

56 N.J.R. 1724(a)

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RULE ADOPTIONS

Reporter

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Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > BOARD OF MASSAGE AND BODYWORK THERAPY

Administrative Code Citation

Adopted Amendments: N.J.A.C. 13:37A-2.1, 3.1, and 4.1

Text

Clinical Practice for Licensure, Electrical Percussive Devices, and Continuing Education

Proposed: August 7, 2023, at 55 N.J.R. 1621(a).

Adopted: March 14, 2024, by the Board of Massage and Bodywork Therapy, David Bank, Chair.

Filed: July 16, 2024, as R.2024 d.073, a name="_Hlk173328095" **without change, but with proposed amendments to N.J.A.C. 13:37A-4.2 not adopted.**

Authority: N.J.S.A. 45:11-67.

Effective Date: August 19, 2024.

Expiration Date: October 17, 2026.

Summary of Public Comments and Agency Responses:

The official comment period ended on October 6, 2023. To ensure compliance with the Administrative Procedure Act and the rules promulgated by the Office of Administrative Law, the comment period was extended to October 29, 2023. The Board of Massage and Bodywork Therapy (Board) received comments from:

1. Judith Cole
2. Holly R. Lange
3. Kimberly Campbell
4. Nancy Sheehan
5. Christina Boyd
6. Rebecca A. Place
7. Matthew Lindholm
8. Kimberly Neild
9. Yvonne Watkis
10. Tara Paccillo
11. Toni Allen
12. Lance Hostetter
13. Christina Newdeck
14. Adrian Villalobos
15. Alana Scott
16. Dyriann Graciani
17. Jacqui Delario
18. Jennifer Davenport
19. Jennifer Richards

1. COMMENT: A commenter opposes the Board's amendment limiting licensees to completing no more than eight continuing education credit hours in one day, arguing that the amendment would disqualify five-day conferences where participants can earn up to 80 continuing education credits. The commenter also states that in addition to bodywork education, five-day conferences give instruction in self-improvement and allow licensees to network and learn about which techniques are working for patients. Similarly, another commenter argues that the

Board should not limit ambitious learners. The commenter further states that continuing education courses are costly, and some licensees attend weekend events where they can earn up to 10 continuing education credits for one class.

RESPONSE: The Board is not disqualifying five-day conferences or weekend events as the commenters suggest. Licensees are free to attend such conferences and events. However, licensees must adhere to the new limit on the number of continuing education credit hours they may complete in one day and maintain their record of attendance as required pursuant to N.J.A.C. 13:37A-4.3 for each course or program they complete during the conference or event.

2. COMMENT: Two commenters opposing the amendment limiting licensees to completing no more than eight continuing education credit hours in one day argue that the Board is overstepping. They both maintain that the issue of licensees stockpiling continuing education credits may be due to the State's decision to allow more online continuing education courses during the COVID-19 pandemic and suggest that the issue might resolve itself.

Another commenter opposes adding additional requirements on how licensees obtain their continuing education credits.

RESPONSE: N.J.S.A. 45:11-59.e grants the Board the authority to "establish standards for the continuing education of licensees as it deems necessary." The purpose of continuing education is to ensure that licensees continue to receive adequate education and training to enable them to practice massage and bodywork therapy safely and effectively. The Board believes limiting licensees to completing no more than eight hours of continuing education credits in one day is necessary to achieve that goal.

The Board also does not believe that the issue of licensees stockpiling continuing education credits might resolve itself with the end of the policy allowing licensees to complete all of their continuing education online. The Board has determined that the eight-hour limit is necessary to educate licensees and protect consumers regardless of whether licensees complete their continuing education online or in-person, and the Board believes this limit must take effect as soon as practicable.

3. COMMENT: A commenter opposes the amendment limiting licensees to completing no more than eight continuing education credit hours in one day and states that while they understand prohibiting licensees from completing all the required 20 hours of continuing education credits in one day, they think the eight-hour limit is too low.

RESPONSE: The Board notes that there is a limit to the amount of educational material a person can absorb in one day. The Board does not believe that licensees who complete most or all of the required 20 credit hours of continuing education in one day are receiving the full educational benefits of their continuing education courses. Moreover, the Board determined that the eight-hour limit strikes the appropriate balance of protecting consumers by ensuring licensees receive adequate education and training while giving licensees the flexibility to accrue all of their continuing education credits in as few as two and a half days if they choose to do so.

[page=1725] 4. COMMENT: Four commenters oppose the amendment limiting licensees to completing no more than eight continuing education credit hours in one day, arguing that it will impose additional financial burdens on licensees. Of those four commenters, one states that live continuing education classes are more expensive when taken in-State, even when travel costs, class prices, lodging, and meals are taken into consideration. The commenter argues that the limit will make it harder for low-income and single-income households and parents, especially single parents and parents with young children who need childcare, to comply with the Board's continuing education requirements. Two commenters oppose the amendment arguing that many licensees need to complete all the required continuing education credit hours in one day due to prohibitive work schedules and the limited availability of in-person courses within driving distance. Another commenter states that some licensees practice massage therapy on the side, in addition to their full-time jobs, and cannot be expected to space out their continuing education credit hours appropriately especially since licensees cannot obtain all the hours online.

RESPONSE: The Board notes that pursuant to N.J.A.C. 13:37A-4.1, licensees have two years to complete the required 20 continuing education credit hours, six of which may be obtained through courses presented online or on DVDs. The Board also notes that the vast majority of continuing education courses related to massage and bodywork therapy are provided by national companies that charge the same amount in all locations. Lastly, the amendment does not limit where licensees may complete continuing education courses. Licensees may complete continuing education courses in-State or out-of-State, so long as the courses are provided or approved by one of the entities listed at N.J.A.C. 13:37A-4.2(a). As a result, the Board believes that any additional burden on licensees will be manageable. The Board also believes that licensees can mitigate any additional burden by planning ahead and availing themselves of the six credit hours of online continuing education permitted pursuant to N.J.A.C. 13:37A-4.1.

5. COMMENT: Four commenters support the Board's amendment limiting licensees to completing no more than eight continuing education credit hours in one day.

RESPONSE: The Board thanks the commenters for their support of the amendment.

6. COMMENT: Three commenters support the Board's amendment requiring that the 100 hours of clinical practice, required as part of a course of study in massage and bodywork therapy, be performed on the premises of the applicant's school. One commenter states that on-campus education ensures that students are receiving the required education with the ability to ask questions in a setting where they are being guided by an educator on a specific topic or modality.

RESPONSE: The Board thanks the commenters for their support of the amendment.

7. COMMENT: Six commenters write to oppose the Board's amendment requiring that the 100 hours of clinical practice, required as part of a course of study in massage and bodywork therapy, be performed on the premises of the applicant's school.

Two commenters state that off-site clinical education is important. They argue that it is already hard to find the courses students need and limiting clinical education to a school campus will make it more challenging.

Another commenter states that it would be controlling and overkill to assert that clinical hours obtained under the observation of an instructor are not good enough unless performed at a school.

Another commenter argues that the amendment will not provide real world exposure and learning opportunities. The commenter further argues that the amendment will eliminate networking opportunities for students. The commenter suggests that the Board require schools to add a provision in their employment contracts requiring their faculty members to randomly inspect off-campus clinical sites or, in the alternative, require schools to limit off-campus clinics to properly vetted off-campus sites.

Another commenter argues that off-site clinical education should be accepted even when it is improperly supervised because it is being obtained through real world applications. In addition, the commenter recommends that the Board require that only 90 percent of the 100 hours of clinical education be completed on school premises.

Another commenter objects to the amendment, but did not offer any explanation.

RESPONSE: The Board believes that students should complete their clinical practice requirement in a controlled environment under the supervision of an instructor. The Board also believes that it is the responsibility of massage and bodywork therapy schools to provide students with properly supervised clinics as part of their programs. Consequently, the Board believes that the new clinical education requirement is necessary because it will ensure that students receive adequate supervision while completing their clinical practice requirements, which in turn will better prepare them to provide massage and bodywork therapy services safely upon licensure. In addition, the Board does not have the authority to require schools to add a provision in their employment contracts requiring faculty members to randomly observe and document clinical sites as one commenter suggests.

8. COMMENT: Two commenters write to voice their concerns about what they perceive as the Board's attempt to require licensees to obtain all their continuing education credit hours on the premises of massage and bodywork therapy schools.

RESPONSE: The amendments do not require licensees to obtain all their continuing education credit hours on the premises of massage and bodywork therapy schools. Rather, the amendment at N.J.A.C. 13:37A-2.1(d)5 requires applicants for licensure to have completed the 100 hours of clinical practice, required as part of a course of study in massage and bodywork therapy, on the premises of the applicant's school.

9. COMMENT: Six commenters support the Board's amendment allowing continuing education courses that are related solely to the business practices of licensees to count toward fulfilling a licensee's continuing education requirements. One commenter states that the amendment will help massage therapists be more well-rounded, knowledgeable, and capable of handling their businesses. Two commenters supporting the amendment stress that the courses should remain optional.

RESPONSE: The Board thanks the commenters for their support of the amendment.

10. COMMENT: Five commenters oppose the amendment clarifying that licensees may use devices that cause percussions or vibrations to the body without engaging in the "application of electrical current to the body," which is prohibited pursuant to N.J.A.C. 13:37A-3.1(b)3. Two commenters oppose the amendment but state that vibration plates help clients with lymphatic fluid build-ups. One commenter adds that handheld vibration tools are critical to medical massage.

Another commenter objects to regulating percussive therapy unless it is being used in a professional setting. The commenter further suggests that licensees should be required to complete a one-day training course to use such devices in a professional setting.

Another commenter argues that massage therapists are uniquely qualified to use percussive devices.

Another commenter opposing the amendment believes that massage therapists should be trained on electrical current devices and should not be limited to tools without percussion and vibrations. The commenter states that when such tools are used correctly, they can potentially bring clients comfort and ease and increase the longevity of therapists' careers.

RESPONSE: N.J.A.C. 13:37A-3.1(b)3 prohibits licensees from applying electrical current to the body. The amendment at N.J.A.C. 13:37A-3.1(b)3 clarifies that using electrical devices that provide percussions or vibrations to the body does not constitute the application of electrical current to the body. The amendment does not prohibit the use of devices that provide percussions or vibrations to the body. Lastly, while the rulemaking does not require licensees to obtain additional training before using devices that provide percussions or vibrations to the body, the Board will continue to evaluate the issue. The Board will propose rules imposing training requirements if it deems it necessary.

11. COMMENT: Three commenters support the amendment clarifying that licensees may use devices that cause percussions or vibrations to the body without engaging in the "application of electrical current to the body," as prohibited at N.J.A.C. 13:37A-3.1(b)3.

RESPONSE: The Board thanks the commenters for their support of the amendment.

[page=1726] 12. COMMENT: The Board proposed amending N.J.A.C. 13:37A-4.2(a) to remove the Association of Bodywork and Massage Professionals (ABMP) from the list of entities authorized to approve continuing education courses or providers. One commenter opposing the amendment, writing on behalf of ABMP, argues that while it is true that ABMP does not approve continuing education courses or providers ABMP should remain on the list because all its courses are approved by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB). The commenter further argues that removing ABMP would be discriminatory since it is not the only organization listed at N.J.A.C. 13:37A-4.2(a) that does not approve continuing education courses or providers. The commenter then suggests creating two lists, one for organizations that

approve courses and another for course developers, sponsors, and providers.

Another commenter urges the Board to approve ABMP as a continuing education provider. The commenter argues that ABMP's classes have been instrumental to learning pathology and anatomy.

Another commenter opposing the amendment asks why the Board is disqualifying ABMP as an accredited continuing education provider since all their courses are approved by NCBTMB.

Another commenter opposing the amendment states that they are against the Board "closing down their ability to get education through ABMP." The commenter asks why the Board is not removing the American Massage Therapy Association (AMTA) from the list at N.J.A.C. 13:37A-4.2(a) since AMTA also does not approve courses or providers.

Another commenter opposing the amendment asks why ABMP is being singled out when all their courses are nationally certified by the NCBTMB. The commenter adds that the proposed amendment would be a detriment to the massage therapist culture.

Another commenter opposing the amendment argues ABMP provides courses that enable licensees to fulfill their ethics continuing education requirements. The commenter further argues that removing ABMP will create a monopoly on such courses.

Another commenter requests clarification on the implications of the amendment. Specifically, the commenter asks whether continuing education hours earned through ABMP will count for the current renewal period.

RESPONSE: N.J.A.C. 13:37A-4.2(a) lists the entities authorized to approve continuing education courses and providers. The Board proposed amending N.J.A.C. 13:37A-4.2(a) to remove ABMP from the list because ABMP does not approve continuing education courses or providers. The proposed amendment would not disqualify ABMP as a continuing education provider. All ABMP courses that are approved by any entity listed at N.J.A.C. 13:37A-4.2(a) would continue to satisfy the Board's continuing education requirements.

While the Board's rationale was sound, the proposed amendment has led to confusion in the regulated community. The wording at N.J.A.C. 13:37A-4.2(a) led some licensees to believe the proposed amendment would prevent them from obtaining continuing education from ABMP. Consequently, the Board has determined not to adopt the proposed amendment. The Board will review and clarify N.J.A.C. 13:37A-4.2(a) in a subsequent rulemaking, if it deems it necessary.

13. COMMENT: One commenter states the commenter opposes all of the Board's amendments, but did not offer any explanation.

RESPONSE: Without an explanation for the basis of the opposition to the amendments, the Board cannot address the commenter's concerns.

14. COMMENT: Numerous commenters raise concerns about various issues that are not the subject of the rulemaking. The issues include Board vacancies, specialty schools, and the number of continuing education credit hours licensees may obtain through online and DVD courses.

RESPONSE: Since the commenters raise issues that are not the subject of the rulemaking and, in some cases, are not under the Board's purview, the Board cannot address the commenters' concerns.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted amendments.

Full text of the adoption follows:

SUBCHAPTER 2. LICENSURE

13:37A-2.1 Application for licensure

(a)-(c) (No change.)

(d) A course of study in massage and bodywork therapy of at least 500 hours shall include:

1.-4. (No change.)

5. At least 100 hours of clinical practice, performed on the premises of the school, that is supervised by a faculty member who is present on-site while services are being performed and is either a licensed massage and bodywork therapist or is legally authorized to perform massage and bodywork therapy in the state in which the school exists.

(e)-(g) (No change.)

SUBCHAPTER 3. PROFESSIONAL PRACTICE

13:37A-3.1 Scope of practice

(a) (No change.)

(b) Notwithstanding any training received as permitted by (a) above, a licensee shall not perform:

1.-2. (No change.)

3. Any application of electrical current to the body (Transcutaneous Electronic Nerve Stimulation, TENS, machine). For purposes of this section, a device that uses electrical power to provide percussions or vibrations to the body shall not constitute the application of electrical current to the body; and

4. (No change.)

SUBCHAPTER 4. CONTINUING EDUCATION

13:37A-4.1 Continuing education

(a) (No change.)

(b) Each applicant for biennial license renewal shall be required to complete during the preceding biennial period 20 credit hours of continuing education related to the practice of massage and bodywork therapy, except as provided at (d) below. These 20 credit hours shall include at least two hours in ethics and one hour in the laws and rules pertinent to the practice of massage and bodywork therapy, specifically, N.J.S.A. 45:11-53 et seq., and this chapter. Courses in practices in which licensees are prohibited from engaging pursuant to N.J.A.C. 13:37A-3.1(b) shall not satisfy continuing education requirements.

(c) Licensees shall be limited to completing a total of:

1. Six credit hours through courses presented online or through DVDs; and
2. Three credit hours through courses that are related solely to the business practices of licensees.

(d)-(e) (No change.)

(f) A licensee shall complete no more than eight continuing education credit hours in one day.

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