

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

Mark Martin

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Little Rock, Arkansas 72201-1094
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www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Health

Department Health Systems Licensing and Regulation/Cosmetology and Massage Therapy Section

Contact Kelli Kersey E-mail kelli.kersey@arkansas.gov Phone 501-661-2171

Statutory Authority for Promulgating Rules Massage Therapy Act; A.C.A. 17-86-203(a)

Rule Title: Rules and Regulations for Massage Therapy in Arkansas

Intended Effective Date
(Check One)

☐ Emergency (ACA 25-15-204)

☐ 10 Days After Filing (ACA 25-15-204)

☒ Other 01/01/2019
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

08/21--08/23/17

09/22/17

12/21/18

08/03/17

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Anna Hurst anna.hurst@arkansas.gov

12/21/18

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Laura K. Shue
Signature

661-2297
Phone Number

laura.shue@arkansas.gov
E-mail Address

General Counsel
Title

12-21-18
Date

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Arkansas Department of Health
DIVISION Health Systems Licensing and Regulation/Cosmetology and Massage Therapy Section
DIVISION DIRECTOR Connie Melton
CONTACT PERSON Kelli Kersey
ADDRESS 4815 West Markham, Slot 8, Little Rock, AR 72205
PHONE NO. 501-661-2171 FAX NO. 501-661-2055 E-MAIL kelli.kersey@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Laura Shue
PRESENTER E-MAIL laura.shue@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

OCT 12 2013

BUREAU OF
LEGISLATIVE RESEARCH

1. What is the short title of this rule? Rules and Regulations for Massage Therapy in Arkansas
2. What is the subject of the proposed rule? Massage Therapy-Cupping Rule Revision to update language to mirror Act 530 of 2017
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒
If yes, what is the effective date of the emergency rule? _____
- When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐

No ☒

5. Is this a new rule? Yes ☐ No ☒

If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes ☐ No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule?

Yes ☒

No ☐

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Act 530 of 2017, codified at Ark. Code Ann. § 17-86-102 (3) et seq.

7. What is the purpose of this proposed rule? Why is it necessary? To revise the Rules to mirror Act 530 of 2017 and to add the practice of cupping to the scope of massage therapy.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.healthy.arkansas.gov

9. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: September 22, 2017

Time: 9 A.M.

Place: Freeway Medical Center, 5800 W 10th St. Suite 801, Little Rock, AR 72204

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
September 22, 2017

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
January 1, 2019, or upon legislative review and approval.

12. Do you expect this rule to be controversial? Yes ☐ No ☒

If yes, please explain. _____

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules?

Please provide their position (for or against) if known.

Massage Therapists, in favor of the change

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Health
DIVISION Health Systems Licensing and Regulation/Cosmetology and Massage Therapy Section
PERSON COMPLETING THIS STATEMENT Kelli Kersey
TELEPHONE NO. 501-661-2171 **FAX NO.** 501-682-5840 **EMAIL:** kelli.kersey@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rules and Regulations for Massage Therapy of Arkansas

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>

Next Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>

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Total 0

Total 0

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	0
Federal Funds	0
Cash Funds	0
Special Revenue	0
Other (Identify)	0
Total	0

Next Fiscal Year

General Revenue	0
Federal Funds	0
Cash Funds	0
Special Revenue	0
Other (Identify)	0
Total	0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

ARKANSAS STATE BOARD OF HEALTH



**Adopted Rules & Regulations
For Massage Therapy in Arkansas
REVISED: June 2017
EFFECTIVE: January 1, 2019**

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Article One

Authority

The following Rules and Regulations for Massage Therapy in Arkansas are duly adopted and promulgated by the Arkansas Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas including, without limitation, the Massage Therapy Act, specifically Ark. Code Ann. § 17-86-203(a).

Article Two

Principles, Methods and Definitions

Terms found in *Arkansas Code* §17-86-102 are descriptive rather than limiting, and massage therapy includes those techniques which are utilized in all phases of massage and bodywork for the purposes of relaxation, stress reduction, pain relief, injury prevention, injury repair, postural improvement and/or health enhancement.

1. **Assist** is defined as acting as an aide to a master massage therapist or massage therapy instructor.
2. **Board** refers to the Arkansas State Board of Health.
3. **Continuing Education** is defined as education that is acquired after an individual has graduated and become licensed as a massage therapist.
4. **Cupping Therapy** for massage is defined as a modality used to release rigid soft tissues, through the application of a non-heated device that creates suction to lift the tissue away from the body.
5. **Department** refers to the Arkansas Department of Health.
6. **Direct supervision** is defined as being in the physical presence of a licensed master massage therapist or massage therapy instructor.
7. **Guest Instructor** is defined as a qualified speaker or presenter who does not teach more than sixteen (16) clock hours in a school curriculum.
8. **Licensee** means an individual licensed under the Massage Therapy Act and these Rules and Regulations.
9. (A) **"Massage therapist"** means a person who has:

- (i) Earned a diploma from a Board-accepted school of massage therapy;
 - (ii) Passed an examination required or accepted by the Board; and
 - (iii) Become licensed and registered to practice massage therapy.
- (B) "Massage therapist" includes a person who has previously obtained the massage therapist license under prior state law.
- (C) A massage therapist may:
- (i) Instruct continuing education programs approved by the Department of Health; and
 - (ii) Assist in the instruction of the procedures listed in the definition of Massage Therapy under the direct supervision of a massage therapy instructor or master massage therapist.

10.(A) "Massage therapy" means the treatment of soft tissues, which may include skin, fascia, and muscles and their dysfunctions for therapeutic purposes of establishing and maintaining good physical condition, comfort, and relief of pain.

(B) "Massage therapy" is a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, and stretching the tissue.

(C) "Massage therapy" also means to engage in the practice of any of the following procedures:

- (i) Massage therapy techniques and procedures, either hands-on or with mechanical devices;
- (ii) Therapeutic application and use of oils, herbal or chemical preparations, lubricants, nonprescription creams, lotions, scrubs, powders, and other spa services;
- (iii) Therapeutic application of hot or cold packs;
- (iv) Hydrotherapy techniques, which means the use of water in any form for therapeutic purposes and includes methods of full and partial immersion baths, whirlpools, sponging, sprays, body shampoos, body scrubs, body wraps, fomentations, compresses, poultices, packs, masks, steam treatments, and sauna treatments.

(v) Heliotherapy, which may include mechanical devices, heat lamps, and other devices;

(a) Heliotherapy means the use of light for therapeutic purposes and may consist of the use of infrared radiation lamps and devices and the various uses of other light that might be approved by the Department.

(vi) Electrotherapy; which means the use of electrical devices for therapeutic purposes and may consist of the use of mechanical vibrators, electric stimulation, direct and alternating currents, interferential currents, micro currents, and Russian stimulation. Therapists must demonstrate training in the use of electrical devices other than simple mechanical vibrators and present qualifications acceptable to the Department before using such devices.

(vii) Any hands-on bodywork techniques and procedures rising to the level of the techniques and procedures intended to be regulated under this chapter and not covered under specific licensing laws of other boards;

D. The following are not included in the scope of massage therapy practice:

- (i) Colonic irrigation and other methods of internal hydrotherapy;
- (ii) Depilation, waxing, extractions, and electrolysis;
- (iii) Practices involving the use of ultrasound, unless the therapist can present educational qualifications acceptable to the Department and a licensed physician prescribes the treatment;

11. “Massage therapy clinic” means a clinic, place, premises, building, or part of a building in which a branch or any combination of branches of massage therapy or the occupation of a massage therapist is practiced;

12. (A) “Massage therapy instructor” means a person who:

- (i) Before July 1, 2010, has completed no less than two hundred fifty (250) hours of practical experience as a master massage therapist, which may be gained, in part or in whole, as an assistant to an instructor in a massage school or may be gained, in part or in whole, as a directed instructor in a massage school and has completed no less than two hundred fifty (250) continuing education hours as approved by the Department;

(ii) On or after July 1, 2010, has been an active and practicing licensee and registered as a master massage therapist for a period of not less than three (3) years preceding the application for an upgrade to massage therapy instructor;

(iii) On or after July 1, 2010, in addition to the experience under subdivision (6)(A)(i) of this section, has completed no less than two hundred fifty (250) continuing education hours as approved by the Department as a licensed master massage therapist; and

(iv) Is determined by the Department to be qualified to be licensed and registered to practice massage therapy.

(B) "Massage therapy instructor" includes a person who has previously obtained the massage therapy instructor license under prior state law.

(C) Massage therapy instructors may:

(i) Instruct continuing education programs approved by the Department;

(ii) Instruct any of the procedures in subdivision (5) of this section; and

(iii) Instruct basic curricula in a massage therapy school registered by the department as required by § 17-86-306(e);

13. Massage Therapy School means a registered and licensed facility that meets and follows the required educational standards as established by § 17-86-306 and all pertinent rules established by the State Board of Health.

14. Massage Therapy Spa means a site or premises, or portion of a site or premises, in which a massage therapist practices massage;

15. (A) Master massage therapist means a person who:

(i) Before July 1, 2010, is a licensed and registered massage therapist who has completed no fewer than two hundred fifty (250) hours of practical experience as a massage therapist, which may be gained in part or in whole as an assistant to an instructor in a massage school and has completed no less than one hundred

twenty-five (125) continuing education hours as approved by the Department of Health;

(ii) On or after July 1, 2010, has been an active and practicing licensee and registered as a massage therapist for a period of not less than two (2) years preceding the application for an upgrade to master massage therapist;

(iii) On or after July 1, 2010, in addition to the experience under subdivision (14)(A)(i) of this section, has completed no less than one hundred twenty-five (125) continuing education hours as approved by the Department of Health; and

(iv) Is determined by the Department of Health to be qualified to be licensed and registered to practice massage therapy.

(B) "Master massage therapist" includes a person who has previously obtained the master massage therapist license under a prior state law.

(C) Master massage therapists may:

(i) Instruct continuing education programs approved by the Department of Health;

(ii) Instruct any of the procedures listed in the definition of massage therapy in this section; and

(iii) Instruct, as directed by a massage therapy instructor, basic curricula in a massage therapy school registered by the Department of Health as required by § 17-86-306(e);

16. Postsecondary Massage Therapy School means a massage therapy school that offers a postsecondary curriculum approved by the State Board of Health and whose enrollment is made up of only students with a high school diploma or its equivalent.¹

¹ The Definition of Postsecondary Massage Therapy Schools complies with 34 C.F.R. 600 and is required to ensure continued Title VI funding for Postsecondary Massage Therapy Schools in Arkansas.
BOH Adopted Rules & Regulations

17. Sexual misconduct includes:

(A) A range of behavior used to obtain sexual gratification against another's will, at the expense of another, without the client's knowledge, engaging in sexual activity for profit, or a combination of any of these activities;

(B) Massage of the genitalia, anus, and, except under specific circumstances, the breast; and

(C) Sexual activity with consent of a client or at the request of a client.

Article Three

Policies & Procedures

1. The Department designates all forms and letters to accompany requests such as applications for licensure, licensing renewals, applications for upgrades to master, massage therapy instructor, continuing education program applications, school applications, satellite school applications, school renewals, school and/or clinic inspections, and any other such forms and letters, as necessary.
2. The Massage Therapy Technical Advisory Committee (MTTAC) may meet on a pre-determined quarterly basis and at other times as deemed necessary by the Department and follows all requirements of the Freedom of Information Act and all other applicable State laws in conducting such meetings.
 - a. The MTTAC may adopt *Robert's Rules of Order* or such other procedures or methodologies, as it deems necessary.
 - b. The MTTAC shall consist of seven (7) members, who shall be appointed by the Board for a term of three (3) years. The composition of the MTTAC shall be as follows:
 - (i) Six (6) shall be licensees under the Massage Therapy Act;
 - (ii) Only one (1) shall be an owner of a massage therapy school; and
 - (iii) One (1) member, to represent the public, shall not be engaged in or retired from the practice of massage therapy.
 - c. The powers and duties of the MTTAC are as follows:

- (i) Recommend rule changes to the Board;
 - (ii) Recommend CEU approval to the Department;
 - (iii) Hold initial hearings and determinations for school and spa/clinic inspections as described in Article Four;
- 3. Applications to the Department continuing education program courses and all requests from members of the public for items to be placed on the MTTAC's agenda must be submitted to the Department of Health's Massage Therapy Section in writing by mail or email and postmarked or sent at least thirty (30) days prior to the applicable MTTAC meeting.
- 4. A copy of the Massage Therapy Act and a copy of the latest adopted Rules and Regulations shall be posted on the Department of Health's website and available for download.
- 5. An applicant applying as a new massage therapy licensee, an individual applying for a new massage therapy school license, or a licensee applying for an upgrade issued by the Department shall apply to the Identification Bureau of the Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau and the Federal Bureau of Investigation.
 - a. The state and federal criminal background check shall conform to applicable federal standards and shall include the taking of fingerprints;
 - b. The applicant shall sign a release of information to the Department and shall be responsible for the payment of any fees associated with the state and federal criminal background check;
 - c. Each applicant who has resided outside of Arkansas shall provide a state and federal criminal background check, including the taking of fingerprints, issued by the state or states in which the applicant resided.
 - d. Results shall be sent directly to the Department from the agency performing the state and federal criminal background check.
- 6. Unless waived by the Department of Health, no applicant is eligible to receive or hold a license issued by the Department if the applicant has pleaded guilty or nolo contendere to or been found guilty of a felony or Class A misdemeanor or any offense involving fraud, theft, dishonesty,

sexual misconduct, sexual solicitation, lewd behavior, child abuse or molestation, statutory rape, sexual assault, human trafficking, or other violent crime.

- a. The Department , at its sole discretion, and upon written request from the applicant, may consider waiver of the bar to eligibility to licensure as provided in Ark. Code Ann. § 17-86- 203(e)-(h).
 - b. If the Department waives the bar to eligibility, the Department must submit the reasons for waiving the bar to eligibility in writing, and the determination and reasons shall be made available to members of the Department for review.
7. Applicants for licensure are considered who have completed and graduated with a minimum of five (500) in-classroom hours of massage therapy classes, or proof is given of completion of the specific classes and hours taken as required in Arkansas massage schools.
 - a. Each course must be a passing grade of seventy-five (75) percent or higher.
8. Individuals who perform “rubdowns” or apply tanning lotions, oils, or apply other substances over the body of clients must hold a current massage license or a license from another discipline and are allowed to use only such procedures as are within the limits of their respective licenses and scope of practice.
 - a. Each service performed without a massage license will constitute a violation of Ark. Code Ann. § 17-86-101 and may be subject to penalties under Ark. Code Ann. § 17-86-103.
9. As a part of the original approval process, the Department considers only U.S. State-approved medical doctors, nurse practitioners and departments of health, and their equivalents, as qualified health care providers for purposes of certifying health compliance. A copy of the verifiable statement or health card issued by such providers indicating that the holder is free from contagious tuberculosis must be provided and meet the requirements of *Arkansas Code* 17-86-303(a)(6).

Article Four

Complaints & Proceedings

(A) Complaints against a person, a clinic/spa, or a massage therapy school or postsecondary massage therapy school.

(1) Any person may file a complaint against any of the following: a person, clinic/spa, massage therapy school or postsecondary massage therapy school licensed by the Board on any of the grounds for disciplinary action provided in § 17-86-311(a) of the Massage Therapy Act.

(2) Official complaints must be made in writing within ninety (90) days from the date of infraction. The accusations must be in writing, signed by the accuser, and verified under oath.

(3) Complaints will be investigated by one (1) member of the MTTAC with the assistance of the Department and its staff.

(4) If findings are made against a licensee, clinic/spa, or massage therapy school or postsecondary massage therapy school, a hearing shall be held by the MTTAC.

(a) The MTTAC will hold any necessary hearings at the regular quarterly meetings.

(b) Appeals of MTTAC findings may be heard by the State Board of Health.

(5) For the purpose of adjudicative hearings on complaints, the Department shall comply with the Arkansas Administrative Procedures Act, § 25-15-201 et. seq.

(6) The Department has the authority and obligation to investigate all such written complaints, investigate and refer to the MTTAC any information that comes to their attention constituting reasonable belief that a violation of law or rule has occurred.

Article Five

Licensing Examinations

1. The Department may administer an examination of its own preparation as the State licensing examination for Arkansas massage therapists, to be administered at the time and place the Department so designates.
2. The Department will accept the Federation of State Massage Therapy Board Massage and Bodywork Licensing Exam (MBLEx) in lieu of the State licensing examination provided that the applicant passes a Department examination that verifies their knowledge of the Massage Therapy Act and of these rules and regulations that govern the practice of massage therapy in the State.
3. In the instance of multiple exams, the Department reserves the right to choose specific exams.

4. The Department may, at its discretion, require a practical examination and may publish guidelines for the examination so that applicants might have insight into what would be expected to be demonstrated.

- a. The Department determines the location for practical examinations

- b. Guidelines for massage and draping techniques will be tested at all locations.

1. The Department will be testing the draping of unclothed clients.

- a. However, exceptions may be allowed for documented medical or religious reasons.

Article Six

Continuing Education

1. All courses for continuing education must fall under the scope of practice as relates to the definition of massage therapy found in Article Two.
2. Courses, demonstrations and workshops offered within the State of Arkansas must be submitted to the Department for prior approval for continuing education credits.
3. For the purpose of renewing or upgrading a license, credits may be approved for courses that are:
 - a. Pre-approved by the Department; or
 - b. Officially transcribed college level courses completed with a passing grade of C or higher in anatomy, physiology, kinesiology, biomechanics, pathology, medical terminology or other related courses within the scope of practice as defined in Article Two and accepted by the Department;
 - c. Out of state continuing education courses with prior approval of another state agency that oversees of massage therapy or certified professional massage therapy agencies as relates to the definition of massage therapy in Article Two.
4. Home study and online courses may be approved by the Department providing all the following criteria are met.

- a. The course is pre-approved by the Department or another state agency regulating massage therapy or certified professional massage therapy agency.
 - b. The course must fall within the scope of practice as defined in Article Two of these rules and regulations.
 - c. The course must be in a non hands-on subject matter.
 - d. The course or courses cannot comprise more than six (6) of the total eighteen (18) continuing education hours needed for biannual renewal and cannot be repeated for renewal or upgrade purposes.
5. Each course requesting Department approval must present all required information on the forms prescribed by the Department and be accompanied with appropriate fees.
- a. Courses must be relevant to the field of massage therapy as defined in Article Two of these rules;
 - b. Courses must have written, clearly defined learning objectives, subject matter and teaching methods.
 - c. Courses must be instructed by a person who has completed specialized related training, or has obtained instructor credentials specific to the practice, or has discovered and/or developed massage techniques, and who has a minimum of two (2) years practical experience related to the subject, and who meets at least two (2) of the following criteria:
 - 1. Holds a current Arkansas massage therapist license;
 - 2. Graduated from a massage therapy school approved by the Department or one which has a comparable in-classroom five hundred (500) hours curriculum;
 - 3. Graduated from a postsecondary massage therapy school approved by the Department or one which has a comparable in-classroom six hundred (600) hours curriculum;
 - 4. Holds a minimum of a bachelor's degree with a major in a subject related to the content of the program offered;
 - 5. Presents to the Department evidence of a substantial amount of education, training, and knowledge sufficient, in the discretion of the Department, to qualify their expertise in the field.
6. Pre-approved continuing education providers must comply with the following rules:

- a. Continuing education course providers must retain an attendance roster of participants with copies of materials for at least three (3) years following the conclusion of the course.
- b. Continuing education course providers must furnish each participant with a certificate of attendance or transcript verifying the participant's successful program completion;
 - 1. The certificate shall not be issued until completion of the course and must contain the participant's name, instructor's name and signature, title of the course, dates the course was given, Department approval number, and number of credit hours earned.
- c. Continuing education course providers must submit to the Department forms for approval for any substantial changes or additional subjects that they may wish to offer;
- d. One (1) hour of continuing education credit is defined as no less than fifty (50) minutes of uninterrupted in-classroom learning, practical demonstration, or practice of the technique in the presence of the instructor;
- e. Presenters/moderators/instructors of courses may not receive credit for the courses they present;
- f. The Department retains the right to audit and/or monitor programs given by the provider; and may rescind provider status or reject individual programs given by provider if the provider has:
 - 1. Disseminated any false or misleading information in connection with the continuing education program; or
 - 2. Failed to conform to and comply with the written agreement and rules of the Department;
 - 3. Failed to meet ethical standards; or
 - 4. Is not providing consistent quality educational benefits to participants.
- g. A written notice to rescind approval for continuing education courses will be sent to the person(s) approved to instruct the course.
 - a. Instructors may request administrative adjudication of a decision to rescind approval for continuing education course(s), which shall be conducted

according to procedures adopted in Article Four of these rules and in accordance with the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

7. Officially transcribed college level courses may be accepted at the rate of three (3) college-credit hours to equal forty (40) clock-hours of education.
8. For the purpose of upgrading a license, classes that repeat any of the applicant's specific entry-level five hundred (500) hour coursework will not be accepted.
9. For the purpose of upgrading a license, duplicated continuing education courses do not apply toward required hours for the upgrade.
10. Instructors may only teach courses that reflect a percentage level of their training consistent with hours of credit being offered by the instructor.
 - a. No more than twenty (20) percent of the hourly credit can be offered in relation to the training received by the instructor.
 1. For example, if a trainer takes an approved thirty (30) hour continuing education program, he or she would qualify to teach a six (6) hour course in that particular subject.
 - b. At the Department's discretion, credit may be given for extensive experience teaching the course and/or related courses, and/or years employed in the field.
11. The Department may audit a percentage of randomly-selected, active licensees, as determined by the Department, for compliance with continuing education requirements.
 - a. Licensees who receive an audit form shall submit all appropriate documentation to substantiate compliance with the Department's continuing education requirements.
 - b. Each licensed massage therapist shall maintain records of continuing education for a period of three (3) years from the date of attendance.
12. Disciplinary action for violations of rules of the Conduct and Ethics will be conducted in accordance with the procedures adopted in Article Three of these rules.

Article Seven

Massage Clinics

1. Massage therapists working in bathhouses, clinics, spas, or other facilities must be given adequate workspace.
 - a. The work area must be well ventilated, clean, and well equipped.
 - b. There must be a sink for hand-washing with hot and cold running water and soap must be accessible.
 - c. A restroom must be accessible.
2. In-home massage clinics/offices must be located in a separate room or rooms, used only for massage therapy services during ordinary business operations.
 - a. There must be no bed in a room used for massage therapy services.
3. A school or clinic must be equipped with a massage table or tables or a massage chair or chairs and equipped with such standard equipment dictated by the practice of massage therapy as defined in Article Two.
4. A towel or sheet that has been used by one (1) client may not be used on another person unless the towel or sheet has been re-laundered.
5. Therapists must comply with all city, county, and/or state regulations.
6. Anyone who has an infectious, contagious, or communicable disease which may be spread by airborne, droplet, contact, or indirect methods and who is in contact with the public must not practice until all risk of disease transmission is cleared. Any employee with such a disease must be immediately relieved from duty until all risk of disease transmission is cleared.

Article Eight

Massage Therapy Schools and Postsecondary Massage Therapy Schools

General Requirements: School as used throughout this Section includes, unless otherwise indicated, both Massage Therapy Schools and Postsecondary Massage Therapy Schools.

1. School applications will be complete in every aspect and verify compliance with the Massage Therapy Act, all relevant Rules and Regulations of the Department of Health, and sound educational principles.
2. Each school is required to furnish such information and documents as may be required by the Department and must comply with all valid requirements of the Department or be subject to suspension or revocation of licensure.
3. The Department may accept training hours submitted by applicants for licensure who graduated from out-of-state schools only upon verification that such education was received in a state with a reciprocal relationship with the Department of Health's Massage Therapy Section.
4. Each school operated within the state shall be inspected by the Department, to include, without limitation, proof of required forms completed and returned to the department with approval or recommendations. Student records for each school operating in the state shall be inspected by the Department at least one (1) time each year.
 - a. The Department or its authorized agent shall conduct such inspections during regular operations causing a minimum of disruption to any class that may be in session.
 - b. Schools shall have an identifiable Massage Therapy Instructor who provides oversight and supervision under which other Master Massage Therapists or Massage Therapy Instructors can teach.
5. A person shall not establish, operate, or maintains a massage therapy school without first having obtained a certificate of massage therapy school licensure issued by the Department.
6. Any Massage Therapy School wishing to teach both secondary and postsecondary students shall obtain both a license for a Massage Therapy School and a Postsecondary Massage Therapy School. The School shall also provide a procedure by which it will ensure that only students with a high school diploma or the equivalent are enrolled in the postsecondary school and receive Title IV funds.
7. Schools must adhere to all state and local ordinance and provide a copy of the fire inspection, occupancy license, and/or business permits where required by law, and furnish copies to the Department upon request.
8. After satisfactory completion of initial requirements, schools are required to undergo Department inspection before they can be licensed.
 - a. A Department staff member will perform an inspection of the school premises with required forms completed, and the results of such

inspection will be returned to the Department for approval and/or adjustment recommendations.

- b. Facilities that do not pass the first inspection are eligible for re-inspection.
 1. When failures are corrected and the Department is advised that corrections are completed, a second inspection to determine the school's compliance with requirements for licensure will be made within thirty (30) days of notice that corrections have been made.
9. Any school desiring to move the location of its license must notify the Department in writing at least thirty (30) days prior to any location change.
 - a. The Department will inspect the school's new location within thirty (30) days of receiving a relocation notice.
10. Schools must inform students regarding emergency evacuation procedures and clearly mark or post all routes and exits.
 - a. Smoke detectors must be installed and maintained in working order.
 - b. Fire extinguishers must be easily accessible.
11. Postsecondary Massage Therapy Schools must show proof that the school adopts and discloses to the students a complaint process substantially similar to the one outlined in Article Four of these Rules.
12. Schools have the discretion to grant CLEP credit for any previously obtained, successfully passed, and officially documented classroom education only upon a student's passing such examinations as required by the school.
 - a. Such credit may be granted at the rate of three (3) college credits to equal no more than forty (40) clock-hours.
 - b. Schools will maintain a file copy of all such examinations for Department inspection.

Facility Requirements

13. Schools must provide an atmosphere that is conducive to learning.
 - a. Space must be sufficient for unrestricted movement around massage tables.

- b. Lighting, ventilation, and temperature control must be adequate.
 - c. Educational equipment must be in evidence, such as chalk or marker boards, charts, or other appropriate teaching aids.
 - d. School facilities and equipment must be maintained in clean and operable condition.
14. Schools must provide students with adequate workspace, such as desks, tables and/or chairs, to accommodate all students during the class hours for which they are enrolled.
- a. The school facilities must include a minimum of one (1) massage table for every three (3) students in class.
15. A minimum of one hand-washing sink supplied with hot and cold running water, a filled soap dispenser and a sanitary hand drying method must be easily accessible.
16. Alcohol or illicit drug use is prohibited on school premises or at any school function.
17. A duplicate of all student records for the immediately preceding five (5) year period must be kept off the school premises.
- a. This duplicate may be either a paper copy or in a form that may reproduce the copies by computer.

Instruction Methods

18. Schools must follow the curriculum outlined in Ark. Code Ann. § 17-86-306(e). The curriculum must be presented to and approved by the Department and will make further applications to the Department for any substantial modifications in the subjects, contents, or instructional methods offered to the students.
19. Each specified course of study must be outlined with a syllabus that includes written learning objectives. Instructors will follow daily lesson plans and will provide active, organized learning sessions.
- a. Recognized methods of instruction, such as, but not limited to, lecture, demonstration, and supervised hands-on practice will be utilized to ensure reasonable learning objectives and outcomes.
20. All classes must be instructed and supervised by qualified and approved personnel and consist of no less than fifty (50) minutes of active teaching per credit hour. In-school study time is limited to no more than five (5) percent of the total hours of a program.

21. Active teaching means qualified school personnel offering organized lecture, activities, demonstration, and/or direct and immediate supervision of students during hands-on practice.
22. Written and practical evaluations shall be conducted with all grades recorded.
 - a. The Department of Health, upon request, may make such information available for inspection.
23. Attendance records will be maintained and verified by the school and must be made available for inspection by the Department upon request.
 - a. Such records must verify both the subject and the actual attendance in class of each student enrolled.
24. Schools must maintain factual records of the first-time pass/fail rates on required Department examinations of all graduates of their program.
 - a. Such records must be inspected each year, and any school whose graduates do not maintain a seventy-five percent (75%) first-time pass rate average on Department examinations is subject to probations, suspension, and/or revocation of licensure.
25. Schools must provide all students with knowledge of where to obtain a copy of his or her school record.
26. Schools must provide no less than three (3) clock-hours of HIV/AIDS and other basic communicable disease education within their twenty-five (25) hours of hygiene and infectious control as required by *Arkansas Code* § 17-86-306 (e)(4).
27. Schools must require and maintain proof of CPR training for all students at the time of their graduation.
28. Schools that teach massage with students wearing swimsuits or underwear must instruct students at some time during their school on how to work on unclothed clients with a minimum of twenty (20) hours of classroom or student clinic massages on unclothed clients, unless there is a documented religious or medical objection made by the student.
29. Schools may not include more than five (5) percent of their total school curriculum of instruction with reiki, polarity, or other energy-based modalities.

Instructor Qualifications

30. All persons who instruct any portion of a curriculum within an approved massage therapy school must have received adequate training and

experience to possess a high degree of knowledge and competency in any and all subjects they are to instruct.

31. Each school must have on file such diplomas, transcripts, certifications, resumes, and/or other verifiable documents that attest to the person's qualifications and technical expertise.
32. Each school must be able to supply the Department with a list of instructors who have taught or who will be teaching at that school along with documentation of their qualifications and the subjects they have instructed or will instruct.
33. For the purposes of qualifying instructors for subjects required by *Arkansas Code* § 17-86-306, the following definitions will be used:
 - a. Technical subjects are those defined as massage therapy techniques, hydrotherapy, heliotherapy, electrotherapy, and any hands-on training that may occur under various related subjects.
 - b. Academic subjects include anatomy, physiology, pathology, and related human sciences; and
 - c. Non-technical subjects include massage therapy laws, ethics, and business management.
34. Persons to instruct technical subjects must be qualified and hold a current license as a master massage therapist or massage therapy instructor, and must have a minimum of two (2) consecutive years of active experience in the practice of massage therapy.
35. Persons to instruct academic subjects must be qualified and hold a current license as a master massage therapist or massage therapy instructor as defined in *Arkansas Code* § 17-86-102 (6)(A) or hold a minimum of a Bachelor's degree plus two (2) years practical experience in a subjects directly related to that being taught.
36. Persons to instruct non-technical subjects must be qualified and hold a current license as a master massage therapist or massage therapy instructor as defined in *Arkansas Code* § 17-86-102 (6)(A) or hold a minimum of a two (2) year associate's degree and two (2) years practical experience in a subject directly relates to that being taught.
37. Massage therapy schools must use qualified licensed master massage therapists, massage therapy instructors, and/or medical personnel within the scope of their professional background as instructors, or may allow other licensed professionals to teach within their field of expertise.
38. Schools may invite guest instructors to teach within their program without Department pre-approval if such guest instructor instructs on no more than

sixteen (16) hours per school curriculum. Article Eight), paragraph # 32, 33 and 34 show how guest instructors shall be qualified.

- a. Schools may utilize guest instructors to provide no more than a total of twenty-five (25) hours per school curriculum.
 1. A Record of all hours of instruction provided in this manner must be maintained by the school and be made available for Department inspection upon request.
- b. Schools must keep a log of guest instructors.

Student Clinical

39. The purpose of any student clinical is to provide advancing students, enrolled in approved schools, an opportunity to gain practical experience working with the public in a supervised setting.

- a. The school shall follow practices consistent with the above stated intent.

40. The status of the practitioner must be made clearly evident to the recipient of student massage.

41. Any student to be considered eligible for clinical practice must have completed the following requirements:

- a. one hundred (100) hours of anatomy, physiology, pathology, and contraindications for massage therapy, and one hundred (100) hours of technical training, and all portions of the school's curriculum pertaining to personal hygiene, sanitation, ethics, and professional standards;
- b. received and filed with the school a recently issued statement by a physician declaring them to be in good health and negative for tuberculosis; and
- c. provide proof of student liability insurance.

42. All clinical massages by a student must be documented and performed under the supervision of a qualified technical instructor who has access to the treatment area at all times.

- a. No more than fifty (50) hours of student massage may be attained in this manner and applied to meet the requirements for licensure.

43. Students may not solicit payment in any form during clinical practice either on school premises, at chosen locations for field trips, or while practicing away from school facilities and direction.
 - a. This includes barters, donations and/or trades.
 - b. The student may accept gratuities during supervised clinical massage.
44. Schools may charge a reduced fee for student clinical massages.
45. Schools must provide upon request by the Department all such evidence as may be required to determine compliance with these and all other rules of the Board of Health.
46. No student may leave classroom instruction to perform student-client massages.
47. Schools abusing the student-client massage relationship are subject to sanctions by the Board of Health.
48. Schools providing off-site student massages shall be allowed only under the direct supervision of a Massage Therapy Instructor or Master Massage Therapist.

Article Nine

Conduct & Ethics

1. It is the responsibility of the licensed massage therapist to create and maintain a safe and comfortable environment that engenders trust and mutual respect during a massage session.
2. It is the therapist's responsibility to inform clients of their rights as recipients of massage therapy.
3. Massage therapists shall ensure and safeguard the following rights of the clients:
 - a. Obtain necessary information from the client, to be held in confidence, regarding pertinent health history in order to assure safe treatment at all times;
 - b. Inform the client of their right to terminate or modify their treatment at any time;

- c. Stay within the scope of practice of massage therapy, performing only techniques for which they are appropriately and sufficiently trained;
 - d. Refer all clients to appropriate health care practitioners or other professionals as such need arises; and
 - e. Refrain, under all circumstances from initiating or engaging in any sexual conversation, sexual conduct, sexual behavior, or sexual activities involving a client, even if the client attempts to sexualize the relationship.
4. The licensed massage therapist adheres to the following practices:
- a. Keeping licensure current;
 - b. Conducts all aspects of their massage practice in a legal, ethical, and responsible way;
 - c. Upholds the highest standards of concern and respect for the wellbeing of their clients;
 - d. Reports to the Department in writing and under oath any knowledge of violations of the Massage Therapy Act or the adopted Rules and Regulations; and
 - e. Wears proper and professional attire that is suitable and consistent with accepted business and professional practices.
5. Violations of any provision under this article may result in disciplinary action by the Board of Health, up to and including revocation of licensure.
6. Disciplinary action for violations of rules of Conduct and Ethics will be conducted in accordance with the procedures adopted in Article Four (4) of these rules.

Article Ten

Draping & Guidelines

- 1. Draping and treatment must be provided in a way that ensures the safety, comfort, and privacy of the client and therapist.
- 2. Draping must take place during the massage, and the therapist shall comply with the client's request to remain partially or fully clothed under the drape.

3. Clients receiving a massage must be draped to assure that the pubic area and genitals are not exposed.
4. A licensee who engages in the practice of massage therapy of the anus and genitalia shall have his or her license revoked for a period of three (3) years. The licensee will receive a hearing in accordance with the process outlined in Article Four and the Arkansas Administrative Procedures Act, Ark. Code Ann. § 25-15-201 et seq.
5. The breast of a female client may be treated under the following circumstances:
 - A. The massage of the breasts is for therapeutic and medical purposes including, without limitation, the reduction of scar tissue following a surgery on the breast, release of myofascial binding, or improving lymphatic flow;
 - B. The massage therapist has received at least forty-eight (48) hours of continuing education credits in lymphatic massage, myofascial massage, or oncology massage; and
 - C. there is a valid request from the client, the valid prescription is presented, or there is a referral from a qualified medical professional.
 - D. A female client's breast may not be exposed without first having obtained her prior written, signed consent.
 - E. A written description and explanation is given to the female client before the massage begins and permission granted again before uncovering the breast.
 - F. Treatments must be noted on the client's assessment form.
6. The MTTAC shall revoke the license for a period of three (3) years of a licensee who engages in the practice of massage therapy of the breast tissue without following the process outlined in Paragraph 5 above.
7. Requirements for practicing cupping therapy:
 - A. The Massage Therapist must have a minimum of six (6) hours in-class, specialized training in cupping therapy which shall include indications, contraindications, hygiene, and hands on techniques.
 - B. When the six (6) hours of specialized training is provided as part of the curriculum in a massage therapy school or postsecondary massage therapy school, the transcript shall indicate course hours in cupping therapy or a certificate of successful completion shall be issued to the student.

Article Eleven

Renewals & Processes

1. Every massage therapy license, active or inactive, is valid for a period of two (2) years and expires on the licensee's birthday.

- a. The licensee must submit the following for renewal of his or her license: a completed license renewal application, payment of the appropriate fees and documented proof of no fewer than eighteen (18) hours of continuing education that have been approved in accordance with Article Six.
- b. A renewal application must be postmarked on or before the first day of the month preceding the month in which the licensee's birthday falls in the biennial renewal year.

Example: Joe's birthday is June 14th and his license expires in 2011. His renewal application must be postmarked on or before May 1, 2011.

- c. A renewal application postmarked after the first day of the month preceding the month in which the licensee's birthday falls shall be charged a late fee of twenty-five dollars (\$25.00) in addition to renewal fees.
- d. A license is expired if application is postmarked after the birthday of the licensee in the biennial renewal year.

- (1) Before the Department issues a new license to an applicant with an expired license, the applicant shall:

- (a) Submit a new application that requires the applicant to meet current requirements; and
- (b) Successfully complete an examination recognized by the Department of Health.

2. Renewal application forms will be mailed out the first of the month preceding the month they are due.

8. Any individual licensee who is currently not practicing and wishes to place his or her license on the inactive list shall:

- a. Submit a renewal application for inactive status every two (2) years, even if remaining inactive.

- b. Surrender his or her current license to the Department of Health office.
 - c. Not practice massage therapy during the time licensee is on the inactive list.
 - d. Not remain on the inactive list for a period to exceed four (4) years without reexamination.
 - e. An individual who has been placed on the inactive list for fewer than four (4) years and wishes to reactivate licensure shall follow the procedures for license renewal, present satisfactory evidence of completion of continuing education hours for the inactive period and pay all appropriate fees before resuming active practice of massage therapy.
 - f. An individual who passes the four (4) year time allotment shall be considered to have an expired license and must meet the current requirements for licensure and successfully complete an examination recognized by the Department before resuming active practice of massage therapy.
4. Persons practicing with an expired license may be prosecuted for practicing without a license and penalties of *Arkansas Code* § 17-86-103 may be applied.

Article Twelve

Reciprocity

a. (1) The Department may enter into reciprocal relations with other states and territories whose licensure requirements are much the same as those provided in the Massage Therapy Act and these Rules and Regulations.

(2)(A) If the applicant's transcript is not obtainable from the original school, the applicant shall submit a statement to explain why it may not be obtained.

(B) Other documentation of credentials may be submitted and accepted for licensure at the discretion of the Department.

b. (1) An out-of-state applicant holding a current massage therapy license issued by another state and after receiving an Arkansas massage therapy license may apply for an upgrade to master massage therapist or massage therapy instructor by providing appropriate continuing education credits and experience gained before

Arkansas licensure for department approval.

- (2) An upgrade request shall be made by submitting a complete application package and paying the fees required by this chapter.

CERTIFICATION

I hereby certify that the foregoing Rules and Regulations for Massage Therapy in Arkansas were adopted by the Arkansas State Board of Health on the 3rd day of August, 2017, at Little Rock, Arkansas.



Nathaniel Smith, MD, MPH

Secretary, Arkansas State Board of Health