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TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 82 LICENSURE OF MASSAGE THERAPY ESTABLISHMENTS

82-001 SCOPE AND AUTHORITY: These regulations govern the credentialing of massage therapy establishments under Neb. Rev. Stat. §§38-1701 to 38-1715 and the Uniform Credentialing Act (UCA).

82-002 DEFINITIONS

1. Act means Neb. Rev. Stat. §§38-1701 to 38-1715, known as the Massage Therapy Practice Act.
2. Attest or Attestation means that the individual declares that all statements on the application are true and complete.
3. Board means the Board of Massage Therapy.
4. Business/Establishment means a person engaged in providing massage therapy services.
5. Client means a person receiving health or health-related services and includes a patient, client, resident, customer, or person with a similar designation.
6. Complete Application means an application that contains all of the information requested on the application, with attestation to its truth and completeness, and that is submitted with the required fees and all required documentation.
7. Confidential information means information protected as privileged under applicable law.
8. Credential means a license, certificate, or registration.
9. Department means the Division of Public Health of the Department of Health and Human Services.
10. Director means the Director of Public Health of the Division of Public Health or his or her designee.
11. Implement means an electrical or mechanical tool, instrument, or a similar device. Examples are brushes, electrical massagers, hot stones, shells, hand tools, and any tool that comes in contact with the client.
12. License means an authorization issued by the Department to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization.

13. Massage Therapist means a person licensed to practice Massage Therapy.
14. Massage Therapy Establishment means any duly licensed place in which a massage therapist practices his/her profession of massage therapy. This does not include:
 - a. On-site massage performed at the location of the client;
 - b. Stand-alone devices, such as chairs, which are operated by the customer; or
 - c. Establishments located within the confines of a hospital, nursing home, or other similar establishment or facility licensed or otherwise regulated by the Department of Health and Human Services.
15. NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 82.
16. Successfully Completed Self Evaluation Inspection or an On-site Inspection means received an affirmative rating on each standard specified in 172 NAC 82-004 through 172 NAC 82-005 during an inspection.

82-003 MASSAGE THERAPY ESTABLISHMENT LICENSE: Any person who wishes to operate a massage therapy establishment must obtain a license.

82-003.01 Qualifications: To receive a credential to operate a massage therapy establishment, an individual must meet the following qualifications:

1. Employ a massage therapist(s) who holds an active license;
2. Have adequate space for providing massage therapy services;
3. Have restroom facilities;
4. Complete a self evaluation inspection report showing compliance with 172 NAC 82, section 004.

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

1. Written Application:
 - a. The full name and address of the business;
 - b. The full name and address of the owner of the business;
 - c. The name of each person in control of the business;
 - d. The Social Security Number of the business owner if the applicant is a sole proprietorship;
 - e. Telephone number including area code (optional);
 - f. E-Mail Address (optional);
 - g. Fax Number (optional);

- h. Signature of:
 - (1) The owner or owners if the applicant is a sole proprietorship, a partnership, or a limited liability company that has only one member;
 - (2) Two of its members if the applicant is a limited liability company that has more than one member;
 - (3) Two of its officers if the applicant is a corporation;
 - (4) The head of the governmental unit having jurisdiction over the business if the applicant is a governmental unit; or
 - (5) If the applicant is not an entity described in items (1) through (4), the owner or owners or, if there is no owner, the chief executive officer or comparable official;
 - i. Practice Before Application: The applicant must state:
 - (1) That s/he has not operated this establishment in Nebraska before submitting the application; or
 - (2) If s/he has operated this establishment in Nebraska before submitting the application, the actual number of days practiced in Nebraska before submitting the application for a credential and the name and location of practice;
 - j. Attestation: The applicant must attest that:
 - (1) S/he has read the application or has had the application read to him/her;
 - (2) All statements on the application are true and complete; and
 - (3) If the applicant is a sole proprietorship, that s/he is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act, for the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her USCIS documentation upon request;
2. Documentation: The applicant must submit the following documentation with the application:
- a. Employment of a duly licensed massage therapist(s);
 - b. Adequate space for providing massage therapy services;
 - c. Restroom facilities;
 - d. A floor plan of the proposed establishment, including:
 - (1) Establishment square footage;
 - (2) Restroom(s) location; and
 - (3) Connecting buildings/living space; and
 - e. A copy of the completed self evaluation inspection report showing compliance with 172 NAC 82-004; and
3. Fee: The applicant must submit the required license fee along with the application and all required documentation.

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

82-003.03 Department Review: The Department will act within 150 days upon all completed applications for initial credentialing. If the application meets the licensing requirements the Department will issue a license. Within 90 days following issuance of the license, the Department will conduct an on-site inspection for the purpose of assuring compliance with the inspection requirements set out in 172 NAC 82-004.

82-003.04 Denial of Initial Credential: If an applicant for an initial credential to operate a business does not meet all of the requirements for the credential or if the applicant is found to have done any of the grounds listed in 172 NAC 82-010, the Department will deny issuance of a credential. To deny a credential, the Department will notify the applicant in writing of the denial and the reasons for the determination. The denial will become final 30 days after mailing the notice unless the applicant, within the 30-day period, requests a hearing in writing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure.

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

82-03.06 Operating a Business without a Credential: The Department may assess an administrative penalty or take such other action as provided in the statutes and regulations governing the credential when evidence exists of operating a business prior to issuance of a credential. See 172 NAC 82-013.

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

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

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

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

1. Initial Self-Evaluation Inspection: Under 172 NAC 82-003.01, the applicant must conduct a self-evaluation inspection prior to the proposed opening date of the establishment.
2. Initial On-Site Inspection: The Board and/or Department will conduct an on-site inspection within 90 days following issuance of an initial establishment license. The inspections are limited to ascertaining whether:
 - a. All massage therapists working on the premises are properly licensed;
 - b. The equipment and sanitation requirements in 172 NAC 82-004 are met;
 - c. The physical structure requirements in 172 NAC 82-004 are met; and
 - d. The duties of the massage therapist and manager and/or owner in 172 NAC 82-004 and 82-006 are met.
3. Routine Inspection: A routine inspection will be conducted to assure compliance with 172 NAC 82-004.01 and 82-004.02. The inspection will be conducted by the Board and/or Department.
 - a. The inspection will occur at least one time every 4 years.
 - b. The inspection is limited to ascertaining whether:
 - (1) All massage therapists working on the premises are properly licensed;
 - (2) The equipment and sanitation requirements in 172 NAC 82-004 are met;
 - (3) The physical structure requirements in 172 NAC 82-004 are met; and
 - (4) The duties of the massage therapist and manager and/or owner in 172 NAC 82-004 and 82-006 are met.

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

1. Physical Structure: A massage therapy establishment must have a clearly identifiable location; each massage therapy establishment can be free-standing or part of an existing structure. The owner must ensure that the establishment is well ventilated and kept in a clean, orderly, and sanitary condition at all times.
 - a. All rooms must have adequate lighting and ventilation;
 - b. Each establishment must have an area that can be screened from public view for customers requesting privacy; and
 - c. Each room where massage therapy services are provided must have an EPA registered disinfectant that is proven effective against HIV-1, or Hepatitis B, or is a Tuberculocidal, and have liquid soap and water or an instant sanitizer;

2. Water: The owner must ensure that the establishment has a supply of hot and cold running water in sufficient quantities to conduct business in the establishment in a sanitary manner.
3. Safety: The owner must maintain the establishment in a safe condition. S/he must ensure that:
 - a. Floors, floor coverings, walls, woodwork, ceilings, furniture, fixtures and equipment are clean and safe;
 - b. Floors are free of unsafe objects and slippery or uneven surfaces;
 - c. Doors, stairways, passageways, aisles, or other means of exit provide safe and adequate access;
 - d. Electrical appliances or apparatus are clean and have no worn or bare wiring to avoid fires, shocks, and electrocution;
 - e. Water or product spills on the floor are removed immediately and floor dried to avoid falls; and
 - f. If candles are used in the establishment, the candle(s) must be on a surface where they are securely supported on a substantial noncombustible base and the candle flame is protected.
4. Restroom Facilities: A restroom must be available on the premise.
5. Massage Tables and Chairs: The owner must ensure that all tables and chairs are safe and in a sanitary condition at all times:
 - a. Tables/chairs with no sheeting/pad must be disinfected between clients with an EPA-registered disinfectant that is proven effective against HIV-1, or Hepatitis B, or is a Tuberculocidal;
 - b. Clean linens must be used for each client; and
 - c. Sheeting/pads that come in direct contact with the client or have been soiled must be removed, disinfected, or cleaned between clients.
6. Storage: The owner must ensure that storage within the establishment meets the following requirements:
 - a. Flammable and combustible chemicals are stored away from potential sources of ignition such as an open flame or an electrical device;
 - b. Storage units:
 - (1) Cabinets, drawers, containers used for storage of tools, equipment, instruments and towels/linens are clean; and
 - (2) Tools, equipment, instruments, or towels/linens which have been used on a client are not placed in a container with clean tools, equipment, instruments, or towels/linens.

7. Towels/Linens: The owner must ensure that all towels and linens are clean and sanitary for each client and meets the following requirements:
 - a. Used Towel and Linen Storage:
 - (1) Cloth towels and linens are deposited in a closed receptacle after use;
 - (2) Used cloth towels and linens are not used again until properly laundered; and
 - (3) Disposable towels are discarded in a covered waste receptacle immediately following each service.
 - b. Clean Towel and Linen Storage: All clean towels are stored in a clean, enclosed, dust-proof cabinet or container until used. Pillows are not required to be stored in a cabinet or container, but must have a clean covering before contact with a client.
8. Products: The owner must ensure that the use of products in the establishment meets the following requirements:
 - a. All liquids, creams, and other products are kept in clean, closed containers;
 - b. Original product bottles and containers have an original manufacturer label, which discloses their contents;
 - c. All products used on a client must be dispensed by a spatula, scoop, spoon, squeeze bottle, pump, dropper, or similar dispenser so that the remaining product is not contaminated;
 - d. If a product is poured into another container, such as a shaker, dispenser pump container, or spray container, the container is labeled to identify the product; and
 - e. Products applied to one client cannot be removed and reused on another client.
9. Methods of Disinfection: The owner must ensure that all electrical and/or mechanical tools, instruments, implements, and equipment are disinfected before use on a client, by using one of the following two procedures:
 - a. Procedure One:
 - (1) Spray, immerse, soak, or saturate the implement until it is totally saturated with an EPA-registered disinfectant that is proven effective against HIV-1, or Hepatitis B, or is a Tuberculocidal;
 - (2) Before removing the sanitized implement(s), wash hands with liquid soap and water or antibacterial solution;
 - (3) Rinse implement;
 - (4) Prior to storing, air-dry on a sanitary surface or dry with a clean sanitized towel; and
 - (5) Store in a clean enclosed cabinet or covered container reserved for clean implements until used.

b. Procedure Two:

- (1) Autoclave implements in accordance with the manufacturers instructions; and
- (2) Autoclaves must be cleaned and serviced at the frequency recommended by the manufacturer.

Foot baths/foot spas, showers, and hot tubs are disinfected with an EPA registered disinfectant that is proven effective against HIV1, or Hepatitis B, or is a Tuberculocidal and in accordance with the manufacturers instructions.

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

10. Activities Not Allowed: While in the establishment, the owner and massage therapist must not engage in or allow any other person, including clients, to engage in any of the following activities:
 - a. Smoking in the massage room; and
 - b. Licensees must not use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises during the hours the establishment is open to the public.

82-004.02 Documents and Records: The owner must ensure that:

1. The license to operate the massage therapy establishment is displayed in a conspicuous location at the massage therapy establishment;
2. There is a sign containing the name of the massage therapy establishment. The sign must be in a conspicuous location at the entrance to the massage therapy establishment;
3. The license of each massage therapist who practices massage therapy in the massage therapy establishment is displayed in a conspicuous location at the massage therapy establishment; and
4. The establishment has one copy of the latest edition of the Massage Therapy Practice Act and one copy of the latest edition of 172 NAC 81 and 82.

82-005 CRITERIA FOR SUCCESSFUL COMPLETION OF A MASSAGE THERAPY ESTABLISHMENT INSPECTION: Each establishment must successfully complete an inspection to receive a license to operate. The rating system for inspections are set forth below:

82-005.01 Initial Inspection:

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

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

1. When an establishment receives a rating of "Unsatisfactory", the Department will forward to the establishment Owner(s), written notification that the establishment license has been placed on a probationary status until all deficiencies cited during the inspection are corrected. The establishment has 15 days from the date of the initial inspection to correct the deficiencies.
2. The inspector will conduct a re-inspection of the establishment within 15 days of receipt of verification that all corrections cited on the inspection report are corrected.
 - a. If the establishment meets the requirements at the time of re-inspection, the inspector will change the "Unsatisfactory" rating and enter a "Satisfactory" rating.
 - b. If the establishment receives an "Unsatisfactory" rating, after the re-inspection, the Department will, within 10 days of the completion of the re-inspection, give notice to the establishment that the license is suspended. The Department will send a written notice to the owner(s) by certified mail stating:
 - (1) The establishment license is suspended;
 - (2) The reasons for the establishment license suspension; and
 - (3) The establishment license suspension will become final 30 days after the mailing of the notice of suspension unless the Owner(s) submits a written request for a hearing within such 30 day period.
 - c. Upon receipt of a written request for a hearing, the Owner(s) will be given a hearing before the Department. The Owner(s) must make a written request to the Department for a hearing. The hearing will be conducted in accordance with the Administrative Procedure Act and

184 NAC 1, Rules of Practice and Procedure for the Department.

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

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

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

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

82-005.02 Routine Inspection

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

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

1. When an establishment receives a rating of "Unsatisfactory", the Department will forward to the establishment Owner(s)/Board of Directors, written notification that the establishment license has been placed on a probationary status until all deficiencies cited during the inspection are corrected. The establishment has 30 days from the date of the initial inspection to correct the deficiencies.
2. The inspector will conduct a re-inspection of the establishment within 15 days of receipt of verification that all corrections cited on the inspection report are corrected.
 - a. If the establishment meets the requirements at the time of re-inspection, the inspector will change the "Unsatisfactory" rating and enter a "Satisfactory" rating.
 - b. If the establishment receives an "Unsatisfactory" rating, after the re-inspection, the Department will, within 10 days of the completion of the re-inspection, give notice to the establishment

that the license is suspended. The Department will send a written notice to the owner(s) by certified mail stating:

- (1) The establishment license is suspended;
 - (2) The reasons for the establishment license suspension; and
 - (3) The establishment license suspension will become final 30 days after the mailing of the notice of suspension unless the Owner(s) submits a written request for a hearing within such 30 day period.
- c. Upon receipt of a written request for a hearing, the Owner(s) will be given a hearing before the Department. The Owner(s) must make a written request to the Department for a hearing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, Rules of Practice and Procedure for the Department.
- d. The Department's decision regarding the suspension of the license will become final 30 days after a copy of the decision is mailed to the Owner(s), unless the Owner(s) appeals the decision.

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

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

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

1. All massage therapists employed by the massage therapy establishment have a valid Nebraska license to practice massage therapy;
2. Licenses are posted in such a manner that clients can readily see the documents; and
3. The massage therapy establishment is operated in accordance with the Massage Therapy Practice Act and 172 NAC 81 and 82. This includes any massage therapy rooms that may be shared or used in conjunction with another health care professional.

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

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

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

1. A request for a change in the establishment name at least 15 days prior to the change; and
2. The required fee for a reissued license.

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

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

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

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

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

1. The type of credential;
2. The credential number;
3. The expiration date; and
4. The amount of the renewal fee;

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

application from the Department or construct an application that must contain the following information:

1. Written Application:
 - a. The full name and address of the business;
 - b. The full name and address of the owner of the business;
 - c. The name of each person in control of the business;
 - d. The Social Security Number of the business if the applicant is a sole proprietorship;
 - e. Telephone number including area code (optional);
 - f. E-Mail Address (optional);
 - g. Fax Number (optional);
 - h. Attestation by the applicant that:
 - (1) S/he has read the application or have had the application read to him/her;
 - (2) All statements on the application are true and complete; and
 - (3) If the applicant is a sole proprietorship, that s/he is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act, for the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her USCIS documentation upon request;
 - i. Signature of:
 - (1) The owner or owners if the applicant is a sole proprietorship, a partnership, or a limited liability company that has only one member;
 - (2) Two of its members if the applicant is a limited liability company that has more than one member;
 - (3) Two of its officers if the applicant is a corporation;
 - (4) The head of the governmental unit having jurisdiction over the business if the applicant is a governmental unit; or
 - (5) If the applicant is not an entity described in items (1) through (4), the owner or owners or, if there is no owner, the chief executive officer or comparable official; and
2. Fee: The renewal fee as specified in 172 NAC 2. The renewal fee must be paid no later than the date of the expiration of the credential.

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

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

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

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

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

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

82-010.01 Temporary Suspension or Limitation

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

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

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

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

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

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

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

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

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

1. Personal Information:
 - a. First, middle and last name;
 - b. Mailing address (street, rural route, or post office address), city, state, and zip code;
 - c. Telephone number; and
 - d. Fax number.

2. Information Regarding the Credential Being Offered for Surrender or Limitation:
 - a. List credential(s) and credential number(s) that would be surrendered or limited;
 - b. Indicate the desired time frame for offered surrender or limitation:
 - (1) Permanently;
 - (2) Indefinitely; or
 - (3) Definite period of time (specify);
 - c. Specify reason for offered surrender or limit of credential; and
 - d. Specify any terms and conditions that the credential holder wishes to have the Department consider and apply to the offer.
3. Attestation: The applicant must:
 - a. Attest that all the information on the offer is true and complete; and
 - b. Provide the applicant's signature and date.

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

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

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

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

82-011.03 When the Department either accepts or rejects an offer of voluntary surrender or limitation, the Director will issue the decision in a written order. The order will be issued within 30 days after receipt of the offer of voluntary surrender or limitation and will specify:

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

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

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

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

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

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

1. A business whose credential has expired, voluntarily surrendered for an indefinite period of time, or suspended or limited for disciplinary reasons may apply at any time to the Department for and obtain another credential as specified in 172 NAC 82-003.
2. A business whose credential has been voluntarily surrendered for a definite period may apply at any time to the Department for and obtain another credential as specified in 172 NAC 82-003.
3. A business whose credential has been revoked may apply only after a period of two years has elapsed from the date of revocation may apply to the Department for and obtain another credential as specified in 172 NAC 82-003.
4. An individual whose credential has been permanently voluntarily surrendered may not apply for another credential.

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

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

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

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

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

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

1. Provide written notice of the assessment to the person. The notice must specify:
 - a. The total amount of the administrative penalty;
 - b. The evidence on which the administrative penalty is based;
 - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
 - d. That the Department will within 30 days following receipt of payment of the administrative penalty, remit the penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5 of the Constitution of Nebraska; and
 - e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property. The Department may also collect in such action attorney's fees and costs incurred directly in the collection of the administrative penalty.
2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

82-013.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure.

Effective Date
5/11/2010

NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

172 NAC 82

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

These Amended Rules and Regulations replace Title 172, Chapter 82, Regulations Governing the Practice of Massage Therapy Establishments, effective January 3, 2005.

Approved by the Attorney General: February 18, 2010

Approved by the Governor: May 6, 2010

Filed with the Secretary of State: May 6, 2010

Effective Date: May 11, 2010