

ARKANSAS STATE BOARD OF HEALTH

MASSAGE THERAPY LAWS



2017

INDEX

<u>Section</u>	<u>Title</u>	<u>Page</u>
17-86-101	Citation	4
17-86-102	Definitions	4
17-86-103	Penalties	8
17-86-104	Criminal Background Checks	8
17-86-201	Members	8
17-86-202	Officers and Employees	10
17-86-203	Powers and Duties	10
17-86-204	Records	13
17-86-205	Disposition of Funds	14
17-86-301	Registration Required--- Exemptions	15
17-86-302	Sanitary Requirements	16
17-86-303	Massage Therapist	17
17-86-304	Master Massage Therapist	19
17-86-305	Massage Therapy Instructor	19
17-86-306	Massage Therapy School	20
17-86-307	Massage Therapy Clinic and Spa	21
17-86-308	Reciprocity	22
17-86-309	Renewals, Inactive List, Continuing Education	22
17-86-310	Display of License	25
17-86-311	Disciplinary Actions and Penalties	25
17-86-312	Fees	28
17-86-313	Repealed by Acts of 2013, Act 1445 § 22, eff. August 16, 2013	28

17-86-101. Citation

This chapter may be referred to and cited as the "Massage Therapy Act".

17-86-102. Definitions

As used in this chapter:

- 1) "Licensee" means an individual licensed under this chapter;
- 2) (A) "Massage therapist" means a person who has:
 - (i) Earned a diploma from a board-accepted school of massage therapy;
 - (ii) Passed an examination required or accepted by the board; and
 - (iii) Become licensed and registered to practice massage therapy.
- (B) "Massage therapist" includes a person who has previously obtained the massage therapist license under prior state law.
- (C) A massage therapist may:
 - (i) Instruct continuing education programs approved by the Department of Health; and
 - (ii) Assist in the instruction of the procedures defined in subdivisions (4)(A) -- (C) of this section under the direct supervision of a massage therapy instructor or master massage therapist;
- 3) (A) "Massage therapy" means the treatment of soft tissues, which may include skin, fascia, and muscles and their dysfunctions for therapeutic purposes of establishing and maintaining good physical condition, comfort, and relief of pain.
- (B) "Massage therapy" is a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, and stretching the tissue.
- (C) "Massage therapy" also means to engage in the practice of any of the following procedures:
 - (i) Massage therapy techniques and procedures, either hands-on or with mechanical devices;
 - (ii) Therapeutic application and use of oils, herbal or chemical preparations, lubricants, nonprescription creams, lotions, scrubs, powders, and other spa services;
 - (iii) Therapeutic application of hot or cold packs;

- (iv) Hydrotherapy techniques;
 - (v) Heliotherapy, which may include mechanical devices, heat lamps, and other devices;
 - (vi) Electrotherapy; and
 - (vii) Any hands-on bodywork techniques and procedures rising to the level of the techniques and procedures intended to be regulated under this chapter and not covered under specific licensing laws of other boards;
 - (viii) Cupping therapy
- 4) “Massage therapy clinic” means a clinic, place, premises, building, or part of a building in which a branch or any combination of branches of massage therapy or the occupation of a massage therapist is practiced;
- 5) (A) “Massage therapy instructor” means a person who:
- (i) Before July 1, 2010, has completed no less than two hundred fifty (250) hours of practical experience as a master massage therapist, which may be gained, in part or in whole, as an assistant to an instructor in a massage school or may be gained, in part or in whole, as a directed instructor in a massage school and has completed no less than two hundred fifty (250) continuing education hours as approved by the Department of Health;
 - (ii) On or after July 1, 2010, has been an active and practicing licensee and registered as a master massage therapist for a period of not less than three (3) years preceding the application for an upgrade to massage therapy instructor;
 - (iii) On or after July 1, 2010, in addition to the experience under subdivision (6)(A)(i) of this section, has completed no less than two hundred fifty (250) continuing education hours as approved by the department as a licensed master massage therapist; and
 - (iv) Is determined by the department to be qualified to be licensed and registered to practice massage therapy.
- (B) “Massage therapy instructor” includes a person who has previously obtained the massage therapy instructor license under prior state law.
- (C) Massage therapy instructors may:
- (i) Instruct continuing education programs approved by the department;
 - (ii) Instruct any of the procedures in subdivision (5) of this section; and

- (iii) Instruct basic curricula in a massage therapy school registered by the department as required by § 17-86-306(e);
- 6) “Massage therapy school” means a registered and licensed facility that meets and follows the required educational standards as established by § 17-86-306 and all pertinent rules established by the State Board of Health;
- 7) “Massage therapy spa” means a site or premises, or portion of a site or premises, in which a massage therapist practices massage; and
- 8) (A) “Master massage therapist” means a person who:
- (i) Before July 1, 2010, is a licensed and registered massage therapist who has completed no fewer than two hundred fifty (250) hours of practical experience as a massage therapist, which may be gained in part or in whole as an assistant to an instructor in a massage school and has completed no less than one hundred twenty-five (125) continuing education hours as approved by the Department of Health;
 - (ii) On or after July 1, 2010, has been an active and practicing licensee and registered as a massage therapist for a period of not less than two (2) years preceding the application for an upgrade to master massage therapist;
 - (iii) On or after July 1, 2010, in addition to the experience under subdivision (8)(A)(i) of this section, has completed no less than one hundred twenty-five (125) continuing education hours as approved by the Department of Health; and
 - (iv) Is determined by the Department of Health to be qualified to be licensed and registered to practice massage therapy.
- (B) “Master massage therapist” includes a person who has previously obtained the master massage therapist license under a prior state law.
- (C) Master massage therapists may:
- (i) Instruct continuing education programs approved by the Department of Health ;
 - (ii) Instruct any of the procedures in subdivision (5) of this section; and
 - (iii) Instruct, as directed by a massage therapy instructor, basic curricula in a massage therapy school registered by the Department of Health as required by § 17-86-306(e);
- 9) “Sexual misconduct” includes:

(A) A range of behavior used to obtain sexual gratification against another's will, at the expense of another, without the client's knowledge, engaging in sexual activity for profit, or a combination of any of these activities; and

(B) Massage of the genitalia, anus, and, except under specific circumstances, the breast; and

(C) Sexual activity with consent of a client or at the request of a client; and

10)“This chapter” means the “Massage Therapy Act”, § 17-86-101 et seq.¹

11)“Postsecondary massage therapy school” means a massage therapy school that:

(A) Offers a postsecondary curriculum approved by the State Board of Health; and

(B) Has an enrollment in which no more than fifty percent (50%) of its students do not diploma or the recognized equivalent of a high school diploma.

17-86-103. Penalties

(a) Any person who shall violate any of the provisions of this chapter shall be found guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not more than six (6) months or by a fine not exceeding one thousand five hundred dollars (\$1,500), or by both fine and imprisonment, at the discretion of the court.

(b) It shall be the duty of the prosecuting attorney in the county where the violation occurs, upon request by the Department of Health, to initiate proper legal proceedings in a court of competent jurisdiction to enforce the provisions of this chapter.

(c) Any person found guilty of violations of this chapter may be subject to emergency suspension or revocation of licensure dependent upon the findings.

(d)The courts of this state are vested with jurisdiction and power to enjoin the unlawful practice of massage therapy and related techniques in a proceeding by the department or by any citizen of this state in the county in which the alleged unlawful practice occurred or in which the defendant resides or in Pulaski County. The issuance of an injunction shall not relieve a person from criminal prosecution for violation of the provisions of this chapter, but the remedy of injunction shall be in addition to liability to criminal prosecution.

17-86-104. Criminal background checks

An applicant applying as a new massage therapy licensee, an individual applying for a new

¹ Paragraph designation so in enrolled act.

massage therapy school license, or a licensee applying for an upgrade issued by the Arkansas State Board of Massage Therapy shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau and the Federal Bureau of Investigation.

17-86-201. Massage Therapy Technical Advisory Committee—Members

(a)(1) The Massage Therapy Technical Advisory Committee shall consist of seven (7) members, who shall be appointed by the State Board of Health for a term of three (3) years.

(2)(A) Six (6) of the members shall be licensees under this chapter.

(B) Only one (1) of the members shall be an owner of a massage therapy school.

(3) One (1) member, to represent the public, shall not be engaged in or retired from the practice of massage therapy.

(4) The State Board of Health shall promulgate by rule the duties and powers of the committee.

17-86-202. Employees

(a) The Department of Health may employ an executive director, regular or special counsel, inspectors, clerks, secretaries, and other personnel it deems necessary to carry out the provisions of this chapter.

(b) An employee under this section shall not have any financial interest in the practice or instruction of massage therapy.

17-86-203. Powers and duties

(a)(1) The State Board of Health may promulgate and enforce reasonable rules for the purpose of carrying out this chapter.

(2) The board shall follow the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as to “rule” and “rule-making” definitions and for the adoption and filing of rules.

(b)(1)(A) The Department of Health shall inspect or cause an inspection of student records at least one (1) time each year for each massage therapy school operated in this state.

(B) The Department of Health and its agents and employees may enter and inspect a massage therapy clinic, spa, or school during operating hours of the business.

(2) The Department of Health and its agents and employees shall not request or be granted permission to enter a room of a massage therapy clinic, spa, or school in which a client is receiving treatment from a licensee under this chapter.

(c) The Department of Health may hold licensing examinations from time to time at a place or places as the department may designate.

(d)(1) The Department of Health may require each original applicant and each upgrade applicant for a license issued by the Department of Health to apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Arkansas State Police and the Federal Bureau of Investigation;

(2) The state and federal criminal background check shall conform to applicable federal standards and shall include the taking of fingerprints;

(3) The applicant shall sign a release of information to the Department of Health and shall be responsible for the payment of any fees associated with the state and federal criminal background check;

(4)(A) Each applicant who has resided outside of Arkansas shall provide a state and federal criminal background check, including the taking of fingerprints, issued by the state or states in which the applicant resided.

(B) Results shall be sent directly to the Department of Health from the agency performing the state and federal criminal background check.

(e)(1) For purposes of this section, an applicant is not eligible to receive or hold a license issued by the Department of Health if the applicant has pleaded guilty or nolo contendere to or been found guilty of a felony or Class A misdemeanor or any offense involving fraud, theft, or dishonesty.

(2) A provision of this section may be waived by the Department of Health if:

(A) The conviction is for a Class A misdemeanor and:

(i) The completion of the applicant's sentence and probation or completion of the applicant's sentence or probation of the offense is at least three (3) years from the date of the application; and

(ii) The applicant has no criminal convictions during the three-year period; or

(B) The conviction is for a felony of any classification and:

(i) The completion of the applicant's sentence and probation or the completion of the applicant's sentence or probation of the offense is at least five (5) years from the date of the application; and

(ii) The applicant has no criminal convictions during the five-year period.

(f) The Department of Health may permit an applicant to be licensed regardless of having been convicted of an offense listed in this section, upon making a determination that the applicant does not pose a risk of harm to any person served by the Department of Health.

(g) In making a determination under subsection (f) of this section, the Department of Health may consider the following factors:

(1) The nature and severity of the crime;

(2) The consequences of the crime;

(3) The number and frequency of crimes;

(4) The relationship between the crime and the health, safety, and welfare of persons served by the agency, such as:

(A) The age and vulnerability of victims of the crime;

(B) The harm suffered by the victim; and

(C) The similarity between the victim and persons served by the Department of Health;

(5) The time elapsed without a repeat of the same or similar event;

(6) Documentation of successful completion of training or rehabilitation pertinent to the incident; and

(7) Any other information that bears on the applicant's ability to care for others or other relevant information.

(h) If the Department of Health waives the provisions of subsection (e) of this section, the department shall submit the reasons for waiving this provision in writing, and the determination and reasons shall be made available to the members of the department for review.

17-86-204. Records

(a)(1) The Department of Health shall maintain a record book and computer file in which will be entered the names and addresses of all persons to whom licenses have been granted under this chapter, the license number, and the dates of granting such licenses and renewals thereof, and other matters of record.

(2) The department will move to a separate book and file the records of all persons who have died, have let their licenses lapse for three (3) years, whose licenses have been suspended or revoked by the department, or cancelled by the licensee.

(b) The record books and computer files so provided and maintained shall be deemed and considered a book of records and files of records, and they will be kept in a timely manner. A transcript of any record therein or a license number or date of granting such a license to a person charged with a violation of any of the provisions of this chapter shall be admitted as evidence in any of the courts of this state if certified by the department.

(c)(1) The original books, records, and papers of the department shall be maintained at the offices of the department.

(2) A school that closes shall immediately submit all student transcripts to the department office.

(d) Copies of records may be furnished to any person requesting them upon payment of such copying fee as the department may require and as Arkansas state laws and regulations permit. However, licensing exams shall be exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

17-86-205. Disposition of funds

(a) (1) All moneys remitted to the Department of Health under this chapter shall be made payable to the Department of Health.

(2) The Department of Health shall deposit all such funds received in a timely manner in accordance with laws of the State of Arkansas and regulations of the Department of Finance and Administration.

(b) (1) All moneys received under this chapter shall be paid into the State Treasury and shall be credited to the Public Health Fund for the general uses of the Department of Health.

(2) Salaries and other expenses necessarily incurred in carrying into effect the provisions of this chapter and other programs administered by the Department of Health shall be paid from the moneys received.

17-86-301. Registration required--Exemptions

(a) It shall be unlawful:

(1)(A) For any person who does not hold a valid license to use the following titles: massage therapist, massage practitioner, myotherapist, masso therapist, massage technologist, masseur, masseuse, therapy technologist, master massage therapist, massage therapy instructor, or any derivation of those titles or to advertise such titles; or

(B) For any person who does not hold the applicable license issued by the Department of Health to engage professionally for payment, barter, donation, or exchange in the practice or instruction of massage therapy as defined in this chapter;

(2) For any person to operate or conduct any massage therapy clinic or massage therapy school which does not conform to the sanitary regulations contained in § 17-86-302, in state law, in local ordinances, or in those rules and regulations which may be adopted by the State Board of Health;

(3) To employ any person to practice or instruct under this chapter who does not hold a valid license issued by the department;

(4) For any person to operate a massage therapy school or clinic without its first being registered under the provisions of this chapter as a licensed massage therapy school or registered clinic; or

(5) For the department or other individual or entity to incorporate privileges or certification requirements of any private organization, private professional association, or private accrediting agency within Arkansas massage laws or its rules and regulations. However, the department may adopt as its licensure exam an exam drafted and administered by a private organization, private professional association, or private accreditation agency.

(b) Exemptions:

(1) Persons authorized by the laws of this state to practice medicine, osteopathy, podiatry, or physical therapy, and licensed physicians' assistants, licensed nurses, licensed physical therapy assistants, licensed acupuncturists, licensed midwives, and chiropractors are exempt

from this chapter in so far as massage therapy practices are offered or instructed within the scope and under the provisions of licensure;

(2) Persons authorized by the department to present and instruct department-approved school curriculum or continuing education programs, or both, may present and instruct such department-approved curriculum and programs for payment and in the presentation and instruction may utilize practices defined in, but without being licensed or registered under, the provisions of this chapter; and

(3) The practice of massage therapy that is incidental to a program of study by students enrolled in a licensed massage therapy school approved by the department, and under direct supervision of a licensee employed as an instructor at the school, is exempt from § 17-86-311(a)(10).

(c)(1) A licensee shall notify the department in writing of any change of name, address, phone number, or place of employment.

(2) If a name change is requested, a new license shall be issued in the new name at the next renewal date or immediately for a fee not to exceed twenty dollars (\$20.00) for printing of a new license.

(3) Valid government-issued photo identification is required for each name change request.

17-86-302. Sanitary requirements

(a) It shall be unlawful for any person or school to be licensed or any clinic to be operated under the provisions of this chapter unless the following requirements are met and practiced:

(1) A sink for hand washing with hot and cold running water and soap must be accessible;

(2) A restroom must be accessible;

(3) A towel or sheet that has been used by one (1) client may not be used on another person unless the towel or sheet has been re-laundered;

(4) Anyone who has any infectious, contagious, or communicable disease which may be spread by airborne, droplet, contact, or indirect methods and who is in contact with the public must not practice until all risk of disease transmission is cleared. Any employee with such a disease must be immediately relieved from duty until all risk of disease transmission is cleared;

(5) A school or clinic must be equipped with a massage table or tables or a massage chair or

chairs or equipped with such standard equipment dictated by the practice engaged in as defined in § 17-86-102; and

(6) A clinic or school must comply with all requirements of the Department of Health, city ordinances, and state laws.

(b) Failure to comply with any of the requirements as set forth by this section will be grounds for suspension or revocation of license.

17-86-303. Massage therapist

(a) In order to be licensed as a massage therapist, the person seeking licensure shall:

(1) Furnish to the Department of Health satisfactory proof that he or she is eighteen (18) years of age or older and of good moral character;

(2) Make oath that he or she has not been convicted of, found guilty of, or entered a plea of guilty or nolo contendere to any offense that would constitute a felony or constitute the offense of prostitution, either in this state or the United States, and submit a signed authorization to investigate and have information released to the department;

(3) Present:

(A) A valid photo identification or driver's license, or both; and

(B) A social security card issued in the same name as the applicant or licensee;

(4)(A) Present a high school diploma, Certificate of General Educational Development, or college transcript and credentials issued by a department-accepted massage therapy school or a like institution with no less than five hundred (500) in-classroom hours of instruction.

(B) An applicant shall not submit his or her transcript directly to the department office.

(C) An applicant shall have the massage therapy school submit the transcript directly to the department office.

(D)(i) If the applicant's transcript is not obtainable from the original school, the applicant shall submit a statement to explain why it may not be obtained.

(ii) Other documentation of credentials may be submitted and accepted for licensure at the discretion of the department;

(5) Furnish to the department satisfactory proof of passing an examination recognized and approved by the department;

(6) Present a negative test for tuberculosis that is current at the time of licensure; and

(7) Pay the specified fees, which shall accompany a completed notarized application to the department.

(b) Fees are as follows:

(1)	Application fee	\$75.00	Nonrefundable
(2)	Original license fee	80.00	
(3)	Biennial renewal	80.00	
(4)	Examination fee or reexamination fee	25.00	
(5)	Duplicate license fee	10.00	
(6)	Pocket card fee not to exceed ten dollars (\$10.00)		

(c) A person shall not practice massage therapy until his or her official license has been received from the department.

(d) A person who attempts to procure or does procure a license in violation of this section shall be subject to the penalties provided for in § 17-86-103.

17-86-304. Master massage therapist

(a) A person who holds a license as a massage therapist issued by the Department of Health and who submits satisfactory evidence to the department that he or she has completed and meets the requirements stated in § 17-86-102 is entitled to be upgraded to master massage therapist.²

(b) Each application for upgrade to master massage therapist shall be considered a new application for purposes of criminal background checks.

(c) Fees are as follows:

(1)	Application fee	\$75.00	Nonrefundable
(2)	Original license fee	80.00	
(3)	Biennial renewal fee	80.00	
(4)	Duplicate license fee	10.00	

² So in enrolled.

(5) Pocket card fee not to exceed ten dollars (\$10.00)

17-86-305. Massage therapy instructor

(a) A person who holds a license as a master massage therapist issued by the Department of Health and who submits satisfactory evidence to the department that he or she has successfully completed and meets the requirements stated in § 17-86-102 shall be entitled to be upgraded to massage therapy instructor.

(b) Each application for upgrade to massage therapy instructor is considered a new application for purposes of criminal background checks.

(c) Fees are as follows:

(1)	Application fee	\$75.00	Nonrefundable
(2)	Original license fee	80.00	
(3)	Biennial renewal fee	80.00	
(4)	Duplicate license fee	10.00	
(5)	Pocket card fee not to exceed ten dollars (\$10.00)		

17-86-306. Massage therapy school

(a) A person shall not establish, operate, or maintain a massage therapy school without first having obtained a certificate of massage therapy school licensure issued by the Department of Health.

(b) A massage therapy school shall not be approved by the department or granted a certificate of licensure until the appropriate application and inspection forms as prescribed by the department have been completed and approved and the licensure fee has been paid.

(c)(1) Inspection of the school premises will be made by department, to include without limitation proof of required forms completed and returned to the department with approval or recommendations.

(2) Should the school facilities not pass the first inspection and, after recommendations, failures are corrected, a second inspection will be made within thirty (30) days to determine the school's eligibility.

(d)(1) Schools shall require a physical examination by a medical doctor that the student poses

no health risk to give and receive massage.

(2) The school shall be required to maintain proof of the examination and furnish additional information and documents as may be required by the department or its appointee during the inspection.

(e) The department may certify the school and provide for licensure thereof if the school follows a curriculum consisting of not fewer than five hundred (500) hours of in-classroom instruction over a term of not fewer than four (4) months consisting of the following subjects:

(1) One hundred seventy-five (175) hours of anatomy, physiology, pathology, and contraindications to massage therapy;

(2) Two hundred twenty-five (225) hours of technique;

(3) Twenty-five (25) hours of hydrotherapy, electrotherapy, and heliotherapy;

(4) Twenty-five (25) hours of hygiene and infection control;

(5) Twenty-five (25) hours of massage therapy law, business management, and professional ethics; and

(6) Twenty-five (25) hours of related subjects as approved by the department.

(f)(1) The fee for establishing a school shall not exceed one thousand dollars (\$1,000).

(2) The initial inspection fee for each school shall not exceed one hundred dollars (\$100).

(3) The annual renewal and inspection fee for each school shall not exceed one hundred dollars (\$100).

(g) The curriculum established in subsection (e) of this section shall be followed for all massage therapy programs.

(h)(1) The State Board of Health shall promulgate rules setting a standard educational curriculum for schools of massage.

(2) The standard educational curriculum shall distinguish between secondary and postsecondary educational requirements for the schools of massage.

17-86-307. Massage therapy clinic and spa

(a) A person shall not establish, maintain, or operate a massage therapy clinic or massage therapy spa, or both, until the address and telephone number of the office, clinic, or spa have been supplied in writing to the Department of Health.

(b) If a massage therapy clinic, massage therapy spa, or both moves to a new location or changes its phone number, the new address or phone number, or both, shall be submitted immediately to the department in writing before operating the clinic or spa, or both, at the new address.

(c) The annual inspection fee for each clinic and spa shall not exceed seventy-five dollars (\$75.00).

17-86-308. Reciprocity

(a)(1) The Department of Health may enter into reciprocal relations with other states and territories whose licensure requirements are substantially the same as those provided in this chapter.

(2)(A) If the applicant's transcript is not obtainable from the original school, the applicant shall submit a statement to explain why it may not be obtained.

(B) Other documentation of credentials may be submitted and accepted for licensure at the discretion of the department.

(b)(1) An out-of-state applicant holding a current massage therapy license issued by another state and after receiving an Arkansas massage therapy license may apply for an upgrade to master massage therapist or massage therapy instructor by providing appropriate continuing education credits and experience gained before Arkansas licensure for department approval.

(2) An upgrade request shall be made by submitting a complete application package and paying the fees required by this chapter.

17-86-309. Renewals--Inactive list--Continuing education

(a)(1)(A) A license issued under this chapter is valid for two (2) years and expires on the licensee's birthday.

(B)(i) If a license issued under this chapter is not renewed by the first day of the month preceding the birthdate of the licensee in the biennial renewal year, the license expires.

(ii)(a) If a license expires under subdivision (a)(1)(B)(i) of this section, the applicant shall submit a new application that requires the applicant to meet current requirements and successfully complete an examination recognized by the Department of Health .

(b) The department shall issue a license effective as of the date of receipt of the late application and all new applicant fees.

(c) An individual licensee who is not currently in practice and who wishes to place his or her license on the inactive list may remain on the inactive list for not more than four (4) years without reexamination.

(2) Each license for a massage therapy school is valid for a period of one (1) year and expires on June 30 of each year, whereupon a renewal license may be issued upon submission of a completed license renewal application with payment of the fee or fees prescribed for class of certification.

(3) Every license for licensees, both active and inactive, shall expire on the birthdate of the licensee in the biennial renewal year.

(4) Each renewal for licensees shall be accompanied by proof of no fewer than eighteen (18) hours of continuing education that have been approved by the department.

(b) A renewal application for a licensee is due on or before the first day of the month preceding the month of the birthdate of the licensee in the biennial renewal year.

(c) A renewal application for a licensee postmarked after the first day of the month preceding the month of the birthdate of the licensee of the biennial renewal year shall be levied a late penalty fee not to exceed twenty-five dollars (\$25.00).

(d)(1) An application for renewal postmarked after the birthdate of the licensee in the biennial renewal year will be treated as an application to renew an expired license.

(2)(A) A license is expired if the application is postmarked after the birthdate of the licensee in the biennial renewal year.

(B) Before the department issues a new license to an applicant whose license has expired under subdivision (d)(2)(A) of this section, the applicant shall:

(i) Submit a new application that requires the applicant to meet current requirements; and

(ii) Successfully complete an examination recognized by the department.

(e) The department shall issue a license effective as of the date of receipt of the late application and all renewal fees, penalties, and required documentation.

(f)(1) Any individual licensee who is not currently in practice and who wishes to place his or her license on the inactive list may remain on this list for a period not to exceed four (4) years without reexamination.

(2) After the time allowed under subdivision (f)(1) of this section, all inactive licensees shall meet current requirements for licensure and must successfully complete an examination recognized by the department before resuming the active practice of massage therapy.

(g) Any individual licensee who has been placed on the inactive list for fewer than four (4) years and who wishes to reactivate his or her license shall follow the procedures for license renewal as provided for in this section, present satisfactory evidence of completion of continuing education hours as required by subsection (a) of this section for the inactive period, and pay all appropriate fees before resuming the active practice of massage therapy.

(h) The fee for placement on the inactive list shall not exceed eighty dollars (\$80.00) per biennium.

(i)(1) A licensee whose massage therapy school license renewal is postmarked after April 30 of each year shall pay a late fee not to exceed five hundred dollars (\$500).

(2) A massage therapy school license renewal postmarked after June 30 of each year automatically expires.

(3) A licensee whose massage therapy school license has expired shall submit a new application to the department with current requirements and fees.

(j)(1) Each application for continuing education programs shall be accompanied by an application fee not to exceed forty dollars (\$40.00).

(2)(A) A licensee holding a valid Arkansas massage therapy license may request department approval of appropriate continuing education courses otherwise not approved by the department.

(B) Courses shall meet similar standards as courses approved by the department.

(C) Proof of residency shall accompany the request.

17-86-310. Display of license

(a) An official license shall be conspicuously and publicly displayed in the place where the holder engages in the practice of massage therapy or instruction of massage therapy. A massage therapy school license shall be conspicuously displayed in the massage therapy school.

(b) It is unlawful to tamper with or reduce in size an original massage therapy license issued by the Department of Health.

(c) Each license shall provide the correct address of the department.

17-86-311. Disciplinary actions and penalties

(a) The Massage Therapy Technical Advisory Committee may deny, suspend, place on probation, or revoke a license upon any one (1) of the following grounds:

(1) Conviction of, finding of guilt, or entry of a plea of guilty or nolo contendere to a felony, Class A misdemeanor, or prostitution;

(2) Malpractice or gross incompetency;

(3) The use in advertisements of untruthful or improbable statements or flamboyant, exaggerated, or extravagant claims concerning the licensee's professional excellence or abilities;

(4) Habitual drunkenness or habitual use of any illegal drugs;

(5) Serving alcoholic beverages at the clinic or school in a room where massage therapy is being performed or in a massage therapy school;

(6) Moral turpitude or immoral or unprofessional conduct;

(7) Failure to comply with the department's Massage Therapy Code of Ethics or any valid regulation or order of the department;

(8) Invasion of the field of practice of any profession for which a license is required, the diagnosis of ailments, diseases, or injuries of human beings, the performance of osseous adjustments, prescription of medications, or other breaches of the scope of practice of massage therapy;

(9) Failure of any licensee to comply with this chapter; or

(10) Failure to have licensed personnel to perform massage therapy techniques in his or her clinic or school.

(b)(1) The State Board of Health shall establish by rule the penalty system to be imposed under this section.

(2) Whenever the committee finds that the holder of a license, certificate of registration, or

other permit issued by the department is guilty of a violation of the rules of the department or the laws of the state pertaining to any occupation, profession, or business licensed or regulated by the department, the committee may impose a penalty on the licensee or permit holder in lieu of suspension or revocation of license, certificate of registration, or other permit.

(3)(A) Upon imposition of a penalty in lieu of suspension or revocation of license, certificate of registration, or other permit, the committee may require that the licensee or permit holder pay a penalty to the department.

(B) The license, certificate of registration, or permit shall be suspended until the penalty is paid.

(4)(A) The penalty may be imposed in lieu of revocation or suspension of a license, certificate, or other permit only if the committee formally finds that the public health, safety, welfare, and morals would not be impaired and that the payment of the penalty will achieve the desired disciplinary results.

(B) The minimum penalty imposed by the committee in lieu of revocation or suspension of a license, certificate, or other permit shall be twenty-five dollars (\$25.00) and the maximum penalty one thousand dollars (\$1,000) per infraction.

(C) The authority of the committee to impose penalties under this section is not affected by any other civil or criminal proceeding concerning the same violation.

(D) A person penalized by the committee under this chapter may appeal any order of the committee in the manner currently provided by law.

(E) In addition to any other sanctions authorized by this chapter, the committee may impose a civil penalty as provided in this subsection against any unlicensed person, firm, or corporation practicing or offering to practice any actions requiring licensure under this chapter.

(c)(1) (c)(1) The massage therapist-patient relationship is founded on mutual trust. Sexual misconduct is prohibited.³

(2) The committee shall revoke the license of a person who engages in the practice of massage of the breasts unless the massage therapist:

(i) Engages in the practice of massage of the breasts for therapeutic and medical purposes including without limitation the reduction of scar tissue following a surgery on the breast,

³ Paragraph designation so in enrolled.

release of myofascial binding, or improving lymphatic flow; and⁴

(ii) Has received at least forty-eight (48) hours of continuing education credits in lymphatic massage, myofascial massage, or oncology massage.⁵

(3) A suspension of a license under subdivisions (c)(1) and (2) of this section shall be for a period of three (3) years.

(d)(1) Charges may be brought by any person. (2) Any accusation of any of the offenses enumerated in this section may be filed with the committee. The accusations shall be in writing, signed by the accuser, and verified under oath.

(e) In denying, suspending, or revoking any license, the committee shall afford any party review as provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and as otherwise provided by the rules and regulations of the State Board of Health.

17-86-312. Fees

(a) All registration fees and other fees due the Department of Health shall be paid in accordance with the provisions of this chapter and all other laws and regulations of this state.

(b)(1) The initial inspection fee for a massage therapy school shall not exceed one hundred dollars (\$100).

(2) The annual renewal and inspection fee for a massage therapy school shall not exceed one hundred dollars (\$100).

(3) A licensee whose massage therapy school license renewal is postmarked after April 30 of each year shall pay a late fee not to exceed five hundred dollars (\$500).

17-86-313. Repealed by Acts of 2013, Act 1445, § 22, eff. Aug. 16, 2013

17-86-314. Active military duty licensure

(a) If a licensee fails to renew timely his or her license because the licensee is or was on active duty with the United States Armed Forces, the licensee may renew the license by:

⁴ Paragraph designation so in enrolled.

⁵ Paragraph designation so in enrolled.

(1) Requesting renewal of the license before or after the expiration by:

(A) The licensee;

(B) The licensee's spouse; or

(C)(i) The licensee's power of authority.

(ii) A copy of the power of authority documentation shall be filed with the renewal form if the power of authority requests the renewal;

(2) Completing the appropriate renewal form, including the current address and telephone number for the individual requesting the renewal; and

(3) Filing with the renewal form a copy of the official orders or other official military documentation showing that the licensee is or was on active duty.

(b) A licensee renewing under this section shall pay the applicable renewal fee under § 17-86-309 but shall not pay a late renewal fee.