Summary of Proposed Revisions to Massage Therapy (172 NAC 81, 82, & 83)

The proposed changes will implement provisions of the Uniform Credentialing Act (UCA) to:

- Require that a credential may only be issued to a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the UCA, or a nonimmigrant whose visa for entry, or application for visa for entry, is related to said employment in the United States.
- Establish uniform processes for all professions and occupations for the initial application process, the renewal process, reinstatement (previously re-credentialing), and voluntary surrender (voluntary surrender is new);
- Require that only one notice be sent to the licensee for renewal;
- Repeal credential revocation for failure to meet renewal requirements; if a licensee fails to renew or meet renewal requirements, the credential will expire and no notice from the Department is required; the credential can be restored through reinstatement;
- Establish uniform grounds for disciplinary actions;
- Establish common definitions for active addiction, alcohol or substance abuse, attest or attestation, board, complete application, confidential information, conviction, Department, dependence, Director, license, military service, pattern of incompetent or negligent conduct, and served in the regular armed forces; and
- Standardize the format of each licensing chapter.

The proposed changes in Chapters 81, 82, & 83 include changes specific to massage therapy to:

- Revise the definition of "Course of Study and Training in Massage Therapy" and require that certain hours of study and training be gained in a class setting under the supervision of a licensed massage therapist;
- Add, to the definition of massage therapy, a further definition of well-being and mechanical or electrical manipulation;
- Revise the definition of licensure examination to include the National Certification Examination for Therapeutic Massage (NCETM) examination and the massage and bodywork licensing exam (MBLEx) developed by the Federation of State Massage Therapy Boards;
- Set out the requirements for applications by reciprocity, including requiring the applicant to successfully pass the licensure examination and board developed jurisprudence examination; and allow training through a massage therapy program, a college/university, work experience, and/or continuing education for applicants who are licensed in another jurisdiction and have not completed 1,000 hours of training in massage therapy. Additionally the hour equivalents are defined as follows:
    1. 50-60 minutes equals one hour obtained from a course of study in massage therapy;
    2. One semester credit hour of massage therapy related college/university hours equals 15 hours;
    3. 100 hours for each year of full-time practice as a massage therapist; and/or
    4. Up to 100 hours obtained from NCBTMB or MBLEx approved continuing education programs.
- Revise Continuing Competency Requirements: require each licensee to obtain at least 3 hours in ethics effective November 1, 2011; effective 11/1/2009 only ethics is an acceptable topic area for homestudy continuing competency hours; revise the definitions of acceptable topic areas for continuing competency activities; remove board approval of continuing competency programs and delineate criteria; specify criteria for a written paper, publications, and homestudy;
- Revise the definition of massage therapy establishment to exclude on-site massage performed at the location of the client or stand-alone devices such as chairs that are operated by the customer;
- Add a definition of "implement";
- Revise the sanitation, structure, and equipment requirements for a massage therapy establishment and school;
- Revise the operating requirements of a massage therapy school; and
- Refer to fees in 172 NAC 2, which is a new chapter.

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 81 LICENSURE~~PRACTICE~~ OF MASSAGE THERAPISTS~~THERAPY~~

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Title 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

Chapter 81 PRACTICE LICENSURE OF MASSAGE THERAPISTSTHERAPY

81-001 SCOPE AND AUTHORITY: These regulations govern apply to the credentialinglicensing procedures for the profession of Massage Therapy underas defined by Neb. Rev. Stat. §§38-1701 71-1,278 to 38-1715 71-1,282, and the Uniform Credentialing Act. Licensing Law.

81-002 DEFINITIONS

1. ActAccredited High School means Neb. Rev. Stat. §§38-1701 to 38-1715, known as the Massage Therapy Practice Act.

2. Active Addiction means current physical or psychological dependence on alcohol or a substance, which develops following the use of alcohol or a substance on a periodic or continuing basis.

3. Alcohol or Substance Abuse means a maladaptive pattern of alcohol or substance use leading to clinically significant impairment or distress as manifested by one or more of the following occurring at any time during the same 12-month period:

   a. Recurrent alcohol or substance use resulting in a failure to fulfill major role obligations at work,secondary school, or home; accredited by a regional accrediting institution.
   b. Recurrent alcohol or substance use in situations in which it is physically hazardous;
   c. Recurrent legal problems related to alcohol or substance use; or
   d. Continued alcohol or substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the alcohol or substance use.

4. Attest or /Attestation means that the individual declares that all statements on the application/petition are true and complete. Attestation to meeting continuing competency requirements satisfies the documentation requirement of Neb. Rev. Stat. § 38-142.

5. Board means the Board of Massage Therapy.

6. Client means any person with whom the massage therapist has an agreement to provide massage therapy.

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

8. Confidential Information means information protected as privileged under applicable law.

9. Consumer 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.

10. Continuing Competency means activities to ensure:

~~1.~~a. The maintenance by a credentialed person of knowledge and skills necessary to competently practice massage therapy;
~~2.~~b. The utilization of new techniques based on scientific and clinical advances; and
~~3.~~c. The promotion of research to assure expansive and comprehensive services to -the public.

The continuing competency activity may be obtained through one or more of the following types of activities:

1. National Examination;
2. Publication;
3. Jurisprudence Examination;
4. Instructor at a Massage Therapy School;
~~Written Paper on Massage Practice;~~
5. Practical Examination;
6. Massage School Training;
7. College or University Coursework; or
8. Workshops and Lectures (Continuing Education Programs); ~~or~~

11. Conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere or non vult contendere made to a formal criminal charge, or a judicial finding of guilt irrespective of the pronouncement of judgment or the suspension thereof, and includes instances in which the imposition or the execution of sentence is suspended following a judicial finding of guilt and the defendant is placed on probation.

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

a. 700 hours of the course of study must consist of at least ~~1.~~ 100 hours in each of the following areas:

(1) ~~a.~~ Anatomy: May ~~which 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.;

(2)~~b.~~ Health Service Management: May ~~which 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 ;

(3) ~~c.~~ Hydrotherapy: May ~~which 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 taught by a licensed massage therapist;~~;~~

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

(a) Hygiene ~~which~~ 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;

(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;~~;~~

(5) ~~e.~~ Massage: May ~~which 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;~~;~~

(6)~~f.~~ Pathology: May ~~which 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, etc. These hours must be taught by a licensed massage therapist or a person with appropriate training in the subject matter; and~~;~~

(7) ~~g.~~ Physiology: May ~~which 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, etc.; andkinesiology, biomechanics, etc. These hours must be taught by a licensed massage therapist or a person with appropriate training in the subject matter; and

b. 2. The remaining 300 hours 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, stress and& practices, hands-on-training, review of health histories and, documentation, 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.

13. Credential means a license, certificate, or registrationDepartment means the Department of Health and Human Services Regulation and Licensure of the State of Nebraska.

14. Department means the Division of Public Health of the Department of Health and Human ServicesDirector 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.
Evidence of Residency means proof of living within the boundaries of Nebraska, i.e., address, car license, or registered to vote.

15. Dependence means a maladaptive pattern of alcohol or substance use, leading to clinically significant impairment or distress, as manifested by three or more of the following occurring at any time in the same 12-month period:

a. Tolerance as defined by either of the following:
(1) A need for markedly increased amounts of alcohol or the substance to achieve intoxication or desired effect; or
(2) A markedly diminished effect with continued use of the same amount of alcohol or the substance;
b. Withdrawal as manifested by either of the following:
(1) The characteristic withdrawal syndrome for alcohol or the substance as referred to in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association; or
(2) Alcohol or the same substance or a closely related substance is taken to relieve or avoid withdrawal symptoms;
c. Alcohol or the substance is often taken in larger amounts or over a longer period than was intended;

d. A persistent desire or unsuccessful efforts to cut down or control alcohol or substance use;

e. A great deal of time is spent in activities necessary to obtain alcohol or the substance, to use alcohol or the substance; or to recover from the effects of use of alcohol or the substance;

f. Important social, occupational, or recreational activities are given up or reduced because of alcohol or substance use; or

g. Alcohol or substance use continues despite knowledge of having had a persistent or recurrent physical or psychological problem that was likely to have been caused or exacerbated by alcohol or the substance.

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

17. Inactive Credential means a credential which the credential holder has voluntarily placed on inactive status and by which action has terminated the right to practice or represent him/herself as having an active credential.

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

~~Inactive License means the voluntary termination of the right or privilege to practice massage therapy. The licensee retains the right or privilege to represent himself or herself as having an inactive license.~~

~~Lapse License means the voluntary termination of the right or privilege to represent oneself as a licensed person and to practice massage therapy.~~

19. Licensure Examination means the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB) or National Certification Examination for Therapeutic Massage (NCETM) developed by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or Massage and Bodywork Licensing Examination (MBLEx) developed by the Federation of State Massage Therapy Boards (FSMTB).

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

21. 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.

22. Military Service means full-time duty in the active military service of the United States, a National Guard call to active service for more than 30 consecutive days, or active service as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration. Military service may also include any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. (From the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as it existed on January 1, 2007.)

23. NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 81.

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

25. Pattern of Incompetent or Negligent Conduct means a continued course of incompetent or negligent conduct in performing the duties of the profession.

26. Profession means any profession or occupation named in subsection (1) or (2) of Neb. Rev. Stat. §38-121.

27. Program Sponsor means an individual or organization that sponsors continuing competency programs to licensees and requests approval from the Board for those programs.

28. Served in the Regular Armed Forces has the same meaning as "military service" in these regulations~~Verified means sworn to before a Notary Public~~.

81-003 INITIAL and RECIPROCITY LICENSE REQUIREMENTS: Any person who wishes to practice massage therapy must obtain a license. ~~The criteria for issuance of licenses and the documentation required by the Department are set forth below.~~

81-003.01 Qualifications: To receive a credential to practice massage therapy, an individual must meet the following qualifications: ~~Initial License~~

1. Age and Good Character: Be at least 19 years old and of good character;~~81-003.01A Requirements: An applicant for an initial license must:~~
~~2. Have attained at least the age of 19 years and have good moral character;~~

2. Citizenship/Resident Information: Be a citizen of the United States, an alien lawfully admitted into the United States for permanent residence under the Immigration and Naturalization Act (INA) and who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant whose visa for entry, or application for visa for entry, is related to employment in the United States;

3. Education: 1. Have completed a course of study and training in massage therapy not less than 1,000 hours, distributed over a term of not less than 9 months as specified in 172 NAC 81-002, item 12, which includes at least: The hours must be obtained as follows:

   a. 100 hours in each of the following areas:

      (1) Anatomy;
      (2) Health Service Management;
      (3) Hydrotherapy;
      (4) Hygiene and Practical Demonstration;
      (5) Massage;
      (6) Pathology;
      (7) Physiology; and

   b. The remaining 300 hours must be obtained in subject areas related to the clinical practice of massage therapy; and

   Reciprocity: An applicant who is licensed in another jurisdiction and has not completed 1,000 hours of training in massage therapy, may obtain hours to equal the required 1,000 hours of training through a massage therapy program, a college/university, work experience and/or continuing education. The applicant is not required to have attained the specified hours in the areas identified in 81-003.01, items 3a and b. Hour equivalents may be granted in the following manner:

      (1) 50-60 minutes equals 1 hour obtained from a course of study in massage therapy;
      (2) 1 semester credit hour of massage therapy related college/university hours equals 15 hours;
      (3) 100 hours for each year of full-time practice as a massage therapist; and/or
      (4) Up to 100 hours obtained from NCBTMB or MBLEx approved continuing education programs.

   Have established residence in the State of Nebraska; and

4. Examination: Have received a passing score on the licensure examination as set by NCBTMB or FSMTB and approved by the Board.

   Reciprocity: An applicant who is licensed in another jurisdiction must also successfully pass the Board developed jurisprudence examination, with a score of at least 75%

81-003.02~~01B~~ Application: To apply for a credential to practice massage therapy, the individual must submit a complete application to the Department. A complete application

includes all required documentation, the required fee, and a written application. Process: The applicant may obtain an application from following must be submitted to the Department or construct an application that must contain the following :

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

1. Written Application:

a. Personal Information:
(1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
(2) Date of birth (month, day, and year);
(3) Place of birth (city and state or country if not born in the United States);
(4) Mailing address: street, rural route, or post office address; and city, state, and zip code, or country information;
(5) The applicant's:
(a) Social Security Number (SSN);
(b) Alien Registration Number ("A#"); or
(c) Form I-94 (Arrival-Departure Record) number.
Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
(6) The applicant's telephone number including area code (optional);
(7) The applicant's e-mail address (optional);
(8) The applicant's fax number (optional);
(9) Citizenship: The applicant must state that s/he is one of the following:
(a) A citizen of the United States;
(b) An alien lawfully admitted into the United States for permanent residence under the Immigration and Naturalization Act (INA) and who is eligible for a credential under the Uniform Credentialing Act; or
(c) A non-immigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States;

2. An official transcript showing

b. Practice Before Application: The applicant must state:
(1) That /s/he has not practiced completed a course of study and training in massage therapy in Nebraska before submitting the application; or;
(2) If s/he has practiced massage therapy in Nebraska before submitting the application, to the actual number of days practiced in Nebraska before submitting the application for a credential and business name and location of practice; and

c. Attestation: The applicant must attest that:

(1) S/he has read the application or has had the application read to him/her;
(2) All statements on the application are true and complete;
(3) S/he is of good character; and
(4) S/he has not committed any act that would be grounds for denial under 172 NAC 81-007 or if an act(s) was committed, provide an explanation of all such acts.

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

a. Age: Evidence that he/she is at least 19 years of age, such as:

(1) Driver's license;
(2) Birth certificate;
(3) Marriage license that provides date of birth;
(4) Transcript that provides date of birth;
(5) U.S. State identification card;
(6) Military identification; or
(7) Other similar documentation;
(1)3. Massage therapy transcript which states date of birth;

b. Good Character: Evidence of good character, including:

(1) Other Credential Information: If the applicant holds a credential to provide health services, health related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed.

The applicant must have the licensing agency submit to the Department a certification of his/her credential;

(2) Disciplinary Action: A list of any disciplinary actions action was taken against the applicant's credential and a license by another state, an official copy of the disciplinary action(s), including charges and disposition;

(3) Denial: If the applicant was denied a credential or denied the right to take an examination, an explanation of the basis for the denial; and

(4) Conviction Information: If the applicant has been convicted of a felony or misdemeanor, the applicant must submit to the Department or felony:
(a) A list of any misdemeanor or felony convictions;
(b) Official Court Record A copy of the court record, which includes charges and disposition;Copies of

arrest records;

(b) A letter Explanation from the applicant of explaining the events leading to nature of the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;

(c) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug; and/or alcohol related offense and if treatment was obtained and/or required;

(d) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and

(e) Any other information as requested by the Board/Department;

c. Evidence that the applicant is:

(1) A citizen;

(2) An alien lawfully admitted into the United States for permanent residence under the Immigration and Naturalization Act (INA) who is eligible for a credential under the Uniform Credentialing Act; or

(3) A non-immigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States;

d. Evidence of citizenship, lawful permanent residence, and/or immigration status may include a copy of:

(1) A U.S. Passport (unexpired or expired);

(2) A birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal;

(3) An American Indian Card (I-872);

(4) A Certificate of Naturalization (N-550 or N-570);

(5) A Certificate of Citizenship (N-560 or N-561);

(6) Certification of Report of Birth (DS-1350);

(7) A Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240);

(8) Certification of Birth Abroad (FS-545 or DS-1350);

(9) A United States Citizen Identification Card (I-197 or I-179);

(10) A Northern Mariana Card (I-873);

(11) An Alien Registration Receipt Card (Form I-551, otherwise known as a "Green Card");

(12) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;

(13) A document showing an Alien Registration Number ("A#") with visa status; or

(14) A Form I-94 (Arrival-Departure Record) with visa status;

e. Education: Documentation of education, including:

(1) An official transcript showing that s/he has completed a course of study and training in massage therapy

(2) Name and date of diploma/degree awarded; and
(3) Name of school, college, university that awarded the diploma/degree;

Reciprocity: An applicant who is licensed in another jurisdiction may also submit evidence of massage therapy program, a college/university, work experience and/or continuing education as defined in 172 NAC 81-003.01, item 3.

f. Examination: Documentation that the applicant:
(1) Requested that the examination rating/grades be sent directly to the Department from the appropriate examination service or State Board Office;
(2) Submitted a completed request for special accommodations, if special testing accommodations are needed by the applicant; and
(3) Submitted any other documentation as requested by the Board/Department; and

6. Evidence of residency in the State of Nebraska;
7. Attestation by the applicant:
a. That s/he has not practiced in Nebraska prior to the application of his/her license; or
b. To the actual number of days practiced in Nebraska prior to the application of his/her license; and

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

a. 81-003.01C Pro-rated Fee: When a credentiallicense 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 , and the Licensee Assistance Program fee of $1, and the license will be valid until the next subsequent renewal date.

81-003.03 Department Review: The Department will act within 150 days upon all completed applications for initial credentialing.

81-003.04 Denial of Initial Credential: If an applicant for an initial credential does not meet all of the requirements for a credential or if the applicant is found to have committed any of the grounds listed in 172 NAC 81-008, 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 that 30-day period, requests a hearing in writing. The hearing will be conducted in accordance with the 01D Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Penalty/Other Action: An individual who practices prior to issuance of a credential is subject to assessment of an Administrative Hearings.

81-003.05 Withdrawn Applications: An applicant for a credential who withdraws his/her application or whose application is rejected by the Department priorPenalty pursuant to administration of the examination will be allowed the return of his/her fee, except for a $25 administrative fee to be retained by the Department.

81-003.06 Practice Prior to Credential: An individual who practices prior to issuance of a credential is subject to assessment of an administrative penalty under 172 NAC 81-81-011013, or such other action as provided in the statutes and regulations governing the credential.

81-003.07 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 information81-003.01E Department Decision: The Department will act within 150 days upon all completed applications for licensure.

81-003.01F Withdrawn/Rejected Application: An applicant for a license who withdraws his/her application or whose application is rejected by the Department prior to administration of the examination will be allowed the return of his/her fee, except for an administrative fee of $25.00 to be retained by the Department.

81-003.08 Address Information: Each credential holder must notify the Department of any change to the address of record.

81-003.09 Non-English Documents: Any documents written in a language other than English must be accompanied by a complete translation into the English language. The translation must be an original document and contain the notarized signature of the translator. An individual may not translate his/her own documents.

81-003.02 Reciprocity

02A Requirements: An applicant for a license to practice massage therapy on the basis of licensure in another jurisdiction must:

1. Have obtained his/her license under standards regulating the practice of massage therapy in the other jurisdiction that are equal to those maintained in Nebraska;
2. Have completed a course of study and training in massage therapy as specified in 172 NAC 002;
3. Have had his/her license based on a written examination, the grades given at such examination, and the date the license was issued;
4. Have been actively engaged in the practice of massage therapy under such license for at least 1 of the 3 years immediately preceding application;
5. Have been in active and continuous practice of massage therapy under license issued by examination in the state, territory, or District of Columbia from which s/he comes for at least 1 year; and
6. Have attained at least the age of 19 and have good moral character.

81-003.02B Application Process. The following must be submitted to the Department:

1. A completed application on Attachment A or an alternate form which contains the same information. Only applications which are complete will be considered;
2. An official transcript showing that s/he has completed a course of study and training in massage therapy;
3. Evidence of having attained at least the age of 19, such as: Driver's license;

Massage therapy transcript which states date of birth;
Birth certificate;
Marriage license; or
Other similar documentation;

4. If any disciplinary action was taken against the applicant's license by another state, an official copy of the disciplinary action, including charges and disposition;
5. If the applicant has been convicted of a misdemeanor or felony:
   a. Official Court Record, which includes charges and disposition;
   b. Copies of arrest records;
   c. A letter from the applicant explaining the nature of the conviction;
   d. All addiction/mental health evaluations and proof of treatment; and
   e. A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation;
6. The required license fee;
7. Have the licensing or certifying agency submit to the Department:
   a. A certification that the applicant is duly licensed or certified, that his/her license or certificate has never been suspended or revoked, and that so far as the record of the agency is concerned, the applicant is entitled to its endorsement on Attachment A3 attached to these regulations and incorporated by this reference or on an alternate form which contains the same information;
   b. The nature of disciplinary actions, if any, taken against the applicant's license or certificate;
   c. The date of the applicant's license or certificate;
   d. The name of the examination on which licensure was based;
   e. The score attained on the examination;
   f. Documentation of the requirements for licensure or certification in the other jurisdiction which are currently in effect and which were in effect at the time the license was issued; and
8. Attestation by the applicant:
   a. That s/he has not practiced in Nebraska prior to the application of his/her license;
   or
   b. To the actual number of days practiced in Nebraska prior to the application of his/her license.

81-003.02C Board Review: The Board will review the documents submitted to determine if the applicant's license or certificate issued by the other jurisdiction was based upon standards regulating the profession which are equal to those maintained in massage therapy by Nebraska.

81-003.02D Pro-rated Fee: When a license will expire within 180 days after its initial issuance date, the Department will collect $25, and the Licensee Assistance Program fee of $1, and the license will be valid until the next subsequent renewal date.

81-003.02E Administrative Penalty/Other Action: An individual who practices prior to issuance of a credential is subject to assessment of an Administrative Penalty pursuant to 172 NAC 81-013, or such other action as provided in the statutes and regulations governing the credential.

81-003.02F Department Decision: The Department will act within 150 days upon all completed applications for licenses.

81-003.02G Withdrawn/Rejected Application: An applicant for a license who withdraws his/her application or whose application is rejected by the Department prior to administration of the examination will be allowed the return of his/her fee, except for an

administrative fee of $25.00 to be retained by the Department.

81-004 TEMPORARY MASSAGE THERAPY LICENSE REQUIREMENTS

81-004.01 QualificationsRequirements and Limitations: A graduate of a course of study and training in massage therapy who has met all the requirements for a license except passage of the licensure examination may apply for a temporary license to practice massage therapy in Nebraska, subject to the following requirements and limitations:
A temporary license to practice massage therapy may be granted to any person who meets all the requirements for a license except passage of the licensure examination or if the individual is applying for licensure by reciprocity as specified in 172 NAC 81-005.01A. A temporary license is subject to the following requirements and limitations:

1. A temporary licensee must be supervised in his or her practice by a licensed massage therapist.
2. A temporary license will be valid for 60 days or until the temporary licensee takes the examination, whichever occurs first. In the event a temporary licensee fails the examination required by such section, the temporary license will be null and void, except that the department, with the recommendation of the board, may extend the temporary license upon a showing of good cause why such license should be extended. A temporary license may not be extended beyond six months.
3. A temporary license will not be issued to any person failing the examination if such person did not hold a valid temporary license prior to his or her failure to pass the examination.

81-004.01A Reciprocity: An applicant who is licensed in another jurisdiction may apply for a temporary license to practice massage therapy if s/he is completing the additional hours necessary to equal 1,000 hours as defined in 172 NAC 81-003.01, item 3 or needs to take the licensure examination.

1. The temporary license will be valid until the Department receives the results of the licensure examination taken by the temporary licensee;
2. The temporary licensee must practice only under the supervision of a Nebraska licensed massage therapist; and
3. The temporary license will be revoked if the temporary licensee fails the examination.

81-004.02 Additional Requirements: An applicant for a temporary license to practice massage therapy must:
1. Not have previously held a temporary massage therapy license;
2. Not have failed the licensure examination; and
3. Meet all requirements for licensure as a massage therapist in Nebraska as prescribed in 172 NAC 81-003.01 or 81-003.02 except passage of the licensure examination.

81-004.023 Application: To apply for a temporary credential to practice massage therapy, the individual must submit a complete application for initial licensure or reciprocity to the Department as described in 172 NAC 81-003.02. A complete application includes all required documentation, the required fee, and a written application. Process: The applicant may obtain an application from the Department or

construct an application that must contain all the required documentation under 172 NAC 81-003.02. In addition to the application for initial licensure, the following must be submitted to the Department:

1. Supervisor and Establishment Information: The applicant must provide the:A completed application on Attachment A or an alternate form which contains the same information. Only applications which are complete will be considered;
   (1) Name andDriver's license number of supervisor;
   (2) Signature of licensee who agrees to supervise;
   (3) Name of establishment where supervision will occur;
   (4) Address of establishment; and. Attestation by the applicant:
   (5) Telephone number of establishment (optional);

2. Evidence of having attained at least the age of 19, such as:
   (Massage therapy transcript which states date of birth;
   Birth certificate;
   Marriage license; or
   Other similar documentation;
   a. That s/he has not practiced in Nebraska prior to the application of his/her license; or
   b. To the actual number of days practiced in Nebraska prior to the application of his/her license; and

4. 2. The required temporary license fee.

81-004.04 The Department will act within 150 days upon all completed applications for a temporary license.

81-004.03 Standards for Supervision: The supervisor of a person who holds a temporary massage therapy license mustis subject to the following standards and conditions:

1. Be Must be present at the location where the temporary licensee is providing massage therapy services;

2. ConsultMust consult with and direct the actions of a person who holds a temporary license to practice massage therapy; and

3. ImmediatelyThe supervisor must immediately notify the Department when supervision of the temporary licensee is terminated.

81-004.046 License Extension Circumstances: The Department, upon recommendation of the Board, may grant an application for extension of a temporary license when the applicant has applied to retake the licensure examination and shows good cause why such license should be extended. Circumstances which may result in extension of the temporary license may include but are not limited to:

1. The applicantApplicant became ill during the licensure examination to the extent that he/s/he could not complete the examination;

2. The applicant Applicant had to leave the licensure examination due to inclement weather conditions which caused the applicant to be unable to

complete the examination; or

_____3. The applicantApplicant suffered an incapacitating injury prior to the licensure examination which allowed him/her to take the examination but affected his/her ability to perform well on the examination.

84-004.057 License Extension Limitations: A temporary licensee who fails the licensure examination may apply for an extension of his/her temporary license to practice massage therapy, subject to the following requirements and limitations:

_____1. ___A temporary license may not be extended beyond 1 year6 months; and

_____2. ___An applicant for extension of a temporary license must submit a written request for extension, stating the reason(s) for said request.

814-004.068 Department Review: The Department will act within 150 days upon all completed applications for initial credentialing.

81-004.07 Denial of Initial Credential: If an applicant for an initial credential does not meet all of the requirements for a credential or if the applicant is found to have committed any of the grounds listed in 172 NAC 81-008, 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 that 30-day period, requests a hearing in writing. The hearingwill be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.
for extension of a temporary license.
81-004.09 Temporary License Denial: The Department may deny an application for a temporary license or extension of a temporary license. Circumstances which may result in denial include but are not limited to:

1. Failure to pay the fee for a temporary license or extension of the temporary license;
2. Falsification of any information submitted for the temporary license or extension of a temporary license;
3. Failure to show good cause for extension of a temporary license; or
4. Violation of any of the provisions specified in 172 NAC 81-009 or 81-011.

81-004.10 Notice of Denial: When the Department denies an application for a temporary license or extension of a temporary license, it will send to the applicant by certified mail a notice setting forth the reason for the denial determination. The applicant has 30 days from the date of receipt of the denial notice to make a request to the Department for an appeal. The appeal
will be conducted in accordance with 184 NAC 1, Rules of Practice and Procedure for

81-004.08 Withdrawn Applications: An applicant for a credential who withdraws his/her application or whose application is rejected by the Department prior to administration of the examination will be allowed the return of his/her fee, except for a $25 administrative fee to be retained by the Department. .

81-004.09 Practice Prior to Credential81-004.11 Administrative Penalty/Other Action: An individual who practices prior to issuance of a credential is subject to assessment of an administrative penalty under 172 NAC 81-011 or Administrative Penalty pursuant to 172 NAC 81-0131 81-01281-012, or such other action as provided in the statutes and regulations

governing the credential.

81-0045.10 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.

81-004.11 Address Information: Each credential holder must notify the Department of any change to the address of record.

81-004.12 Non-English Documents: Any documents written in a language other than English must be accompanied by a complete translation into the English language. The translation must be an original document and contain the notarized signature of the translator. An individual may not translate his/her own documents.

81-005 EXAMINATION

81-005.01 Eligibility:
To take the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB), National Certification Examination for Therapeutic Massage (NCETM) or Massage and Bodywork Licensing Examination (MBLEx) examination, an applicant must apply directly to submit a completed examination application form and supporting documentation to the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or the Federation of State Massage Therapy Boards (FSMTB).

The NCBTMB will send the applicant an Examination Eligibility Letter. After the applicant receives the Examination Eligibility Letter s/he will call the testing service to make an appointment to test. The Examination Eligibility Letter will include a list of testing center locations and testing dates.
81-005.02 Procedures: The NCETMB examination will be administered by the testing service on the dates specified by the testing service of each year and the applicant will be notified of the date, time, place and other information pertinent to administration of the examination by the testing service.

81-006 CONTINUING COMPETENCY: Each person holding an active credential within the state must, on or before the date of expiration of the credential, comply with the continuing competency requirements for his/her profession. Except as otherwise provided in 172 NAC 81-007.03, the Department will not renew the credential of any person who has not complied with these requirements. Each credentialed individual is responsible for maintaining certificates or records of continuing competency activities.

1. The testing service will immediately score the examination and the applicant will receive a copy of the test results before leaving the test center. If the applicant is not successful in passing the examination, he/she will be given directions on how to reapply for a future test.
   a. The applicant must submit the official score report to the Department with his/her completed application for licensure, or have the testing service submit an official copy of the score report to the Department.
2. An examinee who fails an examination may retake the examination upon payment of the fee to the testing service each time he/she is examined.

81-006 CONTINUING COMPETENCY

81-006.01 General Requirements for License Holder: On or before November 1 of each odd-numbered year, each licensed massage therapist who is in active practice in the State of Nebraska must complete 24 hours of approved continuing competency hours/credits during the preceding 24 month period. Additional hours earned during this period which are above and beyond the required 24 hours can not be utilized for subsequent renewals. :

Complete 18 hours of approved continuing education during the preceding 24 month period; no more hours than the total number of approved hours offered in Nebraska will be required during this period;

a. Effective November 1, 2005, a licensee must complete 24 hours of approved continuing competency hours/credits for the November 1, 2007 biennial renewal and every 2 years thereafter.

2. Submit evidence of continuing competency with the renewal notice.

3. Be responsible for:

a. Maintaining certificates or records of credit from continuing competency activities;

b. Verifying with the Department that the continuing competency activity is approved by the Board;

c. If the licensee is a presenter, maintaining documentation of his/her presentation of an approved continuing competency activities. A presenter may receive credit for only the initial presentation during a renewal period. Credit will not be given for subsequent presentations of the same activity; and

d. If applicable, submit an application for waiver of the continuing competency requirement pursuant to 172 NAC 81-007.10B.

81-006.02 The following applies until November 1, 2005: One hour of continuing education credit hours/credits will be awarded for each hour for the following types of programs, provided they have been approved by the Board:

1. Programs relating to the theory or clinical application of theory pertaining to the practice of massage therapy, professional ethics, anatomy, hydrotherapy, CPR, first aid, pathology (which may include the definition of pathology and disease, pharmacology, pathology of body systems, disease entities including cause and effect), and physiology at State and National meetings, i.e., a meeting of the local, state, or National Massage Therapy Association;

2. Formal education courses which relate directly to the theory or clinical application of theory pertaining to the practice of massage therapy, professional ethics, anatomy, hydrotherapy, CPR, first aid, pathology (which may include the definition of pathology and disease, pharmacology, pathology of body systems, disease entities including cause and effect), and physiology;

3. University sponsored courses relating to the theory or clinical application of theory pertaining to the practice of massage therapy, professional ethics, anatomy, hydrotherapy, CPR, first aid, pathology (which may include the definition of pathology and disease, pharmacology, pathology of body systems, disease entities including cause and effect), and physiology. Continuing education credit will be awarded as follows:

a. One semester of academic credit equals 15 continuing education credit hours. One semester credit audited equals 8 hours of continuing education;

b. One quarter hour of academic credit equals 10 continuing education credit hours. One quarter credit audited equals 5 hours of continuing education;

c. One trimester hour of academic credit equals 14 continuing education

credit hours. One trimester credit audited equals7 hours of continuing education;

4. Homestudy programs may accumulate up to 18 hours of continuing education per biennial renewal period;
5. Educational/training video or audio tapes clearly related to maintaining skills necessary for the safe and competent practice of massage therapy may accumulate up to 18 hours of continuing education per biennial renewal period;
6. Any other types of activity approved by the Board of Massage Therapy; and
7. One hour credit will be awarded for each hour of scientific presentation by a license holder acting as an essayist or lecturer to licensed massage therapists if the program relates to theory or clinical application of theory pertaining to massage therapy, professional ethics, anatomy, hydrotherapy, CPR, first aid, pathology (which may include the definition of pathology and disease, pharmacology, pathology of body systems, disease entities including cause and effect), and physiology and is approved by the Board.

81-006.02A Examples of nonacceptable subject matter for continuing education credit for massage therapy includes, but is not limited to the following:

1. Personal development;
2. Government regulations;
3. Time management;
4. Professional affairs;
5. Human relations; and
6. Tours.

81-006.03 Beginning November 1, 2005, licensees

81-006.02 Types of Activities: Licensees must earn 24 hours/credits through a combination of the following types of activities. _Activities must be approved by the Board.

1. Mandatory Hands-on Hours: A licensee must complete at least 14 hours of approved hands-on continuing education through workshops each renewal period (1 hour of attendance = 1 credit). A licensee may earn all 24 hours through hands-on workshops. These hours must meet the following:

   a. The content of the workshop(s) must include at least 75%be HANDS-ON technique which is 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; up to 25% may be theory related to hands-on technique; and

   b. The agenda must reflect a set period of time for class participation (hands-on practice).

2. Mandatory Ethics Hours: Each licensee must obtain at least 3 hours in ethics on or before November 1, 2011); and

3. Optional Hours: A licensee may earn the remaining 10 credits in one or a combination of the following continuing competency activities:

a. National Examination. 7~~10~~ credits will be granted for licensees who successfully pass the examination;

b. Publication. 7 credits will be granted for an~~The~~ article ~~must be~~ published in a professional health related journal; a newsletter article or letter to the editor does not meet this requirement~~. 10 credits will be granted~~;

c. Jurisprudence Examination on State Laws (50 question take home test). 3 credits will be granted for licensees who receive a score of 75% or above;

d. Instructor at a Massage Therapy School. 1.5 credits will be granted for each hour of teaching up to a maximum of ~~10~~ 7 hours;

~~e.Written Paper on massage practice. 7 credits will be granted;~~

~~f.~~e. Practical Examination (must be administered by a Nebraska Licensed Massage Therapy School). 3 credits will be granted;

~~g.~~f. Massage School Training / College or University Coursework (resident/distance. 1 hour of training = 1 credit, 1 semester college credit hour = 15 credits, 1 quarter college credit = 10 credits, up to a maximum of 7~~10~~ credits;

~~h.~~g. Workshops and Lectures (Continuing Education Programs). 1 credit will be granted for each 50~~60~~ minutes of participation up to a maximum of ~~10~~ 7 credits; ~~and~~

~~a.~~ Homestudy Programs: Effective November 1, 2011, only homestudy programs relating to ethics will be acceptable for renewal. Up to a maximum of ~~10~~ 7 credits will be granted. ~~Only the following topic areas are acceptable for homestudy credit:~~

~~(1) Equipment and sanitation;~~
~~(2) Infectious and contagious disease control;~~
~~(3) Anatomy;~~
~~(4) Physiology;~~
~~(5) Business;~~
~~(6) Pathology;~~
~~(7) Hygiene; or~~
~~(8) Stress Management.~~

4. Presenter Credit: If the licensee is a presenter, s/he must maintain documentation of his/her presentation of continuing competency activity. A presenter may receive credit for only the initial presentation during a renewal period.

81-006.03~~A~~ Acceptable Topic Areas:

81-006.03A Hands-on or Non Hands-on Workshops: The following are the acceptable topic areas for continuing competency that may or may not ~~(this does not~~ apply to the mandatory 14 hours of continuing education earned through

hands-on workshops. The method of delivery of the program determines hands-on or non hands-on. or to homestudy):

1. Hydrotherapy – May include,Anatomy – which 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.;

2. Massage - 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, reflexology, deep tissue massage, Swedish massage, sports massage, pregnancy & infant massage, etc.; or

3. Other Topic Areas – May include topics covered on the NCBTMB, NCETM, or MBLEx examination, such as but not limited to: western, non-western, energy work, Chinese medicine, holistic principles, stress management, CPR, first aid, and acupressure therapy.

81-006.03B Non Hands-on Workshops: The following are the acceptable topic areas for continuing competency (these do not apply to the mandatory 14 hours of continuing education earned through hands-on workshops):

a.1. Anatomy – 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.;

2. Business Health Service Mangement – Maywhich may include, but is not limited to, professional ethics, Nebraska Massage Therapy statutes and regulations, business practices, financial management, insurance reimbursement, health histories, etc.;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.;

c.Hydrotherapy – which may include but is not limited to history, benefits of water treatment, cryotherapy, body wraps, salt glows, body shampoos, hot packs, steam cabinets, dry brushing, therapeutic modalities, methods of cold application, heat therapy, contrast baths, skin contra-irritants, spas, etc.;

3. Hygiene - Maywhich may include, but is not limited, to equipment and sanitation, infectious and contagious disease control, etc.;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.;

d.Massage - which 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, reflexology, deep tissue massage, Swedish massage, sports massage, pregnancy & infant massage, etc.;

e.4. Pathology - Maywhich 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 disfunctiondysfunction, etc.;

5. Physiology – May- which 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.;physiology & psychology of exercise, etc.;

6. Ethics: Must include massage practice related ethics. Programs relating to ethics may be earned through workshops or homestudy programs. and

(1) Other Topic Areas covered on the NCBTMB examination, such as but not limited to: western, non-western, energy work, Chinese medicine, holistic principles, stress management, CPR, first aid, and acupressure therapy.

81-006.03B Board Attendance: The Massage Therapy Board reserves the right to attend any workshop for assuring compliance with the regulations.

81-006.04 Continuing Education Program Process and Approval

81-006.04A Process: The Board will evaluate applications from program sponsors of continuing education programs or from licensees to determine if approval is to be granted or denied. To be approved,

g.81-006.03C Acceptable Continuing Competency Programs/Activities: The Board or Department does not approve continuing competency programs/activities. In order for a continuing competency activity/education program to be accepted for renewal or reinstatement of a license, the activity must meet the following criteria:

1. The program must be at least 5060 minutes in duration;

2. The Beginning November 1, 2005, the program topic must relate to the topic areas listed in 172 NAC 81-006.07.0203, except that the 14 mandatory hours must be HANDS-ONTOUCH massage which is 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;

3. The program's objectives must relate to the specified topic areas;

4. The presenter of the program must be qualified by education, experience, or training;

5. Programs must be open to all massage therapists licensed in Nebraska;

___6. ___The program sponsor must employ a system to obtain feedback and knowledge obtained by the licensee; and

___7.— The Program Sponsor must issue proof of licensee attendance. Such proof must include:

a. Name of the program;
b. Date of the program;
c. Location of the program;
d. Name of the licensee who attended the program; and
e. Name of the program sponsor.

81-006.03D Publications: In order for a publication to be accepted for renewal or reinstatement of a license, the publication/article objectives must relate to topic areas defined in 172 NAC 81-007.02A2.

81-006.03E Presenter Credit: If the licensee is a presenter, s/he must maintain documentation of his/her presentation of an approved continuing education program. A presenter may receive credit for only the initial presentation during a renewal period. Credit will not be given for subsequent presentations of the same program.

~~81-006.04B Approval: The program sponsor or licensee must submit to the Board an application on Attachment D 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. The following information must be included in the application:~~

~~3.1. A detailed daily agenda which includes the title of the paper;~~

~~a.b. Topic names; c.~~

~~Topic times (beginning and ending); and~~

~~Designated breaks and/lunches (if applicable);~~

~~2. The publication/article must be already published or accepted for publication in a refereed and/or peer reviewed professional journal, or as a chapter of a book, or as a book.~~

~~homestudy program must meet the following criteria:~~

~~1. The homestudy program's objectives must relate directly to the theory or clinical application of theory pertaining to massage therapy; a. Beginning November 1, 2005, the homestudy program's objectives must relate to equipment and sanitation, infectious and contagious disease control, anatomy, physiology, business, pathology, hygiene, and stress management;~~

~~2. The program sponsor must be qualified by education, experience, or training; and~~

~~3. The program sponsor must require the licensee to pass a final examination with a minimum score of 70%; and~~

~~4. The Program Sponsor must issue proof of licensee attendance. Such proof must include:~~

~~Name of the program;~~

~~Name of the licensee who completed the program; and~~

~~Name of the program sponsor.~~

~~a. Learner objectives per topic;~~

~~b. Hours offered for each learner objective;~~

c. Subject matter that corresponds to each objective; and
d. Teaching method per topic;
3. A description of the qualifications of each presenter which includes the education, training, and/or experience that qualifies the presenter to teach the program topic;
4. The number of hours for which approval is requested;
5. The name, address, and telephone number of the program sponsor and presenter(s); and
6. The date and place of program.

81-006.04C An applicant may submit such additional documents or information as the applicant may consider relevant to the application and in compliance with the Act and these regulations.

81-006.04D In the event that an application is determined to be incomplete, the Division will notify the applicant of the information necessary to complete the application and retain the application submitted pending receipt of such additional information. The applicant has 10 days in which to provide the information necessary to complete the application. Should an applicant fail to complete the application within such 10 day period, all materials will be returned and a new application will be necessary.

81-006.05 Homestudy Program Process and Approval

81-006.05A Process: The board will evaluate applications from program sponsors, or licensees, of homestudy programs to determine if approval is to be granted or denied. To be approved, a the objectives, which includes:

(b. objective;

c address, and number of individual

application.

81-006.05C An applicant may submit such additional documents or information as the applicant may consider relevant to the application and in compliance with the Act and these regulations.

81-006.05D In the event that an application is determined to be incomplete, the Division will notify the applicant of the information necessary to complete the application and retain the application submitted pending receipt of such additional information. The applicant has 10 days in which to provide the information necessary to complete the application. Should an applicant fail to complete the application within such 10 day period, all materials will be returned and a new application will be necessary.

81-006.06 Written Paper Process and Approval

81-006.06A Process: The Board will evaluate applications from licensees for papers written by a licensee to determine if approval is to be granted or denied. To be approved, a paper must meet the following criteria:

1. Cover one or more of the approved topic areas as defined in 172 NAC 81-006.03A;

- Be typed in 12 point font and double spaced with 1 inch margins;
- Have a cover page which includes the title of the paper;
- Be 7 full pages (cover page is not included);
- Include the names of 3 references (a limit of 1 internet site may be used); and
- Include the name and address of the licensee.

81-006.06B Approval: To obtain approval of a paper, a licensee must submit Attachment F attached to these regulations and incorporated by this reference and a copy of the completed written paper. Only applications which are complete will be considered. The purpose of the review is not to critique the paper, but to assure the paper meets the criteria in 172 NAC 81-006.06A.

81-006.07 Publications Process and Approval

81-006.07A Process: Board approval is not required for a publication to be considered acceptable. To be accepted, a publication must meet the following criteria:

1. The publication/article objectives must relate to topic areas defined in 172 NAC 81-006.03A; and
2. The publication/article must be already published or accepted for publication in a refereed and/or peer reviewed professional journal, or as a chapter of a book, or as a book.

81-006.08 Additional Information: The program sponsor or licensee may submit such additional documents or information as the applicant may consider relevant to the application and compliance with the provisions of these regulations.

81-006.09 Prior Approval: The program sponsor or licensee must submit a complete application to the Department at least 60 days prior to the date on which the program is to be given to gain approval before the program is presented.

81-006.10 Continuing Approval: Once a program sponsor is granted approval by the Board for a continuing education workshop or homestudy program, reapproval during the biennial renewal period will not be required for each subsequent occasion on which the program is administered so long as the program is not changed. If any portion of the program is changed or the program is offered during a subsequent biennial renewal period, reapplication must be made pursuant to 172 NAC 81-006.04 and 81-006.05.

81-006.11 Post Program Approval: Applications for approval of a continuing education workshop or homestudy program may be submitted after the program has occurred except those applications for approval submitted 60 days or less before November 1 of each odd-numbered year will not be considered for approval for the renewal period.

81-006.12 Advertisement of Approvals: After the Board has granted its written approval of the application, the program sponsor must publish on all program advertisements the following statement: "The Nebraska Board is not making judgment nor does it endorse the effectiveness or potential risks of approved programs" and is entitled to state upon any publication which advertises or announces the program, the following statement: "This program is approved for ____ hours of continuing competency by the Nebraska Board of Massage Therapy."

81-006.13 Denial of Continuing Education or Homestudy Programs

81-006.13A The Department will deny an application for approval of a continuing education workshop or homestudy program or will suspend or revoke approval of a continuing education or homestudy program on any of the following grounds:

1. Fraud or misrepresentation of information in an application;
2. Program content or the presenter's qualifications fail to meet requirements specified in 172 NAC 81-006.04 or 81-006.05; or
3. If the program's objectives do not relate to the topic areas specified in 172 NAC 81-006.02 or 81-006.03A.

81-006.13B The Board may grant or deny an application for approval of a continuing education or homestudy program. Should the Board determine to deny an application for approval of a continuing education or homestudy program, it will send to the applicant by either certified or registered mail to the last address of record in the Department a notice setting forth the reasons for the determination. The denial will become final 30 days after the mailing of the notice unless the applicant within such 30 day period gives written notice to the Department of a desire for hearing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1 of the Rules of Practice and Procedure for the Department.

81-007 RENEWAL: An individual who wants to renew his/her massage therapy credential must request renewal as specified in 172 NAC 81-007.02. All massage therapy credentials issued by the Department will expire on November 1st of each odd-numbered year.

81-007.01 Renewal Notice: At least 30 days before the expiration of a credential, the Department will notify each credential holder 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. Continuing competency requirements for renewal;
5. The amount of the renewal fee; and
6. Information on how to request renewal and how to place a credential on inactive status.

81-007.02 Renewal Procedures: The request for renewal may be submitted in person or by mail or 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.

1. Application: The applicant must attest that all information in the application is truthful and complete, and the applicant, in his/her application:

   a. Must provide the following information:
      (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
      (2) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
      (3) The applicant's:
         (a) Social Security Number (SSN); or
         (b) Alien Registration Number (A#) or Form I-94 (Arrival-Departure Record) number;

      Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.

   b. Must state that s/he is one of the following:
      (1) A citizen of the United States;
      (2) An alien lawfully admitted into the United States for permanent residence under the Immigration and Naturalization Act (INA) and who is eligible for a credential under the Uniform Credentialing Act; or
      (3) A non-immigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States;

   c. May provide the following information about him/herself:
      (1) The applicant's telephone number including area code;
      (2) The applicant's e-mail address; and
      (3) The applicant's fax number;

d. Must indicate that s/he:
(1) Is of good
(2) Has met the continuing competency requirements specified in 172 NAC 81-006 or has requested a waiver if s/he meets the requirements of 172 NAC 81-007.03 and/or 81-007.04; and
(3) Has not, since the last renewal of the credential, committed any act which would be grounds for action against a credential as specified in 172 NAC 81-008.01, or if an act(s) was committed, provide an explanation of all such acts.

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

a. Alien or Non-Immigrant: Evidence of lawful permanent residence, and/or immigration status may include a copy of:
(1) An Alien Registration Receipt Card (Form I-551, otherwise known as a "Green Card");
(2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
(3) A document showing an Alien Registration Number ("A#") with visa status; or
(4) A Form I-94 (Arrival-Departure Record) with visa status;

b. Other Credential Information: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed;

c. Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;

d. Denial: If the applicant was denied a credential or denied the right to take an examination, an explanation of the basis for the denial;

e. Conviction Information: If the applicant has been convicted of a felony or misdemeanor since his/her last renewal or during the time period since initial credentialing if such occurred within the previous two years, the applicant must submit to the Department:
(1) A list of any misdemeanor or felony convictions;
(2) A copy of the court record, which includes charges and disposition;
(3) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;
(4) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or

required;

(5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and

(6) Any other information as requested by the Board/Department; and

3. The renewal fee according to 172 NAC 2.

81-007.03 Waivers for Military Service: A credential holder who has served in the regular armed forces of the United States during part of the credentialing period immediately preceding the renewal date, or is actively engaged in military service as defined in 172 NAC 81-002, is not required to pay the renewal fee or to meet the continuing competency requirements if acceptable documentation is submitted to the Department. The individual must document his/her military service by submitting to the Department:

1. Military identification proving that s/he is in active service;
2. Military orders; or
3. A letter from his/her Commanding Officer indicating that s/he is on active duty.

Upon receipt of acceptable documentation, the Department will waive the fee and the continuing competency requirements and renew the credential. The credential will remain active until the next renewal period.

81-007.04 Waiver of Continuing Competency Requirements: The Department waives continuing competency requirements for individuals who were first credentialed within the 24-month period immediately preceding the renewal date.

81-007.05 Audit of Continuing Competency Requirements: The Department or the Board may biennially select, in a random manner, a sample of the renewal applications for audit of continuing competency requirements. Each credential holder selected for audit must produce documentation of the continuing competency activities.

81-007.05A The Department/Board will notify each selected credential holder by mail. Failure to notify the Department of a current mailing address will not absolve the credential holder from the requirement for audit.

81-007.05B Within 30 days, each selected credential holder must respond by submitting documentation that s/he has met the requirements for continuing competency. An extension beyond 30 days for submission of the documentation may be granted at the discretion of the Department. Documentation submitted by the credential holder will not be returned.

81-007.05C Acceptable documentation that the credential holder has met the continuing competency requirements include copies of:

1. Certificates of attendance;
2. Attendance rosters;
3. Transcripts or grade reports;
4. Letters from sponsors of continuing education verifying attendance;

or

5. Other similar documentation.

81-007.05D The Department/Board will review the submitted documentation to determine if the credential holder has met the requirements for continuing competency activities for renewal of the credential. Only documented activities/hours that meet the continuing competency requirements will be counted toward the total requirements for renewal.

81-005.05E The Department/Board will notify the credential holder upon satisfactory completion of the audit.

81-007.05F The credential of any person who fails to comply with the conditions of the audit will expire 30 days after notice and an opportunity for a hearing.

81-007.05G The Board reserves the right to audit continuing competency requirements of any credential holder by notifying the credential holder and requesting that s/he produce the required documentation of attendance at or participation in acceptable continuing competency programs within 30 days of mailing.

81-007.06 Department Review: The Department will act within 150 days upon all completed applications for renewal.

81-007.06A False Information: The Department may refuse to renew a credential for falsification of any information submitted for renewal of a credential. The refusal will be made according to 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

81-007.07 Address Information: Each credential holder must notify the Department of any change to the address of record.

81-007.08 Expiration of a Credential: A credential expires if a credential holder fails to:

1. Notify the Department that s/he wants to place his/her credential on inactive status upon its expiration;
2. Meet the requirements for renewal on or before the date of expiration of his/her credential; or
3. Otherwise fails to renew his/her credential.

81-007.08A Failure to Renew: A credential automatically expires without further notice or opportunity for hearing if a credential holder fails by the expiration date of the credential to either:

1. Submit documentation of continuing competency; or
2. Pay the required renewal fee.

81-007.08B Failure to Meet Continuing Competency Requirements: The Department will refuse to renew a credential, after notice and opportunity for hearing, if a credential holder fails to meet the continuing competency requirements for renewal by the expiration date of the credential.

81-007.08C Right to Practice: When an individual's credential expires, the right to represent him/herself as a credential holder and to practice massage therapy expires.

81-007.08D Practice After Expiration: An individual who practices after expiration of his/her credential is subject to assessment of an administrative penalty under 172 NAC 81-011 or such other action as provided in the statutes and regulations governing the credential.

81-007.08E Reinstatement of an Expired Credential: If a credential holder wants to resume the practice of massage therapy after failing to renew his/her credential by the expiration date, s/he must apply to the Department for reinstatement as specified in 172 NAC 81-010.

81-007.09 Inactive Status: When an individual wants to have his/her credential placed on inactive status, s/he must notify the Department in writing. There is no fee to have a credential placed on inactive status and continuing competency is not required.

81-007.09A Request for Inactive Status: When the Department has received notification that an individual wants to have his/her credential placed on inactive status, the Department will notify the credential holder in writing of the acceptance or denial of the request.

81-007.09B Placement on Inactive Status: When an individual's credential is placed on inactive status, the credential holder must not engage in the practice of massage therapy, but may represent him/herself as having an inactive credential.

81-007.09C Return to Active Status: A credential may remain on inactive status for an indefinite period of time. An individual who wants to have his/her credential returned to active status must apply to the Department for reinstatement and meet the requirements specified in 172 NAC 81-010.

81-008 DISCIPLINARY ACTIONS

81-008.01 Grounds for Action Against a Credential: A credential to practice a profession may have disciplinary actions taken against it on any of the following grounds:

1. Misrepresentation of material facts in procuring or attempting to procure a credential;
2. Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;
3. Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;
4. Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to Neb. Rev. Stat. § 38-175;
5. Conviction of:
   a. A misdemeanor or felony under Nebraska law or federal law, or
   b. A crime in any jurisdiction which, if committed within this state, would

have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;

6. Practice of the profession:
   a. Fraudulently,
   b. Beyond its authorized scope,
   c. With gross incompetence or gross negligence, or
   d. In a pattern of incompetent or negligent conduct;
7. Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;
8. Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;
9. Illness, deterioration, or disability that impairs the ability to practice the profession;
10. Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;
11. Having had his/her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to 172 NAC 81-008.05 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this part;
12. Use of untruthful, deceptive, or misleading statements in advertisements;
13. Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;
14. Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;
15. Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;
16. Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;
17. Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the Uniform Controlled Substances Act;
18. Failure to file a report required by Neb. Rev. Stat. §§ 38-1,124 or 38-1,125;
19. Failure to maintain the requirements necessary to obtain a credential;
20. Violation of an order issued by the Department;
21. Violation of an assurance of compliance entered into under Neb. Rev. Stat. § 38-1,108;
22. Failure to pay an administrative penalty;
23. Unprofessional conduct as defined in 172 NAC 81-008.02; or
24. Violation of the Automated Medication Systems Act.

81-008.02 Unprofessional Conduct: Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, or entity is injured. Unprofessional conduct also means conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including but not limited to:

1. Receipt of fees on the assurance that an incurable disease can be permanently cured;
2. Division of fees, or agreeing to split or divide the fees, received for

professional services with any person for bringing or referring a consumer other than:

a. With a partner or employee of the applicant or credential holder or his/her office or clinic;
b. With a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts;
c. With a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement; or
d. By a person credentialed pursuant to the Water Well Standards and Contractors' Practice Act;

3. Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;
4. Cheating on or attempting to subvert the credentialing examination;
5. Assisting in the care or treatment of a consumer without the consent of the consumer or his/her legal representative;
6. Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that the person is entitled to practice a profession for which s/he is not credentialed;
7. Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;
8. Knowingly disclosing confidential information except as otherwise permitted by law;
9. Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;
10. Failure to keep and maintain adequate records of treatment or service;
11. Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;
12. Prescribing any controlled substance to:
    a. Oneself; or
    b. Except in the case of a medical emergency:
        (1) One's spouse;
        (2) One's child;
        (3) One's parent;
        (4) One's sibling; or
        (5) Any other person living in the same household as the prescriber;
13. Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession; and
14. Disruptive behavior, whether verbal or physical, which interferes with consumer care or could reasonably be expected to interfere with the care.

81-008.02A Competence: A massage therapist must not provide services for which s/he is not trained or experienced. Unprofessional conduct in the practice of Massage Therapy includes, but is not limited to:

1. Willfully or intentionally committing any act which endangers client safety or welfare; and
2. Encouraging or promoting massage therapy by untrained or unqualified persons.

81-008.02B Public Statements: A massage therapist must be accurate and objective when advertising regarding professional services or products. Unprofessional conduct includes but is not limited to:

1. Advertising of massage therapy services which contains:
   a. A false, fraudulent, misleading, deceptive statement;
   b. A testimonial which attests to the performance of massage therapy in a superior manner or professional superiority; or
   c. A statement concerning the comparative desirability of offered services;
2. Giving anything of value to a representative of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item;
3. Advertising for massage products offered for commercial sale without making reasonable efforts to ensure presentation of nondeceptive, accurate, or nonmisleading statements;
4. Knowingly permitting others to misrepresent the massage therapist's professional qualifications or the massage therapist's affiliation with products for personal gain of the massage therapist; and
5. Making deceptive or misleading representations of the massage therapist's education, training, or experience.

81-008.02C Confidentiality: A massage therapist must hold in confidence information obtained from a client, except in those unusual circumstances in which to do so would result in clear danger to the person or to others, or where otherwise required by law. Failure to do so constitutes unprofessional conduct.

81-008.02D Professional Relationships: A massage therapist must safeguard the welfare of clients and maintain appropriate professional relationships with clients and temporary licensees. Unprofessional conduct includes but is not limited to:

1. Using skills of the massage therapist to exploit clients;
2. Intentional failure to report to the Board of Massage Therapy known unprofessional conduct by a massage therapist;
3. Failure to decline to carry out massage therapy services that have been requested when such services are believed to be contraindicated or unjustified;
4. Failure to exercise appropriate supervision over a temporary licensee who is authorized to practice only under the supervision of the licensed massage therapist;
5. Willful betrayal of a professional secret except as otherwise provided by law;
6. Verbally or physically abusing clients or engaging in cruel, inhumane, or degrading practice in providing massage therapy to a client; or
7. Willful or intentional failure to accurately represent his/her skills to a client.

81-008.02E Sexual Misconduct: A massage therapist must under no circumstances engage in sexual acts with clients. Such unprofessional conduct

includes, but is not limited to:

1. Providing sexual stimulation as part of massage therapy;
2. Soliciting a sexual relationship with a client;
3. Committing an act with a client punishable as a sexual or sexual related offense; or
4. Engaging in sexual harassment of a client. Sexual harassment means deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unnecessary in the professional relationship with the client.

81-008.02F Draping: A massage therapist must maintain appropriate draping for each client to ensure the comfort level of both the therapist and client.

81-008.03 Temporary Suspension or Limitation

81-008.03A 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 81-008.01 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.

81-008.03B 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.

81-008.03C A temporary suspension or temporary limitation of a credential under 172 NAC 81-008.03 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 reinstated unless and until the Department reaches a decision to revoke, suspend, or limit the credential or otherwise discipline the credential holder.

81-008.04 Department Action: The Department will follow the procedures delineated in the Uniform Credentialing Act to notify credential holders of any disciplinary action to be imposed and the time and place of the hearing.

81-008.05 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.

81-008.05A Additional Terms and Conditions of Discipline: If any discipline is imposed pursuant to 172 NAC 81-008.05, 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.

81-009 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 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 credential holder must:
   a. Attest that all the information on the offer is true and complete; and
   b. Provide the credential holder's signature and date.

81-009.01 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.

81-009.02 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.

81-009.03 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 reinstated; and
   c. Any terms and conditions for reinstatement.

81-009.04 A limitation may be placed on the right of the credential holder to practice a profession or operate a business to the extent, for the time, and under the conditions as imposed by the Director.

81-009.05 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.

81-009.06 Reinstatement following voluntary surrender is set out in 172 NAC 81-010.

81-010 REINSTATEMENT: This section applies to individuals previously credentialed in Nebraska who seek the authority to return to practice in Nebraska with a valid Nebraska credential. Individuals may apply for reinstatement as follows:

1. An individual whose credential has expired, been placed on inactive status, voluntarily surrendered for an indefinite period of time, or suspended or limited for disciplinary reasons, may apply for reinstatement at any time.

2. An individual whose credential has been voluntarily surrendered for a definite period of time may apply for reinstatement after that period of time has elapsed.

3. An individual whose credential has been revoked may apply for reinstatement only after a period of two years has elapsed from the date of revocation.

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

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.

81-010.01 Reinstatement From Expired or Inactive Status or Following Voluntary Surrender Unrelated to a Disciplinary Matter

The applicant must submit to the Department a written application on a form provided by the Department or constructed by the applicant.

1. Application: The applicant must attest that all information in the application is truthful and complete, and the applicant, in his/her application:
   a. Must provide the following information:
      (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
      (2) Mailing address (street, rural route, or post office address; and city, state, and zip code or country information);
      (3) The applicant's:
         (a) Social Security Number (SSN); or
         (b) Alien Registration Number (A#); or
         (c) Form I-94 (Arrival-Departure Record) number.
         Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
      (4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
   b. Must state that s/he is one of the following:
      (1) A citizen of the United States;
      (2) An alien lawfully admitted into the United States for permanent residence under the Immigration and Naturalization Act (INA) and who is eligible for a credential under the Uniform Credentialing Act; or
      (3) A non-immigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States;

      If the applicant is an alien or non-immigrant, s/he must submit evidence of lawful permanent residence and/or immigration status which may include a copy of:
      (1) An Alien Registration Receipt Card (Form I-551, otherwise known as a "Green Card");
      (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;

(3) A document showing an Alien Registration Number ("A#") with visa status; or
(4) A Form I-94 (Arrival-Departure Record) with visa status;

c. May provide the following information about him/herself:
(1) Telephone number including area code;
(2) E-mail address;
(3) Fax number; and

d. Must indicate that s/he:
(1) Is of good character;
(2) Has met the continuing competency requirements specified in 172 NAC 81-006 within the 24 months immediately preceding submission of the application;
(3) Has not practiced in Nebraska since s/he last held an active credential, or if the applicant has practiced in Nebraska since s/he last held an active credential, the actual number of days practiced; and
(4) Has not committed any act which would be grounds for action against a credential as specified in 172 NAC 81-008 since the last renewal or issuance of the credential (whichever is later), or if an act(s) was committed, provide an explanation of all such acts; and

2. Fee(s): The following fee(s):
a. If the credential is expired or inactive, the reinstatement and renewal fees; or
b. If the credential was voluntarily surrendered, the renewal fee.

81-010.01A If an applicant has practiced while his/her credential was expired, inactive, or voluntarily surrendered, the Department may, with the recommendation of the Board, take one or more of the following actions:

1. Assess an administrative penalty pursuant to 172 NAC 81-011, in which case a separate notice of opportunity for hearing will be sent to the applicant;
2. Deny the application to reinstate the credential;
3. Reinstate the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or
4. Reinstate the credential.

81-010.01B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

1. Deny the application for reinstatement of the credential;
2. Reinstate the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or
3. Reinstate the credential.

81-010.01C The Department will act within 150 days on all completed applications.

81-010.01D The Department's decision may be appealed to the Director by any party to the decision. The appeal must be in accordance with the Administrative Procedure Act.

81-010.02 Reinstatement from Non-Disciplinary Revocation or Lapsed Status: An individual whose credential was placed on non-disciplinary revocation or lapsed status before December 1, 2008 may apply for reinstatement as provided in 172 NAC 81-010.01.

81-010.03 Reinstatement Following Suspension, Limitation, Revocation, or Voluntary Surrender to Resolve a Pending Disciplinary Matter, In Lieu of Discipline, or In Response to a Notice of Disciplinary Action: An individual whose credential was suspended or limited may apply for reinstatement at any time. An individual whose credential has been revoked may apply for reinstatement after a period of two years has elapsed from the date of revocation. An individual whose credential was voluntarily surrendered may apply for reinstatement according to the order entered by the Director.

The applicant must submit to the Board a written application on a form provided by the Department or constructed by the applicant.

1. Application: The applicant must attest that all information in the application is truthful and complete, and the applicant, in his/her application:
   a. Must provide the following information:
      (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
      (2) Mailing address (street, rural route, or post office address; and city, state, and zip code or country information);
      (3) The applicant's:
         (a) Social Security Number (SSN); or
         (b) Alien Registration Number (A#); or
         (c) Form I-94 (Arrival-Departure Record) number.
         Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
      (4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
      (5) A statement of the reason the applicant believes his/her credential should be reinstated;
   b. Must state that s/he is one of the following:
      (1) A citizen of the United States;
      (2) An alien lawfully admitted into the United States for permanent residence under the Immigration and Naturalization Act (INA) and who is eligible for a credential under the Uniform Credentialing Act; or
      (3) A non-immigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States;

      If the applicant is an alien or non-immigrant, s/he must submit evidence of lawful permanent residence and/or immigration status which may include a copy of:
      (1) An Alien Registration Receipt Card (Form I-551, otherwise known as a "Green Card");
      (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
      (3) A document showing an Alien Registration Number ("A#") with visa status; or

(4) A Form I-94 (Arrival-Departure Record) with visa status;

c. May provide the following information about him/herself:

(1) Telephone number including area code;

(2) E-mail address;

(3) Fax number; and

d. Must indicate that s/he:

(1) Is of good character;

(2) Has met the continuing competency requirements specified in 172 NAC 81-006 within the 24 months immediately preceding submission of the application;

(3) Has not practiced in Nebraska since s/he last held an active credential, or if the applicant has practiced in Nebraska since s/he last held an active credential, the actual number of days practiced; and

(4) Has not committed any act which would be grounds for action against a credential as specified in 172 NAC 81-008 since the last renewal or issuance of the credential (whichever is later), or if an act(s) was committed, provide an explanation of all such acts; and

2. Fee: The renewal fee.

81-010.03A The Board will make a recommendation regarding reinstatement following suspension, limitation, revocation, or voluntary surrender within 180 days of receipt of the application.

81-010.03B The Department, with the recommendation of the Board, may:

1. Conduct an investigation to determine if the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. § 38-178;
2. Require the applicant to submit to a complete diagnostic examination, at the expense of the applicant, by one or more physician(s) or other professionals appointed by the Board. The applicant may also consult a physician(s) or other professionals of his/her own choice for a complete diagnostic examination and make available a report(s) of the examination(s) to the Department and to the Board;
3. Require the applicant to pass a written, oral, or practical examination or any combination of examinations at the expense of the applicant;
4. Require the applicant to successfully complete additional education at the expense of the applicant;
5. Require the applicant to successfully pass an inspection of his/her practice site; or
6. Take any combination of these actions.

81-010.03C On the basis of the written application, materials submitted by the applicant, and the information obtained under 172 NAC 81-010.03B, the Board may:

1. Deny the application for reinstatement; or
2. Recommend to the Department:
   a. Full reinstatement of the credential;
   b. Modification of the suspension or limitation; or

c. Reinstatement subject to limitations or subject to probation with terms and conditions.

If the applicant has practiced while his/her credential was suspended, limited, revoked, or voluntarily surrendered, the Department may assess an administrative penalty pursuant to 172 NAC 81-011, in which case a separate notice of opportunity for hearing will be sent to the applicant.

81-010.03D An affirmative vote of a majority of the full membership of the Board as authorized by statute is required to recommend reinstatement of a credential with or without terms, conditions, or restrictions.

81-010.03E Full Reinstatement: If the Board recommends full reinstatement of the credential, modification of the suspension or limitation, or reinstatement of the credential subject to limitations or subject to probation with terms and conditions, the Board's recommendation will be sent to the applicant by certified mail. The following information will be forwarded to the Director for a decision:

1. The written recommendation of the Board, including any finding of fact or order of the Board;
2. The application for reinstatement;
3. The record of hearing, if any; and
4. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the applicant.

81-010.03F Denial, Modification, Limitation, or Probation: If the Board's initial decision is to deny the application for reinstatement, recommend modification of the suspension or limitation, or reinstate the credential subject to limitation or probation with terms and conditions, notification of the Board's decision will be mailed to the applicant by certified mail.

1. The initial decision or recommendation of the Board will become final 30 days after the decision or recommendation is mailed to the applicant unless the applicant requests a hearing within that 30-day period.

   a. If the applicant requests a hearing before the Board, the Department will mail a notice of the date, time, and location of the hearing. The notice will be sent by certified mail at least 30 days before the hearing.
   b. Following the hearing, the Board may deny the reinstatement or recommend full reinstatement of the credential, or recommend modification of the suspension or limitation, or recommend reinstatement of the credential subject to limitations or probation with terms and conditions.

2. If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years before filing the current application, the Department may grant or deny the application without another hearing before the Board.

81-010.03G Denial Decision: If the Board's final decision is denial of the application for reinstatement, the applicant will be notified by certified mail. The applicant may appeal the Board's denial to District Court in accordance with the Administrative Procedure Act.

81-010.03H Board Recommendation: If the Board's final recommendation is full reinstatement of the credential, modification of the suspension or limitation, or reinstatement of the credential subject to limitations or probation with terms and conditions, the Board's recommendation will be sent to the applicant by certified mail. The following information will be forwarded to the Director for a decision:

1. The written recommendation of the Board, including any finding of fact or order of the Board;
2. The application for reinstatement;
3. The record of hearing, if any; and
4. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the applicant.

81-010.03I Director's Review: The Director, upon receipt of the Board's recommendation for full reinstatement, modification, or probation, will review the application and other documents and make a decision within 150 days of receipt of the Board's recommendation and accompanying documents. The Director will enter an order setting forth the decision. The Director may:

1. Affirm the recommendation of the Board and grant reinstatement; or
2. Reverse or modify the recommendation if the Board's recommendation is:
   a. In excess of statutory authority;
   b. Made upon unlawful procedure;
   c. Unsupported by competent, material, and substantial evidence in view of the entire record; or
   d. Arbitrary and capricious.

The order regarding reinstatement of the applicant's credential will be sent to the applicant by certified mail. The Director's decision may be appealed to District Court by any party to the decision. The appeal must be in accordance with the Administrative Procedure Act.

~~81-007 PROCEDURES FOR RENEWAL OF LICENSE: All licenses issued by the Department under the Act and these regulations expire on November 1 of each odd-numbered year.~~

~~81-007.01 Any license holder who wishes to renew his/her license must:~~

~~2.Meet the continuing competency requirements as specified in 172 NAC 81-006;~~

~~3.Pay the renewal fee as specified in 172 NAC 81-012;~~

~~4.Respond to the following questions:~~

~~a.Has your license in any profession in another state been revoked, suspended, limited or disciplined in any manner?~~

~~b.Have you been convicted of a misdemeanor or felony?~~

~~5.Cause to be submitted to the Department:~~

a.The renewal notice;
b.The renewal fee;
c.Attestation of completing the required hours of continuing competency earned within 24 months of the date of expiration or application for waiver of continuing competency. Attestation to meeting continuing competency requirements satisfies the submission of the documentation requirement of Neb. Rev. Stat. §71-110;
d.If any disciplinary action was taken against the applicant's license by another state, an official copy of the disciplinary action, including charges and disposition;
e.If the licensee has been convicted of a misdemeanor or felony:
(1)Official Court Record, which includes charges and disposition;
(2)Copies of arrest records;
(3)A letter from the licensee explaining the nature of the conviction;
(4)All addiction/mental health evaluations and proof of treatment; and
(5)A letter from the probation officer addressing probationary conditions and current status, if the licensee is currently on probation.

81-007.02 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's last place of residence as noted in the records of the Department. It is the responsibility of the licensee prior to the renewal period to notify the Department of any name and/or address changes.

81-007.02A The renewal notice must specify:
1. The name of the licensee;
2. The license holder's last known address of record;
3. The license number;
4. The expiration date of the license;
5. The renewal fee as prescribed in 172 NAC 81-012;
6. The number of continuing competency hours required for renewal; and
7. The option to place the license on either inactive or lapse status;

81-007.02B The licensee must apply for renewal by submitting to the Department:
1.The renewal notice;
2.The renewal fee;
3.The licensee's social security number;
4.Attestation of completing the required hours of continuing competency earned within 24 months of the date of expiration and a listing of the continuing competency activities completed or application for waiver of continuing competency; and
5.Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation or disciplinary action (if applicable).

81-007.02C If the licensee wishes to place his/her license on either inactive or lapsed status, s/he must:
1. Request that his/her license be placed on inactive status by submitting to the Department:
a. The renewal notice with a mark in the box marked inactive; and
b. The fee of $25.00; or
2. Request that his/her license be placed on lapsed status by submitting to the Department:
a. The renewal notice with a mark in the box marked lapsed.

81-007.02D The Department must notify the licensee in writing of the acceptance or denial of the request to allow the license to be placed on lapse or inactive status.

81-007.03 Second Notice: The Department will send to each licensee who fails to renew his/her license or place the license on inactive or lapsed status in response to the first notice

a second notice of renewal in accordance with the requirements of 172 NAC 81-007.01 that specifies:

1. That the licensee failed to pay the renewal fee;
2. That the license has expired;
3. That the licensee is subject to an administrative penalty under 172 NAC 81-013 if s/he practices after the expiration date;
4. That upon receipt of the renewal fee, together with an additional late fee of $25.00 and documentation of continuing competency hours within that time, no order of revocation will be entered; and
5. That upon failure to receive $25.00 in addition to the regular renewal fee and documentation of continuing competency hours the license will be revoked as specified in 172 NAC 81-008.

81-007.03A The licensee must apply for renewal by submitting to the Department:
The renewal notice;
The renewal fee and the additional late fee of $25.00;
The licensee's social security number;
Attestation by the licensee:

(1) That s/he has not practiced in Nebraska since the expiration of his/her license; or
(2) To the actual number of days practiced in Nebraska since the expiration of his/her license;

Attestation of completing the required hours of continuing competency earned within 24 months of the date of expiration and a listing of the continuing competency activities completed or application for waiver of continuing competency (if applicable); and
Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation or disciplinary action (if applicable).

81-007.03B If the licensee wishes to place his/her license on either inactive or lapsed status, s/he must:

1. Request that his/her license be placed on inactive status by submitting to the Department:
   a. The renewal notice with a mark in the box marked inactive; and
   b. The fee of $25.00; or
2. Request that his/her license be placed on lapsed status by submitting to the Department:
   a. The renewal notice with a mark in the box marked lapsed.

81-007.03C The Department must notify the licensee in writing of the acceptance or denial of the request to allow the license to be placed on lapse or inactive status.

81-007.04 When any licensee fails, within 30 days of expiration of a license, to pay the renewal fee, to submit documentation of continuing competency, and/or to pay an additional late fee of $25, the Department will automatically revoke the license without further notice or hearing and make proper record of the revocation.

81-007.05 Failure to meet the continuing competency requirement for renewal within 30 days of expiration of his/her license will constitute non-renewal of a license, unless a waiver of continuing competency is granted or the license is placed on inactive or lapsed status. When any licensee fails, within 30 days of expiration of a license, to meet the continuing competency requirements for renewal and to pay an additional late fee of $25, the Department revokes the license after notice and opportunity for hearing. Hearings held before the Department must be conducted in accordance with Neb. Rev. Stat. §§ 84-901 to 84-920, Administrative Procedure Act and 184 NAC 1, Rules of Practice and Procedure of the Department.

81-007.06 When the licensee has given notification to the Department that s/he desires to have the license lapse or be placed on inactive status upon expiration, 172 NAC 81-007.04

and 81-007.05 will not apply.

81-007.07 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.

81-007.08 An individual who practices after expiration of his/her credential is subject to assessment of an Administrative Penalty pursuant to 172 NAC 81-013, or such other action as provided in the statutes and regulations governing the credential.

81-007.09 Waiver of Continuing Competency: The Department, on the recommendation of the Board, may waive the continuing competency requirements, in part or in total, for any two-year licensing period when a license holder submits documentation that circumstances beyond his/her control prevented completion of such requirements.

81-007.09A Such circumstances include situations in which:

1. The licensee holds a Nebraska license but is not practicing his/her profession in Nebraska;
2. The licensee has served in the regular armed forces of the United States during part of the 24 months immediately preceding the license renewal date;
3. The licensee has submitted proof that s/he was suffering from a serious or disabling illness or physical disability which prevented completion of the required number of continuing competency hours during the 24 months immediately preceding the license renewal date; and
4. The licensee was first licensed within the 24 months immediately proceeding the license renewal date.

81-007.09B Application for Waiver of Continuing Competency: Any license holder who seeks a waiver of continuing competency in part or in total for any two-year licensing period must apply to the Department. The Department, on the recommendation of the Board, may waive continuing competency requirements in part or in total for any two-year licensing period. The license holder must submit:

1. A complete application for waiver of continuing competency on the renewal form. Only applications which are complete will be considered, and the application must be received by the Credentialing Division on or before November 1 of the year the license is subject to renewal; and
2. Documentation of the circumstances beyond the license holder's control which prevented completion of continuing competency requirements as set forth in 172 NAC 81-006, including:
   a. A license holder who holds a Nebraska license but is not practicing in Nebraska must mark the appropriate response on the renewal form;
   b. A license holder who has served in the regular armed forces of the United States during part of the 24 months immediately preceding the license renewal date must mark the appropriate response on the renewal form and submit official documentation stating the dates of such service;
   c. A license holder who was suffering from a serious or disabling illness or physical disability which prevented completion of the required number of hours of continuing competency during the 24 months immediately preceding the license renewal date must mark the appropriate response on the renewal form and submit a statement from a treating physician(s) stating that the license holder was injured or ill, the duration of the illness or injury and of the recovery period, and that the license holder was unable to attend continuing competency programs during that period; or
   d. A license holder who was first licensed within the 24 months immediately preceding the license renewal date must mark the appropriate response on the renewal form and list the date said license was issued.

81-007.09C The Department, upon the recommendation of the Board, may grant or deny, in part or in total, an application for waiver of continuing competency requirements upon proof that circumstances beyond the applicant's control prevented completion of such requirements.

1. When the Department determines to deny an application for waiver of continuing competency requirements, it will send to the applicant by certified mail to the last name and address of record in the Department a notice setting forth the reason for the denial determination.
   a. The applicant has 30 days from the date of the denial notice to make a written request to the Department for an appeal. The appeal will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1 Rules of Practice and Procedure for the Department.
   b. The Department will issue at the conclusion of the appeal pursuant to 184 NAC 1, a final order setting forth the results of the appeal.
2. When the Department determines to grant a waiver of continuing competency, the applicant will be notified within 30 days of receipt of the application.

81-007.10 Audit of Continuing Competency: The Board may select, in a random manner, a sample of the license renewal applications for audit of continuing competency credits. Each licensee must maintain in his/her personal files such certificates or records of credit from continuing competency programs received from approved program sponsors. Each licensee selected for audit must produce documentation of attendance at those continuing competency activities listed on his/her renewal application.

1. The Department will send to each licensee selected for audit a notice of audit.
2. When selected for audit, the licensee must provide satisfactory documentation of attendance at or participation in approved continuing competency programs listed on the license holder's renewal application. Satisfactory documentation includes, but is not limited to, certifications of attendance, certified attendance rosters, or letters from sponsors of continuing competency verifying attendance.
   a. In the absence of prior approval of continuing competency activities attended, the licensee may submit material to the Board for approval as specified in 172 NAC 81-006.
3. Failure to comply with the audit will be grounds for non-renewal of the license.

81-008 CREDENTIAL REVOCATION FOR FAILURE TO MEET RENEWAL REQUIREMENTS: The Department may revoke a credential when the credential holder fails to meet the renewal requirements

81-008.01 Revocation for Nonpayment of Renewal Fee or Late fee, or Failure to Submit Documentation of Continuing Competency within Thirty Days of Expiration of the Credential

81-008.01A When a credential holder fails to pay the required renewal fee, to submit documentation of continuing competency, and/or to pay a late fee of $25 and fails to request that his/her credential be placed on either inactive or lapsed status within 30 days of its expiration, the Department automatically revokes the credential without further notice or hearing.

81-008.01A1 A post revocation notice will be sent which will specifies 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 or to request that his/her credential be placed on inactive or lapsed status;
3. The Department has revoked the credential; and
4. The credential holder has a right to request reinstatement of the credential.

81-008.02 Revocation for Failure to Meet Continuing Competency Requirements

81-008.02A When a credential holder fails within 30 days of the expiration of his/her credential to meet the continuing competency requirement, the Department revokes his/her credential after notice and opportunity for a hearing.

81-008.02A1 The revocation notice for failure to meet continuing competency requirements specifies that:

1. The credential holder was given a first and second notice of failure to meet the continuing competency requirement and the respective dates of each notice;
2. The credential holder failed to meet continuing competency renewal requirements or to have his/her credential timely placed on inactive or lapsed status;
3. The credential has been revoked for failure to meet continuing competency requirements within thirty days after expiration of the credential and that the revocation will become final unless a request for hearing is filed by the credential holder with the Department within 30 days of date of receipt of the notice; and
4. The credential holder has a right to request reinstatement of the credential after revocation.

81-009 GROUNDS ON WHICH THE DEPARTMENT MAY DENY, REFUSE RENEWAL OF, OR DISCIPLINE A LICENSE

81-009.01 The Department will deny an application for a license when the applicant fails to meet the requirements for licensure as specified in 172 NAC 81-003 or is found to be in violation of any of the provisions of 172 NAC 81-009.03.

81-009.02 The Department will refuse renewal of a license if the licensee fails to meet the requirements specified in 172 NAC 81-007 or in 172 NAC 81-009.03.

81-009.03 The Department may deny, refuse renewal of, limit, suspend, or revoke licenses for any of the following grounds and those specified in Neb. Rev. Stat. §71-147:

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

Grossly immoral or dishonorable conduct evidencing unfitness or lack of proficiency sufficient to meet the standards required for practice of the profession in this state.

Habitual intoxication or dependence or failure to comply with a treatment program or an aftercare program entered into under the Licensee Assistance Program established pursuant to Neb. Rev. Stat. §71-172.01.

Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction and which, if committed within this state, would have constituted a misdemeanor or felony under state law and which has a rational connection with the applicant's or license holder's fitness or capacity to practice the profession.

Practice of the profession

a. fraudulently,
b. beyond its authorized scope,
c. with manifest incapacity,
d. with gross incompetence or gross negligence, or
e. in a pattern of negligent conduct. A pattern of negligent conduct means a continued course of negligent conduct in performing the duties of the profession.

Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, physical disability, mental disability, or emotional disability.

7. Physical or mental incapacity to practice the profession as evidenced by a legal adjudication or a determination thereof by other lawful means.
8. Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a license or certificate by a person not licensed or certified to do so.
9. Having had his/her license denied, refused renewal, limited, suspended, or revoked or having had such license disciplined in any other manner in accordance with Neb. Rev. Stat. §71-155 by another state or jurisdiction to practice massage therapy based upon acts by the applicant or licensee similar to acts described in Neb. Rev. Stat. §71-155 or 172 NAC 81-009. A certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration or the taking of other disciplinary measures against it by another state or jurisdiction is conclusive evidence.
10. Unprofessional conduct, which term includes all acts specified in Neb. Rev. Stat. §71-148 and such other acts as specified in 172 NAC 81-011.
11. Use of untruthful or improbable statements, or flamboyant, exaggerated, or extravagant claims concerning such license holder's professional excellence or abilities in advertisements.
12. Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act.
13. Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes.
14. Willful or repeated violations of the Uniform Licensing Law or of 172 NAC 81, 82, or 83 relating to the license holder's profession, sanitation, quarantine, or school inspection.
15. Unlawful invasion of the field of practice of any profession mentioned in the Uniform Licensing Law which the license holder is not licensed or certified to practice.
16. Practicing the profession of Massage Therapy while his/her license is suspended or in contravention of any limitation placed upon his/her license.
17. When the applicant is found to be not qualified to practice the particular profession or occupation for which s/he is applying, licensed, or certified because of physical or mental illness or physical or mental deterioration or disability.
18. Refusal of an applicant for a license to submit to a physical or mental examination requested by the Board, pursuant to Neb. Rev. Stat. §§71-161.12 to 71-161.16 to determine his/her qualifications to practice or to continue in the practice of the profession or occupation for which application was made or for which s/he is licensed.
19. Failure to file a report required by Neb. Rev. Stat. §71-168.

81-009.04 If the Department proposes to deny, refuse renewal of, limit, revoke, or suspend a license other than for non-payment of the 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 will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Rules of Practice and Procedure for the Department.

81-010 RE-CREDENTIALING: This section applies to individuals previously issued a Nebraska credential who have lost the legal authority to practice in total or in part and who seek the authority to return to practice in Nebraska with a valid Nebraska credential.

81-010.01 Eligibility

81-010.01A An individual whose credential has been previously:

1. Placed on lapsed status;

2. Placed on inactive status;
3. Revoked for failure to meet the renewal requirements;
1.Suspended or limited for disciplinary reasons; or
2.Voluntarily surrendered or voluntarily limited for an indefinite period of time; may request, at any time, to be re-credentialed and re-authorized to practice under the credential, in accord with these regulations.

81-010.01B An individual 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.

81-010.01C An individual who practices prior to re-credentialing is subject to:
1.Assessment of an Administrative Penalty pursuant to 172 NAC 81-013, and
2.Limitation or other sanction on the credential, or denial of the request to be re-credentialed and re-authorized to practice under the credential, and referral for prosecution for uncredentialed practice, as provided in the statutes and regulations governing the credential.

81-010.02 Requirements for Restoration from Lapsed Status: A person whose credential has been placed on lapsed status may have his/her credential restored from lapsed to active status by the Department upon proof to the Department that s/he meets the requirements pursuant to 172 NAC 81-003.

81-010.02A If the Department has evidence that an applicant has practiced while his/her credential was lapsed, the Department may:
a.Assess an Administrative Penalty pursuant to 172 NAC 81-013;
b.Initiate disciplinary action against the lapsed credential;
c.Deny the request to restore the credential from lapsed to active status; or
d.Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

81-010.02B If the Department has evidence that an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:
1. Initiate disciplinary action against the lapsed credential;
2. Deny the request to restore the credential from lapsed to active status; or
3. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

81-010.02C The Department will act within 150 days on all completed applications.

81-010.02D The applicant will be provided with notice and the opportunity for hearing in accord with the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920 before any of the actions pursuant to 172 NAC 81-010.02A or 81-010.02B are final.

81-010.03 Requirements to Move a Credential from Inactive to Active Status: A person whose credential has been placed on inactive status may have his/her credential moved from inactive to active status upon proof to the Department that s/he meets the following requirements:
1. Meet renewal requirements, including:
a. The continuing competency requirements; and
b. Paying the renewal fee and any other applicable fees;
2. Attest:
(1)That s/he has not practiced in Nebraska since s/he last held an active credential; or
b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

81-010.04 Procedures for Moving from Inactive to Active Status: To move a credential from inactive status to active status, the applicant must submit the following to the Department:

(1)A written application which contains the following information about the applicant:

a. Name;

b. Address;

c. Social security number; and

d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;

e. A statement describing all:

(1) Felony or misdemeanor convictions during the time period since the credential was active;

(a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:

[1] Official Court Record, which includes charges and disposition;

[2] Arrest records;

[3] A letter from the applicant explaining the nature of the conviction;

[4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and

[5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.

(2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was active;

(a) If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and

(3) Disciplinary charges pending against any professional credential held by the applicant.

f. Verification that the continuing competency requirements for renewal have been met;

2. The renewal fee and any other applicable fees; and

3. Attestation by applicant:

a. That s/he has not practiced in Nebraska since s/he last held an active credential; or

(2)To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

81-010.04A If an applicant has practiced while his/her credential was inactive, the Department may:

Assess an Administrative Penalty pursuant to 172 NAC 81-013;
Initiate disciplinary action against the credential;
Deny the request to move the credential from inactive to active status; or
Move the credential to active status and impose limitation(s) or other sanctions on the credential.

81-010.04B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

1. Initiate disciplinary action against the credential;
2. Deny the request to move the credential from inactive to active status; or
3. Move the credential to active status and impose limitation(s) or other sanctions on the credential.

81-010.04C In either event pursuant to 172 NAC 81-010.04A or 81-010.04B, a notice and the opportunity for hearing will be given to the applicant.

81-010.04D The Department will act within 150 days on all completed applications.

81-010.05 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. The continuing competency requirements; and
   b. Paying the renewal fee, the late fee of $35, and any other applicable fees; and
2. Attest:
   a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
   b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

81-010.06 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;
   b. Address;
   c. Social security number; and
   d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
   e. A statement describing all:
      (1) Felony or misdemeanor convictions during the time period since the credential was active;
         (a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:
            [1] Official Court Record, which includes charges and disposition;
            [2] Arrest records;
            [3] A letter from the applicant explaining the nature of the conviction;
            [4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and
            [5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.
      (2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was revoked;

(a) If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and

(3) Disciplinary charges pending against any professional credential held by the applicant.

f. Verification that the continuing competency requirements for renewal have been met;

1.The renewal fee, the late fee of $35 and any other applicable fees; and

3. Attestation by the applicant:

(1)That s/he has not practiced in Nebraska since s/he last held an active credential; or

(2)To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

(1) If an applicant has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 81-013 in which case a notice and opportunity for hearing will be sent to the applicant.

(2) If an applicant has practiced 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 81-010.06B.

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

81-010.06A 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.

81-010.06B 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:

(2)Reinstate the credential. An Administrative Penalty may be assessed pursuant to 172 NAC 81-013 if warranted;

(3)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 81-013 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.

81-010.07 Requirements for Reinstatement More Than One Year Following Revocation for Failure to Meet the Renewal Requirements: An applicant for reinstatement who applies more than one year after revocation for failure to meet the renewal requirements must:

1. Petition the Board for reinstatement pursuant to Neb. Rev. Stat. § 71-161.05. The petition for reinstatement must be accompanied by:

a.Verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the

activities of the petitioner since the credential was revoked; and

b. Verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was revoked.

2. Meet the renewal requirements, including:

a. The continuing competency requirements; and

b. Paying the renewal fee, the late fee of $75 and any other applicable fees.

3. Attest:

a. That s/he has not practiced in Nebraska since s/he last held an active credential; or

b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.

81-010.08 Procedures for Reinstatement More Than One Year Following Revocation for Failure to Meet Renewal Requirements: An applicant for reinstatement more than one year following revocation for failure to meet renewal requirements must submit to the Board:

1. A petition for reinstatement:

a. Stating the reason the petitioner believes his/her credential should be reinstated;

b. Accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was revoked; and verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was revoked.

c. Containing the following information about the petitioner:

(1) Name;

(2) Address;

(3) Social security number; and

(4) If the petitioner holds a professional credential in another state, a list of the state(s) and type of credential;

(5) A statement describing all:

(a) Felony or misdemeanor convictions during the time period since the credential was active;

[1] If the petitioner has been convicted of a felony or misdemeanor, provide copies of:

[a] Official Court Record, which includes charges and disposition;

[b] Arrest records;

[c] A letter from the petitioner explaining the nature of the conviction;

[d] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and

[e] A letter from the probation officer addressing probationary conditions and current status, if the petitioner is currently on probation.

(b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the petitioner during the time period since the credential was revoked;

[1] If any disciplinary action was taken against the petitioner's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and

(c) Disciplinary charges pending against any professional credential held by the petitioner.

(6) Verification that the continuing competency requirements for renewal have been met.

2. The renewal fee, the late fee of $75 and any other applicable fees; and

3. Attestation by the petitioner:

3.That s/he has not practiced in Nebraska since s/he last held an active credential; or

4.To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.

(1) If a petitioner has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 81-013 in which case a notice and opportunity for hearing will be sent to the petitioner.

(2) If a petitioner has practiced 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 81-010.08F.

81-010.08A The petition to recommend reinstatement will be considered at the next meeting of the Board that is held, but not earlier than 30 days after the petition is filed.

81-010.08B Any petition to recommend reinstatement of a credential will be conclusively acted upon by the Board within 180 days after the filing of a properly prepared petition and the necessary accompanying documents with the Board.

81-010.08C If the Board recommends reinstatement of the credential, no public hearing need be held on the petition.

81-010.08D Prior to any recommendation by the Board against reinstatement of the credential, an opportunity for a formal public hearing on the petition must be granted by the Board if formally requested by the petitioner.

81-010.08D1 The petitioner's request for a formal hearing must be submitted within 30 days of the Board's notification of an opportunity for a formal public hearing.

81-010.08E If the petitioner formally requests a formal public hearing or if the Board otherwise holds such a hearing, the petitioner will be given at least 30 days prior notice by sending to the petitioner a copy of the notice of hearing by certified or registered mail at his/her last known residence or business post office address as shown by the files or records of the Department or as otherwise known. Notice may be given to the petitioner by personal service. The hearing will be conducted pursuant to 172 NAC 1.

81-010.08F The Board will review the petition to recommend reinstatement and the record of any hearing held, and submits its recommendation regarding reinstatement and the record on which such recommendation is made to the Department within 180 days of receipt of the petition to recommend reinstatement.

81-010.08F1 If the Board recommends reinstatement of the credential, the Department may:

2.Accept the Board's recommendation and grant reinstatement of the credential.

2. If the Department determines that the Board's recommendation is: in excess of statutory authority; made upon unlawful procedure;

unsupported by competent, material, and substantial evidence; or arbitrary or capricious, the Department may not accept the Board's recommendation and either:

a. Deny reinstatement of the credential, or

b. Grant reinstatement with terms, conditions, or restrictions.

81-010.08F2 If the Board recommends denial of reinstatement, the Board will send to the petitioner a written notice of the Board's recommendation. The petitioner may appeal the Board's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

81-010.08F3 If the Board recommends reinstatement with terms, conditions, or restrictions, the Department may:

1. Accept the Board's recommendation and grant reinstatement with terms, conditions, or restrictions; or

2. Not accept the Board's recommendation and either:

a. Deny reinstatement of the credential; or

b. Grant reinstatement of the credential.

81-010.08F4 The Department will within 150 days of receipt of the Board's recommendation send to the petitioner a written notice of the Department's reinstatement with or without terms, conditions, or restrictions or denial of reinstatement of the credential.

81-010.08F5 The petitioner may appeal the Department's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

81-010.09 Requirements to Reinstate a Credential Following Suspension, Limitation, or Revocation for Disciplinary Reasons: An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must meet the following requirements:

1. Petition the Board for reinstatement:

(2)The petition for reinstatement must be accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and

(3)Verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked.

2. Pay the reinstatement fee of $75, and other profession-specific requirements if expressly set by law;

3. If the credential was revoked or suspended, attest:

a. That s/he has not practiced in Nebraska since s/he last held an active credential; or

b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.

81-010.10 Procedures for Reinstatement Following Suspension, Limitation, or Revocation for Disciplinary Reasons: An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must submit to the Board:

1. A petition for reinstatement:

a. Stating the reason the petitioner believes his/her credential should be reinstated;

b. Accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and verified recommendations from at least

~~two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked.~~

~~c. Containing the following information about the petitioner:~~

~~(1) Name;~~

~~(2) Address;~~

~~(3) Social security number; and~~

~~(4) If the petitioner holds a professional credential in another state, a list of the state(s) and type of credential;~~

~~(5) A statement describing all:~~

~~(a) Felony or misdemeanor convictions during the time period since the credential was suspended, limited, or revoked;~~

~~[1] If the petitioner has been convicted of a felony or misdemeanor, provide copies of:~~

~~[a] Official Court Record, which includes charges and disposition;~~

~~[b] Arrest records;~~

~~[c] A letter from the petitioner explaining the nature of the conviction;~~

~~[d] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~

~~[e] A letter from the probation officer addressing probationary conditions and current status, if the petitioner is currently on probation.~~

~~(b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the petitioner during the time period since the credential was suspended, limited, or revoked;~~

~~[1] If any disciplinary action was taken against the petitioner's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and~~

~~(c) Disciplinary charges pending against any professional credential held by the petitioner;~~

~~(6) Any continuing competency activities; and~~

~~2. The reinstatement fee of $75.~~

~~3. Attestation by the petitioner, if the credential was revoked or suspended:~~

~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~

~~b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.~~

~~(1) If a petitioner has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 81-013 in which case a separate notice and opportunity for hearing will be sent to the petitioner.~~

~~(2) If a petitioner has practiced 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 81-010.10G.

81-010.10A The Board will make a recommendation to the Director regarding reinstatement following disciplinary action. In determining whether reinstatement should be recommended, the Board may:

(a)Request the Department investigate all activities of the petitioner since the disciplinary action was taken against him/her, including activities prohibited by Neb. Rev. Stat. §§71-147 and 71-148.

(b)Require the petitioner to submit to a complete diagnostic examination by one or more physicians appointed by the Board, the petitioner being free also to consult a physician or physicians of his/her own choice for a complete diagnostic examination and make available a report or reports thereof to the Board;

(c)Require the petitioner to pass a written, oral, or practical examination or any combination of such examinations; or

(d)Require the petitioner to complete additional education.

81-010.10B The petition to recommend reinstatement will be considered at the next meeting of the Board that is held, but not earlier than 30 days after the petition is filed.

81-010.10C Any petition to recommend reinstatement of a credential will be conclusively acted upon by the Board within 180 days after the filing of a properly prepared petition and the necessary accompanying documents with the Board.

81-010.10D If the Board recommends reinstatement of the credential, no public hearing need be held on the petition.

81-010.10E Prior to any recommendation by the Board against reinstatement of the credential, an opportunity for a formal public hearing on the petition must be granted by the Board, if formally requested by the petitioner.

81-010.10E1 The petitioner's request for a formal hearing must be submitted within 30 days of the Board's notification of an opportunity for a formal public hearing.

81-010.10E2 If the petitioner had a hearing or an opportunity for a hearing on a prior petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04 within a period of two years immediately preceding the filing of such petition, the Board may grant or deny, without a hearing, any petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04.

81-010.10F If the petitioner formally requests a formal public hearing or if the Board otherwise holds such a hearing, the petitioner will be given at least 30 days prior notice by sending to the petitioner a copy of the notice of hearing by certified or registered mail at his/her last known residence or business post office address as shown by the files or records of the Department or as otherwise known. Notice may be given to the petitioner by personal service. The hearing will be conducted pursuant to 172 NAC 1.

81-010.10G The Board reviews the petition to recommend reinstatement, any examination or investigatory information and the record of hearing, if one was held. The Board will submit its recommendation to the Director within 180 days of receipt of the petition to recommend reinstatement.

81-010.10G1 If the Board recommends reinstatement of the credential:

1. The Board will send its recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.
2. The petitioner must submit, to the Department, an application for reinstatement by the Director within 30 days of receipt of the Board's recommendation.

a. The application must include:
(1) Name of the petitioner; and
(2) Signed statement that the petitioner requests the Director to issue the credential in accordance with the Board's recommendation for reinstatement.

3. Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:
a. The application;
b. The written recommendation of the Board, including any finding of fact or order of the Board;
c. The petition submitted to the Board;
d. The record of hearing, if any;
e. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the petitioner.

4. The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Board. The Director will not hold a second hearing. The Director may affirm, reverse, or modify the Board's recommendation. A decision by the Director to reverse or modify the Board's recommendation will be based on finding that the Board's recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or capricious.
a. When the Director affirms, modifies, or reverses the Board's recommendation for reinstatement, the Director will enter an Order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail to the petitioner;
b. If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

81-010.10G2 If the Board recommends reinstatement of the credential with terms, conditions, or restrictions:

1. The Board will send its recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.

2. The petitioner must submit, to the Department, an application for reinstatement by the Director within 30 days of receipt of the Board's recommendation.
a. The application must include:
(1) Name of the petitioner; and
(2) Signed statement that the petitioner requests the Director to issue the credential in accordance with the Board's recommendation for reinstatement.

3. Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:
a. The application;
b. The written recommendation of the Board, including any finding

of fact or order of the Board;

c. The petition submitted to the Board;

d. The record of hearing, if any; and

e. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the petitioner.

4. The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Board. The Director will not hold a second hearing. The Director may affirm, reverse, or modify the Board's recommendation. A decision by the Director to reverse or modify the Board's recommendation will be based on finding that the Board's recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or capricious.

a. When the Director affirms, modifies or reverses the Board's recommendation for reinstatement, the Director will enter an Order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail to the petitioner;

b. If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

81-010.10G3 If the Board denies reinstatement, the Board will send to the petitioner a written notice of the Board's recommendation to deny reinstatement. The petitioner may appeal the Board's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

81-010.11 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for an Indefinite Period of Time

81-010.11A 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.

81-010.11A1 An applicant for restoration of a credential that was voluntarily surrendered or limited for an indefinite period of time must submit to the Department:

1. A written application which contains the following information about the applicant:

a. Name;

b. Address;

c. Social security number; and

d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;

e. A statement describing all:

(1) Felony or misdemeanor convictions during the time period since the credential was active;

(a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:

[1] Official Court Record, which includes charges

and disposition;
[2] Arrest records;
[3] A letter from the applicant explaining the nature of the conviction;
[4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and
[5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.

(2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was active;

(a) If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and

(3) Disciplinary charges pending against any professional credential held by the applicant.

f. Any continuing competency activities.

g. Attest:

(1) That s/he has not practiced in Nebraska prior to the voluntary surrender of his/her credential; or

(2) To the actual number of days practiced if the applicant has practiced in Nebraska prior to the voluntary surrender of his/her credential.

81-010.11A2 If an applicant has practiced while his/her credential was voluntarily surrendered, the Department may:

Assess an Administrative Penalty pursuant to 172 NAC 81-013;
Initiate disciplinary action against the credential;
Deny the request to restore the credential; or
Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

81-010.11A3 If an applicant has committed any other violation of the statutes and regulations governing the credential while his/her credential was voluntarily surrendered or limited, the Department may:

Initiate disciplinary action against the credential;
Deny the request for restoration of the credential; or
Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

81-010.11A4 In either event pursuant to 172 NAC 81-010.11A2 or 81-010.11A3, a notice and the opportunity for hearing will be given to the applicant.

81-010.11A5 The Department will act within 150 days on all completed applications.

81-010.12 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for a Specific and Definite Period of Time

81-010.12A 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.

81-010.12B If an individual has practiced 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 81-013.

81-010.13 Credentials Voluntarily Surrendered or Limited Permanently: Credentials that are voluntarily surrendered or limited permanently pursuant to Neb. Rev. Stat. § 71-161.11 will not be restored.

81-011 UNPROFESSIONAL CONDUCT: Pursuant to Neb. Rev. Stat. § 71-148 of the Uniform Licensing Law, actions of a licensee who fails to conform to the accepted standards of the profession and whose actions could jeopardize the health, safety and welfare of the clients constitute unprofessional conduct which includes but is not limited to the following:

81-011.01 Competence: A massage therapist must not provide services for which s/he is not trained or experienced. Unprofessional conduct in the practice of Massage Therapy includes but is not limited to:

1. Willfully or intentionally committing any act which endangers client safety or welfare; and
2. Encouraging or promoting massage therapy by untrained or unqualified persons.

81-011.02 Public Statements: A massage therapist must be accurate and objective when advertising regarding professional services or products. Unprofessional conduct includes but is not limited to:

1. Advertising of massage therapy services which contains:
   a. A false, fraudulent, misleading, deceptive statement;
   b. A testimonial which attests to the performance of massage therapy in a superior manner or professional superiority; or
   c. A statement concerning the comparative desirability of offered services;
2. Giving anything of value to a representative of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item;
3. Advertising for massage products offered for commercial sale without making reasonable efforts to ensure presentation of nondeceptive, accurate, or nonmisleading statements;
4. Knowingly permitting others to misrepresent the massage therapist's professional qualifications or the massage therapist's affiliation with products for personal gain of the massage therapist; and
5. Making deceptive or misleading representations of the massage therapist's education, training, or experience.

81-011.03 Confidentiality: A massage therapist must hold in confidence information obtained from a client, except in those unusual circumstances in which to do so would result in clear danger to the person or to others, or where otherwise required by law. Failure to do so constitutes unprofessional conduct.

81-011.04 Professional Relationships: A massage therapist must safeguard the welfare of clients and maintain appropriate professional relationships with clients and temporary licensees. Unprofessional conduct includes but is not limited to:

1. Using skills of the massage therapist to exploit clients;
2. Intentional failure to report to the Board of Massage Therapy known unprofessional conduct by a massage therapist;
3. Failure to decline to carry out massage therapy services that have been requested when such services are believed to be contraindicated or unjustified;

4. Failure to exercise appropriate supervision over a temporary licensee who is authorized to practice only under the supervision of the licensed massage therapist;
5. Willful betrayal of a professional secret except as otherwise provided by law;
6. Verbally or physically abusing clients or engaging in cruel, inhumane, or degrading practice in providing massage therapy to a client; or
7. Willful or intentional failure to accurately represent his/her skills to a client.

81-011.05 Sexual Misconduct: A massage therapist must under no circumstances engage in sexual acts with clients. Such unprofessional conduct includes, but is not limited to:

1. Providing sexual stimulation as part of massage therapy;
2. Soliciting a sexual relationship with a client;
3. Committing an act with a client punishable as a sexual or sexual related offense; or
4. Engaging in sexual harassment of a client. Sexual harassment means deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unnecessary in the professional relationship with the client.

81-011.06 Fees for Services: A massage therapist must solicit or obtain fees for professional service in an appropriate manner and in a manner consistent with the laws of the State of Nebraska. Unprofessional conduct includes but is not limited to:

1. Solicitation of professional patronage by agents or persons, popularly known as cappers or steerers, or profiting by the acts of those representing themselves to be agents of the massage therapist;
2. Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured;
3. Division of fees, or agreeing to split or divide the fees received for professional services with any person for bringing or referring a client; and
4. Obtaining any fee for professional services by fraud, deceit, or misrepresentation.

81-012 SCHEDULE OF FEES: The following fees have been set by the Department:

81-012.01 Initial License Fee: By an applicant for a license to practice massage therapy, the fee of $25 and the Licensee Assistance Program fee of $1 for each year remaining during the current biennial renewal period.

81-012.02 Pro-rated Initial License Fee: For issuance of a license that will expire within 180 days after its initial issuance date, a fee of $25, and the Licensee Assistance Program fee of $2.

81-012.03 Temporary License Fee: By an applicant for a temporary license, or extension of a temporary license, to practice as a massage therapist, the fee of $15.

81-012.04 License Renewal Fee: By an applicant for renewal on a biennial basis of a license to practice massage therapy, the fee of $25, and the Licensee Assistance Program fee of $2.

81-012.05 Inactive License Status Fee: By an applicant to have his/her license placed on inactive status, the fee of $25.

81-012.06 Renewal Late Fee: By an applicant for renewal on a biennial basis of a license, who fails to pay the renewal fee on or before the expiration date of his/her license, the fee of $25 as a late fee in addition to the renewal fee.

81-012.07 Certification of License Fee: For issuance of a certification of a license, the fee of $25. The certification includes information regarding:

The basis on which a license was issued;
The date of issuance;
Whether disciplinary action has been taken against the license; and
The current status of the license.

81-012.08 Verification of License Fee: For issuance of a verification of a license, the fee of $5. The verification includes written confirmation as to whether a license was valid at the time the request was made.

81-012.09 Duplicate License Fee: For a duplicate of original license document or reissued

license, the fee of $10.
81-012.10 Administrative Fee: For a denied license or a withdrawn application, the administrative fee of $25 will be retained by the Department, except if the licensing fee is less than $25, the fee will be forfeited and an examination fee will not be returned.
81-012.11 Reinstatement Late Fee: For reinstatement of a license for failure to meet renewal requirements:
1. Within one year, the fee of $35 in addition to the renewal fee.
2. After one year of revocation, the fee of $75 in addition to the renewal fee.
81-012.12 Reinstatement Fee: For reinstatement following suspension, limitation or revocation for disciplinary reasons, the fee of $75.

81-0181-0113 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists of practicethat a person or entity practiced without a license. Practice without a credential to practice a profession or operate a business. Practice without a credentiallicense for the purpose of this regulation means practice:

4.1. Prior to the issuance of a credentiallicense;
5.2. Following the expiration of a credentiallicense; or
6.3. Prior to the reinstatement of a credentiallicense.

81-81-011013.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without being credentialeda license:

1.
2.The person admits to engaging in practice;
3.2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
4.3. Billing or payment records document the provision of service, care, or treatment by the person;
5.4. Service, care, or treatment records document the provision of service, care, or treatment by the person;
6.5. Appointment records indicate that the person was engaged in practice;or ; and
7.6. 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.

81-81-011013.02 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.license. To assess thesuch penalty, the Department will:

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

c.The total amount of the administrative penalty;
d.b. The evidence on which the administrative penalty is based;
e.c. That the person may request, in writing, a hearing to contest the

assessment of an administrative penalty;

f.d. That the Department will within 30 days following receipt of payment of the administrative penalty, remittransmit the penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5 of the Constitution of Nebraskafor credit to the Permanent School Fund; and

g.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.

81-81-011013.03 -Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.
Neb. Rev. Stat. §§ 84-901 to 84-920 and 184 NAC 1.

81-012 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 81, Regulations Governing the Practice of Massage Therapy, last effective January 3, 2005date April 6, 1999.

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