

269 CMR 6.00: FACILITY LICENSURE

Section

- 6.01: Scope and Purpose
- 6.02: Definitions [Reserved]
- 6.03: Establishment Licensure Required
- 6.04: Initial Application for an Establishment License
- 6.05: Renewal/Reinstatement
- 6.06: Record Retention
- 6.07: Establishment Standards
- 6.08: Inspections
- 6.09: Grounds for Disciplinary Action

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 [Reserved]

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). A Massage Therapist, including those providing out of office massage therapy, must work under an Establishment license.

(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. Any physical space dedicated to massage services must be covered by either a Multiple Therapists Establishment license or a Solo Establishment license.

(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 and that Massage Therapist shall serve as the Compliance Officer of the Solo Establishment. A Solo Establishment license is required for one Massage Therapist to offer out of office massage therapy services.

(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.

(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, unless each Massage Therapist operates as a separate business entity as set forth in 269 CMR 6.03(7). A Multiple Establishment license is required for two or more Massage Therapists to offer out of office massage therapy services as part of the same business entity.

(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.

## 6.03: continued

(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. A Massage Therapist employed by and working at any healthcare facility licensed by the Massachusetts Department of Public Health (For example, hospital, nursing home, medical clinic, *etc.*);
  - 2. Board-approved continuing education programs as described in 269 CMR 4.00: *Continuing Education*;
  - 3. Student clinics operated by Board licensed Massage Schools;
  - 4. Locations at which Chair Massage is exclusively done; and
  - 5. Locations at which massage therapy is offered for not more than 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) Massage therapy shall not be delivered to unclad clients 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;
- (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 6.00;
- (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;

6.04: continued

(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(5);

(3) If the Massage Establishment provides only out-of-office massage therapy services, the Establishment is not required to provide a floor plan as stated in 269 CMR 6.04(2)(g), but shall provide to the Board the address where records and equipment used by the Establishment are located. The location provided to the Board may be subject to inspections by the Board to ensure compliance with Board regulations.

(4) 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.

(5) 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 the equivalency of 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 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 limited to, any of the following:

1. Conviction of, or admission to sufficient facts to, any criminal offense, other than a routine traffic violation;
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.

6.04: continued

(6) 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. The Board may waive the initial inspection for a Massage Establishment that will provide only out-of-office massage therapy and will not operate a Mobile Massage Unit.

(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.

(7) 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.

(8) The Board shall not issue an Establishment license based on an incomplete submission.

(9) The Board may not issue an Establishment license if the Board's inspection reveals any violation of 269 CMR.

(10) 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 for each client.
- (b) Records shall be maintained for seven years from the date of the last client encounter, unless the client is a minor at the time of services.
- (c) If a client is a minor on the date of the last visit, then the records must be maintained for a minimum period of either seven years from the date of the last client encounter or until the client reaches the age of eighteen, whichever is the longer retention period.
- (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.
- (e) Except as permitted under 269 CMR 6.06(1)(f) and (g), client records shall be kept confidential to the extent required by state or federal law.
- (f) Upon the written request of the client, or the client's authorized legal representative, the Massage Therapy Establishment shall furnish a complete copy of the client's records to the party authorized to receive it. A reasonable fee may be charged for this service.
- (g) The Massage Therapy Establishment shall furnish to the Board or its duly authorized representative a complete copy of a client record upon written request promptly and in no instance more than 30 days after the date of the request. No fee may be charged for this service.

6.07: Establishment Standards

(1) Compliance Officer. Each 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. The Board may require a Licensed Massage Therapist to appear personally before the Board or its agents prior to being approved to serve or continuing to serve as 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 currently practice or have practiced at the Establishment and a list of all current and past employees of the Establishment with start and end dates for the past seven years;
- (c) A signature and initials log to assist in identifying signature and/or initials in records. The log shall include the employee's printed name, signature and their initials;
- (d) 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;
- (e) The methods of maintaining and encouraging open lines of communication among the Massage Therapy Establishment's personnel;
- (f) The methods of maintaining and ensuring that equipment is inspected on an annual basis and is in safe operating condition;
- (g) The mechanisms used to report and respond to violations or complaints in an appropriate manner and a log of any complaints received and the Establishment's response;
- (h) The implementation and maintenance of a schedule of the Establishment's compliance audits; and
- (i) 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 and Compliance Officer of the Establishment.
- (c) All students who perform massage therapy at an Establishment must be working and supervised as part of Board-approved school program.
- (d) Massage Establishment Licenses are not transferable.
- (e) The use of aliases by Massage Therapists is prohibited.
- (f) Each Establishment must maintain a list of current workers and past workers for their last seven years and their job duties, which shall be provided to the Board or its agent upon request.

(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.

6.07: continued

- (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.
- (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 150 feet from the entrance door to 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.
- (m) The Board may waive the requirements of 269 CMR 6.07(4)(a) to (l) for a Massage Therapy Establishment that will provide only out-of-office massage services and will not operate a Mobile Massage Unit.

(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 after each client and 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, durable, Opaque covering for the full tabletop of 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 drapes for 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. A Massage Therapist shall not provide massage services, including out-of-office services, in an unsanitary location.

(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 no less than 30 days before taking ownership.

(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.

6.07: continued

(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) Change in Compliance Officer. A change in Compliance Officer requires notification to the Board from existing Compliance Officer with effective dates within ten days except in extraordinary circumstances.

(10) Required Displays. Current true copies of the following must be conspicuously displayed for the benefit of the public within the public section (not treatment room) at each Massage Therapy Establishment. A licensee may redact his/her residential address from the posted license.

(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.

(d) Documents listed in 269 CMR 6.07(10)(a) through (c) shall be displayed in a manner visible to client when out-of-office services are provided.

(11) 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 deliver only out-of-office massage therapy services. 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(11) 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, including the location of record for Establishments offering only out-of-office services, 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 235, 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), 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:

6.09: continued

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.