

REGULATIONS GOVERNING THE PRACTICE OF BODYWORK

SECTION 1: AUTHORITY

On _____ the Waltham Board of Health, pursuant to the authority granted under Massachusetts General Laws (M.G. L.), Chapter 111, Section 31 voted to adopt the “Regulations Governing the Practice of Bodywork” to protect the public health and safety of the community. These regulations will take effect _____.

SECTION 2: RATIONALE/PURPOSE

Whereas persons working in this particular service industry have often been found to identify themselves as bodyworkers in order to gain exemption from the Massachusetts Rules and Regulation Governing Massage Therapists, it is necessary to enact these Regulations Governing the Practice of Bodywork to protect the public health and safety of the community. The scope of these Regulations is broad and includes many aspects, which if not particularly regulated could endanger the community with the risk of prostitution, human trafficking and disease transmission. It is the Board’s intent that only individuals who meet and maintain a minimum standard of competence and conduct within their scope of practice as a professional may provide services to the public. These Regulations designate the requirements for obtaining a permit to operate a bodywork establishment and permit to practice bodywork, as well as grounds for suspension, revocation or denial of such a permit.

SECTION 3: DEFINITIONS

Administrative Revocation shall mean an administrative action with immediate effect taken by the Department for cause when a permit holder fails to renew a permit, or denies entry to an agent of the Department during the conduct of an inspection. A permit holder whose permit has been administratively revoked cannot lawfully continue to practice as a bodywork therapist or to operate a bodywork establishment in the City of Waltham. Permits that have been administratively revoked may be reinstated upon meeting the conditions contained in these Regulations.

Agent shall mean a person who has received delegation of authority from the Board of Health to perform functions subject to these Regulations.

Applicant shall mean a person seeking a permit that has submitted an application and the applicable application fee for a permit.

Application shall mean the application approved by the Director of Public Health and provided by the Department.

Board of Health shall mean the Waltham Board of Health.

Bodywork shall refer to the practice of a person representing themselves as a bodyworker or bodywork therapist, or the practice of a person using primarily touch to manipulate tissue, which does not constitute Massage as defined in M.G.L., c.135, in the course of treatment or therapy provided to another person. Bodywork may include the affectation of the human energy system or acupoints or QI meridians of the human body. The Board, in conjunction with the Department, will maintain a list of treatment and therapy modalities considered Bodywork for the purposes of these Regulations.

Client shall mean a person with whom the bodywork therapist has an agreement to provide bodywork therapy services.

Certification shall mean successful completion of the most current requirements of the American Organization for Bodywork Therapies of Asia (AOBTA®), National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), American Reflexology Certification Board or other national professional membership organization recognized by the Institute for Credentialing Excellence, or its accrediting body, that provides a certification or credential. Any such national professional membership organization or national certification commission must include an established set of educational standards, require compliance with a specific code of ethics, and offer a grievance process. All certifications and/or credentials must be approved by the Board of Health.

Department shall mean the Health Department.

Director shall mean the Director of Public Health.

Establishment shall mean any location, or portion thereof, as listed on the permit and under the control of an individual operator, which advises and/or provides bodywork therapy services on the premises. Any health care facility licensed by an agency of the Commonwealth of Massachusetts wherein bodywork therapy services are not advertised or provided except on an occasional outcall basis is not an establishment for the purposes of these Regulations. Any location within a licensed health care facility or health care professional's office which is dedicated to and maintained for the use of a therapist who performs occasional therapy services to the patients of the facility is a bodywork establishment for the purposes of permitting under these Regulations and the portions of the facility or office wherein bodywork therapy services are provided must be in compliance with these Regulations.

Operation shall mean times when the establishment is open to the public for the practice of bodywork.

Operator shall mean the person possessing the permit to operate a bodywork establishment issued by the Department.

Permit shall mean either a document issued by the Department allowing a specific person to operate a bodywork establishment in the City of Waltham, or a document issued by the Department allowing a specific person to practice bodywork in the City of Waltham.

Permit holder shall mean a person holding a permit, which is in his or her name, issued by the Department.

Person shall mean any individual, firm, corporation, partnership, organization, or body politic.

Person in charge shall mean a the permit holder present at the bodywork establishment who is responsible for the operation at the time of inspection, and who is authorized to sign Department inspection forms and communicate with the Department or its authorized agent(s).

Retired permit shall mean a permit that has not been renewed for more than twelve (12) consecutive months.

Therapist shall mean a person holding a permit to practice bodywork, which is in his name or her name, issued by the Department.

SECTION 4: EXEMPTIONS

1. Any physician, chiropractor, osteopath, nurse, physical therapist, occupational therapist, massage therapist, or acupuncturist operating within the scope of his/her Commonwealth of Massachusetts license or registration and not representing him/herself as a bodywork therapist shall be exempt from these Regulations.
2. Hospitals, long-term facilities, and home health agencies licensed or certified under the laws of the Commonwealth of Massachusetts shall be exempt from these Regulations.

SECTION 5: REQUIREMENT FOR A PERMIT TO PRACTICE BODYWORK

To practice bodywork therapy, or to be employed in a bodywork establishment in the City of Waltham, a person must possess a current and valid permit to practice bodywork issued by the Department. The process for obtaining a permit to practice bodywork is as follows:

- (a) An Application shall be obtained from the Department.
- (b) The applicant shall answer every question truthfully and completely and supply all information requested in the application. The applicant shall submit the completed application to the Department. False statements shall constitute grounds for denial.
- (c) Applications shall be accepted throughout the year. The Department shall make reasonable efforts to act on completed permit applications within thirty (30) days of receipt.
- (d) The applicant shall submit a certified copy of his/her birth certificate or its equivalent to establish that the applicant is at least twenty-one (21) years of age at the time of application. Provided all documentation is provided.
- (e) The applicant shall submit a High School Diploma or its verifiable equivalent.
- (f) The applicant shall be able to communicate effectively in English.
- (g) The applicant shall attach to his/her application a signed passport type photograph taken within the preceding 12 months.
- (h) The applicant shall provide satisfactory evidence of being appropriately certified in accordance with Section 3 "Certification"
- (i) The applicant shall complete a release of Criminal Offender Record Information (CORI) and a release of Sexual Offender Registry Information (SORI) to the Police Department. So they may be able to perform the checks as agents of the Department.

- (j) The applicant shall disclose the circumstances surrounding any of the following:
 - 1. Revocation or denial of a permit or license to practice bodywork issued by any state or municipality.
 - 2. Loss or restriction of a permit, license or certification by any jurisdiction for any reason.
- (k) The applicant shall submit a non-refundable application fee with their application. The fee will be determined by the Board of Health. An application is not considered complete unless accompanied by the applicable fee.
- (l) The application shall be sworn to and signed by the applicant under the pains and penalties of perjury and be notarized by a Notary Public of the Commonwealth of Massachusetts.
- (m) The documents submitted for the purpose of obtaining a permit become property of the Department and will not be returned.

SECTION 6: REQUIREMENT FOR A PERMIT TO OPERATE A BODYWORK ESTABLISHMENT

To operate a bodywork establishment in the City of Waltham, a person must possess a current and valid permit to operate a bodywork establishment issued by the Department. The process for obtaining a permit to operate a bodywork establishment is as follows:

- (a) An application shall be obtained from the Department.
- (b) The applicant shall answer every question truthfully and completely and supply all information requested in the application. The applicant shall submit the completed application to the Department. False statements shall constitute grounds for denial.
- (c) The applicant shall include in the application copies of the permits to practice bodywork of all therapists performing bodywork at the establishment. To obtain a permit, an establishment shall have at least one (1) duly permitted body worker employed at all times.
- (d) The applicant is responsible for ensuring all persons performing bodywork in his/her establishment are permitted by the Department.
- (e) The applicant shall submit a non-refundable application fee with their application. The fee will be determined by the Board of Health. An application is not considered complete unless accompanied by the applicable fee.

- (f) The application shall be sworn to and signed by the applicant under the pains and penalties of perjury and be notarized by a Notary Public of the Commonwealth of Massachusetts.
- (g) The documents submitted for the purpose of obtaining a permit become property of the Department and will not be returned.
- (h) Applicants for a Permit to Operate a Bodyworks Establishment shall provide the name or names of individuals that are currently certified in basic cardiopulmonary resuscitation (CPR) and a copy of their valid certification form. One individual trained in CPR shall be on-site at all times during operating hours.

SECTION 7: PERMITS

1. All permits expire on the thirty-first (31st) day of December each year.
2. Permit holders intending to renew a current permit shall submit the appropriate renewal application (s) provided by the Department along with the applicable fee, as determined by the Board of Health, before the thirty-first (31st) day of December.
3. Any permits not renewed by the thirty-first (31st) day of December shall be administratively revoked.
4. Administratively revoked permits may be subject to a reinstatement fee, as determined by the Board of Health.
5. Administratively revoked permits may be reinstated upon meeting all renewal requirements.
6. A permit shall be considered retired if not renewed for more than (12) months. A retired permit may not be renewed; an initial permit application must be submitted to the Department.
7. No permit is transferrable in any way; including new ownership or change of location.
8. No replacement permits will be issued.
9. All permit holders shall notify the Department of a change of name and/or address within (30) days.
10. All permits shall be displayed on the premises in a location that is conspicuous, open, and obvious to all people entering the establishment.

SECTION 8: REQUIREMENTS AND STANDARDS FOR BODYWORK ESTABLISHMENTS AND BODYWORK THERAPISTS

1. Bodywork Establishment

- (a) All new establishments initially permitted after the effective date of the Regulations must contain a waiting area for clients within the establishment.
- (b) All establishments shall have a sink for hand washing immediately available at all times. Such sink shall be supplied with hot water between 110-130°F, hand soap, and hand drying provisions.
- (c) All establishments shall comply with the zoning requirements of the City of Waltham.
- (d) The establishment, or any facilities or equipment contained therein, including any showers, table showers and sinks, shall at all times meet the requirements of the Waltham Building Department.
- (e) Bodywork may be conducted only in adequately lighted, heated and ventilated rooms, which are so constructed that they be kept clean. Floors, walls, ceilings and windows must be kept free of dust, soil, and other unclean substances.
- (f) Bodywork locations will not have shades, covers, blackout curtains, etc in the waiting room or reception area.
- (g) All equipment, furniture, linens and supplies used in the performance of bodywork shall be maintained in a safe and sanitary manner.
- (h) A written plan describing sanitation measures must be submitted by the applicant to the Department for any bodywork that entails disrobing and/or draping, use of oils or lotions, and/or use of a massage-type table.
- (i) If any latex-containing products are used, a sign shall be conspicuously posted alerting all clients that latex-containing products are in use.

2. Bodywork Therapist

- (a) A therapist may only perform bodywork at the permitted establishment listed on his/her permit to practice bodywork. Therapists may provide services off-site for single events, such as health fairs and demonstrations, or in the homes of clients who are medically homebound, as documented by a health care professional.

- (b) All therapists shall maintain a sufficient level of personal cleanliness and wear clothing that is clean, as determined by the Department.
- (c) All therapists shall be properly clothed, within the bounds of decency and propriety, in accordance with the standards of their profession. Abbreviated or provocative attire is prohibited. The Board, the Director, the Department, or an agent will make the judgement in regard to what constitutes inappropriate or prohibited attire.

SECTION 9: GENERAL REQUIREMENTS

1. Hours of operation for any establishment shall be limited to 9:00 AM to 8:00 PM, both inclusive.
2. There shall be a person in charge who must be present in the establishment at all times, who shall be so designated by the operator.
3. Not including clients and exempt professionals, only permit holders may be present or employed in an establishment during operation.
4. There shall be at least one (1) bodywork therapist present in the establishment at all times of operation.
5. All permit holders shall notify the Department of any criminal complaint brought against him/her within seven (7) days.
6. No false statements or information shall be presented to the Department, or any agent thereof.
7. No alcoholic beverages may be served in any bodywork establishment.
8. No therapist in a bodywork establishment may be unclothed.
9. No therapist shall provide bodywork therapy services on a client when a communicable disease will be spread through the bodywork process. All therapists must practice safe work-related procedures in accordance with universal precautions, Occupational Safety and Health Administration (OSHA) standards, and the established guidelines of their profession.
10. All bodyworks establishments will keep records of clients who have received services, which may be used in the event of a communicable disease being reported to the Board.
11. No room or section of a bodywork establishment shall be used as a bedroom or for sleeping or domicile.

SECTION 10: SEXUAL ACTIVITY PROHIBITED

1. Sexual activity by any person or persons in any establishment is prohibited.
2. As used in these regulations “sexual activity” means any direct or indirect physical contact or communication by any person or between persons which is intended to erotically stimulate either person or both or which is likely to cause such stimulation and include: sexual intercourse, fellatio, cunnilingus, masturbation (or “hand release”), or anal intercourse. For the purpose of these regulations, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. As used, herein, sexual activity can involve the use of any device or object and is not dependent on whether penetration, orgasm, or ejaculation occurs.

SECTION 11: ADVERTISING

1. Establishments and therapists shall be mindful of professional ethics when placing advertisements. As used in this section, advertisements shall include, but not be limited to, service offerings, or promotions in or on newspapers, periodicals, television, radio, any form of print media, or any form of internet or web-based marketing. Advertisements that appeal to prurient interests or advertising in a manner that uses exotic, sexual or provocative language and/or pictures to promote business may be construed as a breach of proper standards of bodywork.
2. Any person who is not permitted in the manner described herein may not represent him/herself as being permitted or licensed by using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification or advertisements of any sort.
3. Unless all bodywork therapists within the establishment possess individual permits to practice bodywork in the City of Waltham, any person operating a bodywork establishment may not present his/her establishment as a permitted or licensed bodywork establishment or to hold his/her establishment out to the public as being permitted or licensed by using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification or advertisements of any sort.

4. The use of aliases is prohibited. If the therapist or establishment operator wishes to use a name other than that which appears on a permit, both names must be used together in all advertising and representations.

SECTION 12: INSPECTIONS

1. Establishments and therapists are subject to inspections by the Board or its authorized agent(s) during all times of operation.
2. Inspections may be conducted at random anytime.
3. The purpose of inspections is to verify compliance with these Regulations.
4. Denial of access to an agent of the Board shall result in the immediate administrative revocation of the permit to operate a bodywork establishment.
5. If, upon inspection, conditions are found that do not comply with the provisions set forth in these Regulations, both the operator and any bodywork therapist responsible for violating these Regulations may be subject to enforcement proceedings and penalties pursuant to Section 13 and Section 14 below.
6. If, upon inspection, conditions are found that do not comply with the standards and requirements set forth in these Regulations, a re-inspection may be necessary to ensure corrective action was taken to achieve compliance with these Regulations.

SECTION 13: ENFORCEMENT

These regulations may be enforced by the Board of Health, or its agent, except that only the Board of Health may grant, deny, revoke, suspend or modify permits or variances of these regulations.

The grounds on which the Health Department may deny, revoke, suspend, or modify any permit or certification issued pursuant to these regulations include, but are not limited to:

1. Refusal to permit an agent of the Board, Police, or other government official to inspect the facility.
2. Interference with the Board or other government official in the performance of their duty.

3. A criminal conviction of the license holder relating to the operation of the establishment.
4. Failure of the license holder to submit the appropriate documentation.
5. Failure to pay the required license fees or assessed fines or penalties.
6. The establishment's owner, operator, or employee's failure to comply with these regulations.
7. Committing a Prohibited or Criminal Act.
8. Keeping or submitting any misleading or false records or documents related to the operation of the establishment or practicing bodywork.

Otherwise operating a bodywork facility or practicing bodywork so as to cause a threat to the public health or safety shall cause suspension, modification, or revocation of license. Such action by the Board of Health may include ordering other appropriate relief, including but not limited to ordering corrections of the physical facility. These Regulations may be enforced through appropriate criminal or civil process, including but not limited to those specified at M.G.L. c. 40, section 21D, in any court of competent jurisdiction. All criminal acts or violations of M.G.L. will be enforced by the Waltham Police Department. In addition, the Waltham Police Department or Health Department may issue fines per this ordinance on top of penalties assessed by the appropriate criminal court.

SECTION 14: PENALTIES

1. Criminal penalties. Under Massachusetts General Laws (M.G.L.), Chapter 111, Section 31, any person who violates any provision of these regulations shall, upon conviction, be fined not more than one thousand dollars (\$1,000.00) for violation of these regulations. Each day's failure to comply with an order of the Department shall constitute a separate offense.
2. Non-criminal penalties. Under Massachusetts General Laws (M.G.L.), Chapter 21D, Section 40, a civil penalty of fifty dollars (\$50.00) may be assessed at the discretion of the Director, the Department or the Board of Health for violation(s) of these Regulations.

SECTION 15: VARIANCE

1. The Board of Health may vary the application of any provision of these regulations with respect to any particular case, when, in the Board's opinion, the enforcement thereof would do manifest injustice; provided that the decision shall not conflict with the intent and spirit of these Regulations.
2. A request for a variance shall be submitted in writing. The Board of Health may ask for supporting evidence in order to consider the variance request. The request shall not be deemed complete until all such requested evidence has been received by the Department.
3. Any variance granted under this section may be subject to qualification, revocation, suspension, or expiration. A variance granted may be revoked, modified, or suspended in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard in accordance with these Regulations.
4. Any variance granted by the Board of Health shall be in writing. A copy of any such variance, while it is in effect, shall be available to the public at all reasonable hours at the Department. A copy of the variance shall also be on file in the usual place of practice of the applicant.

SECTION 16: SEVERABILITY

If any section, subsection, sentence, clause, phrase, heading, or any portion of these Regulations is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such provisions and such holdings shall not affect the validity of the remaining portions thereof.

