Title 172 PROFESSIONAL AND OCCUPATIONAL LICENSEURE

Chapter 83 LICENSURE OF MASSAGE THERAPY SCHOOLS

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~~Applications~~ ~~Available Upon Request~~

Title 172 -PROFESSIONAL AND OCCUPATIONAL LICENSEURE

Chapter 83 LICENSURE OF MASSAGE THERAPY SCHOOLS

83-001 SCOPE AND AUTHORITY: These regulations ~~apply to~~ govern the ~~licensing procedures for~~credentialing of Massage Therapy Schools ~~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).

83-002 DEFINITIONS:

1. Approved School of Massage Therapy means a school which is approved by the Department of Health and Human Services ~~Regulation and Licensure upon~~, Division of Public Health, upon recommendation by the Board.

2. Act means Neb. Rev. Stat. §§38-1701 to 38-1715, known as the Massage Therapy Practice Act.

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

4. Board means the Board of Massage Therapy.

~~Client~~

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

~~Completed~~

6. Complete Application means an application ~~with~~ that contains all of the information requested on the application ~~filled in, the signature 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. Client means a person receiving health or health-related services or environmental services and includes a patient, client, resident, customer, or person with a similar designation.

9. Course of Study and Training in Massage Therapy means a course of not less 1,000 hours distributed over a term of not less than 9 months. All hours must be gained in a class setting. ~~1.~~ For purposes of this section, continuing education is not considered study or training in massage therapy. Such study and training must consist of:

a. 700 hours of the course of study must consist of at least 100 hours in each of the following areas:

~~a.~~(1) Anatomy ~~which may~~: May include, but is not limited to,

structure of the human body, study of cells, tissues, bones, muscles, organ systems, histology, embryology, kinesiology, biomechanics, etc.;

~~b~~(2) Health Service Management ~~which may~~: May include, but is not limited to, professional ethics, legalities of massage, business practices, promotion, employment opportunities, oral presentations, telephone techniques, marketing plan, sales techniques, resumes, bookkeeping, financial management, insurance coverage, networking, interview techniques, etc. These hours must be gained under the supervision of a licensed massage therapist~~;~~

~~c.~~(3) Hydrotherapy ~~which may~~: May include, but is not limited to, history, benefits of water treatment, cryotherapy, body wraps/masks, salt glows, body scrubs, body shampoos, moisturizers, hot packs, steam cabinets, dry brushing, therapeutic modalities, methods of cold application, heat therapy, contrast baths, skin contra-irritants, spas, etc. These hours must be gained in a class setting under the supervision of a licensed massage therapist;

~~d.~~ (4) Hygiene and Practical Demonstration ~~which~~ :

(a) Hygiene may include, but is not limited to, physiology of digestion, weight control, herbal therapy, nutrition, food combining, supplementation, wellness, hygiene principles and practices, CPR, first aid, equipment and sanitation, infectious and contagious disease control, etc. These hours must be taught by a licensed massage therapist; and

(b) Practical Demonstration may include, but is not limited to, various massage therapy techniques and demonstration, hands-on training, student clinic hours, etc~~.~~. These hours must be taught by a licensed massage therapist;

~~e.~~(5) Massage ~~which may~~: May include, but is not limited to, history of massage, benefits of massage, physiology of massage, equipment and procedures, psychology of massage, interpersonal client contact, relaxation and visualization, proper draping techniques, general guidelines for massage, principles of body massage, etc. These hours must be taught by a licensed massage therapist;

~~f.~~ (6) Pathology ~~which may~~: May include, but is not limited to, definition of pathology and disease, pharmacology, pathology of body systems, disease entities including cause and effect, blood pressure, pulse monitoring, injury and soft tissue ~~disfunction~~dysfunction, etc. These hours must be taught by a licensed massage therapist or a person with appropriate training in the subject matter;

~~g.~~ (7) Physiology ~~which may~~: May include, but is not limited to, endocrinology, biochemistry, interaction of hormones to the body's balance and metabolism, function of human body, and organ systems, kinesiology, biomechanics, etc. These hours must be taught by a licensed massage therapist or a person with appropriate training in the subject matter; and

~~2.~~

b. The remaining 300 hours of the course of study must be obtained in subject areas related to the clinical practice of massage therapy which may include, but is not limited to, reflexology, deep tissue massage, Swedish massage, sports massage, pregnancy and infant massage, physiology and psychology of exercise, acupressure therapy, ~~management techniques~~therapy and protocol, stress and practices, hands-on-training, review of health histories~~,~~ National Certification Examination for Therapeutic Massage and Bodywork (NCETMB) or National Certification Examination for Therapeutic Massage (NCETM) or Massage and Bodywork Licensing Examination (MBLEx) topics, etc. These hours must be gained under the on-site supervision of a licensed massage therapist or health care professional whose scope of practice includes massage techniques.

~~documentation, etc.~~

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

11. 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.~~

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

13. Hour means 50-60 minutes in duration.

14. 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.

15. 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.

16. Massage Therapist means a person licensed to practice massage therapy.

17. Massage Therapy means the physical, mechanical, or electrical manipulation of soft-tissue for the therapeutic purposes of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being and may

include the use of oil, salt glows, heat lamps, and hydrotherapy. It does not include diagnosis or treatment or use of procedures for which a license to practice medicine or surgery, chiropractic, or podiatry, is required nor the use of microwave diathermy, shortwave diathermy, ultrasound, transcutaneous electrical nerve stimulation, electrical stimulation of over thirty-five volts, neurological hyperstimulation, or spinal and joint adjustments.

a. Well-being includes, but is not limited to:

(1) Remediation, such as myofacial release, active/passive stretching, and similar modalities;
(2) Relaxation, such as Swedish Massage, hot stone, and similar modalities; and
(3) Holistic, such as Ortho-Bionomy®, polarity, shiatsu, reflexology, acupressure, and similar techniques.

b. Mechanical or electrical manipulation includes, but is not limited to, the use of the following equipment:

(1) Electrical stimulation equipment under 35 volts;
(2) Oscillating (vibrating) equipment; and
(3) Hydrotherapy equipment.

18. NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 83.

19. Official means issued by and under the original seal of the educational institution.

20. Regularly Licensed Physician means a physician licensed in Nebraska to practice medicine and surgery or osteopathic medicine ~~by the licensing authority in the jurisdiction where the school is located~~.
~~Verified means sworn to before a Notary Public.~~

83-003 ~~REQUIREMENTS FOR ISSUANCE OF A MASSAGE THERAPY~~INITIAL SCHOOL ~~LICENSE~~CREDENTIAL: Any person who wishes to operate a massage therapy school must obtain a license.- If the school provides ~~only~~ massage therapy services in addition to the student training~~, a massage therapy establishment license, pursuant to 172 NAC 82, is not required. However, if the school provides massage therapy services outside of the training~~ program, a massage therapy establishment license must be obtained~~. An applicant must demonstrate that the following requirements for approval are met~~ under 172 NAC 82.

83-003.01 ~~Initial Licensure Requirements: An applicant for~~Qualifications: To receive a credential to operate a massage therapy school~~license~~, an individual must meet the following qualifications:

1. Physician: Have a regularly licensed physician (current license to practice medicine and surgery or Osteopathic Medicine) affiliated with the staff;

2. Employees: Employ at least one ~~or more~~ licensed massage therapists as

~~instructors~~an instructor;

3. Student Enrollment: Require ~~for admission~~ a diploma from an accredited high school or its equivalent as a condition of student enrollment;

4. Course of Study: Have a continuous course of study and training of not less than 1,000 hours, distributed over a term of not less than 9 months and consisting of the following subjects:

   a. 100 Hours of Anatomy;
   b. 100 Hours of Health Service Management;
   c. 100 Hours of Hydrotherapy;
   d. 100 hours of Hygiene (~~Health~~ health wellness) and Practical Demonstration;
   e. 100 Hours of Massage;
   f. 100 Hours of Pathology;
   g. 100 Hours of Physiology; and
   h. The remaining 300 hours must be obtained in subject areas related to the clinical practice of massage therapy; and

5. Inspection: Have received a successful rating on the initial inspection as set out in 172 NAC 83-005.01.

83-003. 02~~01A The applicant~~ Application: To apply for a ~~license~~credential to operate a massage therapy school, a business must submit to the Department~~:~~ a complete application. 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 contains the following information:

1. Written Application: ~~A complete application on Attachment A attached to these regulations and incorporated by this reference or an alternate form which contains the same information. Only applications which are complete will be considered; and~~

   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. A curriculum plan which lists all of the subjects offered for completion of the massage therapy course of study;

~~3. A copy of the~~ b. The syllabus for each subject taught, documented on ~~Attachment A1 attached to these regulations and incorporated by this reference~~ the application or an alternate form which contains the same information, to include:

~~a.~~ (1) Title of course;
~~b.~~ (2) Instructor's Name;
~~c.~~ (3) Hours associated with each subject;
~~d.~~ (4) Description of course;
~~e.~~ (5) Course objectives;
~~f.~~ (6) Text books and Resource or Supplement References; and
~~g.~~ (7) Grading System;

~~4. The name of each staff person, including identification of a school manager; and a resume, vita or similar documentation for each staff person;~~ c. Identification of the method for determining hours of contact attained by the student;

~~5.~~ d. The name of each instructor and his/her license number (if applicable), and the name of the school manager;

~~A draft copy of the school handbook or school bulletin;~~

~~6. A draft copy of the rules of the school;~~

~~7. A detailed floor plan or blueprint of the proposed school building;~~

~~8.~~ e. A schedule of proposed hours of school operation;

~~9. Attestation by the applicant:~~

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

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

f. Floor Plan or Blueprint: A detailed floor plan or blueprint of the proposed school building must be submitted to the Department at least 30 days prior to the anticipated opening date of the school to allow for an initial inspection to be conducted:

~~10.~~ 4. Fee: The applicant must submit the required license fee~~.~~ along with the application and all required documentation.

~~83-003.01B An application for a massage therapy school license must be submitted at least 30 days before the anticipated opening date of the school to allow for an initial inspection to be conducted.~~ 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.

~~83-003.02 Board and Department Responsibilities: The Board and Department will~~4.~~:~~

~~1. Review the application to determine completeness; and~~83-003.03 Department Review: The Department will act within 150 days upon all completed applications for initial credentialing.

~~2. Acknowledge receipt of the completed application by means of a written letter to the school with a copy to the appropriate school inspector.~~

83-003.~~02A~~ 04 Inspection: The Department will contact the applicant and schedule an inspection to be complete prior to the anticipated opening date. The results of the inspection will be recorded on a form provided by the Department. ~~83-003.02B~~ The Department will issue to each school passing the inspection a license and the school may begin operation.

~~83-003.02C 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.~~83-003.05 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 83-010, 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 mailing the notice unless the applicant, within the 30-day period, 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.

83-003.06 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.

~~83-003.02D Administrative Penalty/Other Action: An individual who operates a school prior to issuance of a credential is subject to assessment of an Administrative Penalty pursuant to 172 NAC 83-012, or~~83-003.07 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 83-013.

~~83-003.03 Application for a Change in License for Existing Schools: Any school may apply for a change to its license, due to a change in Owner/Board of Directors, change in name, or a change in location. Each school license issued is in effect solely for the Owner/Board of Directors or Owner/Board of Directors and premises named thereon and will lapse automatically upon any change of Owner/Board of Directors as defined in this section or change of location.~~

~~The licensee must notify the Department at least 30 days prior to any change of Owner/Board of Directors, 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:~~

83-003.08 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.

83-003.09 Address Information: Each credential holder must notify the Department of any change to the address of record.

83-003.10 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.

~~83-003.03A Requirements for Change in Owner/Board of Directors: The applicant must:~~

~~1. Meet the requirements as set forth in 172 NAC 83-003.01; and~~

~~2. Submit to the Department:~~

~~a. A complete application on Attachment B attached to these regulations and incorporated by this reference, or an alternate form which contains the same information. Applications must be received at least 15 days before the proposed change of Owner/Board of Directors of the school. Only applications which are complete will be considered;~~

~~b. A list of the new Owner/Board of Directors, corporate owners, principal stockholders and partners;~~

~~c. Evidence of any changes to the curriculum plan, staff employed, handbook or school bulletin, physical design, or schedule of proposed hours of operation. If a change has occurred in the physical design, passage of an inspection is required prior to issuance of a license; and~~

~~d. The required fee for initial licensing.~~

~~83-003.03A1 The Department will act within 150 days upon all completed applications.~~

~~83-003.03B Requirements for Change in School Name: The applicant must:~~

~~1. Submit to the Department:~~

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

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

~~03B1 The Department will act within 150 days upon all completed applications and will reissue a license with the change of school name identified on the license.~~

~~83-003.03C Requirements for Change in Location: The applicant must:~~

~~1. Meet the requirements as set forth in 172 NAC 83-003.01.~~

~~2. Submit to the Department:~~

~~a. A complete application on Attachment B, or an alternate form which contains the same information. Applications must be received by the Department at least 30 days before the proposed opening of the school. Only applications which are complete will be considered;~~

~~b. A list of the Owner/Board of Directors, corporate owners, principal stockholders and partners, if changes occurred;~~

~~c. A detailed floor plan or blueprint of the proposed school building;~~

~~d. Any changes to the curriculum plan, staff employed, handbook or school bulletin, or schedule of proposed hours of operation;~~

~~e. Attestation by the applicant:~~

~~(1) That s/he has not operated this school at this location in Nebraska prior to the application for a license; or~~

~~(2) To the actual number of days operated this school at this location in Nebraska prior to the application for a license; and~~

~~f. The required licensure fee.~~

~~83-003.03C1 Upon approval of the application, the Board and the Department will immediately conduct an inspection of the school.~~

~~83-003.03D The Department will issue to each school passing the inspection a license to begin operation.~~

~~83-003.03E If the school fails the inspection, the Department will send to the applicant by certified mail to the name and address of record in the Department, a letter setting forth the reasons for failure of the inspection. The applicant has 15 days of receipt of the certified letter to submit evidence of corrective action of the deficiencies listed in the failure letter.~~

~~83-003.03F The Department will then schedule a second inspection within 30 days of receipt of the corrective action taken by the applicant.~~

~~83-003.03G Upon receiving a satisfactory rating, the Department will issue a license to the school and the school may begin operation.~~

~~83-003.03H If the school does not receive a satisfactory rating on the second inspection or fails to submit to the Department evidence of corrective action within the specified 15days, the application may be denied by the Department.~~

~~83-003.03I Administrative Penalty/Other Action: An individual who changes the location of a school and operates prior to issuance of a 83-003. credential is subject to assessment of an Administrative Penalty pursuant to 172 NAC 83-012, or such other action as provided in the statutes and regulations governing the credential.~~~~83-003.04 Procedures for Closing a School: When any school is permanently closed, the holder of the school license must notify the Department in writing at least 60 days prior to closure, and surrender the school license within 10days of closing.~~

83-004 ~~REQUIREMENTS FOR MASSAGE THERAPY SCHOOL~~ INSPECTIONS: All schools will receive an initial and thereafter, a ~~biennial~~ routine inspection. The criteria for inspection required by the Board and Department ~~and Board~~ is set forth below:

~~83-004.01 Inspections: All inspections will be announced and conducted by the Board.~~

1._ Initial Inspection: An initial inspection will be conducted within 30 days of the receipt of ~~a completed massage therapy school licensure application and prior to the anticipated opening date~~the detailed floor plan/blueprint of the proposed school building and the school's address. The inspection will be announced and conducted by the Board and/or Department.

2._ Routine Inspection: A routine inspection will be conducted within each renewal period to assure compliance with 172 NAC 83-004.01. The inspection will be conducted by the Board and/or Department.

~~02 Documents Reviewed: The following will be reviewed during each inspection:~~

~~1. The license to operate a massage therapy school, displayed in a conspicuous location at the massage therapy school;~~

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

~~3. The license of each massage therapist who practices massage therapy in the massage therapy school, displayed in a conspicuous location at the massage therapy school; and~~

~~4. A copy of the license of the regularly licensed physician affiliated with the staff, maintained in the files of the massage therapy school.~~

~~83-004.03 Physical Review: A massage therapy school must have a clearly identifiable location; each massage therapy school may be free-standing or part of an existing structure.~~

~~1. Floors, walls, ceilings, furniture, and fixtures must be kept in good repair, clean and sanitary at all times.~~

~~2. The school must not have the same entrance as or direct access to a massage therapy establishment. The entrance into the school used by the general public must lead directly from the outside to the school, except that a school may have its entrance open from a public area such as a foyer.~~

~~3. All rooms must have adequate lighting and ventilation and must be free of offensive odors and maintained at a comfortable temperature.~~

~~4. Each client receiving a massage must have said massage performed in a private location, except that an instructor may be present while the massage therapist is providing the client's massage.~~

~~5. Each massage therapy school must have toilet and lavatory facilities for use by clients and employees. Such will be located within or immediately adjacent to the premises. The toilet or lavatory must be equipped with hot and cold running water, toilet paper, soap, single service towels, and waste receptacle.~~

~~6. Each massage therapy school must have hot and cold running water for hand washing. 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 school. 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 school.~~

~~7. A massage therapy school must not allow a door or doors to any rooms in the school~~

~~to be locked, barricaded, or blocked in any manner while simultaneously occupied by a massage therapy school employee and client.~~

~~83-004.04 Library Area Review: A library area must be easily accessible to the students and contain:~~

~~1. At least 1 copy of all textbooks utilized within the school;~~
~~2. Adequate resource books for the various courses of study;~~
~~3. Standard Dictionary of the English Language and Medical Dictionary;~~
~~4. At least 1 copy of the latest printing of Massage Therapy Act;~~
~~5. At least 1 copy of the latest printing of all rules and regulations relating to the Nebraska Massage Therapy Act; and~~
~~6. At least 1 copy of the current rules of the school.~~

~~83-004.05~~ , ~~Equipment and~~ 83-004.01 Structure-Equipment and Sanitation ~~Review: The massage therapy school must have~~: The owner must ensure that the school has the equipment necessary to teach and provide massage therapy services. This equipment must be clean, well-maintained, and in good repair.

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

   a. ~~a. At least 70 inches long, 22 inches wide, and a height appropriate for the massage therapist; and~~ All rooms must have adequate lighting and ventilation;

   ~~b. Sturdy enough to accommodate clients weighing up to 500 pounds.~~

   b. ~~2.~~ Each school must have an area that can be screened from public view for clients/students requesting privacy, except that an instructor may be present while the massage therapist is providing the client's massage;

   c. All massage therapy schools providing saunas or steam baths must be equipped with shower facilities~~.~~; and

   d. 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.

   If a massage therapy establishment is located within the school, the room(s) utilized by the licensee(s) must be licensed as an establishment, must comply with 172 NAC 82 and must be clearly identified by the name of the establishment. If these same rooms are utilized by the school for student clinics, the room(s) must be clearly identified as 'student clinic' while utilized by the students.

~~3. All cabinets, showers, tubs, basins, massage or steam tables, carts/containers used for transporting laundry, and all other fixed equipment used must be thoroughly cleansed and must be free from harmful organisms by the application of a bactericidal agent.~~

~~3. Combs, brushes, shower caps, mechanical and massage instruments, or bathing devices that come in contact with the body must be sterilized or disinfected. Devices, equipment, or parts thereof having been used on one person must be sterilized or~~

~~disinfected before being used on another person.~~

~~4. Sheeting must cover all massage tables or pads.~~

~~5. Clean linen such as sheets, towels, gowns, pillowcases, and all other linens used in the practice of massage must be provided for the use of each individual client.~~

~~6. All towels and linens used for one person must be laundered or cleaned in hot water and/or with the application of a germicidal /bactericidal agent before they are used by another person.~~

~~7. All clean linens must be kept in a clean dry area.~~

~~8. All soiled linens must be placed in a receptacle designated for soiled linens.~~

~~9. A separate cart/container must be used to transport clean and soiled linens.~~

~~10. Wastewater must be disposed of in a manner consistent with the requirements of the local authority, i.e., Department of Environmental Quality or city ordinances.~~

~~11. Creams and oils must be in clean, closed containers. Powder must be kept in a shaker.~~

~~therapy~~

~~12. Soap and clean individual towels must be provided by the licensee for use by all employees.~~

~~13. At least 1 bulletin board conspicuously located for posting and used as such; and~~

~~14. Audio visual or media equipment.~~

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

3. Safety: The owner must ensure that the school is maintained in a safe condition:

   a. Floors, floor coverings, walls, woodwork, ceilings, furniture, fixtures and equipment are clean and 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;
   e. Water or product spills on the floor are removed immediately and floor dried to avoid falls; and
   f. If candles are used in the school, 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.

5. Massage Tables and Chairs: The owner must ensure that all tables and chairs are safe and in a sanitary condition at all times:

   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 school 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. Storage units:
      (1) Cabinets, drawers, and containers used for storage of tools, equipment, instruments and towels/linens are clean; and
      (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 towels/linens.

7. Towels/Linens: The owner must ensure that all towels and linens are clean and sanitary for each client/student and meets the following requirements:

   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.

   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/student.

8. Products: The owner must ensure that the use of products in the school 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. All products used on a client must be dispensed by a spatula, scoop, spoon, 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. 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 twp 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 liquid soap and water or antibacterial solution;

(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.

b. Procedure Two:

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

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

Foot baths/foot spas, showers, and hot tubs are disinfected with an EPA registered disinfectant that is proven effective against HIV-1, or Hepatitis B, or is a Tuberculocidal and in accordance with manufacturers instructions.

Paraffin wax machines must be kept clean. Paraffin wax removed for one client/student must not be re-melted and used by another client/student.

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

a. Smoking in the massage rooms; and

c. A licensee/student must not use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises during the hours the school is open to the public.

83-004.02 Documents and Records. The owner must ensure that:

1. The license to operate a massage therapy school, is displayed in a conspicuous location at the massage therapy school;

2. There is a sign containing the name of the massage therapy school. The sign must be in a conspicuous location at the entrance to the school;

3. The license of each massage therapist who practices massage therapy in the massage therapy school, is displayed in a conspicuous location at the massage therapy school;

4. A copy of the license of the regularly licensed physician affiliated with the staff, maintained in the files of the massage therapy school; and

5. The school has one copy of the latest edition of the Massage Therapy Practice Act and one copy of the latest edition of 172 NAC 81, 82 and 83.

83-004.03 Operating Requirements: Each school of massage therapy must:

1. Not pay direct compensation to any of its students; tips are considered direct compensation;

2. Ensure that all students are under the supervision of an instructor at all times. Students in internships and practicums must have an onsite supervisor who is a licensed health care provider and who reports directly to the school instructor~~; the onsite supervisor~~ who is ~~not required to be~~ a licensed ~~as a~~ massage therapist;

3. Not credit a student with hours except when such hours were earned in the study or practice of massage therapy in accordance with the required curriculum, except massage schools may transfer ~~college or university credit in~~credits to the massage therapy course of study from an accredited school by Council for Higher Education Accreditation (CHEA);

4. Record student hours on a daily basis;

5. Give periodic evaluations that are graded according to a formula established by the school. A student's final average, when in training, must be no less than an average of 75%. A final ~~Board-Developed~~ practical examination, as ~~defined in 172 NAC 83-006~~described below, must be given before issuance of a diploma;

   a. The examination must test over the following techniques and skills:
      (1) Effleurage;
      (2) Petrissage;
      (3) Tapotement or Percussion;
      (4) Friction;
      (5) Vibration;
      (6) Draping; and
      (7) Hygiene and Sanitation;

   b. Each student must be administered the examination by at least 2 instructors. Each instructor must score each part of the examination, and the average of the scores must be the final score for the student;

   c. The board may observe any practical examination administered by the school for the purpose of adherence to the required techniques and skills specified in 172 NAC 83-004.03, item 5a; and

   d. The school must comply with the provisions of the Americans with Disabilities Act (42 USCG Section 12101, et.seq.) and Title VII of the Civil Rights Act, as amended (42 USC 2000e, et.seq.) in accommodating candidates who, because of a disability, need special arrangements to enable them to take an examination.

6. Post and adhere to all class schedules and the school curriculum;

~~7. Immediately notify the Department in writing of any change in instructional staff; and~~

7. Ensure that massage technique is only taught by licensed massage therapists or by a health care provider who is under the supervision of a licensed massage

therapy instructor.

8. ~~Notify the Department in writing at least 30 days in advance of any change in name of the school.~~ Ensure that massage therapy students do not not teach the massage curriculum;

9. Issue an official transcript to each student completing the program. The transcript must clearly identify each of the required coursework areas (as defined in 172 NAC 83-002, item 9), the hours earned in each coursework area, the name of the student, and the enrollment and graduation date; and

10. At the time of renewal, notify the Department of any changes in curriculum.

83-004.~~07~~04 Infectious and Contagious Disease Control: A massage therapy school must operate in such a manner that prevents the spread of infectious or contagious disease.

~~83-004.08 Failure to permit an inspection for the purposes set out in 172 NAC 83-003.01 and 83-003.03 will be grounds for denial of an initial massage therapy school license or for suspension of a massage therapy school's existing license~~83-004.05 Additional Duties and Responsibilities of the Owner(s): Each school owner(s) must ensure that the school is operated in accordance with the statutes and rules and regulations governing the profession of Massage Therapy. This includes any massage therapy rooms that may be shared or used in conjunction with another health care professional.

83-005 CRITERIA FOR SUCCESSFUL COMPLETION OF A MASSAGE THERAPY SCHOOL INSPECTION: Each applicant for a school license must successfully complete an inspection to receive a license to operate. The criteria for successful completion of inspections are set forth below:

83-005.01 ~~Criteria for Successful Completion of an~~ Initial Inspection

83-005.01A The inspector will record a rating of "Satisfactory or Unsatisfactory" on the inspection report.

83-005.01B The inspector will record a rating of "Satisfactory" on the initial inspection when the school receives an overall inspection rating of 100% and an "Unsatisfactory" on the initial inspection when the school receives an overall inspection rating of less than 100% or if the inspector believes there is a severe health risk to the public.

1. ~~When an applicant receives a rating of "Unsatisfactory" the applicant can not operate the school. The school has 30 days from the date of the initial inspection to correct the deficiencies.2.~~ The inspector will conduct a re-inspection within 30 days of receipt of verification that all corrections cited on the inspection report are corrected.

~~3.~~ 2. If the school receives a "Satisfactory" rating after re-inspection, the inspector will change the "Unsatisfactory" rating and enter a "Satisfactory" rating.

~~4.~~ 3. If the school receives an "Unsatisfactory" rating after the re-inspection, the Department will deny the applicant the issuance of a massage therapy school license.

83-005.02 ~~Criteria for Successful Completion of a~~ Routine Inspection

83-005.02A The inspector will issue a rating of "Satisfactory" on all routine inspections when the school receives an overall inspection rating of 100%.

83-005.02B The inspector will issue a rating of "Unsatisfactory" on all routine inspections when the school receives an overall inspection rating of less than 100%.

1. ~~When a school receives a rating of "Unsatisfactory", the Department must forward to the school Owner/Board of Directors, written notification that the school's license has been placed on a probationary status until all deficiencies cited during the inspection are corrected.~~ The school has 30 days from the date of the ~~initial~~routine inspection to correct the deficiencies and to notify the Department that the corrections have been completed.

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

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

b. If the school 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 school that the license is suspended. The notice will be in written form and will:

(1) State that the school license is suspended;

(2) State the reasons for the school license suspension;

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

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

c. Upon receipt of a written request for a hearing, the Owner/~~Board of Directors~~(s) will be given a hearing before the Department. The Owner/~~Board of Directors~~(s) must make a written request to the Department for a hearing and an appeal. The hearing must 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~~(s) , unless the Owner/~~Board of Directors~~(s) appeals the decision.

___3.__ When a school license is suspended for failure of a ~~biennial~~routine inspection, the school must reapply to the Department for a license to operate as specified in 172 NAC 83-006.03.~~1712 NAC 83-003.~~

~~83-006 CRITERIA FOR THE BOARD-DEVELOPED PRACTICAL EXAMINATION: The Board-Developed practical examination must be administered by the school prior to the issuance of a diploma. The examination must be administered in two parts, which will test the applicant's ability to perform specific massage techniques and will test the applicant's knowledge of the steps involved in performing a massage.~~

~~83-006.01 Part I of the examination must test over the following techniques:~~

~~1. Effleurage;~~
~~2. Petrissage;~~
~~3. Tapotement or Percussion;~~
~~4. Friction; and~~
~~5. Vibration.~~

~~83-006.02 Part II of the examination must test over the following skills:~~

~~1. Professionalism;~~
~~2. Application and removal of oil;~~
~~3. Pressure;~~
~~4. Table Mechanics;~~
~~5. Rhythm;~~
~~6. Specificity;~~
~~7. Routine;~~
~~8. Percussive and vibration techniques; and~~
~~9. Therapeutics.~~

~~83-006.03 The maximum points allowed on each part must be 50, with a combined total of 100. The passing score on the examination must be 75.~~

~~83-006.04 Each student must be administered the examination by at least two instructors. Each instructor must score each part of the examination, and the average of the scores must be the final score for the student.~~

~~83-006.05 The board may observe any board-developed practical examination administered by the school for the purpose of adherence to the test outline specified in 172 NAC 83-006.01, 83-006.02, and 83-006.03.~~

~~83-006.06 The school must comply with the provisions of the Americans with Disabilities Act (42 USCG Section 12101, et.seq.) and Title VII of the Civil Rights Act, as amended (42 USC 2000e, et.seq.) in accommodating candidates who, because of a disability, need special arrangements to enable them to take an examination.~~

~~83-007 DUTIES AND RESPONSIBILITIES OF LICENSEE, STUDENTS, MANAGER, OWNER/BOARD OF DIRECTORS: The following duties and responsibilities must be strictly adhered to:~~

83-006 OWNER(s) AND MANAGER/PERSON IN CHARGE LIABILITY:

~~Duty and Responsibility of Massage Therapist(s) and Students: Each licensed massage therapist and student on duty is responsible for providing massage therapy in a sanitary manner:~~

~~1. Wash hands with soap and water before and after serving each client;~~
~~2. Wear clean outer garments free of dirt, offensive odor, and stains; and~~
~~3. Be free of open sores and infectious or contagious disease.~~

~~83-007.02 Duties and Responsibilities of Manager and /Board of Directors: Each massage therapy school Owner/Board of Directors and manager must:~~

~~1. Verify that all massage therapists employed by the massage therapy school have a valid Nebraska license to practice massage therapy;~~
~~2. Notify the Department if the licensed physician affiliated with the school or any of the licensed massage therapy instructors terminate employment with the school. If the licensed physician terminates his/her affiliation, the manager or Owner/Board of Directors must notify the Department of who will replace that physician. If any of the licensed massage therapy instructors terminate employment, the manager or Owner/Board of Directors must notify the Department who will replace that instructor and submit a resume, vita or similar documentation for the new instructor. If the massage therapy instructor will not be replaced, the manager or Owner/Board of Directors must explain how the departing instructor's duties will be redistributed.~~
~~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 schools is accessible to the staff; and~~
~~5. Insure that the massage therapy school is operated in accordance with the statutes and rules and regulations governing the profession of Massage Therapy.~~

~~83-007.03 Owner/Board of Directors~~83-~~007~~006.01 Owner (s) Liability: The owner~~/board of directors~~(s) of each school of massage therapy have full responsibility for ensuring that the school is operated in compliance with all statutes, rules and regulations governing massage therapy and are liable for any and all violations occurring in the school.

83-~~007.04~~006.02 Manager or Person in Charge Liability: Each school must be operated by a manager or person in charge who must be present on the premises of the school at all times while the school is in operation. ~~The manager or person in charge may have responsibility for the daily operation of the school and, if so, must share with the owner/board of directors the liability for any and all violations occurring in the school.~~

83-~~007.05~~006.03 General Provisions:

1. Advertising:~~.~~ All advertising by schools must state that services are performed by students who are in training in massage therapy.

2. Statutes and Regulations Observed: All school personnel and students must comply with the Massage Therapy Practice Act and the rules and regulations.

~~3. School Rules: The school rules must be consistent with acceptable disciplinary practices and professional conduct and ethics. A copy of the rules of the school must be on file with the Department. An emergency evacuation plan must be posted in the clinical area.~~

34. Smoking: Smoking is prohibited in the entire school.

~~4~~5. Unprofessional Conduct: All school personnel and students must abide by the acts of unprofessional conduct as specified in 172 NAC 81-~~011~~010.

~~83-008 PROCEDURES FOR RENEWAL OF A LICENSE: All school licenses issued by the Department under the Act and these regulations expire on November 1 of each odd-numbered year.~~

~~83-008.01 Renewal Process: Any licensee who wishes to renew his/her school license must~~

~~Pay the renewal fee as prescribed in 172 NAC 83-013; and~~

~~Cause to be submitted to the Department:~~

83-007 CHANGE IN LICENSE FOR EXISTING SCHOOLS: Any school may apply for a change to its license, due to a change in Owner(s) , change in name, or a change in location. Each school 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.

83-007.01 Change in Owner(s) : The applicant must apply to the Department for and obtain another credential as specified in 172 NAC 83-003 at least 15 days prior to the change. The applicant must also identify:

1.—Any changes to the curriculum plan, staff employed, handbook or school bulletin, physical design, or schedule of proposed hours of operation; and

2. Any change in the physical design. If a change in the physical design as occurred, passage of an inspection is required prior to issuance of a license.

83-007.02 Change in School Name: The applicant must:

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

2. Submit the required fee for a reissued license.

83-007.02A The Department will act within 150 days upon all completed applications and will reissue a license with the change of school name identified on the license.

83-007.03 Change in Location: The applicant must apply to the Department for and obtain another credential as specified in 172 NAC 83-003 at least 15 days prior to the change. The applicant must also identify any changes to the curriculum plan, manager and/or licensed massage therapist(s) employed, handbook or school bulletin, or schedule of proposed hours of operation.

83-007.03A The Department will contact the applicant and schedule an inspection within 30 days. The results of the inspection will be recorded on a form provided by the Department.

83-007.03B The Department will issue to each school passing the inspection a license to begin operation.

83-007.03C If the school fails the inspection, the Department will send to the applicant by certified mail to the name and address of record in the Department, a letter setting forth the reasons for failure of the inspection. The applicant has 15 days of receipt of the certified letter to submit evidence of corrective action of the deficiencies listed in the failure letter.

83-007.03D The Department will then schedule a second inspection within 30 days of receipt of the corrective action taken by the applicant.

83-007.03E Upon receiving a satisfactory rating, the Department will issue a license to the school and the school may begin operation.

83-008 CLOSING A SCHOOL: When any school is permanently closed, the holder of the school license must notify the Department in writing at least 15 days prior to closure, and surrender the school license within 15 days of closing.

83-009 RENEWAL OF A SCHOOL CREDENTIAL: To renew a school credential, the credentialed school must request renewal and complete the renewal requirements specified in 172 NAC 83-009.02. All massage therapy school credentials issued by the Department will expire on November 1st of each odd-numbered year.

83-009.01 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.

83-009.02 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.

83-009.03 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.

83-009.03A Right to Operate: When a business credential expires, the right to operate the business terminates without further notice or hearing.

83-009.03B 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 83-003.

83-009.04 Address Information: The credentialed business must notify the Department of any change in name or address.

83-010 DISCIPLINARY ACTION: A credential to operate a business may have disciplinary actions taken against it in accordance with 172 NAC 83-010 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 that has submitted a complaint or information to the Department or is perceived to have submitted a complaint or information to the Department.

83-010.01 Temporary Suspension or Limitation

83-010.01A 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 83-010 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.

83-010.01B 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.

83-010.01C A temporary suspension or temporary limitation of a credential under 172 NAC 83-010.01 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.

83-010.02 Department Action: The Department will follow the procedures delineated in the Uniform Credentialing Act to notify the credential holder of any disciplinary action to be imposed and the time and place of the hearing.

83-010.03 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.

83-010.03A Additional Terms and Conditions of Discipline: If any discipline is imposed pursuant to 172 NAC 83-010.03, 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.

83-011 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 this offer is true and complete; and
   b. Provide the applicant's signature and date.

83-011.01 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.

83-011.02 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.

83-011.03 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.

83-011.04 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.

83-011.05 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.

83-011.06 Re-application following voluntary surrender is set out in 172 NAC 83-010.

83-011.07 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.

83-012 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 or has been 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 83-003.

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 83-003.

3. ~~Credentials that are voluntarily surrendered or limited permanently pursuant to Neb. Rev. Stat. § 71-161.11 will not be restored~~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 83-003.

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

83-~~012~~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.

83-~~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.

83-~~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. 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.

83-~~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. Rev. Stat. §§ 84-901 to 84-920 and~~ the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure.

~~83-013 SCHEDULE OF FEES: The following fees have been set by the Department:~~83-014 FEES: Fees referred to in these regulations are set out in 172 NAC 2, unless otherwise specified.

~~83-013.01 Initial License Fee: By an applicant for a license to operate a school, the fee of $100.~~

~~83-013.02 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.~~

~~83-013.03 License Renewal Fee: By an applicant for renewal on a biennial basis of a license to operate a school, the fee of $100.~~

~~83-013.04 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.~~

~~83-013.05 Change in License: By an applicant who operates an existing massage therapy school and requests a change in:~~

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

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

~~3. Location of the school, the same fee as the initial license fee of $100.~~

~~83-013.06 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.~~

~~83-013.07 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.~~

~~83-013.08 Duplicate License Fee: For a duplicate of original license document or reissued license, the fee of $10.~~

~~83-013.09 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.~~

~~83-013.10 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.~~

~~These regulations~~ These Rules and Regulations replace Title 172, Chapter 83, Regulations Governing the Practice of Massage Therapy, ~~last~~ effective ~~date April 6, 1999 and June 3, 2003~~January 9, 2005.

Approved by the Attorney General: ~~November 29, 2004~~
Approved by the Governor: ~~January 4, 2005~~
Filed with the Secretary of State: ~~January 4, 2005~~_____

Effective Date: ~~January 9, 2005~~

~~The applications referred to in these regulations may be obtained from the Department.~~