

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	08/16/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 9/30/2016**

**2. COMAR Codification**

<b>Title</b>	<b>Subtitle</b>	<b>Chapter</b>	<b>Regulation</b>
10	43	01	01-.06
10	43	03	01-.03
10	43	04	01
10	43	05	02 and .03
10	43	06	02-.05
10	43	07	01 and .09
10	43	08	01 and .02
10	43	09	02
10	43	10	02
10	43	11	02
10	43	12	01-.07
10	43	13	01-.10
10	43	14	02
10	43	15	02
10	65	01	01-.14
10	65	02	01-.09
10	65	03	03 and .09
10	65	04	01-.03 and .06
10	65	05	01-.04



**9. Public Body - Open Meeting**

**X-** OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

**\_** OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

**\_** Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Grant Gerber, Assistant Attorney General, (telephone #410-767-5469) on August 1, 2016. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Van T. Mitchell

**Title**

Secretary

**Telephone No.**

410-767-6500

**Date**

August 16, 2016

**Title 10**

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.01 General Regulations**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.03 Advertising**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.04 Licensure by Credentials for Chiropractors**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.05 Chiropractic Externship Program**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.06 Fees**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.07 Chiropractic Assistants**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.08 Licensure and Registration Examination – Special Needs Applicants**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.09 Monetary Penalties**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.10 Continuing Education Requirements**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.11 Licensure Examination**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.12 Procedures for Clinical Demonstrations in Public Places**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.13 Code of Ethics**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.14 Record Keeping**

**Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY]  
EXAMINERS**

**10.43.15 Sanctioning Guidelines**

**Subtitle 65 BOARD OF MASSAGE THERAPY EXAMINERS**

**10.65.01 General Regulations**

**Subtitle 65 BOARD OF MASSAGE THERAPY EXAMINERS**

**10.65.02 Rules of Procedure for Board Hearings**

**Subtitle 65 BOARD OF MASSAGE THERAPY EXAMINERS**

**10.65.03 Code of Ethics**

**Subtitle 65 BOARD OF MASSAGE THERAPY EXAMINERS**

**10.65.04 Advertising**

**Subtitle 65 BOARD OF MASSAGE THERAPY EXAMINERS**

**10.65.05 Continuing Education Requirements**

**Subtitle 65 BOARD OF MASSAGE THERAPY EXAMINERS**

**10.65.06 Record Keeping**

**Subtitle 65 BOARD OF MASSAGE THERAPY EXAMINERS**

**10.65.07 Fees**

**Subtitle 65 BOARD OF MASSAGE THERAPY EXAMINERS**

**10.65.08 Licensure and Registration Examination — Special Needs Applicants**

**Subtitle 65 BOARD OF MASSAGE THERAPY EXAMINERS**

**10.65.09 Sanctioning Guidelines**

Authority: See proposal.

## Notice of Proposed Action

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The Secretary of Health and Mental Hygiene proposes to :

- 1) Amend subtitle name under COMAR 10.43 Board of Chiropractic Examiners;
- 2) Amend chapter name under COMAR 10.43.01 General Regulations;
- 3) Amend chapter name and amend Regulations .01—.03 under COMAR 10.43.03 Advertising;
- 4) Amend Regulation .01 under COMAR 10.43.04 Licensure by Credentials for Chiropractors;
- 5) Amend Regulations .02 and .03 under COMAR 10.43.05 Chiropractic Externship Program;
- 6) Amend chapter name and recodify Regulations .04—.05 to be Regulations .02—.03 under COMAR 10.43.06 Fees;
- 7) Amend Regulations .01 and .09 under COMAR 10.43.07 Chiropractic Assistants;
- 8) Amend chapter name under COMAR 10.43.08 Licensure and Registration Examination – Special Needs Applicants;
- 9) Recodify chapter COMAR 10.43.10 to be chapter COMAR 10.43.09, amend chapter name, and amend Regulation .02 under COMAR 10.43.09 Monetary Penalties;
- 10) Recodify chapter COMAR 10.43.11 to be COMAR 10.43.10, amend chapter name, amend Regulation .02 under COMAR 10.43.10 Continuing Education Requirements;
- 11) Recodify chapter COMAR 10.43.11 to be COMAR 10.43.12, amend chapter name, and amend Regulation .02 under COMAR 10.43.11 Licensure Examination;
- 12) Recodify chapter COMAR 10.43.13 to be COMAR 10.43.12 and amend chapter name under COMAR 10.43.12 Procedures for Clinical Demonstrations in Public Places;
- 13) Recodify chapter COMAR 10.43.14 to be COMAR 10.43.13 and amend chapter name under COMAR 10.43.13 Code of Ethics;
- 14) Recodify chapter COMAR 10.43.15 to be COMAR 10.43.14, amend chapter name, and amend Regulation .02 under COMAR 10.43.14 Record Keeping;
- 15) Recodify chapter COMAR 10.43.16 to be COMAR 10.43.15 amend chapter name, and amend Regulation .02 under COMAR 10.43.15 Sanctioning Guidelines;
- 16) Adopt a new Subtitle 65 under COMAR 10.65 Board of Massage Therapy Examiners;
- 17) Recodify chapter COMAR 10.43.17 to be COMAR 10.65.01, amend chapter name, adopt new Regulations .01 and .02, recodify Regulations .01, .05 and .07 to be Regulations .03, .07 and .09, amend and recodify Regulations .02—.04, .06 and .08—.10 to be Regulations .04—.06, .08, and .10—.12, and recodify Regulations 11 and .12 to be Regulations .13 and .14 under a new chapter COMAR 10.65.01 General Regulations;
- 18) Adopt new Regulations .01—.09 under a new chapter COMAR 10.65.02 Rules of Procedure for Board Hearings;
- 19) Recodify chapter COMAR 10.43.18 to be COMAR 10.65.03, amend chapter name, and amend Regulations .03 and .09 under a new chapter COMAR 10.65.03 Code of Ethics;
- 20) Recodify chapter COMAR 10.43.19 to be COMAR 10.65.04, amend chapter name, and amend Regulations .01-.03 and .06 under a new chapter 10.65.04 Advertising;

- 21) Recodify chapter COMAR 10.43.20 to be COMAR 10.65.05 and amend chapter name under a new chapter COMAR 10.65.05 Continuing Education Requirements;
- 22) Recodify chapter COMAR 10.43.21 to be COMAR 10.65.06 and amend chapter name under a new chapter COMAR 10.65.06 Record Keeping;
- 23) Adopt new Regulations .01 and .03—.04 and recodify Regulation .03 under COMAR 10.43.06 to be Regulation .02 under a new chapter COMAR 10.65.07 Fees;
- 24) Adopt new Regulations .01 and .02 under a new chapter COMAR 10.65.08 Licensure and Registration Examination — Special Needs Applicants; and
- 25) Adopt new Regulations .01—.06 under a new chapter COMAR 10.65.09 Sanctioning Guidelines.

This action was considered at a public meeting on July 14, 2016, notice of which was given by publication on the Board's website at <http://dhmh.maryland.gov/chiropractic/Pages/index.aspx>, pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

### **Statement of Purpose**

The purpose of this action is to :

- 1) Separate the Chiropractic Examiners regulations and the Massage Therapy Examiners regulations into two separate subtitles of COMAR as required by 2016 HB 1420, Chapter 739;
- 2) Require that massage therapy applicants attend a massage therapy school that is approved by MHEC or accredited by a certain accrediting body; and
- 3) Delete references to approval of chiropractic trade names as required by 2015 HB 208, Chapter 229.

### **Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

### **Estimate of Economic Impact**

The proposed action has no economic impact.

### **Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

### **Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to

dhnh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through October 31, 2016. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2017

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly: This proposal is not increasing or decreasing a fee or penalty, nor is it imposing any new burdens on licensees that could result in a fiscal impact. The Board would retain its current staff, but staff would split their time between Board functions, so no new staff would need to be hired.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

This proposal implements legislation passed during the 2016 legislative session that splits the current Board of Chiropractic and Massage Therapy into two separate Boards. Since the proposal is not imposing any new burdens on small businesses and since small businesses do not regulate the professions of chiropractic or massage therapy, they are not affected.

G. Small Business Worksheet:

Attached Document:

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## **Title 10**

# **DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 43 BOARD OF CHIROPRACTIC [AND MASSAGE THERAPY] EXAMINERS**

### **10.43.01 [Chiropractic –] General Regulations**

Authority: Health Occupations Article, Title 3, Annotated Code of Maryland

.01—.06 (text unchanged)

### **10.43.03 [Chiropractic –] Advertising**

Authority: Health Occupations Article, §3–401, Annotated Code of Maryland

10.43.03.01. (downloaded 7/18/2016)

#### **.01 Scope.**

A chiropractor may advertise [his] *chiropractic* services subject to the provisions of this chapter.

10.43.03.02.

#### **.02 Qualifications.**

A.—B. (text unchanged)

[C. The licensee shall petition the Board for approval of a trade name.]

10.43.03.03.

#### **.03. Prohibitions.**

An advertisement may not contain statements that:

A.—I. (text unchanged)

[J. Utilize an unauthorized trade name.]

### **10.43.04 Licensure by Credentials for Chiropractors**

Authority: Health Occupations Article, §§ 3–302.1 and 3–305, Annotated Code of Maryland

10.43.04.01

#### **.01 Preface and Scope.**

A. Preface. The Board of Chiropractic [and Massage Therapy] Examiners has established guidelines for licensure by credentials. This method of licensure is a special privilege granted by present statute, and is secured for those candidates who possess the necessary credentials required to practice chiropractic in the State. The requirements for licensure are stringent in order to insure the public is adequately protected and that licensure may be granted only to those who qualify by virtue of clinical competency and professional expertise.

B. (text unchanged)

### **10.43.05 Chiropractic Externship Program**

Authority: Health Occupations Article, §§ 3–205 and 3–301, Annotated Code of Maryland

10.43.05.02

#### **.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Approved program" means a program that has been approved by the Board of Chiropractic [and Massage Therapy] Examiners and the Council on Chiropractic Education or its successor.

(3) "Board" means the Maryland Board of Chiropractic [and Massage Therapy] Examiners.

(4) "Chiropractic extern program" means a 2-semester clinical program:

(a) (text unchanged)

(b) That operates in a facility where chiropractic services have been approved by the Board of Chiropractic [and Massage Therapy] Examiners.

(5)—(9) (text unchanged)

#### **.03 Eligibility.**

A. An extern applicant is eligible for approval in the chiropractic extern program if the applicant is currently enrolled in an approved program that is recognized by the Board of Chiropractic [and Massage Therapy] Examiners as requiring adequate clinical training and as maintaining an acceptable course of chiropractic instruction.

B. (text unchanged)

### **10.43.06 [Chiropractic and Massage Therapy] Fees**

Authority: Health Occupations Article, §§ 3–205[, 3–206, 3–5A–02, and 3–5A–03] and 3–206, Annotated Code of Maryland

.01 (text unchanged)

[.04].02—[.05].03 (text unchanged) \*Note to DSD: 10.43.06.02 has been recodified as Regulation .03 under new COMAR chapter 10.65.07 Fees later on in this proposal.

### **10.43.07 Chiropractic Assistants**

10.43.07.01

**.01 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1) (text unchanged)
  - (2) "Board" means the Board of Chiropractic [and Massage Therapy] Examiners.
  - (3)—(5) (text unchanged)

10.43.07.09

**.09 Activities That May Be Performed by Chiropractic Applicants and Assistants Under Direct Supervision of a Supervising Chiropractor.**

A chiropractic applicant or assistant may perform the following activities only under the direct supervision of a supervising chiropractor who is in the treatment area:

- A.—O. (text unchanged)
- P. Therapeutic massage, if licensed under Health Occupations Article, [§3-5A-01] *Title 6*, Annotated Code of Maryland; and
- Q. (text unchanged)

**10.43.08 [Chiropractic and Massage Therapy –] Licensure and Registration Examination – Special Needs Applicants**

Authority: Health Occupations Article, §§3–205 and 3–304, Annotated Code of Maryland

.01—.02 (text unchanged)

**[10.43.10] 10.43.09 [Chiropractic –] Monetary Penalties**

Authority: Health Occupations Article, §3–314, Annotated Code of Maryland

.01 (text unchanged)

10.43.10.02 (recodified as 10.43.09 - downloaded 7/18/2016)

**.02 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1) "Board" means the State Board of Chiropractic [and Massage Therapy] Examiners.
  - (2)—(4) (text unchanged)

.03—.06 (text unchanged)

**[10.43.11] 10.43.10 [Chiropractic –] Continuing Education Requirements**

Authority: Health Occupations Article, §§ 3–308 and 3–313, Annotated Code of Maryland

.01 (text unchanged)

10.43.11.02 (recodified as 10.43.10 - downloaded 7/18/2016)

**.02 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1) "Board" means the Maryland Board of Chiropractic [and Massage Therapy] Examiners.
  - (2)—(4) (text unchanged)

.03—.05 (text unchanged)

**[10.43.12] 10.43.11 [Chiropractic –] Licensure Examination**

Authority: Health Occupations Article, §§ 3–202, 3–205, and 3–301 – 3–304, Annotated Code of Maryland

.01 (text unchanged)

10.43.12.02 (recodified as 10.43.11 - downloaded 7/18/2016)

**.02 Definitions.**

- A. (text unchanged)
- B. Terms Defined.

- (1) (text unchanged)
- (2) "Board" means the State Board of Chiropractic [and Massage Therapy] Examiners.
- (3)—(5) (text unchanged)

.03—.05 (text unchanged)

### **[10.43.13] 10.43.12 [Chiropractic –] Procedures for Clinical Demonstrations in Public Places**

Authority: Health Occupations Article, §3-205, Annotated Code of Maryland

.01—.07 (text unchanged)

### **[10.43.14] 10.43.13 [Chiropractic –] Code of Ethics**

Authority: Health Occupations Article, §§1–212, 3–205, and 3–313, Annotated Code of Maryland

.01—.10 (text unchanged)

### **[10.43.15] 10.43.14 [Chiropractic –] Record Keeping**

Authority: Health Occupations Article, § 3–205, Annotated Code of Maryland

.01 (text unchanged)

*10.43.15.02 (recodified as 10.43.14 - downloaded 7/18/2016)*

#### **.02 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1) "Board" means the Maryland Board of Chiropractic [and Massage Therapy] Examiners.
  - (2)—(5) (text unchanged)

.03—.06 (text unchanged)

### **[10.43.16] 10.43.15 Sanctioning Guidelines**

Authority: Health Occupations Article, §§1–606, 3–313, 3–315, Annotated Code of Maryland

.01 (text unchanged)

*10.43.16.02 (recodified as 10.43.15 - downloaded 7/18/2016)*

#### **.02 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1) "Board" means the Maryland State Board of Chiropractic [and Massage Therapy] Examiners.
  - (2) "Conditions" means requirements in a public or nonpublic order that a licensee is required to satisfy which include but are not limited to:
    - (a)—(n) (text unchanged)
    - (o) The provision of pro bono chiropractic [and massage therapy] to the poor, elderly, or disabled;
    - (p)—(q) (text unchanged)
  - (3) (text unchanged)

.03—.06 (text unchanged)

## ***Subtitle 65 BOARD OF MASSAGE THERAPY EXAMINERS***

### **[10.43.17] 10.65.01 [Massage Therapy —] General Regulations**

Authority: Health Occupations Article, §§[3-205, 3-302.1, 3-5A-01, 3-5A-02, 3-5A-04, 3-5A-05, 3-5A-06, 3-5A-07, 3-5A-09, and 3-5A-12] 6-101, 6-102, 6-201–6-206, 6-301–6-306, 6-504, Annotated Code of Maryland

#### **.01 Rules of Order.**

*All proceedings of the Board in regular session shall be governed by Robert's Rules of Order.*

#### **.02 Board Officers, Members, and Staff.**

- A. *The Board shall, as the appointing authority, direct the operation of the staff through the executive director.*
- B. *Board members may not have monetary, pecuniary, or other interest in the affairs of any:*
  - (1) *Staff member; or*
  - (2) *Organization engaged in business with the Board, including:*
    - (a) *Businesses;*

- (b) *Enterprises; or*
- (c) *Other for-profit organizations.*

C. A Board member or Board staff may not serve for compensation as an instructor in a continuing education course or program under Board cognizance over which that Board member or staff member serves in an approval capacity.

[10.43.17.01] 10.65.01.03

[.01].03 (text unchanged)

[10.43.17.02] 10.65.01.04 (downloaded 7/25/2016)

**[.02].04 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) "Board" means the State Board of [Chiropractic and] Massage Therapy Examiners.

(2) "Health care setting" has the meaning stated in Health-Occupations Article, [§3–5A–01(c)] §6–101(c), Annotated Code of Maryland.

(3)—(4) (text unchanged)

(5) "[Maryland] State Board of Massage Therapy Examiners Jurisprudence Examination" means the test developed by the Board to assess an applicant's knowledge of the statute and regulations governing massage therapy in the State.

(6)—(8) (text unchanged)

[(9)] "Practice non-therapeutic massage" means to engage professionally and for compensation in massage therapy in a setting that is not a health care facility.]

[(10)] (9)—[(11)] (10) (text unchanged)

[10.43.17.03] 10.65.01.05.

**[.03].05 Licensure or Registration Required; Exceptions.**

An individual shall be licensed by the Board in order to practice massage therapy, and shall be registered by the Board in order to practice massage therapy in a setting that is not a health care setting, except for the following:

A. (text unchanged)

B. An individual who:

(1) (text unchanged)

(2) Is seeking to practice in Maryland exclusively with a visiting organization for not more than 7 consecutive days and not to exceed 30 days per calendar year; and

(3) (text unchanged)

C.—F. (text unchanged)

[10.43.17.04] 10.65.01.06

**[.04].06 Application for Licensure or Registration.**

A. An applicant for a license to practice massage therapy shall:

(1) (text unchanged)

(2) Pay the application fee as specified in COMAR [10.43.06] 10.65.07;

(3) Submit two recent 2 inch by 2 inch passport type photographs on a solid white background of the applicant;

(4) (text unchanged)

(5) Pass the [Maryland] State Board of Massage Therapy Examiners Jurisprudence Examination, which is administered by the Board, with a score of at least 75 percent;

(6)—(10) (text unchanged)

B. (text unchanged)

C. To be a registered massage practitioner, an applicant shall:

(1) (text unchanged)

(2) Pay the application fee as specified in COMAR [10.43.06] 10.65.07; and

(3) Submit two recent 2 inch by 2 inch passport type photographs on a solid white background of the applicant;

(4) (text unchanged)

(5) Pass the [Maryland] State Board of Massage Therapy Examiners Jurisprudence Examination, which is administered by the Board, with a score of at least 75 percent;

(6) (text unchanged)

(7) Have copies of official transcripts sent directly to the Board from the schools from which the applicant graduated that document completion of at least 600 classroom hours in a massage therapy education program that is:

(a) Approved by the:

(i) Maryland Higher Education Commission (MHEC); or

(ii) Higher education commission, or comparable authority, of the state or country in which the applicant's school is located; and

(b) Either:

(i) Accredited by the Commission on Massage Therapy Accreditation (COMTA); or

(ii) Approved or accredited by an accrediting agency recognized by the United States Department of Education, with the instructors teaching massage related curriculum who are licensed or registered in the instructors' state of residence;

(8) Provide documentation of having satisfactorily completed the requirements listed in §D of this regulation.

(9) Provide documentation of current certification in basic CPR; and

(10) Have verification of status sent directly to the Board by the issuing state, if certified, licensed, or registered to practice massage therapy in another state.

[(7) Submit] D. To comply with §C(8) of this regulation, an applicant for a registration to practice massage therapy shall provide documentation of completion of at least 600 hours of education in a Board-approved program for the study of massage therapy that includes the following areas of content:

(a)—(d) (text unchanged)

[(8) Provide documentation of current certification in basic CPR; have verification of status sent directly to the Board by the issuing state, if certified, licensed, or registered to practice massage therapy in another state; and

(9) Have verification of status sent directly to the Board by the issuing state, if certified, licensed, or registered to practice massage therapy in another state.]

[D.] E. The Board may not issue a license or registration if the criminal history record information required under Health Occupations Article, [§3–302.1] §6–303(b), Annotated Code of Maryland, has not been received.

[10.43.17.05] 10.65.01.07

[.05] .07 (text unchanged)

[10.43.17.06] 10.65.01.08

**[.06] .08 Licensure.**

A.—B. (text unchanged)

C. The Board may not issue a license or registration if the criminal history records information required under Health Occupations Article, [§3–302.1] §6–303(b), Annotated Code of Maryland, has not been received.

D. (text unchanged)

[10.43.17.07] 10.65.01.09

[.07] .09 (text unchanged)

[10.43.17.08] 10.65.01.10

**[.08] .10 Renewals.**

A. The Board shall send each license and registration holder a renewal notice that states the:

(1)—(2) (text unchanged)

(3) Amount of the renewal fee as specified in COMAR [10.43.06] 10.65.07.

B.—C. (text unchanged)

[10.43.17.09] 10.65.01.11

**[.09] .11 Reinstatement.**

A. The Board shall reinstate an individual whose license or registration has expired if the individual meets the renewal requirements of this chapter and pays the:

(1) Late fee in addition to the renewal fee as specified in COMAR [10.43.06] 10.65.07, if the request is received by the Board within 30 days of the expiration date of the license or registration; or

(2) Late and reinstatement fees in addition to the renewal fee as specified in COMAR [10.43.06] 10.65.07, if the request is received by the Board more than 30 days after the expiration date of the license or registration.

B.—C. (text unchanged)

[10.43.17.10] 10.65.01.12

**[.10] .12 Inactive Status.**

A. The Board shall place a license or registration holder on inactive status if the license or registration holder submits to the Board the:

(1) (text unchanged)

(2) Biennial fee for inactive status as specified in COMAR [10.43.06] 10.65.07.

B. The license or registration holder on inactive status may reactivate the license or registration at any time if the license or registration holder pays the reactivation fee as specified in COMAR [10.43.06] 10.65.07.

[10.43.17.11] 10.65.01.13

**[.11] .13 Duplicate Licenses and Registrations.**

The Board shall issue a duplicate license or registration to the license or registration holder if:

A. The license or registration holder has a change of name, loses or damages the original, practices in multiple locations; and

(1)—(2) (text unchanged)

(3) Pays the fee as specified in COMAR [10.65.07] 10.65.07; and

(4) (text unchanged)

B.—C. (text unchanged)

[10.43.17.12] 10.65.01.14

**[.12] .14 Penalties.**

If a license or registration holder fails to notify the Board of a change of name or address within the time required in Regulations .06B and .07B of this chapter, subject to the hearing provisions of Health Occupations Article, [§3-315] §6-309, Annotated Code of Maryland, the Board may impose an administrative penalty of \$100.

**10.65.02 Rules of Procedure for Board Hearings**

*Authority: Health Occupations Article, §§6-206, 6-309, 6-310; State Government Article, §10-206; Annotated Code of Maryland*

**.01 Scope.**

*This chapter applies to all contested case hearings before the Board of Massage Therapy Examiners or before the Office of Administrative Hearings. It does not apply to conferences or other informal investigations or proceedings.*

**.02 Notice of Hearing.**

A. *Written notice of a hearing shall be sent by the Board to all interested parties at least 30 days before the hearing. The notice shall state the date, time, and place of the hearing. It shall also state the issues or charges involved in the proceeding, provided, however, that if by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable.*

B. *Service upon a party shall be by delivery of the charging document and a copy of the complaint to the party in person. Instead of personal service, the Board may serve the charging document and a copy of the complaint by registered or certified mail, restricted delivery, return receipt requested.*

**.03 Representation of Parties.**

*Every party appearing at formal hearings has the right to appear in proper person, or by or with counsel.*

**.04 Pre-hearing Procedures.**

A. *Pre-hearing Conferences.* The Board may set a pre-hearing conference as it deems appropriate.

B. *Oaths and Subpoenas.* The Board may administer oaths and compel the attendance of witnesses and the production of physical evidence before it from witnesses upon whom process is served anywhere within the State as in civil cases in the circuit court of the county or of Baltimore City, by subpoena issued over the signature of the President or Secretary and the seal of the Board. Upon a request by a party and statement under oath that the testimony or evidence is necessary to their defense, the Board shall issue a subpoena on their behalf.

C. *All motions filed by a party with the Board or the Office of Administrative Hearings, as appropriate, shall be accompanied by a memorandum of points and authorities and shall be filed at least 15 days before the hearing. A copy shall be served on the opposing party. Any response shall be filed with the Board or the Office of Administrative Hearings, as appropriate, at least 7 days before the hearing and a copy shall be served on the opposing party.*

D. *Discovery on Request.* By written request served on the other party and filed with the Board or the Office of Administrative Hearings, as appropriate, a party may require another party to produce, within 15 days, the following:

(1) *A list of witnesses to be called;*

(2) *Copies of documents intended to be produced at the hearing; or*

(3) *Both §A(1) and (2) of this regulation.*

E. *Mandatory Discovery.*

(1) *Each party shall provide to the other party not later than 15 days before the prehearing conference, if scheduled, or 45 days before the scheduled hearing date, whichever is earlier:*

(a) *The name and curriculum vitae of any expert witness who will testify at the hearing; and*

(b) *A detailed written report summarizing the expert's testimony, which includes the opinion offered and the factual basis and reasons underlying the opinion.*

(2) *If the Board or the Office of Administrative Hearings, as appropriate, finds that the report is not sufficiently specific, or otherwise fails to comply with the requirements of this section, the Board or the Office of Administrative Hearings, as appropriate, shall exclude from the hearing the testimony and any report of the expert.*

(3) *The Board or the Office of Administrative Hearings, as appropriate, shall consider and decide arguments regarding the sufficiency of the report:*

- (a) *At the prehearing conference, if scheduled; or*
- (b) *Immediately before the scheduled hearing.*
- (4) *If an expert adopts a sufficiently specific charging document as the expert's report, that adoption satisfies the requirements set forth in this section.*
- F. *Parties are not entitled to discovery of items other than as listed in §§D and E of this regulation.*
- G. *Both parties have a continuing duty to supplement their disclosures of witnesses and documents.*
- H. *Absent unforeseen circumstances which would otherwise impose an extraordinary hardship on a party, witnesses or documents may not be added to the list:*
  - (1) *After the prehearing conference, if scheduled; or*
  - (2) *Later than 15 days before the hearing, if no prehearing conference is scheduled.*
- I. *The prohibition against adding witnesses does not apply to witnesses or documents to be used for impeachment or rebuttal purposes.*
- J. *Construction.*
  - (1) *In hearings conducted by an administrative law judge of the Office of Administrative Hearings, this regulation shall, whenever possible, be construed as supplementing and in harmony with COMAR 28.02.01.*
  - (2) *In the event of a conflict between this regulation and COMAR 28.02.01, this regulation applies.*

#### **.05 Conduct of the Hearing.**

- A. *Duties of Presiding Officer.*
  - (1) *The Board shall conduct hearings before a quorum of the Board.*
  - (2) *For purposes of a hearing under this chapter, four Board members present and entitled to vote shall constitute a quorum.*
  - (3) *Board action shall be by majority vote of all the members then serving.*
  - (4) *The President, or the President's designee, shall be the presiding officer, and shall have complete charge of the hearing, permit the examination of witnesses, admit evidence, rule on the admissibility of evidence, and adjourn or recess the hearing from time to time.*
  - (5) *The presiding officer may set reasonable time limits in arguments and presentation of evidence.*
  - (6) *The presiding officer shall be responsible for decorum in hearings and can suspend the proceedings as necessary to maintain decorum.*
- B. *Legal Advisor and Counsel for the Board.*
  - (1) *The presiding officer may request the Office of the Attorney General to participate in any hearing to present the case on behalf of the Board, and, upon such a request, this counsel has all the rights with regard to the:*
    - (a) *Submission of evidence, examination and cross-examination of witnesses;*
    - (b) *Presentation of summation and argument; and*
    - (c) *Filing of objections, exceptions, and motions as counsel for any party.*
  - (2) *The presiding officer may also request a representative of the Office of the Attorney General to act as legal advisor to the Board as to questions of evidence and law.*
- C. *Order of Procedure. The State shall present its case first. Then the respondent shall present his case. After this the State may present rebuttal.*
- D. *Examination of Witnesses and Introduction of Evidence.*
  - (1) *The rules of evidence in all hearings under these regulations shall be as set forth in State Government Article, §§10-208 and 10-209, Annotated Code of Maryland.*
  - (2) *Every party has the right on every genuine issue to:*
    - (a) *Call witnesses and present evidence;*
    - (b) *Cross-examine every witness called by the agency, or other party;*
    - (c) *Submit rebuttal evidence, present summation and argument; and*
    - (d) *File objections, exceptions, and motions, except that when a party is represented by counsel, all the submissions of evidence, examination and cross-examination of witnesses, and filing of objections, exceptions, and motions shall be done and presented solely by this counsel.*
  - (3) *The presiding officer, or the presiding officer's designee, may examine:*
    - (a) *A witness called by a party; and*
    - (b) *An individual in attendance at the hearing.*
  - (4) *A member of the Board may examine a witness called by a party.*
  - (5) *The Board may submit evidence from an investigative file to other administrative and criminal investigative offices to assist in the investigation and prosecution of a case.*

#### **.06 Records and Transcripts.**

- A. *The Board shall prepare an official record, which shall include all pleadings, testimony, exhibits, and other memoranda or material filed in the proceeding.*
- B. *A stenographic record of the proceedings shall be made at the expense of the Board. This record need not be transcribed, however, unless requested by a party, or by the Board. The cost of any typewritten transcripts of any proceeding, or part of it, shall be paid by the party requesting the transcript.*

**.07 Decision and Order.**

A. Every decision and order rendered by the Board shall be in writing and shall be accompanied by findings of fact and conclusions of law.

B. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed promptly to each party or attorney of record.

**.08 Rehearings.**

A. Any party aggrieved by the decision and order rendered may apply for rehearing within 10 days after service on him of the decision and order. Action on an application shall lie in the discretion of the Board.

B. Unless otherwise ordered, neither the rehearing nor the application for it shall stay the enforcement of the order, or excuse the person affected by it for failure to comply with its terms.

C. The Board may consider facts not presented in the original hearing, including facts arising after the date of the original hearing, and may by new order abrogate, change, or modify its original order.

**.09 Appeal.**

Any person whose license has been revoked or suspended by the Board, or any person placed on probation or reprimand under the regulations in this chapter, may appeal the Board's decision as provided by law.

**[10.43.18] 10.65.03 [Massage Therapy —] Code of Ethics**

Authority: Health Occupations Article, §§1-212, [3-5A-01, 3-5A-02, and 3-5A-09] 6-102, 6-206, 6-308, Annotated Code of Maryland

**.01—.02** (text unchanged)

[10.43.18.03] 10.65.03.03 (downloaded 7/26/2016)

**.03 Standards of Practice.**

A.—B. (text unchanged)

C. A license holder or registration holder shall:

(1)—(5) (text unchanged)

(6) Practice massage therapy only as defined in the scope of practice set out in Health Occupations Article, [§3-5A-01] §6-101, Annotated Code of Maryland;

(7) Cooperate with a lawful investigation conducted by the Board of [Chiropractic and] Massage Therapy Examiners, including:

(a)—(d) (text unchanged)

(8) Report to the Board of [Chiropractic and] Massage Therapy Examiners, or other appropriate authority, conduct in the practice of massage therapy that indicates a violation of:

(a) (text unchanged)

(b) Health Occupations Article, Title [3, Subtitle 5A] 6, Annotated Code of Maryland; or

(c) (text unchanged)

(9) (text unchanged)

D. (text unchanged)

**.04—.08** (text unchanged)

[10.43.18.09] 10.65.03.09

**.09 Penalties.**

If a license holder or registration holder violates a regulation in this chapter, the Board may take action pursuant to Health Occupations Article, [§3-5A-09] §6-308, Annotated Code of Maryland. The Board may also impose a penalty not exceeding \$5,000.

**[10.43.19] 10.65.04 [Massage Therapy —] Advertising**

Authority: Health Occupations Article, §§[3-5A-01, 3-5A-02, 3-5A-07, and 3-5A-09] 6-101, 6-102, 6-206, 6-401, Annotated Code of Maryland

[10.43.19.01] 10.65.04.01 (downloaded 7/26/2016)

**.01 Scope.**

This chapter governs advertising by individuals licensed as massage therapists or registered as massage practitioners by the Board of [Chiropractic and] Massage Therapy Examiners in Maryland.

[10.43.19.02] 10.65.04.02

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

- (2) "Board" means the Board of [Chiropractic and] Massage Therapy Examiners.  
(3)—(4) (text unchanged)

[10.43.19.03] 10.65.04.03

**.03 Advertising.**

A.—B. (text unchanged)

C. An advertisement shall state at a minimum the:

- (1) [Authorized trade name] *License holder's or registration holder's practice or business name*;  
(2) [Practitioner's] *License holder's or registration holder's name*;  
(3) [Practitioner's] *License holder's or registration holder's status as a [licensee] license holder or [registrant] registration holder*; and  
(4) *Practice or business address and telephone number.*

[D. Trade Name.

(1) An advertisement may only use the trade name authorized by the Board.

(2) Trade names used in advertising:

(a) Shall be pre-approved by the Board in writing;

(b) Shall be used on all advertising including:

- (i) Signs;  
(ii) Billing statements;  
(iii) Business cards;  
(iv) Stationery;  
(v) Receipts; and  
(vi) Correspondence; and

(c) May not be used in any false or misleading advertisements.

(3) Only one trade name may be issued to a license or registration holder per geographic practice location.

(4) A trade name shall be distinct in order to clearly identify the practitioner.]

[E.] D.—[H.] G. (text unchanged)

**.04—.05** (text unchanged)

[10.43.19.06] 10.65.04.06

**.06 Penalties for Violation.**

A violation of this chapter may result in disciplinary action against the license holder or the registration holder under Health Occupations Article, Title [3] 6, Annotated Code of Maryland.

**[10.43.20] 10.65.05 [Massage Therapy —] Continuing Education Requirements**

Authority: Health Occupations Article, §6–206, Annotated Code of Maryland

**.01—.04** (text unchanged)

**[10.43.21] 10.65.06 [Massage Therapy —] Record Keeping**

Authority: Health Occupations Article, §§3-205 and 3-5A-02,] 6–206, Annotated Code of Maryland

**.01—.02** (text unchanged)

**10.65.07 Fees**

Authority: Health Occupations Article, §§6–206 and 6–207, Annotated Code of Maryland

**.01 Scope.**

*This chapter governs those who are licensed and registered or who are applying for licensure or registration by the Board.*

[10.43.06.03] 10.65.07.02

[.03] .02 (text unchanged)

**.03 Refunds.**

A. *Fees are nonrefundable with the exception of the examination fee.*

B. *The examination fee may be refunded at the discretion of the Board if the applicant's written request is received by registered mail at least 14 days before the examination.*

**.04 Assessment for Health Care Professionals.**

*The applicant shall pay at the time of license renewal a fee for health care professionals, assessed by the Maryland Health Care Commission (MHCC), as specified in COMAR 10.25.02.*

## **10.65.08 Licensure and Registration Examination — Special Needs Applicants**

Authority: Health Occupations Article, §§6–206 and 6–302, Annotated Code of Maryland

### **.01 Scope.**

This chapter establishes the procedures to be followed by examination applicants who have special needs because of a handicap or religious convictions.

### **.02 Eligibility Requirements.**

A. An applicant with a disability may request modifications in examination materials or procedures by making a written request to the Board that includes:

- (1) The applicant's name;
- (2) The date of the examination to be modified;
- (3) A letter from the appropriate medical professional that:
  - (a) Confirms the disability; and
  - (b) Provides information describing the accommodations required; and
- (4) A letter from the applicant's education program, indicating what modifications, if any, were granted by the program.

B. The applicant shall send the request for modification and supporting documentation to the Board by the application deadline.

C. The Board reserves the right to review each special needs application and evaluate each on its individual merit.

D. The applicant may be required to bear the cost of special arrangements or procedures to accommodate the applicant's special needs.

## **10.65.09 Sanctioning Guidelines**

Authority: Health Occupations Article, §§1-606, 6-308, 6-309, Annotated Code of Maryland

### **.01 Scope.**

A. This chapter shall be used by the Board and the Maryland Office of Administrative Hearings as a framework for imposing discipline.

B. The Board and the Maryland Office of Administrative Hearings shall take into consideration a range of activity within certain types of conduct rather than assigning particular sanctions to each specific violation.

C. The Board shall complete a worksheet for each complaint considered by the Board that is not initially closed.

D. The Board is aware that there may be conduct by a license holder or registration holder that does not fall squarely within a particular guideline contained in Regulation .06 of this chapter. In that event the Board will so indicate on the worksheet and use its best judgment to determine the appropriate sanction.

E. The Board and the Maryland Office of Administrative Hearings shall make determinations that maximize the protection of the public's health while maintaining the rights of license holders and registration holders.

### **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Board" means the Maryland State Board of Massage Therapy Examiners.

(2) "Conditions" means requirements in a public or nonpublic order that a license holder or registration holder is required to satisfy which include but are not limited to:

- (a) Treatment and counseling for an emotional or physical illness;
- (b) Submission to drug and alcohol testing;
- (c) Abstinence from specified drugs;
- (d) Abstinence from alcohol;
- (e) Remedial training;
- (f) Inspection;
- (g) Monitoring;
- (h) Evaluation;
- (i) Supervision;
- (j) Testing of clinical skills;
- (k) Submission of written reports;
- (l) A demonstration of knowledge or competency;
- (m) Limitation of practice;
- (n) Limitation on the administration of specified drugs to patients;
- (o) The provision of pro bono massage therapy to the poor, elderly, or disabled;
- (p) Obedience of Maryland Massage Therapy Act, federal, State, and local laws; and
- (q) The payment of a civil penalty.

(3) "Conduct" means behavior or action or a failure to behave or act that results in a violation of the Maryland Massage Therapy Act or the regulations adopted by the Board.

### **.03 Application.**

A. This chapter shall be used by the Board as a guide for sanctioning license holders and registration holders in formal and informal actions and proceedings.

B. Except as provided in Regulation .05 of this chapter, the Board shall impose a sanction not less severe than the minimum listed in Regulation .06 of this chapter, nor more severe than the maximum listed in Regulation .06 of this chapter.

C. When conduct results in multiple violations of the Maryland Massage Therapy Act and the regulations adopted by the Board, the Board shall consider sanctions that are greater than those imposed for a single violation.

D. This chapter does not apply to disciplinary matters reviewed by the Board that are initially closed.

E. Unless otherwise indicated, the period of a suspension may be stayed in whole or in part.

F. A respondent placed on suspension or probation shall have conditions attached to the suspension or probation which focus on the conduct and steps needed to assure public protection.

G. Consent orders shall:

(1) Include an acknowledgement of the violation or violations; and

(2) Indicate that the respondent accepts personal responsibility for the respondent's behavior.

H. If the conduct is not described in Regulation .06 of this chapter, the Board shall use its judgment to determine appropriate sanctions and shall so state in the sanctions worksheet.

I. A departure from the sanctioning guidelines alone may not be grounds for any hearing or appeal of any Board action before the Board or the Maryland Office of Administrative Hearings.

J. The sanctioning guidelines are not applicable to:

(1) Individuals seeking an initial license; or

(2) The summary suspension of a license under State Government Article, §10-226, Annotated Code of Maryland.

K. Notwithstanding the sanctioning guidelines, a respondent may surrender a license.

### **.04 Worksheet.**

A. The Board shall complete a sanctions worksheet after considering each disciplinary matter.

B. The sanctions worksheet shall, at a minimum:

(1) Briefly summarize the conduct that constituted the violation or violations meriting action;

(2) Identify the severity of the conduct;

(3) Describe other factors that the Board considered in determining the recommended sanctions imposed including but not limited to:

(a) Aggravating factors as outlined in Regulation .05 of this chapter;

(b) Mitigating factors as outlined in Regulation .05 of this chapter; and

(c) Prior disciplinary history; and

(4) Identify the recommended sanctions.

C. The Board's summary of the conduct that constituted the violation or violations need not:

(1) Be exhaustive; or

(2) Include every violation meriting action by the Board.

D. The existence of one or more aggravating or mitigating factors contained in Regulation .05 of this chapter does not impose on the Board any requirement to make findings of fact or to articulate its reasoning for not exercising its discretion to impose a sanction outside the range of sanctions.

E. A copy of the sanctions worksheet may be obtained by the respondent or the respondent's legal representative.

### **.05 Aggravating and Mitigating Factors.**

A. Sanctions in a particular case may fall outside the range of the sanctioning guidelines established by the Board.

B. If the sanctions imposed by the Board fall outside the range of the sanctioning guidelines the Board shall state its reasons on its worksheet.

C. Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the Board may consider the following aggravating and mitigating factors in determining whether the sanction in a particular case should fall outside the range of the sanctioning guidelines:

(1) Aggravating Factors:

(a) Previous criminal or administrative discipline history;

(b) Whether the offense was committed deliberately or with gross negligence or recklessness;

(c) Whether the offense has the potential for, or caused, serious patient harm;

(d) Whether the offense was part of a pattern of detrimental conduct;

(e) Whether the respondent pursued the respondent's financial gain over the patient's welfare;

(f) Whether the patient was especially vulnerable;

(g) Whether the respondent attempted to hide error or misconduct from patients or others;

(h) Whether the respondent:

(i) Concealed, falsified, or destroyed evidence; or

(ii) Presented false testimony or evidence;

(i) Whether the respondent willfully and without legal justification failed to cooperate with a lawful investigation conducted by the Board; and

- (j) Whether previous attempts to rehabilitate the respondent were unsuccessful; and
- (2) Mitigating Factors:
- (a) Absence of a prior disciplinary record;
  - (b) The passage of time since any prior offenses;
  - (c) Whether the respondent self-reported to the Board;
  - (d) Cooperation with the Board's investigation;
  - (e) Full disclosure to the Board;
  - (f) Implementation of remedial measures to correct or mitigate harm arising from the misconduct;
  - (g) Timely good-faith efforts to make restitution or to rectify consequences of misconduct;
  - (h) Evidence of rehabilitation or rehabilitative potential;
  - (i) Absence of premeditation to commit the offense;
  - (j) Absence of potential harm to the public;
  - (k) Absence of adverse impact;
  - (l) Whether the offense was an isolated incident and not likely to recur;
  - (m) How and when the respondent has been involved in community service and the value of the community service to the community; and
  - (n) Voluntary admissions of misconduct.

**.06 Disciplinary Guidelines.**

The following guidelines shall be used by the Board as a guide for sanctioning license holder or registration holder in formal and informal actions and proceedings:

**A. Abuse — Physical and Emotional.**

Severity	Tier/Conduct	Sanction Range		Duration
		Minimum	Maximum	
Least to Greatest	(1) Unnecessary or disruptive behavior which may include verbal comments, directed to a patient, resulting in minimal harm or a risk of harm	Reprimand	Suspension for up to 5 years, and probation for up to 5 years, and conditions	Reprimand to suspension and probation for up to 5 years
	(2) Physical abuse resulting in significant physical or emotional injury	Suspension for 3 years, without stay for at least 30 days and probation for 3 years, and conditions	Revocation	Suspension for 3 years, without stay for at least 30 days, and probation for 3 years to revocation

**B. Criminal Convictions or Plea of Nolo Contendere.**

Severity	Tier/Conduct	Sanction Range		Duration
		Minimum	Maximum	
Least to Greatest	(1) Convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude	Suspension for 1 year and probation for 1 year, and conditions	Revocation	Suspension for 1 year and probation for 1 year, to revocation
	(2) Convicted of or pleads guilty or nolo contendere to a sexual offense	Suspension for 5 years, without stay for at least 60 days, and probation for 5 years, and conditions	Revocation	Suspension for 5 years, without stay for at least 60 days, and probation for 5 years, to revocation

**C. Disciplined by Another Licensing or Disciplinary Authority.**

Severity	Tier/Conduct	Sanction Range		Duration
		Minimum	Maximum	
Least to Greatest	(1) Conduct resulting in no physical or psychological harm	Reprimand	Reprimand and probation for up to 3 years, and conditions	Reprimand to reprimand and probation for up to 3 years

	<i>(2) Conduct resulting in financial injury</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>Reprimand to Revocation</i>
	<i>(3) Conduct resulting in physical or psychological harm or a risk of physical or psychological harm</i>	<i>Suspension for 3 years, without stay for at least 10 days, and probation for 3 years, and conditions</i>	<i>Revocation</i>	<i>Suspension for 3 years, at least 10 days without stay, and probation for 3 years to revocation</i>
	<i>(4) Misrepresentation or fraud</i>	<i>Suspension for 2 years, without stay for at least 5 days, and probation for 2 years, and conditions</i>	<i>Revocation</i>	<i>Suspension for 2 years, without stay for at least 5 days, and probation for 2 years to revocation</i>
	<i>(5) Conduct not provided for in §C(1)—(4) of this regulation</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>Reprimand to Revocation</i>

*D. Diversion of Controlled Substances or Prescription Drugs.*

<i>Severity</i>	<i>Tier/Conduct</i>	<i>Sanction Range</i>		<i>Duration</i>
		<i>Minimum</i>	<i>Maximum</i>	
<i>Least to Greatest</i>	<i>(1) Diversion without harm to self or others</i>	<i>Reprimand and conditions, and probation for 1 year</i>	<i>Suspension for up to 5 years, and probation for up to 5 years, and conditions</i>	<i>Reprimand and probation for 1 year to suspension for up to 5 years and probation for up to 5 years</i>
	<i>(2) Diversion creating risk of harm</i>	<i>Suspension for 3 years and probation for 3 years, and conditions</i>	<i>Suspension for up to 5 years and probation for up to 5 years, and conditions</i>	<i>Suspension for 3 years and probation for 3 years to suspension for up to 5 years and probation for up to 5 years</i>
	<i>(3) Diversion with harm</i>	<i>Suspension for 5 years, without stay for at least 90 days, and probation for 5 years, and conditions</i>	<i>Revocation</i>	<i>Suspension for 5 years, without stay for at least 90 days, and probation for 5 years, to revocation</i>

*E. Failure to Renew a License When the License Holder or Registration Holder Has Continued to Practice.*

<i>Severity</i>	<i>Tier/Conduct</i>	<i>Sanction Range</i>		<i>Duration</i>
		<i>Minimum</i>	<i>Maximum</i>	
<i>Least to Greatest</i>	<i>(1) Failure to renew a license and practicing for up to 1 year</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>Reprimand to suspension for 2 years, and probation for to 2 years</i>
	<i>(2) Failure to renew a license and practicing for 1 year or longer</i>	<i>Suspension for 2 years, and probation for 2 years, and conditions</i>	<i>Revocation</i>	<i>Suspension for 2</i>

				years, and probation for 2 years, to revocation
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*F. Noncompliance with Board Orders.*

Severity	Tier/Conduct	Sanction Range		Duration
		Minimum	Maximum	
Least to Greatest	(1) Failure to comply with a Board order	Suspension for 3 years, without stay for at least 10 days, and probation for 3 years, and conditions	Revocation	Suspension for 3 years, without stay for at least 10 days, probation for 3 years, to revocation
	(2) Failure to comply with a Board order with additional unprofessional conduct	Suspension for 3 years, without stay for at least 30 days, and probation for 3 years, and conditions	Revocation	Suspension for 3 years, without stay for at least 30 days, and probation for 3 years, to revocation
	(3) Failure to comply with a Board order with serious physical injury or death of a patient, or the risk of significant physical injury or death	Suspension for 5 years, without stay for at least 1 year, and probation for 5 years, and conditions	Revocation	Suspension for 5 years, without stay for at least 1 year, and probation for 5 years, to revocation

*G. Incompetent Practice Or Misconduct.*

Severity	Tier/Conduct	Sanction Range		Duration
		Minimum	Maximum	
Least to Greatest	(1) Practice below acceptable standards with a low risk of patient harm	Reprimand and conditions	Suspension for 1 year, and probation for 1 year, and conditions	Reprimand to suspension for 1 year, and probation for 1 year
	(2) Practice below acceptable standards with patient harm or risk of patient harm	Suspension for 3 years, without stay for at least 30 days, and probation, and conditions	Revocation	Suspension for 3 years, without stay for at least 30 days, and probation, to revocation
	(3) Practice below acceptable standards with serious physical injury or death of a patient, or a risk of significant physical injury or death	Suspension for 3 years, without stay for at least 90 days, and probation for 3 years, and conditions	Revocation	Suspension for 3 years, without stay for at least 90 days, and probation for 3 years, to revocation

*H. Sexual Misconduct.*

Severity	Tier/Conduct	Sanction Range		Duration
		Minimum	Maximum	
Least to Greatest	(1) Unsolicited conduct of a sexual nature excluding physical contact that serves no diagnostic or treatment purpose	Reprimand and conditions	Revocation	Reprimand to suspension for 1 year, and probation for 1 year
	(2) A personal relationship that violates professional ethics	Suspension for 1 year, and probation for 1	Suspension for up to 5 years,	Suspension for 1 year, and probation for 1 year, to

		<i>year, and conditions</i>	<i>probation for up to 5 years, and conditions</i>	<i>suspension for up to 5 years, and probation for up to 5 years</i>
	<i>(3) Physical contact of a sexual nature that does not include force, intimidation, the use of drugs, or alcohol, and that serves no diagnostic or treatment purpose</i>	<i>Suspension for 2 years, without stay for at least 90 days, and probation for 2 years, and conditions</i>	<i>Revocation</i>	<i>Suspension for 2 years, without stay for at least 90 days, and probation for 2 years, to suspension for up to 7 years, without stay for at least 90 days, and probation for up to 7 years</i>
	<i>(4) Sexual conduct involving, but not limited to, force intimidation, the use of drugs, or alcohol, or multiple victims</i>	<i>Suspension for 5 years, without stay for at least 1 year, and probation for 5 years, and conditions</i>	<i>Revocation</i>	<i>Suspension for 5 years, without stay for at least 1 year, and probation for 5 years to revocation</i>

*I. Substance Abuse.*

<i>Severity</i>	<i>Tier/Conduct</i>	<i>Sanction Range</i>		<i>Duration</i>
		<i>Minimum</i>	<i>Maximum</i>	
<i>Least to Greatest</i>	<i>(1) Misuse of drugs or alcohol without harm to others</i>	<i>Suspension for 2 years and probation for 2 years, and conditions</i>	<i>Suspension for up to 5 years, and probation for up to 5 years, and conditions</i>	<i>Suspension for 2 years and probation for 2 years, to suspension for up to 5 years and probation for up to 5 years</i>
	<i>(2) Misuse of drugs or alcohol with patient harm or a risk of patient harm</i>	<i>Suspension for 5 years, without stay for at least 90 days, probation for 5 years, and conditions</i>	<i>Revocation</i>	<i>Suspension for 5 years, without stay for at least 90 days, and probation for 5 years to revocation</i>

*J. Unauthorized Practice.*

<i>Severity</i>	<i>Tier/Conduct</i>	<i>Sanction Range</i>		<i>Duration</i>
		<i>Minimum</i>	<i>Maximum</i>	
<i>Least to Greatest</i>	<i>(1) License holder or registration holder knowingly allows an unauthorized individual to practice outside their scope of practice without patient harm or minimal patient harm</i>	<i>Reprimand and conditions</i>	<i>Suspension for 2 years, and probation for 2 years, and conditions</i>	<i>Reprimand to suspension for 2 years, and probation for 2 years</i>
	<i>(2) License holder or registration holder knowingly allows an unauthorized individual to practice outside their scope of practice with greater than minimal patient harm</i>	<i>Suspension for 5 years, without stay for at least 30 days, and probation for 5 years, and conditions</i>	<i>Revocation</i>	<i>Suspension for 5 years, without stay for at least 30 days, and probation for 5 years to revocation</i>

	<i>(3) An unauthorized individual practices outside their scope of practice without patient harm or minimal patient harm</i>	<i>Reprimand</i>	<i>Suspension for 2 years, and probation for 2 years, and, conditions</i>	<i>Reprimand to suspension for 2 years, and probation for 2 years</i>
	<i>(4) An unauthorized individual practices outside their scope of practice with greater than minimal patient harm</i>	<i>Suspension for 5 years, without stay for at least 30 days, and probation, and conditions</i>	<i>Revocation</i>	<i>Suspension for 5 years, without stay for at least 30 days, and probation, to revocation</i>

*K. Unethical Conduct.*

Severity	Tier/Conduct	Sanction Range		Duration
		Minimum	Maximum	
<i>Least to Greatest</i>	<i>(1) Unethical Conduct resulting in no physical or psychological harm</i>	<i>Reprimand and conditions</i>	<i>Suspension for up to 2 years, and probation for up to 2 years, and conditions</i>	<i>Reprimand to suspension for up to 2 years, and probation for up to 2 years</i>
	<i>(2) Unethical conduct resulting in financial injury</i>	<i>Suspension for 3 years, and probation for 3 years, and conditions</i>	<i>Revocation</i>	<i>Suspension for 3 years, and probation for 3 years, to revocation</i>
	<i>(3) Unethical conduct resulting in physical or psychological harm or a risk of physical or psychological harm</i>	<i>Suspension for 3 years, and probation for 3 years, and conditions</i>	<i>Revocation</i>	<i>Suspension for 3 years, and probation for 3 years, to revocation</i>
	<i>(4) Unethically, and without legal justification, fails to cooperate with a lawful investigation conducted by the Board</i>	<i>Suspension for 5 years, without stay for at least 30 days, and probation, for 5 years, and conditions</i>	<i>Revocation</i>	<i>Suspension for 5 years, without stay for at least 30 days, and probation for 5 years, to revocation</i>
	<i>(5) Unethical conduct resulting from misrepresentation or fraud</i>	<i>Suspension for 5 years, and probation for 5 years, and conditions</i>	<i>Revocation</i>	<i>Suspension for 5 years, and probation for 5 years, to revocation</i>
	<i>(6) Threatens, forces, intimidates, or influences a person to change or withhold evidence before the Board or the Office of Administrative Hearings.</i>	<i>Suspension for 5 years, without stay for at least 90 days, and probation for 5 years, and conditions</i>	<i>Revocation</i>	<i>Suspension for 5 years, without stay for at least 90 days, and probation for 5 years, to revocation</i>
	<i>(7) Unethical Conduct resulting from any violation not provided for in §K(1)–(6) of this regulation</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>Reprimand to revocation</i>

**VAN T. MITCHELL**

**Secretary of Health and Mental Hygiene**