TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 82 LICENSURE OF MASSAGE THERAPY ESTABLISHMENTS

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SUBJECT PAGE

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 82 LICENSURE OF MASSAGE THERAPY ESTABLISHMENTS

82-001 SCOPE AND AUTHORITY: These regulations ~~apply to~~ govern the ~~licensing procedures for~~credentialing of massage therapy establishments ~~as defined by~~under Neb. Rev. Stat. §§~~71-1,278~~38-1701 to ~~71-1,282,~~38-1715 and the Uniform ~~Licensing Law.~~Credentialing Act (UCA).

82-002 DEFINITIONS

1. Act means Neb. Rev. Stat. §§~~71-1,278~~§§38-1701 to ~~71-1,282~~38-1715, known as the ~~Practice of~~ Massage Therapy Practice Act.

2. Attest/ or Attestation means that the individual declares that all statements on the application/~~petition~~ are true and complete.

3. Board means the Board of Massage Therapy.

~~Client~~

4. Business/Establishment means ~~any~~ person ~~with whom the massage therapist has an agreement to provide~~engaged in providing massage therapy services.

5. Client means a person receiving health or health-related services and includes a patient, client, resident, customer, or person with a similar designation.

~~Completed~~

6. Complete Application means an application ~~with~~ that contains all of the information requested on the application ~~filled in, the signatures of the applicant,~~, with attestation to its truth and completeness, and that is submitted with the required fees and all required documentation ~~submitted~~.

7. Confidential information means information protected as privileged under applicable law.

8. Credential means a license, certificate, or registration.

9. Department means the Division of Public Health of the Department of Health and Human Services.~~Department of Health and Human Services Regulation and Licensure of the State of Nebraska.~~

~~Director means the Director of Regulation and Licensure or the Chief Medical Officer if one has been appointed pursuant to Neb. Rev. Stat. § 81-3201, for performance of the duties set out in that statute.~~

~~Division means the Credentialing Division of the Department of Health and Human Services Regulation and Licensure of the State of Nebraska.~~

10. Director means the Director of Public Health of the Division of Public Health or his or her designee.

11. Implement means an electrical or mechanical tool, instrument, or a similar device. Examples are brushes, electrical massagers, hot stones, shells, hand tools, and any tool that comes in contact with the client.

12. License means an authorization issued by the Department to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization.

13. Massage Therapist means a person licensed to practice Massage Therapy.

14. Massage Therapy Establishment means any duly licensed place in which a massage therapist practices his/her profession of massage therapy. This does not include:
    a. On-site massage performed at the location of the client;
    b. Stand-alone devices, such as chairs, which are operated by the customer; or
    c. Establishments located within the confines of a hospital, nursing home, or other similar establishment or facility licensed or otherwise regulated by the department.

15. NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 82.

16. Successfully Completed Self Evaluation Inspection or an On-site Inspection means received an affirmative rating on each standard specified in 172 NAC 82-~~008~~004 -through 172 NAC 82-~~010~~-005 during an inspection.

~~Verified means sworn to before a notary public or equivalent title.~~

82-003 MASSAGE THERAPY ESTABLISHMENT LICENSE: Any person who wishes to operate a massage therapy establishment must obtain a license. ~~The criteria for issuance of a license and the documentation required by the Department are set forth below.~~

82-003.01 ~~Initial Licensure~~

~~82-003.01A Requirements: An applicant for a license~~ Qualifications: To receive a credential to operate a massage therapy establishment, an individual must meet the following qualifications:

1. Employ a ~~duly licensed~~ massage therapist(s~~)~~) who holds an active license;

2. Have adequate space for providing massage therapy services;

3. ~~Provide~~ Have restroom facilities;

4. ~~Successfully complete~~ Complete a self-evaluation inspection ~~as specified in~~report showing compliance with 172-NAC 82, section ~~005~~004.~~NAC 82-007.~~

~~82-003.01B Application Process: The following must be submitted to the Department:~~

~~1. A complete application on Attachment A attached to these regulations and incorporated by this reference or an alternate form which contains the same information;~~

~~2. Attestation by the applicant:~~

~~a. That s/he has not operated this establishment in Nebraska prior to the application for a license; or~~

~~b. To the actual number of days operated this establishment in Nebraska prior to the application for a license;~~

~~3. A floor plan of the proposed establishment, including:~~

~~a. Establishment square footage;~~

~~b. Restroom(s) location;~~

~~c. Connecting buildings/living space;~~

~~4. A copy of the completed self evaluation inspection report; and~~

~~5. The required license fee.~~

~~82-003.01C Pro-rated Fee: When a credential will expire within 180 days after its initial issuance date, the Department will collect $25 and the credential will be valid until the next subsequent renewal date.~~

~~82-003.01D Administrative Penalty/Other Action: An individual who operates an establishment prior to issuance of a credential is subject to assessment of an Administrative Penalty pursuant to 172-012, or such other action as provided in the statutes and regulations governing the credential.~~

~~82-003.01E Department Review: The Department will review the completed application and supporting documentation within 150 days. If the application meets the licensing requirements the Department will issue a license. Within 90 days following issuance of the license, the Department will conduct an on-site inspection for the purpose of assuring compliance with the inspection requirements set out in 172 NAC 82-007.~~

~~82-003.02 Change in Owner, Name or Location: Any establishment may apply for a change in its license, due to a change in owner, change in name, or a change in location. Each establishment license issued will be in effect solely for the owner or owners and premises named thereon and will lapse automatically upon any change or owner or change of location.~~

~~The licensee must notify the Department at least 30 days before any change of owner or address, and at least 60 days prior to closure, except in emergency circumstances as determined by the Department. The criteria for issuance of a license and the documentation required by the Department and the Board are set forth below:~~

~~82-003.02A Change in Owner:~~

~~1. Application Process: The applicant must submit to the Department:~~

~~a. A complete application on Attachment A attached to these regulations and incorporated by this reference or an alternate form which contains the same information at least 15 days before the proposed change of owner of the establishment. Only applications which are complete will be considered;~~

~~b. A list of the owner, corporate owners, principal stockholders, and partners; and~~

82-003.02 Application: To apply for a credential to operate a massage therapy establishment, a business must submit a complete application to the Department. A complete application includes all required documentation, the required fee, and a written application. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. Written Application:
   - a. The full name and address of the business;
   - b. The full name and address of the owner of the business;
   - c. The name of each person in control of the business;
   - d. The Social Security Number of the business if the applicant is a sole proprietorship;
   - e. Telephone number including area code (optional);
   - f. E-Mail Address (optional);
   - g. Fax Number (optional);
   - h. Signature of:
     - (1) The owner or owners if the applicant is a sole proprietorship, a partnership, or a limited liability company that has only one member;
     - (2) Two of its members if the applicant is a limited liability company that has more than one member;
     - (3) Two of its officers if the applicant is a corporation;
     - (4) The head of the governmental unit having jurisdiction over the business if the applicant is a governmental unit; or
     - (5) If the applicant is not an entity described in items (1) through (4), the owner or owners or, if there is no owner, the chief executive officer or comparable official;
   - i. Practice Before Application: The applicant must state:
     - (1) That s/he has not operated this establishment in Nebraska before submitting the application; or
     - (2) If s/he has operated this establishment in Nebraska before submitting the application, the actual number of days practiced in Nebraska before submitting the application for a credential and the name and location of practice;
   - j. Attestation: The applicant must attest that:
     - (1) S/he has read the application or has had the application read to him/her; and
     - (2) All statements on the application are true and complete.

2. Documentation: The applicant must submit the following documentation with the application:

   - a. Employment of a duly licensed massage therapist(s);
   - b. Adequate space for providing massage therapy services;

c. ~~The required fee for a reissued license.~~ Restroom facilities;

~~2.~~ d. A floor plan of the proposed establishment, including:
(1) Establishment square footage;
(2) Restroom(s) location; and
(3) Connecting buildings/living space; and

e. A copy of the completed self evaluation inspection report showing compliance with 172 NAC 82-004; and

3. Fee: The applicant must submit the required license fee along with the application and all required documentation.

a. Prorated Fee: When a credential will expire within 180 days after its initial issuance date and the initial credentialing fee is $25 or more, the Department will collect $25 or one-fourth of the initial credentialing fee, whichever is greater, for the initial credential, and the credential will be valid until the next subsequent renewal date.

82-003.03 Department Review: The Department will act within 150 days upon all completed applications ~~and will re-issue the license with the new owner identified on the license~~for initial credentialing. If the application meets the licensing requirements the Department will issue a license. Within 90 days following issuance of the license, the Department will conduct an on-site inspection for the purpose of assuring compliance with the inspection requirements set out in 172 NAC 82-00~~7~~4.

~~82-003.02B Change in Establishment Name:~~

~~1. Application Process: The applicant must submit to the Department:~~

~~a. A complete application on Attachment A attached to these regulations and incorporated by this reference or an alternate form which contains the same information at least 15 days before the proposed name change of the Establishment. Only applications which are complete will be considered;~~

~~b. Indication of the new name of the establishment; and~~

~~c. The required fee for a reissued license.~~

~~2. Department Review: The Department will act within 150 days upon all completed applications and will re-issue the license with the change of establishment name identified on the license.~~

~~82-003.02C Change in Location:~~

~~1. Application Process: The applicant must meet the requirements as set forth in 172 NAC 82-003.01.~~

~~a. If the anticipated opening date changes, the owner of the establishment must inform the assigned inspector of the new opening date. An establishment must not provide any type of massage therapy services prior to licensure.~~

~~82-003.03 Procedures for Closing an Establishment: When any establishment is permanently closed, the holder of the establishment license must notify the Department in writing at least 60 days prior to closure and surrender the establishment license no later than 15 days following closure.~~

82-004 PROCEDURES FOR RENEWAL OF A LICENSE: All establishment licenses issued by the Department under the Act and these regulations expire on November 1 of each odd-numbered year.

82-004.01 Renewal Process: Any licensee who wishes to renew his/her establishment license must:

1. Pay the renewal fee as prescribed in 172 NAC 81-013; and
2. Cause to be submitted to the Department:
   a. The renewal notice; and
   b. The renewal fee.

82-004.02 First Notice: At least 30 days before November 1 of each odd-numbered year, the Department will send a renewal notice by means of regular mail to each licensee at the licensee's last place of operation as noted in the records of the Department.

82-004.02A The renewal notice must specify:

1. The name of the licensee;
2. The licensee's last known address of record;
3. The license number;
4. The expiration date of the license; and
5. The renewal fee as prescribed in 172 NAC 82-013.

82-004.02B The licensee must apply for renewal by submitting to the Department:

1. The renewal notice; and
2. The renewal fee.

82-004.03 Second Notice: The Department must send to each licensee who fails to renew his/her establishment license in response to the first notice, a second notice of renewal in accordance with the requirements of 172 NAC 82-004.02 that specifies:

1. That the licensee failed to pay the renewal fee;
2. That the license has expired;
3. That the Department will suspend action for 30 days following the date of expiration;
4. That upon receipt of the renewal fee, together with an additional late fee of $25, no order of revocation will be entered; and
5. That upon failure to receive $25 in addition to the regular renewal fee, the license will be revoked as specified in 172 NAC 82-005.

82-004.03A The licensee must apply for renewal by submitting to the Department:

1. The renewal notice;
2. Attestation by the licensee:
   a. That s/he has not operated the establishment in Nebraska since the expiration of its license; or
   b. To the actual number of days s/he operated the establishment in Nebraska since the expiration of its license; and
3. The renewal fee and the additional late fee of $25.

82-004.04 When any licensee fails, within 30 days of expiration of a license, to pay the renewal fee and/or to pay an additional late fee of $25, the Department will automatically revoke the license without further notice of hearing and makes proper record of the revocation.

82-004.05 The Department may refuse to renew a license for falsification of any information submitted for renewal of a license. The refusal must be made pursuant to Neb. Rev. Stat. §§ 71-149 to 71-155 and 184 NAC 1, Rules of Practice and Procedure of the Department.

82-004.06 Administrative Penalty/Other Action: An individual who operates an establishment after the expiration of a credential is subject to assessment of an Administrative Penalty pursuant to 172 NAC 82-012, or such other action as provided in the statutes and regulations governing the credential.

82-005 CREDENTIAL REVOCATION FOR FAILURE TO MEET RENEWAL REQUIREMENTS: The Department may revoke a credential when the credential holder fails to meet the renewal requirements.

82-005.01 Revocation for Nonpayment of Renewal Fee or Late fee within Thirty Days of Expiration of the Credential

82-005.01A When a credential holder fails to pay the required renewal fee and/or to pay a late fee of $25 within 30 days of its expiration, the Department automatically revokes the credential without further notice or hearing.

82-005.01A1 A post revocation notice will be sent which will specify that:

1. The credential holder was given a first and final notice of renewal requirements and the respective dates for these notices;
2. The credential holder failed to renew the credential;
3. The Department has revoked the credential; and
4. The credential holder has a right to request reinstatement of the credential.

82-006 RE-CREDENTIALING: This section applies to individuals previously issued a Nebraska credential who have lost the legal authority to operate an establishment in total or in part and who seek the authority to return to operation in Nebraska with a valid Nebraska credential.

82-006.01 Eligibility

82-006.01A An establishment whose credential has been previously:

1. Revoked for failure to meet the renewal requirements; or
2. Suspended, limited, or revoked for disciplinary reasons;

may request, at any time, to be re-credentialed and re-authorized to operate under the credential, in accord with these regulations.

82-006.01B An establishment whose credential has been revoked for disciplinary reasons may apply for reinstatement only after a period of two years has elapsed from the date of revocation.

82-006.01C An establishment which operates prior to re-credentialing is subject to:

1. Assessment of an Administrative Penalty pursuant to 172 NAC 82-012, and
2. Limitation or other sanction on the credential, or denial of the request to be re-credentialed and re-authorized to operate under the credential, and referral for prosecution for uncredentialed operation, as provided in the statutes and regulations governing the credential.

82-006.02 Requirements for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: An applicant for reinstatement who applies not more than one year following revocation for failure to meet renewal requirements must:

1. Meet the renewal requirements, including:
   a. Paying the renewal fee, the late fee of $35 and any other applicable fees; and
2. Attest:
   a. That s/he has not operated the establishment in Nebraska since it

last held an active credential; or

b. To the actual number of days s/he operated the establishment if the applicant has operated in Nebraska since it last held an active credential.

82-006.03 Procedures for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: To reinstate a credential not more than one year following revocation for failure to meet renewal requirements, the applicant must submit the following to the Department:

1. A written application which contains the following information about the applicant:
   a. Name; and
   b. Address;
2. The renewal fee, the late fee of $35, and any other applicable fees;
3. Attestation by the applicant:
   a. That s/he has not operated the establishment in Nebraska since it last held an active credential; or
   b. To the actual number of days operated if the applicant has operated the establishment in Nebraska since it last held an active credential.
      (1) If an applicant has operated the establishment after its credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 82-012 in which case a notice and opportunity for hearing will be sent to the applicant.
      (2) If an applicant has operated the establishment after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 82-006.03B.

The Department will forward the application to the Board for its recommendation pursuant to Neb. Rev. Stat. § 71-110 (5).

82-006.03A The Board's recommendation to the Department may be to:

1. Reinstate the credential;
2. Reinstate the credential with terms, conditions, or restrictions; or
3. Deny reinstatement.

82-006.03B Upon receipt of the Board's recommendation, the Department will, within 150 days, send to the applicant a written notice of the Department's response. The Department may:

1. Reinstate the credential. An Administrative Penalty may be assessed pursuant to 172 NAC 82-012 if warranted;
2. If the Department determines that the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. §§ 71-147 or 71-148, the Department may:
   a. Reinstate the credential with terms, conditions or restrictions. In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920. An Administrative Penalty may be assessed pursuant to 172 NAC 82-012 if warranted; or
   b. Deny reinstatement. In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the

Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920.

82-006.04 Reapplication After One Year of Revocation for Non-Payment of the Renewal Fee: A massage therapy establishment whose license has been revoked for non-payment of renewal fees may reapply to the Department for licensure after one year of revocation as set forth in 172 NAC 82-003.01.

82-006.05 Reapplication After Disciplinary Action: A massage therapy establishment whose license has been limited, suspended, or revoked for disciplinary action may reapply to the Department for licensure as set forth in 172 NAC 82-003.01.

82-006.06 Voluntarily Surrendered License:

1. Credentials voluntarily surrendered or limited for an indefinite period of time pursuant to Neb. Rev. Stat. §71-161.11 may be restored at the discretion of the Department.
2. Credentials voluntarily surrendered or limited for a specific and definite period of time as agreed to between the holder and Department pursuant to Neb. Rev. Stat. § 71-161.11 will be automatically restored at the expiration of that period of time.
   a. If an individual has operated the establishment while his/her credential was voluntarily surrendered for a specific and definite period of time, the Department may assess an Administrative Penalty pursuant to 172 NAC 82-012.
3. Credentials that are voluntarily surrendered or limited permanently pursuant to Neb. Rev. Stat. § 71-161.11 will not be restored.

82-007 MASSAGE THERAPY ESTABLISHMENT INSPECTIONS: All massage therapy establishments will receive an initial and thereafter, a routine inspection. The criteria for inspection required by the Department and the Board is set forth below:

82-007.01 Initial Inspection – Purpose and Review Time: Pursuant to 172 NAC 82-003.01, the applicant must conduct a self-evaluation inspection prior to the proposed opening date of the establishment.

The Department will conduct an on-site unannounced inspection within 90 days following issuance of an initial establishment license.

1. The inspections are limited to the following purposes:
   a. To ascertain whether all massage therapists working on the premises are properly licensed;
   b. To ascertain whether the equipment and sanitation requirements in 172 NAC 82-008 are met;
   c. To ascertain whether the physical structure requirements in 172 NAC 82-008 are met; and
   d. To ascertain whether the duties of the massage therapist and manager and/or owner in 172 NAC 82-009 and 82-010 are met.

82-007.02 Initial Department Inspection – Rating:

82-007.02A The inspector will issue a rating of "Satisfactory" on all initial inspections when the establishment receives an overall inspection rating of 100%.

82-007.02B The inspector will issue a rating of "Unsatisfactory" on all initial inspections when the establishment receives an overall inspection rating of less than 100%.

1. When an establishment receives a rating of "Unsatisfactory", the Department will forward to the establishment Owner/Board of Directors, written notification that the establishment license has been placed on a probationary status until all

~~deficiencies cited during the inspection are corrected. The establishment has 15 days from the date of the initial inspection to correct the deficiencies.~~

~~2. The inspector will conduct a re-inspection of the establishment within 15 days of receipt of verification that all corrections cited on the inspection report are corrected.~~

~~a. If the establishment meets the requirements at the time of re-inspection, the inspector will change the "Unsatisfactory" rating and enter a "Satisfactory" rating.~~

~~b. If the establishment receives an "Unsatisfactory" rating, after the re-inspection, the Department will, within 10 days of the completion of the re-inspection, give notice to the establishment that the license is suspended. Such notice will be in written form and will:~~

~~(1) State that the establishment license is suspended;~~
~~(2) State the reasons for the establishment license suspension;~~
~~(3) State that the establishment license suspension~~

82-003.04 Denial of Initial Credential: If an applicant for an initial credential to operate a business does not meet all of the requirements for the credential or if the applicant is found to have done any of the grounds listed in 172 NAC 82-010, the Department will deny issuance of a credential. To deny a credential, the Department will notify the applicant in writing of the denial and the reasons for the determination. The denial will become final 30 days after ~~the~~ mailing ~~of~~ the notice ~~of suspension~~ unless the ~~Owner/Board of Directors submits a written request for a hearing~~applicant, within ~~such~~the 30-~~-~~day period~~; and~~

~~(4) Be sent to the Owner/Board of Directors by certified mail.~~

~~c. Upon receipt of a written request for a hearing, the Owner/Board of Directors will be given a hearing before the Department. The Owner/Board of Directors must make a written request to the Department for a hearing.~~, requests a hearing in writing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure~~ for the Department.~~.

82-003.05 Withdrawn Applications: An applicant for a business who withdraws his/her application or whose application is rejected by the Department will be allowed the return of his/her fee, except for a $25 administrative fee to be retained by the Department.

~~d. The Department's decision regarding the suspension of the license will become final 30 days after a copy of the decision is mailed to the Owner/Board of Directors, unless the Owner/Board of Directors appeals the decision.~~

~~82-007.02B3 When an establishment license is suspended for failure of an initial inspection and if the Owner/Board of Directors wishes to operate the establishment, the applicant must reapply to the Department for a license to operate as specified in~~
82-03.06 Operating a Business without a Credential: The Department may assess an administrative penalty or take such other action as provided in the statutes and regulations governing the credential when evidence exists of operating a business prior to issuance of a credential. See 172 NAC 82-~~003.~~013.

~~82-007.02B4 Failure to permit an inspection for the purposes set out in 172 NAC 82-007.01 and 82-007.03 is grounds for denial of an initial massage therapy establishment license or for suspension of a massage therapy establishment's existing license~~

82- 003.07 Confidentiality: Social Security Numbers obtained under this section are not public information but may be shared by the Department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to this information.

~~82-007.03 Routine Inspection – Purpose and Review Time: The Board or its agent will conduct an on-site inspection of each massage therapy establishment.~~

82-003.08 Address Information: Each credential holder must notify the Department of any change to the address of record.

82-003.08 License Not Transferable: A license is issued only for the premises named in the application and is not transferable or assignable. A change of owner or location terminates the license.

~~82-007.03A The inspection will be unannounced and it~~

82-004 INSPECTIONS: All massage therapy establishments will receive an initial and thereafter, a routine inspection. The criteria for inspection required by the Board and Department is set forth below:

1. Initial Self-Evaluation Inspection: Under 172 NAC 82-003.01, the applicant must conduct a self-evaluation inspection prior to the proposed opening date of the establishment.

2. Initial On-Site Inspection: The Board and/or Department will conduct an on-site inspection within 90 days following issuance of an initial establishment license. The inspections are limited to ascertaining whether:

   a. All massage therapists working on the premises are properly licensed;
   b. The equipment and sanitation requirements in 172 NAC 82-004 are met;
   c. The physical structure requirements in 172 NAC 82-004 are met; and
   d. The duties of the massage therapist and manager and/or owner in 172 NAC 82-004 and 82-006 are met.

3. Routine Inspection: A routine inspection will be conducted to assure compliance with 172 NAC 82-004.01 and 82-004.02. The inspection will be conducted by the Board and/or Department.

   a. The inspection will occur at least every 4 years.

~~82-007.03B~~ b. The inspection is limited to ~~the following purposes:~~
~~1. To ascertain~~ascertaining whether ~~all~~:

   (1) All massage therapists working on the premises are properly licensed;

~~2. To ascertain whether the~~ (2) The equipment and sanitation requirements in 172 NAC 82-~~008~~004 are met;

~~3. To ascertain whether the~~ (3) The physical structure requirements in 172 NAC 82-~~008~~004 are met; and

~~4. To ascertain whether the~~ (4) The duties of the massage therapist and manager and/or owner in 172 NAC 82-~~009~~004 and 82-~~010~~006 are met.

~~82-007.03C The inspector will record the inspection results on a form provided by the Department.~~

~~82-007.04 Routine Inspection – Rating~~

~~82-007.04A The inspector will issue a rating of "Satisfactory" on all routine inspections when the establishment receives an overall inspection rating of 100%.~~

~~82-007.04B The inspector will issue a rating of "Unsatisfactory" on all routine inspections when the establishment receives an overall inspection rating of less than 100%.~~

~~1. When an establishment receives a rating of "Unsatisfactory", the Department will forward to the establishment Owner/Board of Directors, written notification that the establishment license has been placed on a probationary status until all deficiencies cited during the inspection are corrected. The establishment has 30 days from the date of the initial inspection to correct the deficiencies.~~

~~2. The inspector will conduct a re-inspection of the establishment within 15 days of receipt of verification that all corrections cited on the inspection report are corrected.~~

~~a. If the establishment meets the requirements at the time of re-inspection, the inspector will change the "Unsatisfactory" rating and enter a "Satisfactory" rating.~~

~~b. If the establishment receives an "Unsatisfactory" rating, after the re-inspection, the Department will, within 10 days of the completion of the re-inspection, give notice to the establishment that the license is suspended. Such notice will be in written form and will:~~

~~(1) State that the establishment license is suspended;~~

~~(2) State the reasons for the establishment license suspension;~~

~~(3) State that the establishment license suspension will become final 30 days after the mailing of the notice of suspension unless the Owner/Board of Directors submits a written request for a hearing within such 30 day period; and~~

~~(4) Be sent to the Owner/Board of Directors by certified mail.~~

~~c. Upon receipt of a written request for a hearing, the Owner/Board of Directors will be given a hearing before the Department. The Owner/Board of Directors must make a written request to the Department for an hearing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, Rules of Practice and Procedure for the Department.~~

~~d. The Department's decision regarding the suspension of the license will become final 30 days after a copy of the decision is mailed to the~~

Owner/Board of Directors, unless the Owner/Board of Directors appeals the decision.

82-007.04B3 When an establishment license is suspended for failure of a routine inspection, the establishment must reapply to the Department for a license to operate as specified in 172 NAC 82-003.

82-007.05 Failure to permit an inspection for the purposes set out in 172 NAC 82-007.01 and 82-007.03 is grounds for denial of an initial massage therapy establishment license or for suspension of a massage therapy establishment's existing license.

82-008 STRUCTURE, EQUIPMENT AND SANITATION82-004.01 Structure, Equipment, and Sanitation: The massage therapy establishment must have the equipment necessary to provide massage therapy. This equipment must be clean, well-maintained, and in good repair.

82-008.01 Personal Cleanliness: The owner must ensure that the following procedures for personal cleanliness are observed in the establishment:

1 Attire: Every massage therapist, while engaged in serving the public must be clean in person and in attire, and free from any communicable disease, which may be communicated in the usual course of practice.

2. Licensee Hand Cleanliness: Every massage therapist must:

a. Wash his/her hands thoroughly with soap and water or instant hand sanitizer, before serving each client;

3. Physical Structure: A massage therapy establishment must have a clearly identifiable location; each massage therapy establishment can be free-standing or part of an existing structure. The owner must ensure that the establishment is well lighted, well ventilated and kept in a clean, orderly, and sanitary condition at all times.

a. The establishment must not have the same entrance as or direct access to a massage therapy school. The entrance into the establishment used by the general public, must lead directly from the outside to the establishment, except that an establishment may have its entrance open from a public area such as a foyer.

a. All rooms must have adequate lighting and ventilation and must be free of offensive odors and maintained at a comfortable temperature;.

c. Each client receiving a massage must have said massage performed in a private location.

d. No door or doors to any rooms in a massage therapy establishment will be locked, barricaded, or blocked in any manner while simultaneously occupied by a massage therapy establishment employee and client.

4. b. Each establishment must have an area that can be screened from public view for customers requesting privacy; and

c. Each room where massage therapy services are provided must have an EPA registered disinfectant that is proven effective against HIV-1, or Hepatitis B, or is a Tuberculocidal, and have liquid soap and water or an instant sanitizer;

2. Water: The owner must ensure that the establishment has a supply of hot and cold running water in sufficient quantities to conduct business in the establishment in a sanitary manner~~, specifically that:~~.

~~a. At least a 5 gallon capacity hot water heater will be required if only a facility for hand washing is available and is to be used in the establishment.~~

~~b. At least a 20 gallon capacity hot water heater will be required if a facility for showers and other hydrotherapy activities is available and is to be used in the establishment.~~

~~Any location licensed prior to the May 22, 2002 is not be required to comply with this requirement, except that an establishment without a sink must use a germicide or instant hand sanitizer wash.~~

~~5. Waste Water: The owner must ensure that waste water is disposed of through a system that carries it away from buildings and is either:~~

~~a. A public sewer connection; or~~

~~b. A private disposal system that complies with state law, city or village ordinances, and local health authority requirements.~~

~~6.~~3. Safety: The owner must maintain the establishment in a safe condition. S/he must ensure that:

a. Floors, floor coverings, walls, woodwork, ceilings, furniture, fixtures and equipment are clean and ~~in good repair~~safe;

b. Floors are free of unsafe objects and slippery or uneven surfaces;

c. Doors, stairways, passageways, aisles, or other means of exit provide safe and adequate access;

d. Electrical appliances or apparatus are clean and have no worn or bare wiring to avoid fires, shocks, and electrocution; ~~and~~

e. Water or product spills on the floor are removed immediately and floor dried to avoid falls~~.~~; and

f. ~~7~~If candles are used in the establishment, the candle(s) must be on a surface where they are securely supported on a substantial noncombustible base and the candle flame is protected.

4. Restroom Facilities: A restroom must be available on the premise. ~~The owner must keep restrooms clean, orderly, and sanitary at all times. The owner must ensure that:~~

~~a. Chemicals are not stored in the restroom, except in a locked cabinet;~~

~~b. The following are available at all times:~~

~~(1) Suitable holders for toilet paper;~~

~~(2) An adequate supply of toilet paper;~~

~~(3) A clean toilet and sink;~~

~~(4) A clean waste receptacle;~~

~~(5) Hot and cold running water;~~
~~(6) Soap or instant hand sanitizer;~~
~~(7) Clean towels or disposable towels for clients; and~~
~~(8) Appropriate, clean towel holders.~~

~~Any location licensed prior to the May 22, 2002 is not be required to comply with this requirement, except that an establishment without a sink must use a germicide or instant hand sanitizer wash.~~

~~8. Laundry Facilities: If the establishment has a laundry facility, the owner must ensure the laundry facility:~~
~~a. Is not in an area open to the public;~~
~~b. Is clean; and~~
~~c. Has a closed receptacle in which to store soiled towels.~~

~~9~~5. Massage Tables and Chairs

~~a. Tables must be sturdy enough to accommodate clients weighing up to 400 pounds;~~

: The owner must ensure that all tables and chairs are ~~in good repair~~safe and in a sanitary condition at all times~~; and~~:

~~c. Used sheeting or pads used to cover tables or chairs must not be used again until properly laundered. Massage tables and chairs without sheeting or pads must be disinfected immediately following each client;~~

~~10~~

a. Tables/chairs with no sheeting/pad must be disinfected between clients with an EPA-registered disinfectant that is proven effective against HIV-1, or Hepatitis B, or is a Tuberculocidal;
b. Clean linens must be used for each client; and
c. Sheeting/pads that come in direct contact with the client or have been soiled must be removed, disinfected, or cleaned between clients.

6. Storage: The owner must ensure that storage within the establishment meets the following requirements:

a. Flammable and combustible chemicals are stored away from potential sources of ignition such as an open flame or an electrical device;
~~b. All products are stored in closed bottles;~~
~~c. No chemicals are stored:~~
~~(1) Where food is kept; or~~
~~(2) In the restroom, unless in a locked cabinet;~~
~~d.~~ b. Storage units:
(1) Cabinets, drawers, containers used for storage of tools, equipment, instruments and towels/linens are clean; and
~~(2) Clean linen is stored in an enclosed, dust-proof cabinet or container;~~
~~(3)~~(2) Tools, equipment, instruments, or towels/linens which have been used on a client are not placed in a container with clean tools, equipment, instruments, or ~~linen~~towels/linens.

~~11~~7. Towels/Linens: The owner must ensure that ~~the use of~~ all towels ~~in the establishment~~ and linens are clean and sanitary for each client and meets the following requirements:

~~1.~~a. Used Towel and Linen Storage:

(1) Cloth towels and linens are deposited in a closed receptacle after use;
(2) Used cloth towels and linens are not used again until properly laundered; and
(3) Disposable towels are discarded in a covered waste receptacle immediately following each service.

~~2. Laundry: Used cloth towels are laundered either:~~
~~a. By regular commercial laundering; or~~
~~b. By a noncommercial laundering process which includes immersion in water at 140 degrees Fahrenheit for not less than fifteen minutes during the washing or rinsing operation.~~

~~3.~~b. Clean Towel and Linen Storage: All clean towels are stored in a clean, enclosed, dust-proof cabinet or container until used. Pillows are not required to be stored in a cabinet or container, but must have a clean covering before contact with a client.~~.~~

~~4~~8. Products: The owner must ensure that the use of products in the establishment meets the following requirements~~.~~:

a. All liquids, creams, and other products are kept in clean, closed containers;
b. Original product bottles and containers have an original manufacturer label, which discloses their contents;
c. ~~When only a portion of the product is to be~~ All products used on a client~~, the product is removed from the container~~ must be dispensed by a spatula, scoop, spoon, ~~or~~ squeeze bottle, pump, dropper, or similar dispenser so that the remaining product is not contaminated;
d. If a product is poured into another container, such as a shaker, dispenser pump container, or spray container, the container is labeled to identify the product; and
~~e. Oils, lotions, antibacterial solutions, creams, and similar products, are dispensed by pump or dropper.~~

e. ~~5~~Products applied to one client cannot be removed and reused on another client.

9. Methods of Disinfection: The owner must ensure that all electrical and/or mechanical tools, instruments, implements, and equipment are disinfected before use on a client, by using one of the following two procedures:

a. Procedure One:

(1) Spray, immerse, soak, or saturate the implement until it is totally saturated with an EPA-registered disinfectant that is proven effective against HIV-1, or Hepatitis B, or is a Tuberculocidal;

(2) Before removing the sanitized implement(s), wash hands with ~~an antibacterial~~ liquid soap and water or antibacterial solution;

~~Air~~(3) Rinse implement;

(4) Prior to storing, air-dry on a sanitary surface or dry with a clean sanitized towel; and

(5) Store in a clean enclosed cabinet or covered container reserved for clean implements~~.~~ until used.

~~c. Autoclaving is also an acceptable disinfectant method.~~

~~6. Disinfecting Electrical Implements: The owner must ensure that the use and sanitation of electrical implements such as massagers, foot~~

b. Procedure Two:

(1) Autoclave implements in accordance with the manufacturers instructions; and

(2) Autoclaves must be cleaned and serviced at the frequency recommended by the manufacturer.

Foot baths/foot spas, ~~and paraffin wax machines meets the following specifications:~~

~~a. Electrical implements have no bare or worn wires.~~

~~b. Electrical implements generally~~showers, and hot tubs are disinfected ~~by the following method:~~

~~(1) Remove all foreign matter;~~

~~Spray, immerse, soak or saturate~~ with an EPA-registered disinfectant that is proven effective against HIV-1, or Hepatitis B, or is a Tuberculocidal and in accordance with the manufacturers instructions~~; and~~.

~~(3) Wipe dry with a clean towel.~~

~~c. Foot baths/foot spas are disinfected by the following procedures:~~

~~(1) Between each customer:~~

~~(a) Drain all water;~~

~~(b) Remove all foreign matter;~~

~~(c) Spray, immerse, soak, or saturate with an EPA-registered disinfectant, proven effective against HIV-1, Hepatitis B, or Tuberculocidal; and~~

~~(d) Wipe dry with a clean towel.~~

~~(2) At the end of the day:~~

~~(a) Remove the screen;~~

~~(b) Clean out all foreign matter trapped behind the screen of each footbath/footspa;~~

~~(c) Spray, immerse, soak, or saturate the screen and the area behind the screen with an EPA-registered disinfectant that is proven effective against HIV-1, Hepatitis B, or Tuberculocidal; and~~

~~(d) Wipe dry the screen and area behind the screen with a clean towel.~~

~~d.~~

Paraffin wax ~~used by~~ machines must be kept clean. Paraffin wax removed from one client ~~is~~must not be re-melted and used by another client.

~~7. Infectious Disease: The owner must observe the following requirements to prevent the transmission of infectious or communicable diseases.~~

~~a. No person afflicted with an infectious or communicable disease, which may be transmitted during the performance of the acts of massage therapy, is permitted to work or train in an establishment.~~

~~8~~ 10. Activities Not Allowed: While in the establishment, the owner and massage therapist must not engage in or allow any other person, including clients, to engage in any of the following activities:

a. Smoking in the massage room~~.~~; and

~~b. Consuming food in any area where massage therapy is being performed, except that clients may be allowed to consume food.~~

~~c. Storing food in the same area where chemical supplies are used or stored.~~

~~Using, consuming, serving~~

b. Licensees must not use, consume, serve, or in any manner ~~possessing or distributing~~possess or distribute intoxicating beverages or controlled substances upon its premises during the hours the establishment is open to the public.

82-004.02 Documents and Records: The owner must ensure that:
~~82-009 DOCUMENTS AND RECORDS: Each~~

1. The license to operate the massage therapy establishment ~~must:~~
~~1. Display~~is displayed in a conspicuous location at the massage therapy establishment ~~its license to operate the massage therapy establishment, designated by such license~~;

2. ~~Maintain in a conspicuous location at the entrance to the massage therapy establishment.~~ There is a sign ~~in intelligible lettering not less than one inch in height~~ containing the name of the massage therapy establishment. The sign must be in a conspicuous location at the entrance to the massage therapy establishment;

3. ~~Display in a conspicuous location at the massage therapy establishment, the~~ The license of each massage therapist who practices massage therapy in the

massage therapy establishment is displayed in a conspicuous location at the massage therapy establishment; and

4. ~~Have~~ The establishment has one copy of the latest ~~printing~~edition of the Massage Therapy Practice Act and one copy of the latest ~~printing~~edition of 172 NAC 81 and 82.

~~82-010 DUTIES AND RESPONSIBILITIES OF MANAGER AND OWNER: Each massage therapy establishment owner must~~82-005 CRITERIA FOR SUCCESSFUL COMPLETION OF A MASSAGE THERAPY ESTABLISHMENT INSPECTION: Each establishment must successfully complete an inspection to receive a license to operate. The rating system for inspections are set forth below:

82-005.01 Initial Inspection:

82-005.01A The inspector will issue a rating of "Satisfactory" on all initial inspections when the establishment receives an overall inspection rating of 100%.

82-005.01B The inspector will issue a rating of "Unsatisfactory" on all initial inspections when the establishment receives an overall inspection rating of less than 100%.

1. When an establishment receives a rating of "Unsatisfactory", the Department will forward to the establishment Owner(s), written notification that the establishment license has been placed on a probationary status until all deficiencies cited during the inspection are corrected. The establishment has 15 days from the date of the initial inspection to correct the deficiencies.

2. The inspector will conduct a re-inspection of the establishment within 15 days of receipt of verification that all corrections cited on the inspection report are corrected.

   a. If the establishment meets the requirements at the time of re-inspection, the inspector will change the "Unsatisfactory" rating and enter a "Satisfactory" rating.

   b. If the establishment receives an "Unsatisfactory" rating, after the re-inspection, the Department will, within 10 days of the completion of the re-inspection, give notice to the establishment that the license is suspended. The Department will send a written notice to the owner(s) by certified mail stating:
      (1) The establishment license is suspended;
      (2) The reasons for the establishment license suspension; and

(3) The establishment license suspension will become final 30 days after the mailing of the notice of suspension unless the Owner(s) submits a written request for a hearing within such 30 day period.

c. Upon receipt of a written request for a hearing, the Owner(s) will be given a hearing before the Department. The Owner(s) must make a written request to the Department for a hearing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Rules of Practice and Procedure for the Department.

d. The Department's decision regarding the suspension of the license will become final 30 days after a copy of the decision is mailed to the Owner(s), unless the Owner(s) appeals the decision.

82-005.01C When an establishment license is suspended for failure of an initial inspection and if the Owner(s) wishes to operate the establishment, the applicant must reapply to the Department for a license to operate as specified in 172 NAC 82-003.

82-005.01D Failure to permit an inspection for the purposes set out in 172 NAC 82-004 and 82-005.01 is grounds for denial of an initial massage therapy establishment license or for suspension of a massage therapy establishment's existing license.

82-005.01E The inspector will record the inspection results on a form provided by the Department.

82-005.02 Routine Inspection

82-005.02A The inspector will issue a rating of "Satisfactory" on all routine inspections when the establishment receives an overall inspection rating of 100%.

82-005.02B The inspector will issue a rating of "Unsatisfactory" on all routine inspections when the establishment receives an overall inspection rating of less than 100%.

1. When an establishment receives a rating of "Unsatisfactory", the Department will forward to the establishment Owner(s)/Board of Directors, written notification that the establishment license has been placed on a probationary status until all deficiencies cited during the inspection are corrected. The establishment has 30 days from the date of the initial inspection to correct the deficiencies.

2. The inspector will conduct a re-inspection of the establishment within 15 days of receipt of verification that all corrections cited on the inspection report are corrected.

a. If the establishment meets the requirements at the time of re-inspection, the inspector will change the "Unsatisfactory" rating and enter a "Satisfactory" rating.

b. If the establishment receives an "Unsatisfactory" rating, after the re-inspection, the Department will, within 10 days of the completion of the re-inspection, give notice to the establishment that the license is suspended. The Department will send a written notice to the owner(s) by certified mail stating:

(1) The establishment license is suspended;
(2) The reasons for the establishment license suspension; and
(3) The establishment license suspension will become final 30 days after the mailing of the notice of suspension unless the Owner(s) submits a written request for a hearing within such 30 day period.

c. Upon receipt of a written request for a hearing, the Owner(s) will be given a hearing before the Department. The Owner(s) must make a written request to the Department for a hearing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, Rules of Practice and Procedure for the Department.

d. The Department's decision regarding the suspension of the license will become final 30 days after a copy of the decision is mailed to the Owner(s) , unless the Owner(s) appeals the decision.

82-005.02C When an establishment license is suspended for failure of a routine inspection, the establishment must reapply to the Department for a license to operate as specified in 172 NAC 82-003.

82-005.02D Failure to permit an inspection for the purposes set out in 172 NAC 82-005.04 and 82-005.02 is grounds for denial of an initial massage therapy establishment license or for suspension of a massage therapy establishment's existing license.

82-006 DUTIES AND RESPONSIBILITIES OF OWNER: Each massage therapy establishment owner must insure that:

1. All massage therapists employed by the massage therapy establishment have a valid Nebraska license to practice massage therapy;

2. Licenses are posted in such a manner that clients can readily see the documents; and

3. The massage therapy establishment is operated in accordance with the Massage Therapy Practice Act and 172 NAC 81 and 82. This includes any massage therapy rooms that may be shared or used in conjunction with another health care professional.

~~1. Verify that all massage therapists employed by the massage therapy establishment have a valid Nebraska license to practice massage therapy;~~

~~2. Notify the Department that the establishment is closed when one massage therapist is on staff and that massage therapist terminates employment. The establishment may reopen upon the hire of a qualified massage therapist and notification to the Department.~~

~~3. Post all licenses in such a manner that clients can readily see the documents;~~

~~4. Insure that a copy of these rules and regulations governing massage therapy establishments is accessible to the staff; and~~

~~5. Insure that the massage therapy establishment is operated in accordance with the statutes and rules and regulations governing the profession of Massage Therapy.~~

82-007 CHANGE IN LICENSE FOR EXISTING ESTABLISHMENTS: Any establishment may apply for a change to its license, due to a change in Owner(s), change in name, or a change in location. Each establishment license issued is in effect solely for the Owner(s) and premises named thereon and will expire automatically upon any change of Owner(s) or change of location.

82-007.01 Change in Owner(s): The applicant must apply to the Department for and obtain another credential as specified in 172 NAC 82-003 at least 15 days prior to the change.

82-007.02 Change in Establishment Name: The applicant must:

1. Request a change in the establishment name at least 15 days prior to the change and submit to the Department.

2. Submit the required fee for a reissued license.

82-007.02A The Department will act within 150 days upon all completed applications and will reissue a license with the change of establishment name identified on the license.

82-007.03 Change in Location: The applicant must apply to the Department for and obtain another credential as specified in 172 NAC 82-003 at least 15 days prior to the change.

82-007.03A The Department will contact the applicant and schedule an inspection within 30 days. The results of the inspection will be recorded on a report provided by the Department.

82-007.03B The Department will issue to each establishment passing the inspection a license to begin operation.

82-007.03C If the establishment fails the inspection, the Department will provide a written report of the deficiencies for failure of the inspection. The applicant has 15 days from receipt of the deficiencies to submit evidence of corrective action for each of the deficiencies identified.

1. The Department will then schedule a second inspection within 30 days of receipt of the corrective action taken by the applicant to verify compliance with 172 NAC 82-004.

2. Upon receiving a satisfactory rating, the Department will issue a license to the establishment and the establishment may begin operation.

3. If the establishment receives an "Unsatisfactory" rating, after the re-inspection, the Department will, within 10 days of the completion of the re-inspection, give notice to the establishment that the license is suspended. The Department will send a written notice to the owner(s) by certified mail stating:

   a. The establishment license is suspended;
   b. The reasons for the establishment license suspension; and
   c. The establishment license suspension will become final 30 days after the mailing of the notice of suspension unless the Owner(s) submits a written request for a hearing within such 30 day period.

4. Upon receipt of a written request for a hearing, the Owner(s) will be given a hearing before the Department. The Owner(s) must make a written request to the Department for a hearing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, Rules of Practice and Procedure for the Department.

5. The Department's decision regarding the suspension of the license will become final 30 days after a copy of the decision is

mailed to the Owner(s) , unless the Owner(s) appeals the decision.

82-007.03D When an establishment license is suspended for failure of a routine inspection, the establishment must reapply to the Department for a license to operate as specified in 172 NAC 82-003.

82-007.03E Failure to permit an inspection for the purposes set out in 172 NAC 82-005.01 and 82-005.02 is grounds for denial of an initial massage therapy establishment license or for suspension of a massage therapy establishment's existing license.

82-008 CLOSING AN ESTABLISHMENT: When any establishment is permanently closed, the holder of the establishment license must notify the Department in writing at least 15 days prior to closure.

82-009 RENEWAL OF A BUSINESS CREDENTIAL: To renew a business credential, the credentialed business must request renewal and complete the renewal requirements specified in 172 NAC 82-009.02. All massage therapy establishment credentials issued by the Department will expire on November 1st of each odd-numbered year.

82-009.01 Renewal Notice: At least 30 days before the expiration of a credential, the Department will notify the credentialed business at the last known address of record. The renewal notice will include:

1. The type of credential;
2. The credential number;
3. The expiration date;
4. The amount of the renewal fee; and
5. Information on how to request renewal and how to place a credential on inactive status.

82-009.02 Renewal Procedures: The request for renewal may be submitted in person, by mail, or by Internet, and must include all required documentation and the renewal fee, which must be paid no later than the expiration date. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. Written Application:

   a. The full name and address of the business;
   b. The full name and address of the owner of the business;
   c. The name of each person in control of the business;
   d. The Social Security Number of the business if the applicant is a sole proprietorship;
   e. Telephone number including area code (optional);

f. E-Mail Address (optional);
g. Fax Number (optional);
h. Attestation by the applicant that:
   (1) S/he has read the application or have had the application read to him/her; and
   (2) All statements on the application are true and complete;
i. Signature of:
   (1) The owner or owners if the applicant is a sole proprietorship, a partnership, or a limited liability company that has only one member;
   (2) Two of its members if the applicant is a limited liability company that has more than one member;
   (3) Two of its officers if the applicant is a corporation;
   (4) The head of the governmental unit having jurisdiction over the business if the applicant is a governmental unit; or
   (5) If the applicant is not an entity described in items (1) through (4), the owner or owners or, if there is no owner, the chief executive officer or comparable official; and

2. Fee: The renewal fee as specified in 172 NAC 2. The renewal fee must be paid no later than the date of the expiration of the credential.

82-009.03 Expiration of a Business License: A business credential will expire if a business fails to:

1. Meet the requirements for renewal on or before the date of expiration of the business credential; and/or
2. Renew the business credential.

82-009.03A Right to Operate: When a business credential expires, the right to operate the business terminates without further notice or hearing.

82-009.03B Re-Application for a Business License: When a business fails to renew its credential by the expiration date, a business must apply to the Department for and obtain another credential as specified in 172 NAC 82-003.

~~82-011 GROUNDS ON WHICH THE DEPARTMENT MAY DENY, REFUSE RENEWAL OF, OR DISCIPLINE A LICENSE~~

~~82-011.01 The Department will deny an application for a license when the massage therapy establishment fails to meet the requirements for licensure as specified in 172 NAC 82-003 or is found to be in violation of any of the provisions of 172 NAC 82-011.03.~~

~~82-011.02 The Department will refuse renewal of a massage therapy establishment license if the license holder fails to meet the requirements specified in 172 NAC 82-004 or any of the acts listed in 172 NAC 82-011.03.~~

~~82-011.03 The Department may deny, refuse renewal of, limit, suspend, or revoke massage therapy establishment licenses for any of the following grounds:~~

~~1. Fraud, forgery, or misrepresentation of material facts, in procuring or attempting to procure a license.~~

~~2. Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a license by a person not licensed to do so~~

~~3. Use of untruthful or improbable statements, or flamboyant, exaggerated, or extravagant claims concerning such establishment licensee's professional excellence or abilities, in advertisements~~

~~4. Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act.~~

~~5. Failure to meet the standards/criteria as specified in 172 NAC 82-008 to 82-011.~~

~~6. Willful or repeated violations of the Uniform Licensing Law or these rules and regulations.~~

~~82-011.04 If the Department proposes to deny, refuse renewal of, limit, revoke, or suspend a license other than for non-payment of renewal fee, the applicant or license holder will be given an opportunity for a hearing before the Department and will have the right to present evidence on his/her own behalf. Hearings before the Department~~

82-010 DISCIPLINARY ACTION: A credential to operate a business may have disciplinary actions taken against it in accordance with 172 NAC 82-010 on any of the following grounds:

1. Violation of the Uniform Credentialing Act or the rules and regulations adopted and promulgated under the act relating to the applicable business;
2. Committing or permitting, aiding, or abetting the commission of any unlawful act;
3. Conduct or practices detrimental to the health or safety of an individual served or employed by the business;
4. Failure to allow an agent or employee of the Department access to the business for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department; or
5. Discrimination or retaliation against an individual served or employed by the business who has submitted a complaint or information to the Department or is perceived to have submitted a complaint or information to the Department.

82-010.01 Temporary Suspension or Limitation

82-010.01A The Department may temporarily suspend or temporarily limit any credential issued by the Department without notice or a hearing if the Director determines that there is reasonable cause to believe that grounds exist under 172 NAC 82-010 for the revocation, suspension, or limitation of the credential and that the credential holder's continuation in practice or operation would constitute an imminent danger to the public health and safety. Simultaneously with the action, the Department will institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the credential. The hearing will be held no later than 15 days from the date of the temporary suspension or temporary limitation of the credential.

82-010.01B A continuance of the hearing will be granted by the Department upon the written request of the credential holder, and the continuance must not exceed 30 days unless waived by the credential holder. A temporary suspension or temporary limitation order by the Director will take effect when served upon the credential holder.

82-010.01C A temporary suspension or temporary limitation of a credential under 172 NAC 82-010.01 will not be in effect for more than 90 days unless waived by the credential holder. If a decision is not reached within 90 days, the credential will be reissued unless and until the Department reaches a decision to revoke, suspend, or limit the credential or otherwise discipline the credential holder.

82-010.02 Department Action: The Department will follow the procedures in the Uniform Credentialing Act to notify the credential holders of any disciplinary action to be imposed and the time and place of the hearing.

82-010.03 Sanctions: Upon the completion of any hearing held regarding discipline of a credential, the Director may dismiss the action or impose the following sanctions:

1. Censure;
2. Probation;
3. Limitation;
4. Civil Penalty;
5. Suspension; or
6. Revocation.

82-010.03A Additional Terms and Conditions of Discipline: If any discipline is imposed pursuant to 172 NAC 82-010.03, the Director may, in addition to any other terms and conditions of that discipline:

1. Require the credential holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both and may be a practical or clinical examination or both or any or all of the combinations of written, oral, practical, and clinical, at the option of the Director;
2. Require the credential holder to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the Director. If the Director requires the credential holder to submit to an examination, the Director will receive and consider any other report of a complete diagnostic examination given by one or more physicians or other qualified professionals of the credential holder's choice if the credential holder chooses to make available the report or reports by his/her physician or physicians or other qualified professionals; and
3. Limit the extent, scope, or type of practice of the credential holder.

82-011 VOLUNTARY SURRENDER OR LIMITATION: A credential holder may offer to voluntarily surrender or limit a credential issued by the Department. The credential holder must make the offer in writing on a form provided by the Department or a form constructed by the credential holder, which must include the following information:

1. Personal Information:
   a. First, middle and last name;
   b. Mailing address (street, rural route, or post office address), city, state, and zip code;
   c. Telephone number; and
   d. Fax number.
2. Information Regarding the Credential Being Offered for Surrender or Limitation:
   a. List credential(s) and credential number(s) that would be surrendered or limited;
   b. Indicate the desired time frame for offered surrender or limitation:
      (1) Permanently;
      (2) Indefinitely; or
      (3) Definite period of time (specify);
   c. Specify reason for offered surrender or limit of credential; and
   d. Specify any terms and conditions that the credential holder wishes to have the Department consider and apply to the offer.
3. Attestation: The applicant must:
   a. Attest that all the information on the offer is true and complete; and
   b. Provide the applicant's signature and date.

82-011.01 The Department may accept an offer of voluntary surrender or limitation of a credential based on:

1. An offer made by the credential holder on his/her own volition;
2. An offer made with the agreement of the Attorney General or the legal counsel of the Department to resolve a pending disciplinary matter;
3. A decision by the Attorney General to negotiate a voluntary surrender or limitation in lieu of filing a petition for disciplinary action; or
4. A decision by the legal counsel of the Department to negotiate a voluntary surrender or limitation in response to a notice of disciplinary action.

82-011.02 The Department may reject an offer of voluntary surrender of a credential under circumstances which include, but are not limited to, when the credential:

1. Is under investigation;
2. Has a disciplinary action pending but a disposition has not been rendered; or
3. Has had a disciplinary action taken against it.

82-011.03 When the Department either accepts or rejects an offer of voluntary surrender or limitation, the Director will issue the decision in a written order. The order

will be issued within 30 days after receipt of the offer of voluntary surrender or limitation and will specify:

1. Whether the Department accepts or rejects the offer of voluntary surrender; and
2. The terms and conditions under which the voluntary surrender is accepted or the basis for the rejection of an offer of voluntary surrender. The terms and conditions governing the acceptance of a voluntary surrender will include, but not be limited to:
   a. Duration of the surrender;
   b. Whether the credential holder may apply to have the credential reissued; and
   c. Any terms and conditions for re-application.

82-011.04 A limitation may be placed on the right of the credential holder to operate a business to the extent, for the time, and under the conditions as imposed by the Director.

82-011.05 Violation of any of the terms and conditions of a voluntary surrender or limitation by the credential holder will be due cause for the refusal of renewal of the credential, for the suspension or revocation of the credential, or for refusal to restore the credential.

82-011.06 Re-application following voluntary surrender is set out in 172 NAC 82-012.

82-011.07 The voluntary surrender of a credential may be unrelated to disciplinary matters, or may be done to resolve a pending disciplinary matter, in lieu of disciplinary action, or in response to a notice of disciplinary action.

82-012 RE-APPLICATION: This section applies to businesses previously credentialed in Nebraska who seek the authority to return to practice in Nebraska with a valid Nebraska credential.

1. A business whose credential has expired, voluntarily surrendered for an indefinite period of time, or suspended or limited for disciplinary reasons may apply at any time to the Department for and obtain another credential as specified in 172 NAC 82-003.

2. A business whose credential has been voluntarily surrendered for a definite period may apply at any time to the Department for and obtain another credential as specified in 172 NAC 82-003.

3. A business whose credential has been revoked may apply only after a period of two years has elapsed from the date of revocation may apply to the Department for and obtain another credential as specified in 172 NAC 82-003.

4. An individual whose credential has been permanently voluntarily surrendered may not apply for another credential.

82-013 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists ~~that a person or entity practices without a credential.~~of practice without a credential to operate a business. Practice without a credential for the purpose of this regulation means practice:

1. Prior to the issuance of a credential;
2. Following the expiration of a credential; or
3. Prior to the ~~reinstatement~~re-application of a credential.

82-~~012~~013.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without ~~a credential~~being credentialed:

1. The person admits to engaging in practice;
2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
3. Billing or payment records document the provision of service, care, or treatment by the person;
4. Service, care, or treatment records document the provision of service, care, or treatment by the person;
5. Appointment records indicate that the person was engaged in practice; and
6. The person opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

For purposes of this regulation prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.

82-~~012~~013.02 Penalty: The Department may assess an administrative penalty in the amount of $10 per day, not to exceed a total of $1,000 for practice without a credential. To assess ~~such~~ the penalty, the Department will:

~~1.~~ 1. Provide written notice of the assessment to the person. The notice must specify:

a. The total amount of the administrative penalty;
b. The evidence on which the administrative penalty is based;
c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
d. That the Department will within 30 days following receipt of payment of the administrative penalty, ~~transmit~~remit the penalty to the State Treasurer ~~for credit~~ to ~~the Permanent School Fund~~be disposed of in accordance with Article VII, section 5 of the Constitution of Nebraska; and

e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property. The Department may also collect in such action attorney's fees and costs incurred directly in the collection of the administrative penalty.

2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

82-~~012~~013.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to ~~Neb.~~ Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure. ~~Rev. Stat. §§ 84-901 to 84-920 and the Department's rules and regulations adopted pursuant to these statutes.~~

~~82-013 SCHEDULE OF FEES: The following fees have been set by the Department:~~

~~82-013.01 Initial License Fee: By an applicant for a license to operate an establishment, the fee of $50.~~

~~82-013.02 Pro-rated Initial License Fee: For issuance of a credential that will expire within 180 days after its initial issuance date, a fee of $25.~~

~~82-013.03 License Renewal Fee: By an applicant for renewal on a biennial basis of a license to operate fee of $50.~~

~~82-013.04 Renewal Late Fee: By an applicant for renewal on a biennial basis of a credential, who fails to pay the renewal fee on or before the expiration date of his/her credential, the fee of $25 as a late fee in addition to the renewal fee.~~

~~82-013.05 Change in License: By an applicant who operates an existing massage therapy establishment, and requests a change in:~~

~~1. Owner/Board of Directors of the establishment, the reissued fee of $10.~~

~~2. Establishment name, the reissued fee of $10.~~

~~3. Location of the establishment, the same fee as the initial license fee of $50.~~

~~82-013.06 Certification of License Fee: For issuance of a certification of a credential, the fee of $25. The certification includes information regarding:~~

~~1. The date of issuance;~~

~~2. Whether disciplinary action has been taken against the credential; and~~

~~3. The current status of the credential.~~

~~82-013.07 Verification of License Fee: For issuance of a verification of a credential, the fee of $5. The verification includes written confirmation as to whether a credential was valid at the time the request was made.~~

~~82-013.08 Duplicate License Fee: For a duplicate of original license document or reissued license, the fee of $10.~~

~~82-013.09 Administrative Fee: For a denied credential or a withdrawn application, the administrative fee of $25 will be retained by the Department, except if the credentialing fee is less than $25.~~

~~82-013.10 Reinstatement Late Fee: For reinstatement of a credential for failure to meet renewal requirements within one year, the fee of $35 in addition to the renewal fee.~~

82-014 FEES: Fees referred to in these regulations are set out in 172 NAC 2, unless otherwise specified.

These Amended Rules and Regulations replace Title 172, Chapter 82, Regulations Governing the Practice of Massage Therapy Establishments, ~~last~~ effective ~~date April 1, 1999 and June 3, 2003~~January 3, 2005.

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