so there is no assurance that they have acquired any continuing education. For those that do acquire CE for professional memberships, those hours will satisfy the requirements of the Board and no additional burden will be imposed; 2) For massage therapists certified or licensed in other states, there are provisions for endorsement of that license or certification; 3) Provided a person does not claim the title of “massage therapist” or “certified massage therapist”, he can provide massage therapy to a sports team or other group in Virginia without certification; 4) The 500-hour educational requirement is established in the law, so there is no authority for the Board to waive all or part of that requirement for persons with other training; and 5) The particular standards opposed by the commenters were found in the Standards of Practice of the NCBTMB, which the Board decided to eliminate from the regulation. Since the Board has chosen to reference the Code of Ethics from an organization, it is reasonable to incorporate the code from NCBTMB, which is the certifying body through which the national examination is given.

- One person commented that the proposed regulations were reasonable and necessary. She supported the 25-hour per biennium requirement for continuing education.

Board response: The Board acknowledged the comment.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 90-50-10. Definitions.

The Board proposes to include definitions for three terms that are currently defined in the Code – “Board,” “Certified massage therapist,” and “Massage therapist.” In addition, the terms “Category A” and “Category B” used in the proposed section on continuing competency are included, as in the definition of NCBTMB, the certifying body in massage therapy.

18 VAC 90-50-40. Initial certification.

A. Although the qualifications for certification are spelled out in the Code, the Board proposes to include them in regulation so there is greater clarity and understanding of the requirements by applicants.

B. The initial "grandfathering" provisions permitted persons with lesser qualifications to be certified for a one-year period ending July 1, 1998. In order to reduce any possible confusion for potential applicants or the public, this section is being amended to clarify that those persons who had fulfilled the lesser criteria for certification listed in § 54.1-3029B must have submitted an application to the Board prior to June 30, 1998.

C. A new subsection is added to address qualifications of persons who have been licensed or certified in another country (similar language is now found in subsection C of section 50).

18 VAC 90-50-50. Certification by endorsement.

Amendments are proposed to clarify that an applicant who is licensed or certified in another state or country must have met qualifications substantially equivalent to those currently required in Virginia. The use of the phrase "substantially equivalent" allows the Board to retain its discretion to determine comparability of the educational and examination qualifications obtained in another jurisdiction.

18 VAC 90-50-60. Provisional certification.

It was proposed that this section be repealed, but the Board has reinserted provisional certification to permit massage therapists who are required by a locality to have certification from the Board to begin employment while awaiting the results of the national examination.

18 VAC 90-50-70. Renewal of certification.

Based on comments by certified massage therapists, amendments are recommended to provide some measure of assurance of continued competency as criteria for renewal.

18 VAC 90-50-75. Continuing competency requirements.

Certification by the National Certification Board for Therapeutic Massage and Bodywork is required for initial certification in Virginia. Since maintaining NCBTMB certification necessitates continuing education or experiences, both accredited and non-accredited, mandating current certification is one option for assuring continued competency. To provide an option for those who were initially “grandfathered” without national certification or for those who have allowed that certification to lapse, the Board proposes a total of 25 hours of continuing education or learning activities over the biennium - with at least half of the hours to be Category A, offered by an approved provider, and no more than half in Category B, which promote learning in the profession but do not have to be accredited. Regulations also provide for an exemption in the first biennium following initial certification, record-keeping requirements, and provisions for extension or exemptions for good cause.

18 VAC 90-50-90. Disciplinary provisions.

To set the code of ethics by which massage therapy should be practiced, the Board proposes to incorporate by reference those provided by the NCBTMB, the national credentialing body. Regulations provide that failure to practice by those standards may constitute unprofessional conduct and subject the certificate holder to disciplinary action by the Board. The Standards of Practice by the NCBTMB were also incorporated by reference in the proposed regulation, but the Board has deleted that requirement in the adoption of final amendments.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In its analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability, economic self-sufficiency, or the marital commitment. The amendments may result in a slight decrease in disposable family income for those certified massage therapists who do not currently comply with continuing competency requirements.