

## Chapter MTBT 5

### UNPROFESSIONAL CONDUCT

MTBT 5.01 Unprofessional conduct.

MTBT 5.02 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. Chapter SPS 94 was renumbered MTBT 5 under s. 13.92 (4) (b) 1., Stats., Register August 2012 No. 680.

**MTBT 5.01 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 bodywork therapist to a client.
- (3) Failing to inform a client about contraindications of massage therapy or bodywork therapy.
- (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 bodywork therapist.
- (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 therapy 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 therapy.
- (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 therapy treatment.
- (9) Failing to keep confidential any information that a client gives in confidence to the license holder and any other information that the license holder obtains about a client in the course of practicing massage therapy or bodywork therapy 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 therapy profession.
- (13) Knowingly placing false information in a client's record.
- (14) Failing to provide access to client records when requested by the board or its representative.
- (15) Knowingly providing false information to the board.
- (16) After a request by the board, failing to cooperate in a timely manner with the board's investigation of complaints filed against the license holder. There is a rebuttable presumption that a license holder who takes longer than 30 calendar days to respond to a request of the board has not acted in a timely manner under this subsection.
- (17) Violating any rule adopted by the board relating to the practice of massage therapy or bodywork therapy.

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

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

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

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

(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 therapy.

(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 therapy.

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

(25) Knowingly permitting any professional staff to provide massage therapy or bodywork therapy 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 therapy profession.

(27) Failing to submit a written report to the board if the license 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 therapy. The report shall be made on a complaint form provided by the board and shall be submitted within 30 days after the entry of the judgment of conviction or the judgment that the license 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 forfeiture.

**Note:** Complaint forms are available from the Department of Safety and Professional Services, Division of Legal Services and Compliance, 1400 East Washington Avenue, P.O. Box 7190, Madison, Wisconsin 53707, or from the department's website at: <http://dps.wi.gov>.

(28) Failing to display his or her license 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 therapy, 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. MTBT 5.02.

(32) Advertising by a license holder that he or she practices massage therapy or bodywork therapy unless the advertisement includes a statement that the license holder is a "licensed massage therapist or bodywork therapist" or "licensed massage therapist" or "licensed bodywork therapist." 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; correction in (31) made under s. 13.92 (4) (b) 7., Stats., Register August 2012 No. 680; **CR 13-055: am. (9), (16) to (20), (27), (28), (32) Register May 2014 No. 701, eff. 6-1-14; correction in (16) made under s. 13.92 (4) (b) 6., Stats., corrections in (2) to (4), (6) to (8), (12), (14), (15), (17), (19) to (27), (29) made under s. 35.17, Stats., Register May 2014 No. 701.**

**MTBT 5.02 Duty to make reports. (1)** A license holder shall submit a report to the board if he or she has reasonable cause to believe that another license 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 license 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 license holder, engaged in nonmarital sexual contact or sexual intercourse with the other license holder.

(c) Being informed by another license 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 board. The board 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 Safety and Professional Services, Division of Legal Services and Compliance, 1400 East Washington Avenue, P.O. Box 7190, Madison, Wisconsin 53707, or from the department’s website at: <http://dsps.wi.gov>.

**(4)** A complaint as defined in s. SPS 2.03 (2), filed against a license 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 board to believe that a license holder has committed a crime and the board shall report the belief to the district attorney for the county in which the crime, in the opinion of the board, 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; **CR 13-055: am. (1), (2) (b), (c), (3), (4) Register May 2014 No. 701, eff. 6-1-14; correction in (4) made under s. 13.92 (4) (b) 6., Stats., correction in (2) (a) made under s. 35.17, Stats., Register May 2014 No. 701.**