

Chapter MTBT 5

UNPROFESSIONAL CONDUCT

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Note: Chapter RL 94 was renumbered chapter SPS 94 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671. Chapter SPS 94 was renumbered MTBT 5 under s. 13.92 (4) (b) 1., Stats., Register August 2012 No. 680.

MTBT 5.01 Unprofessional conduct. The definitions of this chapter are adopted by the board pursuant to the authority delegated by ss. 15.085 (5) (b) and 460.04 (2) (a), Stats., to establish the standards of ethical conduct for massage therapists and bodywork therapists.

History: Cr. Register, February, 1999, No. 518, eff. 3-1-99; CR 06-069: am. (intro.), (6) (9), (16), (19), (20), (26) to (28), cr. (29) to (32), Register December 2006 No. 612, eff. 1-1-07; correction in (31) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; correction in (31) made under s. 13.92 (4) (b) 7., Stats., Register August 2012 No. 680; CR 13-055: am. (9), (16) to (20), (27), (28), (32) Register May 2014 No. 701, eff. 6-1-14; correction in (16) made under s. 13.92 (4) (b) 6., Stats., corrections in (2) to (4), (6) to (8), (12), (14), (15), (17), (19) to (27), (29) made under s. 35.17, Stats., Register May 2014 No. 701; CR 14-041: r. and recr. Register June 2015 No. 714, eff. 7-1-15.

MTBT 5.02 Unprofessional conduct. “Unprofessional conduct” includes the following, or aiding, abetting, or conspiring the same:

(1) Violating s. 460.14 (2) (a) to (j), Stats., or any provision of a board order.

(2) Being convicted of an offense under s. 940.22, 940.225, 944.15, 944.17, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.085, 948.09, 948.095, or 948.10, Stats.

(3) Engaging in fraud, misrepresentation, or deceit in applying for or procuring a license to practice massage therapy or bodywork therapy, in connection with applying for or procuring periodic renewal of a license, or in otherwise maintaining a license.

(4) Engaging in any act of fraud, deceit, or misrepresentation, including acts of omission to the board or any person acting on the board’s behalf, including department of safety and professional services personnel.

(5) Employing illegal or unethical business practices, including either of the following:

(a) Fraud, deceit, or misrepresentation in obtaining or attempting to obtain any fee or third-party reimbursement.

(b) Engaging in uninformed, in-person solicitation of actual or potential clients, who because of their particular circumstances are vulnerable to undue influence.

(6) Knowingly, negligently, or recklessly making any written or oral statement while practicing massage therapy that is likely to deceive, defraud, mislead, or create an unacceptable risk of harm to a client, the public, or both.

(7) Engaging in false, misleading, or deceptive advertising.

(8) Failing to maintain accurate and timely records necessary for the continuity of a client’s massage therapy or bodywork therapy treatment. Records are to be maintained for a period of at least 5 years.

(9) Performing any act constituting the practice of massage therapy or bodywork therapy on any client without the client’s informed consent or after the client has withdrawn informed consent, whether verbally or in writing, or either of the following:

(a) Failure to document informed consent.

(b) Failure to inform the client that any act of massage therapy may or will be performed by unlicensed personnel.

(10) Any practice or conduct that falls below the standard of minimal competence within the profession that results in unacceptable risk of harm to the client, regardless of whether injury results.

(11) Practicing as a massage therapist or bodywork therapist when physical or mental abilities are impaired by the use of controlled substances or other drugs, chemicals, or alcohol, or by other causes.

(12) Practicing as a massage therapist or bodywork therapist with a mental or physical condition that impairs the ability of the licensee to practice within the standard of minimal competence or without exposing a client to an unacceptable risk of harm.

(13) Practicing beyond the scope of massage therapy or bodywork therapy.

(14) Divulging any information that is required under s. 460.11 (2), Stats., to be kept confidential.

(15) Engaging in sexually explicit conduct, sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a client, a client’s immediate family member, or a person responsible for the client’s welfare. For purposes of this subsection, all of the following shall apply:

(a) Sexual nature of contact shall be determined from the totality of the circumstances and is presumed when the massage therapist or bodywork therapist has contact with a client’s intimate parts without legitimate professional justification for doing so.

(b) An adult client shall continue to be considered a client for 6 months after the termination of professional services.

(c) A client who is a minor shall continue to be considered a client for 2 years after the termination of services or for 2 years after the client reaches the age of majority, whichever is longer.

(16) Engaging in any sexual contact or conduct with or in the presence of a client or former client who lacks the ability to consent for any reason, including age, medication, or psychological or cognitive disability.

(17) Falsifying client records.

(18) Failing to provide access to client records when requested by the board or the board’s representative.

(19) After a request by the board, failing to cooperate in a timely manner with the board’s investigation of complaints filed against the licensee. There is a rebuttable presumption that a licensee who takes longer than 30 calendar days to respond to a request of the board has not acted in a timely manner under this subsection.

(20) Failing to provide clean clothing, linens, or equipment.

(21) Failing to provide draping and treatment that ensures the safety and privacy of a client.

(22) Permitting or assisting any person to perform acts constituting massage therapy or bodywork therapy without sufficient qualifications, necessary credentials, adequate informed consent, or adequate supervision. The licensed massage therapist or bodywork therapist is responsible for determining whether general, one-to-one, or on-premises supervision is necessary to protect the client from an unacceptable risk of harm. The licensed massage therapist or bodywork therapist retains responsibility for delegated or supervised acts unless the board determines that the del-

egate knowingly and willfully violated the supervisor's direction or instruction.

(23) Failing to inform a client about contraindications of massage therapy or bodywork therapy as it related to the information provided on the informed consent or intake form completed by the client.

(24) Failing to complete the continuing education requirements under s. MTBT 7.02 (3).

(25) Having an adverse action against a credential pertaining to the practice of massage therapy or bodywork therapy by any agency of this or another state, or by an agency or authority within the federal government. This subsection applies whether the adverse action is accompanied by findings of negligence or unprofessional conduct or results in a temporary or permanent limitation, restriction, suspension, or revocation.

(26) Subject to ss. 111.321, 111.322, and 111.335, Stats., being convicted of an offense the circumstances of which substantially relate to the practice of massage therapy or bodywork therapy. For purposes of this subsection, all of the following shall apply:

(a) Except as otherwise provided by law, a certified copy of a decision is conclusive evidence of the finding of facts and conclusions of law by a state or federal court or agency charged with making legal determinations relevant to a conviction.

(b) The board has the burden of proof that a conviction is substantially related to the practice of massage therapy or bodywork therapy.

(27) Failing to report to the board any incident in which the licensee has direct knowledge of reasonable cause to suspect that a massage therapist or bodywork therapist has committed any unprofessional, incompetent, or illegal act in violation of state or federal statute, administrative rule, or orders of the board. Reports shall be made within the time necessary to protect clients from further unacceptable risk of harm.

(28) Failing to display the license granted under ch. 460, Stats., in the licensee's place of business or practice as required under s. 460.07 (1), Stats. In the case of a mobile practice, a licensee shall be able to present the license for public display.

(29) Failing to maintain liability insurance coverage of at least \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year as required under s. 460.05 (1) (g), Stats.

History: CR 14-041: cr. Register June 2015 No. 714, eff. 7-1-15; correction in (24) made under s. 35.17, Stats., Register June 2015 No. 714; CR 19-101: am. (2), (6), (11), (14), (15) (intro.), (c), (20), (24), (25), (26) (intro.), (a), (b), (28), (29) Register April 2020 No. 772, eff. 5-1-20.

MTBT 5.03 Duty to make reports. (1) A licensee shall submit a report to the board if the licensee has reasonable cause to believe another licensee has committed a crime relating to prostitution under ss. 944.30 to 944.34, Stats., or has had sexual contact or sexual intercourse with a client. For purposes of this subsection, a licensee shall be considered to have reasonable cause upon occurrence of any of the following:

(a) The licensee is informed by a person that, while a client of another licensee, that person engaged in an act prohibited by ss. 944.30 to 944.34, Stats., with that licensee.

(b) The licensee is informed by a person that, while a client of another licensee, that person engaged in sexual contact or sexual intercourse with that licensee.

(c) The licensee is informed by another licensee that they engaged in sexual contact, sexual intercourse, or an act prohibited by ss. 944.30 to 944.34, Stats., with a client.

(3) The report shall be made on a complaint form provided by the board. If the report relates to sexual contact or sexual intercourse with a client, the report may not identify the client unless the client has provided written consent for disclosure of this information. The board may use the report as the basis for an investigation under s. 460.14 (1), Stats.

Note: Complaint forms are available from the department of safety and professional services at (608) 266-2112 or from the department's website at: <http://dsps.wi.gov>.

(4) A complaint as defined in s. SPS 2.03 (2), filed against a license holder pursuant to s. SPS 2.08, based upon the allegation of one or more acts prohibited under ss. 944.30 to 944.34, Stats., constitutes reasonable cause for the board to believe that a licensee holder has committed a crime and the board shall report the belief to the district attorney for the county in which the crime, in the opinion of the board, occurred.

History: CR 06-069: cr. Register December 2006 No. 612, eff. 1-1-07; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 13-055: am. (1), (2) (b), (c), (3), (4) Register May 2014 No. 701, eff. 6-1-14; correction in (4) made under s. 13.92 (4) (b) 6., Stats., correction in (2) (a) made under s. 35.17, Stats., Register May 2014 No. 701; CR 14-041: renum. from MTBT 5.02 Register June 2015 No. 714, eff. 7-1-15; CR 19-101: renum. (1) to (1) (intro.), am., r. (2) (intro.), renum. (2) (a) to (c) to (1) (a) to (c) and am., am. (3) Register April 2020 No. 772, eff. 5-1-20.

MTBT 5.04 Audits. Any licensee who is under investigation by the board for alleged misconduct shall be audited by the board for compliance with the continuing education requirements under s. MTBT 7.02.

History: CR 14-041: cr. Register June 2015 No. 714, eff. 7-1-15; correction made under s. 35.17, Stats., Register June 2015 No. 714; CR 19-101: am. Register April 2020 No. 772, eff. 5-1-20.