

269 CMR 6.00: FACILITY LICENSURE

Section

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6.01: Scope and Purpose

269 CMR 6.00 establishes the standards for applying for licensure and operating a licensed Massage Therapy Establishment pursuant to M.G.L. c. 112, § 227 through 235. The purpose of 269 CMR 6.00 is to protect the health, safety, and welfare of the public by promoting minimum standards for Massage Therapy Establishments throughout the Commonwealth.

6.02: Definitions

Adult Entertainment Venues. Any Establishment, including but not limited to a nightclub, bar, restaurant, tavern, dance hall, stage or other performance venue, which displays live entertainment, including but not limited to persons or entertainers appearing in a state of nudity or other live performance, distinguished by an emphasis on depicting, describing or relating to sexual conduct or sexual excitement as defined in M.G.L. c. 272, § 31.

Chair Massage. Massage therapy performed on a clothed, seated (*i.e.* not in a reclining or prone position) client.

Establishment. Any location, or portion thereof, which advertises and/or provides massage therapy services which has been licensed by the Board pursuant to M.G.L. c. 112, § 227 through 236.

Operator. A person who, by his or her direction or control, allows massage therapy to be offered for compensation on premises owned/leased or controlled by that individual or an entity controlled by the individual. For the purposes of 269 CMR 6.03(5) a Massage Therapist practicing alone shall be considered an Operator.

Regular. More than eight hours in a one week period.

6.03: Establishment Licensure Required

(1) Delivery of Massage Therapy. Massage therapy, including the provision of out of office massage therapy services, shall only be delivered or offered at any location or portion thereof covered by a valid Massage Therapy Establishment license issued by the Board or otherwise exempted from licensure under 269 CMR 6.03(8).

(2) License Required. Each Massage Therapy Establishment within the Commonwealth shall be licensed by the Board before providing or offering to provide massage therapy and shall annually renew its license using an application provided by the Board, unless there is a change in ownership or location.

(3) Establishment License Type Classes.

(a) Solo Establishment License. A Solo Establishment License shall entitle a single Massage Therapist to deliver or offer massage therapy services from one designated location.

(b) Multiple Therapists Establishment License. A Multiple Therapists Establishment License shall entitle two or more Massage Therapists to deliver or offer massage therapy services from one designated location.

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- (4) Multiple Therapists Establishment License Required. A Multiple Therapists Establishment License shall be required at all locations where two or more Massage Therapists are delivering or offering massage therapy services jointly.
- (5) Responsibility for Obtaining an Establishment License. The responsibility for obtaining an Establishment License shall rest with the Operator of the location.
- (6) Failure to Obtain an Establishment License. Failure to obtain an Establishment License shall be considered unlicensed practice, unless otherwise exempted.
- (7) Number of Licenses Required for Two or More Establishments at the Same Address. Each Massage Therapy Establishment shall require a separate license. The Board will consider the following in determining whether two or more Massage Therapists delivering massage therapy services at the same address constitute one or more Massage Therapy Establishments:
- (a) The business structure of each Establishment, including but not limited to, overlap in areas of financing, management, or ownership;
 - (b) The resources shared by the Establishments, including, but not limited to, office space, staff, record storage and maintenance facilities; and
 - (c) The overall impression created by advertising, signage, stationery, and office layouts.
- (8) Exemptions.
- (a) A Massage Therapy Establishment license is not required for the following:
 - 1. Any healthcare facility licensed by the Massachusetts Department of Public Health;
 - 2. Board approved continuing education programs and student clinics operated by Board licensed Massage Schools;
 - 3. Locations at which Chair Massage is exclusively done; and
 - 4. Locations at which massage therapy is offered for not more than 24 hours in a one week period every six months at a public or charitable event with a primary purpose unrelated to massage.
 - (b) The Board may require any location at which massage therapy is provided to provide satisfactory evidence why it is eligible for the exemption from Massage Therapy Establishment licensure requirements. The burden of proving eligibility shall rest with the entity claiming the exemption.
- (9) Locations at Which the Delivery of Massage Therapy Is Prohibited.
- (a) Massage therapy shall not be delivered in adult entertainment venues;
 - (b) Massage therapy shall not be delivered in bars or nightclubs; and
 - (c) Regular massage therapy shall not be delivered on the streets or sidewalks.

6.04: Initial Application for an Establishment License

- (1) Application for a Massage Therapy Establishment license may be made by a sole proprietorship, partnership, corporation, limited liability company, or limited liability partnership. A Massage Therapy Establishment may be owned by an individual who is not a licensed Massage Therapist.
- (2) An application for a Massage Therapy Establishment License shall be:
- (a) made on forms prescribed by, and available from the Board;
 - (b) signed under the pains and penalties of perjury by the applicant or a person authorized to act on behalf of the applicant;
 - (c) accompanied by information concerning ownership and control that identifies: if owned by an individual, partnership or trust, the names and ownership.

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- (d) percentages of such individual, partners or trustees, except that, in the case of a limited partnership, such information shall be provided only for those limited partners owning 5% or more of the partnership interest and the general partner;
 - 1. if owned by a for profit corporation, the names of all stockholders who hold 5% or more of any class of the outstanding stock, specifying the percentage owned;
 - 2. if owned by a not for profit corporation, the names of the members and directors of the corporation; and
 - 3. the name and ownership percentage of each individual who directly or indirectly has any ownership interest of 5% or more, unless otherwise provided pursuant to 269 CMR 6.03(c)1. through 3.;
- (e) accompanied by any information required by the Board as part of the application, including, but not limited to, such additional information concerning ownership and control as the Board may require.
- (f) accompanied by the required nonrefundable fees;
- (g) accompanied by a floor plan that demonstrates compliance with the specifications necessary to meet the minimum standards required to meet the public health, safety and welfare set forth in 269 CMR 6.07(4); and
- (h) accompanied by evidence of suitability of ownership required by the Board as set forth in 269 CMR 6.04(4);

(3) The Board shall not approve an application for original or renewal license unless the Board has conducted an investigation of the proposed licensee(s) and/or owners of 5% or more and determined that each proposed licensee/owner is suitable and responsible to establish or maintain an Establishment.

(4) Evidence of Responsibility and Suitability.

- (a) In determining whether an applicant is responsible and suitable to be granted an Establishment license, the Board shall consider all relevant information including, but not limited to, the following:
 - 1. the proposed licensee's history of prior compliance with Massachusetts state and local laws governing operation of Massage Therapy Establishments and the practice of massage therapy. Assessment of this factor shall include, but not be limited to, the ability and willingness of the proposed licensee to take corrective action when notified by the authority having jurisdiction over any regulatory violations;
 - 2. the history of criminal conduct of the proposed licensee and owners, officers and directors as evidenced by criminal proceedings against those individuals which resulted in convictions, or guilty pleas, or pleas of *nolo contendere*, or admission of sufficient facts; and
 - 3. the proposed licensee's history of statutory and regulatory compliance for Massage Therapy Establishments in other jurisdictions or localities, including, but not limited to, proceedings in which the proposed licensee was involved which proposed or led to a limitation upon or a suspension, revocation, or refusal to grant or renew a Massage Therapy Establishment license.
- (b) If the Board receives information about an applicant for Establishment licensure that reasonably raises a question about whether that applicant is suitable to hold an Establishment license or lacks the responsibility to hold an Establishment license, the Board shall conduct a further inquiry into the relevant facts and circumstances before making a final decision on the application.
- (c) If the Board determines, in its discretion, that such steps are reasonably necessary, the Board may require the applicant to appear personally before the Board, and/or furnish additional written information to the extent permitted by applicable state or federal law.
- (d) The burden of demonstrating that the applicant possesses the responsibility required for Establishment licensure or is suitable for such licensure shall rest with the applicant.
- (e) Conduct which reasonably raises a question about whether an applicant possesses the responsibility required for Establishment licensure or is suitable for such licensure includes, but is not necessarily limited to, any of the following:
 - 1. Conviction of any criminal offense, other than a routine traffic violation;

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2. Disciplinary action taken against any professional license, registration or certification held by the applicant, or denial of licensure, by the applicable governmental authority of any state, territory or political subdivision of the United States or any foreign jurisdiction; or
 3. Conduct which is not described in 269 CMR but which nevertheless involves any of the following: failure to exercise proper regard for the applicant's own health, welfare or safety; failure to exercise proper regard for the health, welfare, safety or legal rights of another person; or fraud, deception or lack of honesty or truthfulness.
- (5) Inspection. The Board shall not approve an application for an original Establishment license or renewal of such license unless the Board has been afforded the opportunity to inspect the Establishment;
- (a) The applicant for an Establishment license must arrange for the inspection by the Board of the location seeking that license.
 - (b) In order to pass that inspection, the location must meet the minimum standards necessary to protect the public health, safety and welfare set forth in 269 CMR 6.07.
- (6) The Board may require and consider supplemental Establishment licensure application information and materials reasonably necessary to prevent insurance fraud, protect the health, safety, or welfare of the public, or for other valid regulatory purposes, including obtaining appropriate permits either prior to or as a condition subsequent to receiving an Establishment License.
- (7) The Board shall not issue an Establishment license based on an incomplete submission.
- (8) The Board may not issue an Establishment license if the Board's inspection reveals any violation of 269 CMR.
- (9) The Board will consider the evidence produced and make licensing decisions accordingly.

6.05: Renewal/Reinstatement

- (1) A Massage Therapy Establishment shall renew its license annually on or before the anniversary of the date of issue by submitting:
 - (a) a Massage Therapy Establishment renewal form as prescribed by the Board;
 - (b) complete information as required on the form, including changes in information since the original application or last renewal; and
 - (c) the nonrefundable renewal fee;
- (2) If a Massage Therapy Establishment's license has expired, the Massage Therapy Establishment may request that the Board reinstate its license. The authorized representatives may be required to personally appear before the Board to discuss the request for reinstatement. All requests for reinstatement must be in writing and shall include the following submissions:
 - (a) an application;
 - (b) a nonrefundable late fee; and
 - (c) any other pertinent information as required by the Board.

6.06: Record Retention

- (1) Required records shall be maintained in a manner that protects them from foreseeable damage or destruction.
 - (a) A Massage Therapy Establishment shall maintain required records on the premises for each active client.
 - (b) For a client who is younger than two years old when he or she receives massage therapy, records shall be maintained at least until the client reaches nine years of age.
 - (c) For clients who receive massage therapy on or after the client reaches two years of age, records shall be maintained for a minimum of seven years from the date of the last client encounter.
 - (d) Records stored electronically shall have an established system of regular back-up. Copies of the back-up records shall be maintained safely and securely.

6.07: Establishment Standards

(1) Compliance Officer. Each Multiple Massage Therapist Establishment shall designate a Licensed Massage Therapist who is responsible for the Massage Therapy Establishment's compliance with the laws of the Commonwealth and 269 CMR. Said Licensed Massage Therapist shall agree to be accessible to the Board and shall be responsible for cooperating with inspections or investigations conducted by the Board or its agents. Upon the request of the Board or its agents, the designated Licensed Massage Therapist shall provide immediate access to, and, if requested, copies of records maintained by the Massage Therapy Establishment. Such Massage Therapist shall be designated the Massage Therapy Establishment's compliance officer.

(2) Compliance Plan. Each Multiple Therapists Establishment shall implement and maintain a business compliance plan, that shall include, but not be limited to, standards, procedures, and policies that address the Massage Therapy Establishment's administrative and clinical protocols. The standards, procedures, and policies in the compliance plan shall include, but not be limited to, addressing the following issues:

- (a) A plan for ascertaining that all individuals providing massage therapy in the Massage Therapy Establishment have current, valid licenses;
- (b) A list of all Massage Therapists who practice at the Establishment;
- (c) The methods for training personnel regarding the Massage Therapy Establishment's standards, procedures, and policies, including appropriate right-to-know training, standard precautions to prevent communicable disease, proper documentation, clients' rights, and proper billing, on an ongoing basis;
- (d) The methods of maintaining and encouraging open lines of communication among the Massage Therapy Establishment's personnel;
- (e) The methods of maintaining and ensuring that equipment is inspected on an annual basis and is in safe operating condition;
- (f) The mechanisms used to report and respond to violations or complaints in an appropriate manner;
- (g) The implementation and maintenance of a schedule of the Establishment's compliance audits; and
- (h) In the event of the dissolution of the Massage Therapy Establishment or the departure of a licensed Massage Therapist from the Establishment, a plan for the dissolution of the Massage Therapy Establishment or for the departure of a practicing Massage Therapist, including, but not limited to, a plan for the storage and retrieval of clients' records.

(3) Personnel.

- (a) All Massage Therapists at an Establishment must hold a current Massage Therapist license from the Board, unless exempted by regulation or statute.
- (b) All Massage Therapists conducting massage at an Establishment shall be deemed the responsibility of the Operator of the Establishment.

All students who perform massage therapy at an Establishment must be supervised by a licensed Massage Therapist.

- (c) Massage Establishment Licenses are not transferable.
- (d) The use of aliases by Massage Therapists is prohibited.

(4) Interior Specifications.

- (a) The Establishment shall maintain a properly installed smoke detector and fire extinguisher.
- (b) Massage therapy may be conducted only in rooms, which are adequately lighted and ventilated, and so constructed that they can be kept clean. Floors, walls, ceilings and windows must be kept free of dust, soil, and other unclean substances.
- (c) Massage rooms shall have at least 65 square feet of floor space for all Establishments licensed after December 12, 2008.
- (d) Smoking is prohibited anywhere on the premises.
- (e) Every Establishment shall have accessible rest room facilities, including at least one toilet with toilet tissue provided, a hand sink with soap, disposable towels, single use linens, or air dryers provided.

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- (f) Every Establishment shall have hand-washing facilities for therapist use. Said facilities shall provide an adequate supply of hot water at a temperature that complies with 105 CMR 410.000: *Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II)*.
- (g) Hand washing facilities for Establishments shall be accessible and located no more than 50 feet from the treatment area.
- (h) Soap, disposable towels, single use linens or air dryers and adequate waste receptacles shall be provided at all times.
- (i) Toilet and hand washing facilities shall meet the requirements of the state plumbing code and shall be maintained in good repair, well-lighted and adequately ventilated, kept in a clean and sanitary condition and free of vermin.
- (j) Every Establishment shall provide for safe and unobstructed passage in the public and private areas of the premises.
- (k) Facilities shall be provided for the storage and removal of garbage, waste and refuse.
- (l) Any flammable or hazardous materials in the Establishment shall be stored in a safe manner in accordance with local and state regulations and Massachusetts General Laws.

(5) Equipment.

- (a) All equipment and supplies used in the performance of massage shall be maintained in a safe and clean manner. All tables and other cleanable surfaces that come into contact with clients shall be cleaned by the regular application of a cleanser and sanitized with an EPA registered sanitizer. "Regular application" as used in 269 CMR 6.07(5)(a) means a thorough cleansing of the massage table at least one time a day or whenever oils, lotions, or other substances visibly accumulate on client contact surfaces.
- (b) Each client shall receive a separate, clean covering for use on the massage table, such as sheets or towels.
- (c) All re-usable sheets, towels, and other cloth materials used in the conduct of a massage that come in contact with a client shall be laundered after each use.
- (d) Each Establishment shall maintain a sufficient supply of clean linens for the purpose of draping each client while the client is being massaged. As used in 269 CMR 6.07(5)(d) drapes means towels, gowns, or sheets.
- (e) If any latex-containing products are used, a sign shall be conspicuously posted so stating and all clients shall be advised that latex-containing products are used.

(6) Sanitary Conditions. The Massage Therapy Establishment shall be equipped with proper and adequate lighting and ventilation and kept in clean, orderly, and sanitary condition.

(7) Change in Massage Therapy Establishment Ownership. A change in Massage Therapy Establishment Ownership shall require application for and receipt of a new Massage Therapy Establishment license. A change in Massage Therapy Establishment ownership shall occur on the date that there is a transfer of a controlling interest in a Massage Therapy Establishment. When a change in ownership occurs, the Massage Therapy Establishment license shall expire, and the new owner must apply for a new license within 30 days.

(8) Change in Location. An Establishment license is valid only for the location stated on the license and is neither transferable nor assignable.

- (a) The Board must be notified in writing at least 30 days prior to a change in location of a Massage Therapy Establishment.
- (b) The license for the previous location will be cancelled and will be invalid as of the date of relocation.
- (c) The massage therapy compliance officer or Establishment owner shall file a new application for a Massage Therapy Establishment license that is subject to the Board's approval.
- (d) The Massage Therapy Establishment shall not operate at the new location until the Board has approved a Massage Therapy Establishment license for the new location.

(9) Required Displays. Current true copies of the following must be conspicuously displayed for the benefit of the public at each Massage Therapy Establishment. A licensee may redact his/her residential address from the posted license.

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- (a) The Massage Therapy Establishment's license;
- (b) The license of each massage therapist licensed by the Board who provides massage therapy services at the Massage Therapy Establishment; and
- (c) The most recent inspection report completed by the Board or its agents.

(10) Variances.

- (a) Variance Permitted. The Board may vary the application of any provision of 269 CMR 6.00 with respect to any particular case when, in its opinion, the enforcement thereof would create a manifest injustice. This may include practitioners who do not deliver massage at a specific location. Any variance granted by the Board shall be in writing.
- (b) Expiration, Modification, Suspension. Any variance or other modification authorized to be made by 269 CMR 6.07(10) may be subject to such qualification, revocation, suspension, or expiration as the Board expresses in its grant. A variance or other modification authorized to be made by 269 CMR 6.00 may otherwise be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard.

6.08: Inspections

- (1) The Board or its agent may inspect any Massage Therapy Establishment at any time during regular business hours, and without prior notice, for the purpose of verifying that the Massage Therapy Establishment, and its agents or employees are in compliance with all applicable requirements of M.G.L. c. 112, §§ 61 through 65, M.G.L. c. 112, §§ 227 through 236, and 269 CMR 6.00, and all other applicable federal, state and local laws or regulations.

6.09: Grounds for Disciplinary Action

- (1) Pursuant to M.G.L. c. 13, § 99(a)(v), the Board may, through the processes set out in M.G.L. c. 30A, M.G.L. c. 112, §§ 61 through 65, and 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*, take disciplinary action against any Massage Therapy Establishment. Grounds for disciplinary action shall include, but shall not be limited to:
 - (a) Violation of any provision of 269 CMR 6.00. by any person associated with the Establishment;
 - (b) Unlicensed practice at the Massage Therapy Establishment or arranged through the Massage Therapy Establishment. Unlicensed practice includes practice by an individual who:
 - 1. has never held a license to render care within the discipline in which he or she is acting;
 - 2. has let his or her license to practice lapse or expire;
 - 3. has had his or her license to practice suspended or revoked; or
 - 4. has voluntarily surrendered his or her license.
 - (c) Where a person having more than 5% ownership interest, company officer, principal, or any employee of, or person associated with, the Massage Therapy Establishment:
 - 1. violates or permits the violation of any of the grounds for disciplinary action under 269 CMR;
 - 2. interferes with or obstructs the Board or its agent in the performance of the Board's duties;
 - 3. is sanctioned for violations of state or federal laws regarding insurance fraud; or
 - 4. solicits, facilitates, or otherwise permits illicit behavior.

REGULATORY AUTHORITY:

269 CMR 6.00: M.G.L. c. 13, § 99; c. 112, § 234.