

Report From Agency

STATE OF WISCONSIN DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION	:	LICENSING ADOPTING RULES
AND LICENSING	:	(CLEARINGHOUSE RULE 06-069)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to repeal RL 90.02 (3) and (9), 91.03 (1) (c) 3., 5. and 6., 92.01 (3) and 92.02; to renumber and amend RL 91.01 (3) (b) to (f) and 91.03 (2); to amend RL 90.01, 90.02 (2), (6) and (8), 91.01 (title), (intro.) and (2), 91.03 (title), (1) (intro.) and (1) (c) 1., 4. and 7., 91.04, 92.01 (title), (1), (2), (4) (intro.), (a), (b), (5) (intro.), (b), (d) and (e), 93.01 (title) and 93.01, 93.02 (title), (intro.), (2) and (3), 93.03, 93.04 (intro.) and (1) (c), 94.01 (title), (intro.), (6), (9), (16), (19), (20), (26), (27) and (28); to repeal and recreate RL 90.02 (1) (b), 91.01 (3) (a) and 91.03 (1) (c) 2.; and to create RL 90.02 (1g), (1r), (5m), (10) to (13), a Note following RL 91.01 (3) (a), 91.01 (b) to (e), 91.015, 91.03 and (2) (a) and (b), 91.05, a Note following RL 94.01 (27), RL 94.01 (29) to (32) and 94.02, relating to application requirements, definitions, certification, reciprocity, waiver of education requirements and unprofessional conduct, governing the certification of massage therapists and bodyworkers.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Wis. Stats. Chapter 460.

Statutory authority:

Section 227.11 (2), Stats., and ch. 460, Stats.

Explanation of agency authority:

2001 Wisconsin Act 74 recreated the credentialing and practice requirements for the practice of massage therapy and bodywork in the state of Wisconsin. The proposed rule revisions to Wis. Admin. Code Chapters RL 90 to 94 are intended to update these administrative rules for consistency with 2001 Wisconsin Act 74.

Related statute or rule:

Wis. Admin. Code chapters RL 90 to 94.

Plain language analysis:

The proposed revisions to Chapters RL 90 to 94 are necessary to implement Chapter 460 of the Wisconsin Statutes pursuant to 2001 Wisconsin Act 74, governing the certification of massage therapists and bodyworkers. The proposed rules will in part modify the requirements necessary for qualified applicants, reciprocal certification, acceptable training programs, waivers of education requirements, renewals, acts constituting unprofessional conduct, and the handling of complaints by the department relating to specified allegations of sexual misconduct.

SECTION 1 changes “registration” to “credentialing.”

SECTION 2 repeals and recreates language relating to application requirements which must be met for a credential to be issued.

SECTION 3 creates two new definitions – “approved training program” and “certificate holder.”

SECTION 4 amends the definition of “classroom hour.”

SECTION 5 repeals the definition of “course of instruction.”

SECTION 6 creates the definition of “insured.”

SECTION 7 amends the definitions of “manual action” and “massage therapy or bodywork.”

SECTION 8 repeals the definition of “registrant.”

SECTION 9 creates definitions of “policyholder,” “sexual contact,” “sexual intercourse” and “sexually oriented business.”

SECTION 10 changes “registration” to “a certificate.”

SECTIONS 11, 13 and 14 make changes relating to application requirements which must be met for a credential to be issued.

SECTION 12 creates a note indicating where to find a list of approved schools.

SECTION 15 creates s. RL 91.015, relating to the waiver of education requirements necessary for a credential to be granted.

SECTIONS 16, 17, 18, 19, 20, 21, 22 and 23 make changes relating to the requirements for the granting of a reciprocal certificate and defines that the requirements for a current similar license, registration or certificate to practice massage therapy or bodywork in another state or territory of the United States or another country, are substantially equivalent to the requirements under s. 460.05, Stats., if the requirements include certification by the National Certification Board for Therapeutic Massage and Bodywork or any other organization accredited by the National Commission for Certifying Agencies to certify massage therapy or bodywork; or completion of at least 500 classroom hours of instruction in massage therapy or bodywork at a school approved by an accrediting agency.

SECTION 24 changes “registration” to “certification.”

SECTION 25 creates s. RL 91.05, a grandfathering provision for the granting of a certificate as a massage therapist or bodyworker.

SECTION 26 amends s. RL 92.01, to include new requirements for an approved training program.

SECTION 27 repeals a provision that is no longer necessary.

SECTION 28 amends s. RL 92.01 (4), to include new requirements for an approved training program.

SECTION 29 repeals a provision that is no longer necessary.

SECTIONS 30, 31, 32 and 33 amend rules relating to renewal and conform the nomenclature of these sections to Chapter 460, Stats.

SECTION 34 amends the title of s. RL 93.01 from “Violations of standards of practice” to “Unprofessional conduct.” Section RL 94.01 (6) is amended relating to the requirements for obtaining informed consent from a patient. Section RL 94.01 (9) is amended relating to the failure to keep confidential information received from a client. Section RL 94.01 (16) is amended relating to the failure by a credential holder to cooperate in a timely manner with the department’s investigation of complaints filed against a credential holder. Section RL 94.01 (19) is amended to change a reference from “registrant” to “certificate holder.” Section RL 94.01 (20) is amended to change a reference from “unregistered” to “uncertified.” Section RL 94.01 (26) is amended relating to the failure to maintain premises according to standards recognized by the massage therapy or bodywork profession. Section RL 94.01 (27) is amended relating to a certificate holder notifying the department for the conviction of a crime.

SECTION 35 creates a note describing where complaint forms may be obtained.

SECTION 36 deletes “of registration” in s. RL 94.01 (28).

SECTION 37 creates additional violations of unprofessional conduct. Section RL 94.01 (29) is created to prohibit practicing massage therapy or bodywork, whether for compensation or not, for a sexually oriented business. Section RL 94.01 (30) is created to prohibit having sexual contact or sexual intercourse with a client that occurs on or after March 1, 2003. Section RL 94.01 (31) is created relating to the failure to make a report as required under s. RL 94.02. And s. RL 94.01 (32) is created to clarify permissible advertising by a certificate holder.

SECTION 38 creates s. RL 94.02 relating to the submission of reports to the department if a certificate holder has reasonable cause to believe that another certificate holder has committed a crime relating to prostitution under ss. 944.30 to 944.34, Stats., or has had sexual contact or sexual intercourse with a client.

Summary of, and comparison with, existing or proposed federal regulation:

No federal regulation exists.

Comparison with rules in adjacent states:

[Note, 2001 Wisconsin Act 74, requires certain mandatory rule revisions to massage therapy regulation currently codified at Wis. Admin. Code Chapters RL 90 to 94. Accordingly, the rule revisions contained in this proposed rule-making order essentially rewrite the substance of massage therapy regulation in Wisconsin.]

Minnesota, Michigan, Indiana:

No regulation.

Iowa:

Iowa requires applicants to complete 500 hours of approved schooling and successfully pass the national examination. The practice of massage therapy and bodywork is practice as well as title protected. IAC 645-Chap. 131 (Iowa Admin. Code 645-Chap. 131).

Illinois:

Illinois requires applicants to complete 500 hours of approved schooling and successfully pass the national examination. The credential holders are granted licenses. The practice of massage therapy and bodywork is practice protected as well as title protected; however, numerous exceptions exist to that practice protection. Illinois Admin. Code title. 68 § 1284 (proposed rules currently in promulgation process pursuant to the Massage Licensing Act [225 ILCS 57], effective 6-1-03).

Summary of factual data and analytical methodologies:

The provisions of 2001 Wisconsin Act 74 and 2005 Wisconsin Acts 25 and 277 were reviewed to determine the appropriate provisions of then existing Wis. Admin. Code Chapters RL 90 to 94 which required amending for conformity. 2001 Wisconsin Acts 25 and 277 required the creation of s. RL 91.05 to conform to the statutory change resulting from those Acts whereby s. 460.05 (3), Stats., was amended to delete the duty of the Wisconsin Educational Approval Board to review certain applications, placing the duty instead on the department. The proposed rules were submitted to the Massage Therapy and Bodyworker Council for review and comments as required by s. 460.04 (3), Stats.

Massage Therapy and Bodyworker Council Comments – (April 13, 2004)

MOTION: Amy Remillard moved, seconded by Mary Ellen Martin, to change the three hours [education requirements] from CPR to a science portion of the rules. Motion carried unanimously.

Department response: change made.

MOTION: Amy Remillard moved, seconded by Vlad Thomas, to change the rule [informed consent] to read, “practice massage therapy or body work on a client without first obtaining the written informed consent of the client and has informed the client they may withdraw at any time.” Motion carried unanimously at today’s meeting.

Department response: change made.

Analysis and supporting documents used to determine effect on small business:

The proposed amendments to the department’s administrative rules, Chapters RL 90 to 94, represent a recodification and clarification of existing administrative rules of the department. These amended rules do not represent any significant change in terms of increasing or decreasing existing requirements on the certification of governance of Massage Therapist and Bodyworkers, therefore no additional effect on small business or economic impact is anticipated.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The department estimates that this rule will require staff time in the Division of Professional Credentialing. The total staff salary and fringe is estimated at \$230.

Effect on small business:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us. or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack at the Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 89235, Madison, Wisconsin 53708-8935. Email to pamela.haack@drl.state.wi.us. Comments must be received on or before July 21, 2006, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. RL 90.01 is amended to read:

RL 90.01 Authority and intent. The rules in chs. RL 90 to 94 are adopted by the department pursuant to ~~ss. s.~~ s. 227.11 (2), Stats., and 440.982 ch. 460, Stats., to govern the ~~registration~~ credentialing of massage therapists and bodyworkers.

SECTION 2. RL 90.02 (1) (b) is repealed and recreated to read:

RL 90.02 (1) (b) A state government agency or territorial government agency located in another state or territory of the United States or another country.

SECTION 3. RL 90.02 (1g) and (1r) are created to read:

RL 90.02 (1g) "Approved training program" means a series of classroom courses, not including continuing education, which is approved by the department having a unified purpose which lead to a diploma or degree or to an occupational or vocational objective, meeting the requirements of s. RL 92.01.

(1r) "Certificate holder" means a person granted a certificate under ch. 460, Stats.

SECTION 4. RL 90.02 (2) is amended to read:

RL 90.02 (2) “Classroom hour” means a period of instruction ~~in an approved course~~ consisting of not less than 50 minutes.

SECTION 5. RL 90.02 (3) is repealed.

SECTION 6. RL 90.02 (5m) is created to read:

RL 90.02 (5m) “Insured” means any person to whom or for whose benefit an insurer makes a promise in an insurance policy. The term includes policyholders, subscribers, members, and beneficiaries.

SECTION 7. RL 90.02 (6) and (8) are amended to read:

RL 90.02 (6) “Manual action” includes holding, positioning, rocking, kneading, compressing, decompressing, gliding or percussing the soft tissue of the human body ~~and~~ or applying friction to soft tissue a passive range of motion to the human body.

(8) “Massage therapy or bodywork” means the science and healing art that uses manual actions to palpate and manipulate the soft tissue of the human body, in order to improve circulation, reduce tension, relieve soft tissue pain or increase flexibility, and includes determining whether massage therapy or bodywork is appropriate or contraindicated, or whether referral to another health care practitioner is appropriate. Massage therapy or bodywork does not include making a medical or chiropractic diagnosis ~~or instructing in or prescribing rehabilitative strengthening or conditioning exercises that are within the practice of physical therapy, as defined in s. 448.50 (4), Stats.~~

SECTION 8. RL 90.02 (9) is repealed.

SECTION 9. RL 90.02 (10) to (13) are created to read:

RL 90.02 (10) “Policyholder” means the person who controls the policy by ownership, payment of premiums, or otherwise.

(11) “Sexual contact” has the meaning given in s. 939.22 (34), Stats.

(12) “Sexual intercourse” has the meaning given in s. 948.01 (7) (a), Stats.

(13) “Sexually oriented business” means keeping a place of prostitution as defined in s. 939.22 (24), Stats.

SECTION 10. RL 91.01 (title), (intro.) and (2) are amended to read:

RL 91.01 (title) **Application for registration a certificate.** (intro.) An individual applying for ~~registration a certificate~~ as a massage therapist or bodyworker shall submit all of the following:

(2) The fee ~~required~~ specified in s. 440.05 (1), Stats.

SECTION 11. RL 91.01 (3) (a) is repealed and recreated to read:

RL 91.01 (3) (a) Has graduated from a school of massage therapy or bodywork approved by the educational approval board at the time of the applicant's graduation or completed an approved training program.

SECTION 12. A Note following RL 91.01 (3) (a) is created to read:

Note: A list of approved schools is available upon request to the Educational Approval Board, 30 West Mifflin Street, 9th Floor, P.O. Box 8696, Madison, Wisconsin 53708, or the department at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 13. RL 91.01 (3) (b), (c), (d), (e) and (f) are renumbered RL 91.01 (3) (f), (i), (g), (h) and (j), and as renumbered RL 91.01 (3) (f), (g), (i) and (j) are amended to read:

RL 91.01 (3) (f) Subject to ss. 111.321, 111.322 and 111.335, Stats., ~~does not have a conviction record~~ has not been convicted of any other offense not listed in par. (e), the circumstances of which substantially relate to the practice of massage therapy or bodywork.

(g) Has passed either the national certification examination for therapeutic massage and bodywork or the national certification examination for therapeutic massage that are offered by the national certification board for therapeutic massage and bodywork, or a substantially equivalent another examination approved relating to the practice of massage therapy or bodywork that is administered by a national board that is accredited by the national commission of for certifying agencies of the national organization for competency assurance or that is developed, administered or a substantially equivalent examination approved by the department relating to the practice of massage therapy or bodywork.

(i) Has in effect as a policyholder and insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

(j) Has successfully completed a course consisting of 8 5 classroom hours in adult cardiopulmonary resuscitation and standard first aid, ~~unless if~~

the individual has not graduated from a school of massage therapy or bodywork approved by the educational approval board and the 8 5 classroom hours are not completed as part of a course of instruction by the individual as part of an approved training program as provided under s. RL 92.01 ~~(5) (e)~~ (4) (f).

SECTION 14. RL 91.01 (3) (b) to (e) are created to read:

RL 91.01 (3) (b) Has successfully completed at least 6 classroom hours of study in the laws of this state and rules of the department relating to the practice of massage therapy or bodywork in a course of instruction offered by any of the following:

1. A school of massage therapy or bodywork approved by the educational approval board, whether or not the course of instruction was completed to meet a requirement for graduation.

2. An approved training program whether or not the training program is completed by the individual for purposes of satisfying par. (a).

3. A school approved by an accrediting agency.

4. A technical college established pursuant to s. 38.02, Stats.

(c) Is 18 years of age or older.

(d) Has graduated high school or attained high school equivalency as determined by the department of public instruction under s. 115.29 (4), Stats.

(e) Has not been convicted of an offense under s. 940.22, 940.225, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.085, 948.09, 948.095 or 948.10, Stats., or a comparable offense under federal law or a law of any other state.

SECTION 15. RL 91.015 is created to read:

RL 91.015 Waiver of education requirements. The requirements of s. RL 91.01 (3) (a) and (b) shall be waived if an individual submits evidence satisfactory to the department that he or she has successfully completed a course consisting of 5 classroom hours in adult cardiopulmonary resuscitation and standard first aid and satisfied one of the following:

(1) Is currently either certified or recertified by the national certification board for therapeutic massage and bodywork.

(2) Is currently either certified or recertified as active and in good standing by any other organization accredited to certify massage therapy or bodywork by the national commission for certifying agencies.

SECTION 16. RL 91.03 (title), (1) (intro.) and (1) (c) 1. are amended to read:

RL 91.03 (title) Reciprocal registration certificate. (1) (intro.) An individual applying for ~~registration~~ a certificate on the basis of a similar license, registration or ~~certification~~ certificate in another state or ~~jurisdiction~~ territory of the United States or another country shall:

(c) 1. Holds a current similar license, registration or certificate to practice massage therapy or bodywork in another state or ~~jurisdiction~~ territory of the United States or another country, the requirements for which are substantially equivalent to the requirements under s. 460.05, Stats.

SECTION 17. RL 91.03 (1) (c) 2. is repealed and recreated to read:

RL 91.03 (1) (c) 2. Has not been convicted of an offense under s. 940.22, 940.225, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.085, 948.09, 948.095 or 948.10, Stats., or a comparable offense under federal law or a law of any other state.

SECTION 18. RL 91.03 (1) (c) 3. is repealed.

SECTION 19. RL 91.03 (1) (c) 4. is amended to read:

RL 91.03 (1) (c) 4. Subject to ss. 111.321, 111.322 and 111.335, Stats., ~~does not have an arrest or conviction record~~ has not been convicted of any other offense not listed under subd. 2., the circumstances of which substantially relate to the practice of massage therapy or bodywork.

SECTION 20. RL 91.03 (1) (c) 5. and 6. are repealed.

SECTION 21. RL 91.03 (1) (c) 7. is amended to read:

RL 91.03 (1) (c) 7. Has in effect as a policyholder and insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

SECTION 22. RL 91.03 (2) is renumbered RL 91.03 (2) (intro.) and is amended to read:

RL 91.03 (2) (intro.) ~~In determining whether to grant a reciprocal registration, the department shall consider whether the requirements~~ Requirements for a current similar license, registration or certificate to practice massage therapy or bodywork ~~in the other~~

another state or jurisdiction are similar to the requirements for registration as a massage therapist or bodyworker in this state, territory of the United States or another country, are substantially equivalent to the requirements under s. 460.05, Stats., if the requirements include either of the following:

SECTION 23. RL 91.03 (2) (a) and (b) are created to read:

RL 91.03 (2) (a) Certification by the national certification board for therapeutic massage and bodywork or any other organization accredited by the national commission for certifying agencies to certify massage therapy or bodywork.

(b) Completion of at least 500 classroom hours of instruction in massage therapy or bodywork at a school approved by an accrediting agency, and passing an examination relating to the practice of massage therapy or bodywork that is administered or approved by an accrediting agency.

SECTION 24. RL 91.04 is amended to read:

RL 91.04 Accommodations relating to a disability. A qualified individual with a disability shall be provided with reasonable accommodations requested in connection with the completion of an application for ~~registration~~ certification as a massage therapist or bodyworker.

SECTION 25. RL 91.05 is created to read:

RL 91.05 Alternate certification. The department shall grant a certificate as a massage therapist or bodyworker to a person who satisfies all of the following:

- (1) Is 18 years of age or older.
- (2) Has graduated high school or attained high school graduation equivalency as determined by the department of public instruction under s. 115.29 (4), Stats.
- (3) Submits an application for the certificate to the department on a form provided by the department.

Note: Application forms are available upon request to the department at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

- (4) Has paid the fee specified in s. 440.05 (1) (a), Stats.
- (5) Submits evidence satisfactory to the department that the person has in effect as a policyholder and insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

(6) Has not been convicted of an offense under s. 940.22, 940.225, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.09, 948.095 or 948.10, Stats., or a comparable offense under federal law or a law of any other state.

(7) Submits evidence satisfactory to the department that, during the 2 year period after March 1, 2003, the person was actively engaged in the practice of massage therapy or bodywork. In this subsection, “actively engaged in the practice of massage therapy or bodywork” means having engaged in at least 1500 hours of the practice of massage therapy or bodywork during the 2 year period after March 1, 2003.

(8) Attests that he or she only recently became aware of the requirements of ch. 460, Stats.

SECTION 26. RL 92.01 (title), (1) and (2) are amended to read:

RL 92.01 (title) ~~Course of instruction~~ Approved training program. (1) An individual applying for ~~registration a certificate~~ as a massage therapist or bodyworker who has not graduated from a school of massage therapy or bodywork approved by the educational approval board shall submit an official transcript or other official documentation showing dates and total hours attended and a description of the curriculum completed establishing that he or she has completed ~~at least 600 classroom hours of study in a course of instruction~~ an approved training program.

(2) Credit may be granted for ~~a course of instruction~~ an approved training program regardless of when the ~~instruction program~~ was completed.

SECTION 27. RL 92.01 (3) is repealed.

SECTION 28. RL 92.01 (4) (intro.), (a), (b), (5) (intro.), (b), (d) and (e) are amended to read:

RL 92.01 (4) (intro.) In addition to satisfying the requirements of sub. ~~(4)~~ (5), ~~a course of instruction that is approved by the department~~ an approved training program shall be one of the following:

(a) An associate degree program, or a ~~vocational~~ technical diploma program in massage therapy or bodywork offered by a technical college established pursuant to s. 38.02, Stats.

(b) A course of instruction in massage therapy or bodywork offered by a school accredited by an accredited agency at the time the individual completes the course of instruction.

(5) (intro.) An approved ~~course of instruction consisting~~ training program shall consist of a minimum of 600 classroom hours of study and shall include the following subject areas:

(a) Anatomy, physiology, pathology and kinesiology: ~~422~~ 125 classroom hours.

(b) Business, law and ethics: 50 classroom hours, which may include at least 6 classroom hours in the laws of this state and rules of the department relating to the practice of massage therapy or bodywork required by s. RL 91.01 (3) (b).

(e) Adult cardiopulmonary resuscitation (CPR) and standard first aid: ~~8~~ 5 classroom hours. The requirement of this paragraph may be alternatively satisfied as provided under s. RL 91.01 (3) ~~(f)~~ (j).

SECTION 29. RL 92.02 is repealed.

SECTION 30. RL 93.01 (title) and 93.01 are amended to read:

RL 93.01 (title) ~~Registration Certificate expiration.~~ Registration Certificates for massage therapists and bodyworkers ~~expires~~ expire on March 1 of each odd-numbered year.

SECTION 31. RL 93.02 (title), (intro.), (2) and (3) are amended to read:

RL 93.02 (title) ~~Renewal of registration certificate.~~ Renewal of registration certificate. (intro.) In order to renew a ~~registration certificate~~ on or before the renewal date, the ~~registrant~~ certificate holder shall submit the following to the department:

(2) The renewal fee required under s. 440.08 (2) (a) ~~67q.~~ 46r., Stats.

(3) Evidence satisfactory to the department that he or she has in effect as a policyholder and insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

SECTION 32. RL 93.03 is amended to read:

RL 93.03 Failure to renew. A ~~registrant~~ certificate holder who fails to renew a ~~registration certificate~~ by the applicable renewal date shall not use any title or description that implies that he or she is ~~registered~~ credentialed by the department as a massage therapist or bodyworker until his or her ~~registration certificate~~ registration certificate is renewed under s. RL 93.04.

SECTION 33. RL 93.04 (intro.) and (1) (c) are amended to read:

RL 93.04 Late renewal. (intro.) A massage therapist or bodyworker who fails to renew his or her ~~registration certificate~~ by the renewal date may renew the ~~registration certificate~~ by satisfying all of the following requirements:

(1) (c) Evidence satisfactory to the department that he or she has in effect as a policyholder and insured, malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

SECTION 34. RL 94.01 (title), (intro.), (6), (9), (16), (19), (20), (26) and (27) are amended to read:

RL 94.01 (title) ~~Violations of standards of practice~~ Unprofessional conduct. (intro.) The following, without limitation because of enumeration, are violations of the standards of ~~practice for massage therapists and bodyworkers~~ professional conduct and constitute unprofessional conduct under s. 460.14 (2) (g), Stats.:

(6) ~~Failing to obtain and record~~ Practicing massage therapy or bodywork on a client without first obtaining the written informed consent of the client or the client's authorized representative before initiating a plan of treatment and informing the client in writing that he or she may withdraw the consent at any time.

(9) Failing to ~~maintain the confidentiality of all client information, unless disclosure is required by law or court order~~ keep confidential any information that a client gives in confidence to the certificate holder and any other information that the certificate holder obtains about a client in the course of practicing massage therapy or bodywork that a reasonable person in the client's position would want kept confidential, unless the information is otherwise required by law to be disclosed or the client specifically authorizes the disclosure of the information.

(16) After a request by the department, failing to cooperate in a timely manner with the department's investigation of complaints filed against the ~~individual or registrant~~ certificate holder. There is a rebuttable presumption that a ~~registrant or individual~~ certificate holder who takes longer than 30 calendar days to respond to a request of the department has not acted in a timely manner under this subsection.

(19) Failing to practice massage therapy or bodywork within the scope of the ~~registrant's~~ certificate holder's competence, education, training and experience.

(20) Aiding or abetting an ~~unregistered~~ uncertified person, knowingly conspiring with an ~~unregistered~~ uncertified person, or allowing one's ~~registration certificate~~ to be used by an ~~unregistered~~ uncertified person to evade the use of title restrictions under ~~ch. 440~~ s. 460.02, Stats., relating to the practice of massage therapy or bodywork.

(26) Failing to maintain premises according to standards recognized by the massage therapy or bodywork profession ~~or to standards established by local regulation, whichever standard is higher.~~

(27) Failing to ~~notify the department of any criminal conviction within 30 calendar days after the date of conviction~~ submit a written report to the department if the certificate holder is convicted of a felony or misdemeanor, or is found to have committed a violation, in this state or elsewhere, if the circumstances of the felony, misdemeanor or violation substantially relate to the practice of massage therapy or bodywork. The report shall be made on a complaint form provided by the department and shall be submitted within 30 days after the entry of the judgment of conviction or the judgment that the certificate holder committed the violation, and shall identify the date, place, and nature of the conviction or finding. If the report is submitted by mail, the report is considered to be submitted on the date that it is mailed. In this subsection, “violation” means a violation of any state or local law that is punishable by a forfeiture.

SECTION 35. A Note following RL 94.01 (27) is created to read:

Note: Complaint forms are available from the Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or from the department’s website at: <http://drl.wi.gov>.

SECTION 36. RL 94.01 (28) is amended to read:

RL 94.01 (28) Failing to display his or her certificate ~~of registration~~ in his or her place of business or practice so that it can easily be seen and read by the public.

SECTION 37. RL 94.01 (29) to (32) are created to read:

RL 94.01 (29) Practicing massage therapy or bodywork, whether for compensation or not, for a sexually oriented business.

(30) Having sexual contact or sexual intercourse with a client that occurred on or after March 1, 2003.

(31) Failing to make a report as required under s. RL 94.02.

(32) Advertising by a certificate holder that he or she practices massage therapy or bodywork unless the advertisement includes his or her certificate number and a statement that the certificate holder is a “certified massage therapist or bodyworker” or “certified massage therapist” or “certified bodyworker.” A telephone directory listing for which no additional advertising charge is made is not considered advertising.

SECTION 38. RL 94.02 is created to read:

RL 94.02 Duty to make reports. (1) A certificate holder shall submit a report to the department if he or she has reasonable cause to believe that another certificate holder has committed a crime relating to prostitution under ss. 944.30 to 944.34, Stats., or has had sexual contact or sexual intercourse with a client. If the report relates to sexual contact or sexual intercourse with a client, the report may not identify the client unless the client has provided written consent for disclosure of this information.

(2) For purposes of this section, “reasonable cause” means any of the following:

(a) Being informed by a person that he or she has engaged in an act with another certificate holder prohibited by ss. 944.30 to 944.34, Stats.

(b) Being informed by a person that he or she, while a client of another certificate holder, engaged in nonmarital sexual contact or sexual intercourse with the other certificate holder.

(c) Being informed by another certificate holder that he or she has engaged in nonmarital sexual contact or sexual intercourse with a client, or has done an act prohibited by ss. 944.30 to 944.34, Stats.

(3) The report shall be made on a complaint form provided by the department. The department may use the report as the basis for an investigation under s. 460.14 (1), Stats.

Note: Complaint forms are available from the Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or from the department’s website at: <http://drl.wi.gov>.

(4) A complaint as defined in s. RL 2.03 (2), filed against a certificate holder pursuant to s. RL 2.08, based upon the allegation of one or more acts prohibited under ss. 944.30 to 944.34, Stats., constitutes reasonable cause for the department to believe that a certificate holder has committed a crime and the department shall report the belief to the district attorney for the county in which the crime, in the opinion of the department, occurred.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____ Agency _____
Celia M. Jackson, Secretary
Department of Regulation and Licensing

Chs RL 90-94 CR06-069 (Massage therapy and bodyworkers) Draft to Leg 8-28-06