



Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Nursing; Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC90-50-10
Regulation title	Regulations Governing the Certification of Massage Therapists
Action title	Periodic review
Date this document prepared	5/22/08

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Proposed amendments to update and clarify the regulations result from a periodic review of Chapter 50, regulations governing certification of massage therapists. There is a reduction in the hours of continuing education (CE) required for biennial renewal of certification from 25 to 24 and inclusion of a course in cardiopulmonary resuscitation (CPR) as acceptable for CE credit. The only amendment that may be considered substantive would be the expanded prohibition against a boundary violation, rather than the somewhat more narrow prohibition against sexual contact.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Board of Nursing adopted the amendments to 18VAC90-50-10 et seq., Regulations Governing the Certification of Massage Therapists on May 20, 2008.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 24 of Title 54.1 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, establish renewal schedules and to levy fees:

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

4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.

5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege 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...

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the proposed regulatory action is to make regulations consistent with current approval of educational programs, to encourage massage therapists to be trained in CPR by accepting those hours for CE credit, to ensure that a massage therapist whose certification has been suspended or revoked has met continuing competency requirements for reinstatement and to further define the prohibition on engaging in any sexual conduct involving a patient. Regulations that more clearly delineate the prohibition against a professional boundary violations will help to protect patients/clients who may be subject to inappropriate behaviors by massage therapists.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The Board has determined that a fast-track process is appropriate because there is no controversy with this action. Massage therapists were included in the periodic review of the regulation and concurred with the changes. Amendments will primarily clarify current provisions and will not any new requirement.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The only amendment that may be considered substantive would be the expanded prohibition against a boundary violation. Currently the regulation makes it unprofessional conduct to initiate or engage in any sexual conduct involving a patient. Consistent with other regulations under the Board of Nursing, the amended regulation makes it unprofessional to enter into a relationship that constitutes a professional boundary violation to include taking advantage of the vulnerability of a patient or sexual conduct with a patient or his family.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary 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 indicate.

- 1) The advantage to the public of the amendment on unprofessional conduct may be that more explicit language about professional boundary violations may help a massage therapist understand and avoid actions that would take advantage of a client or patient's vulnerability, including, but not limited to, sexual conduct.
- 2) There are no disadvantages to the agency or the Commonwealth.
- 3) There is no other pertinent matter of interest related to this action.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.</p> <p>There will be no on-going expenditures related to this action.</p>
<p>Projected cost of the regulation on localities</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals affected by this regulation would be persons who are certified massage therapists.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are currently 4866 persons certified by the Board as massage therapists. Most would be self-employed or work in small business practices.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative</p>	<p>There are no additional costs for compliance. The reduction of one hour of continuing education could result in a very modest decrease in cost for renewal of certification.</p>

costs required for compliance by small businesses.	
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Since this action resulted from a periodic review of regulations, a notice for comment had been sent to interested parties in advance of the review by an ad hoc committee. The only comments received were from the Virginia Chapter of the American Massage Therapy Association, which are summarized below. Additionally, a petition for rulemaking was received during the comment period; the petitioner requested that the Board consider a reduction in or elimination of the requirement for continuing education for renewal of certification. While action on the petition was separate from the periodic review, the committee also considered the request during its review.

Comments on the Periodic Review:

Comment	Agency response
Section 10. Definitions Since Category A and Category B are no longer used by NCBTMB, the approver of CE for massage therapists, they should be removed from definitions and replaced with continuing education credits and learning activities.	The Board did eliminate the terms. For renewal, the distinction between the two types of hours is consistent with Board regulations.
Section 20. Initial certification. Programmatic approval of massage therapy programs is no longer conducted by the Va. Dept. of Education, so the section needs to be updated.	The amendment was adopted.
Section 75. Continuing competency requirements. Recommended that the hours of CE be reduced from 25 to 24 and that 3 of those hours be required in ethics; that would be consistent with NCBTMB requirements for 48 hours and 6 hours of ethics every four years. Recommended elimination of subsection a and b under A 2.	The Board did reduce the CE hours to 24 but did not increase the ethics requirement from one hour to three hours. According to the massage therapist who worked with the committee, many CE courses have a component incorporated into the course which is devoted to ethical practice or ethical behavior, but it is more problematic to find sufficient hours specified as “ethics.” The Board decided to retain the current requirement.

To inform the review, the Board also reviewed a chart of requirements from state that administer massage practice laws and regulations. The chart shows the educational requirements, fees

charged, continuing education requirements and examination required. Virginia’s requirements were consistent with most other states; neighboring state requirements are:

State	Education Req.	Fees	CEU Required	Exam
Kentucky	600 hours	\$125 – licensure \$100 – renewal	24 hours biennially	NCETMB or NCCA-approved
DC	500 hours	\$262 – licensure \$177 – renewal	12 hours biennially	NCETMB
Maryland	500 hours + 60 college credits	\$200 – certification \$100 – application \$200 – renewal	24 hours biennially	NCETMB or NCCAOM & state exam
North Carolina	500 hours	\$170 – licensure \$100 – renewal	25 hours biennially	NCETMB
Tennessee	500 hours	\$110 – licensure & renewal	25 hours biennially	NCETMB & MBLE _x
Virginia	500 hours	\$105 – certification \$70 – renewal	25 hours biennially	NCETMB
West Virginia	500 hours	\$225 – licensure \$100 – renewal	24 hours biennially	NCETMB

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact on the institution of the family or family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Proposed change and rationale
10	n/a	The definitions for Category A and Category B are eliminated as the terms are no longer used in the regulation.
40	n/a	Amendments to section 40 (Requirements for initial certification): 1) Deleted the requirement that an approved massage therapy program have programmatic approval from the Virginia Board of Education, Division of Proprietary Schools, or been certified or approved by the Virginia Board of Education, Division of Proprietary Schools. The only approval for massage therapy schools is currently being granted by the

		<p>State Council of Higher Education, so the outdated language was removed.</p> <p>2) Added another examination in massage therapy, the National Certification Exam for Therapeutic Massage, as acceptable to the board and leading to national certification. The Board had previously taken action to accept the NCETM exam, but it is clearer to include it by name in regulation.</p>
75	n/a	<p>Amendments to section 75 (Continuing competency requirements):</p> <p>1) Reduced the hours required for biennial renewal from 25 to 24. To renew certification as a massage therapist with the Board, a practitioner must either hold current certification by the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB) or obtain hours of continuing education. The NCBTMB requirement includes 48 hours of CE in order to be re-certified every four years. Therefore, the review committee agreed to reduce the Board’s requirement to 24 hours each biennium as consistent with NCBTMB.</p> <p>2) Although NCBTMB no longer recognizes courses as “Category A” or “Category B,” the Board allows 12 of the 24 hours to be self-directed learning that is not necessarily offered by a NCBTMB-approved provider. Included in that category could be hours of CPR, offered by the Red Cross, the American Heart Association, or other such provider. The Board would consider such hours to be of value to the safe practice of massage therapy.</p>
80	n/a	<p>An amendment to subsection C of section 80 on reinstatement requirements clarified that a massage therapist whose certificate has been suspended or revoked must apply and meet the continuing competency requirement specified in subsection B in order to be granted reinstatement.</p>
90	n/a	<p>Currently, section 90 specifies that initiating or engaging in any sexual conduct involving a patient constitutes unprofessional conduct. The review committee agreed that a professional boundary violation occurs whenever the therapist enters into a relationship with a patient or client in which the massage therapist uses his professional position to take advantage of the vulnerability of a patient, a client or his family, to include but not limited to actions that result in personal gain at the expense of the patient or client, a nontherapeutic personal involvement or sexual conduct with a patient or client. The language that was adopted for massage therapy was taken from regulations for nurses and certified nurse aides; it is the same language adopted during the recent review and revision of those chapters.</p>