

Chapter SPS 94

UNPROFESSIONAL CONDUCT

SPS 94.01 Unprofessional conduct.

SPS 94.02 Duty to make reports.

Note: Chapter RL 94 was renumbered chapter SPS 94 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 94.01 Unprofessional conduct. The following, without limitation because of enumeration, are violations of the standards of professional conduct and constitute unprofessional conduct under s. 460.14 (2) (g), Stats.:

- (1) Misrepresenting qualifications, education, credentials and professional affiliations.
- (2) Misrepresenting the scope of practice of a massage therapist or bodyworker to a client.
- (3) Failing to inform a client about contraindications of massage therapy or bodywork.
- (4) Failing to refer a client to a health care practitioner for necessary treatment beyond the qualifications or scope of practice of the massage therapist or bodyworker.
- (5) Failing to inform a client, prior to charging or accepting fees, of any policy relating to cancellation of an appointment or failure of the client to appear for an appointment.
- (6) Practicing massage therapy or bodywork on a client without first obtaining the written informed consent of the client and informing the client in writing that he or she may withdraw the consent at any time.
- (7) Violating the client's right to refuse, modify or terminate massage therapy or bodywork care.
- (8) Failing to maintain, for a period of at least 5 years, records necessary for the continuity of the client's massage therapy or bodywork treatment.
- (9) Failing to 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.
- (10) Failing to provide draping and treatment that ensure the safety and privacy of a client.
- (11) Engaging in inappropriate sexual conduct, exposure or gratification, or other sexual behavior with or in the presence of a client.
- (12) Failing to maintain clean clothing, linens and equipment, according to standards recognized by the massage therapy or bodywork profession.
- (13) Knowingly placing false information in a client's record.
- (14) Failing to provide access to client records when requested by the department or its representative.
- (15) Knowingly providing false information to the department.
- (16) After a request by the department, failing to cooperate in a timely manner with the department's investigation of complaints filed against the certificate holder. There is a rebuttable presumption that a 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.

(17) Violating any rule adopted by the department relating to the practice of massage therapy or bodywork.

(18) Violating any term, provision or condition of any order issued by the department.

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

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

(21) Practicing in a manner which substantially departs from the standard of care ordinarily exercised by a massage therapist or bodyworker.

(22) Engaging in conduct likely to deceive, defraud, or harm an individual or the public in the course of the practice of massage therapy or bodywork.

(23) Having a disciplinary action through final adjudication taken by another jurisdiction against one's license, certificate, permit or registration to practice massage therapy or bodywork.

(24) Providing massage therapy or bodywork when benefits cannot reasonably be expected.

(25) Knowingly permitting any professional staff to provide massage therapy or bodywork that exceed that person's competence, education, training and experience.

(26) Failing to maintain premises according to standards recognized by the massage therapy or bodywork profession.

(27) Failing to 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.

Note: Complaint forms are available from the Department of Safety and Professional Services, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or from the department's website at: <http://dsp-s.wi.gov>.

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

(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. SPS 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 "certi-

fied massage therapist” or “certified bodyworker.” A telephone directory listing for which no additional advertising charge is made is not considered advertising.

History: Cr. Register, February, 1999, No. 518, eff. 3-1-99; CR 06-069: am. (intro.), (6) (9), (16), (19), (20), (26) to (28), cr. (29) to (32), Register December 2006 No. 612, eff. 1-1-07; **correction in (31) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 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.

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(4) A complaint as defined in s. SPS 2.03 (2), filed against a certificate holder pursuant to s. SPS 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.

History: CR 06-069: cr. Register December 2006 No. 612, eff. 1-1-07; **correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**