



Town of Lexington
Land Use, Health and Development Department
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ARTICLE XIX, Regulations Governing the Practice of Bodywork
[Adopted October 18, 2017]

§ 155-154. AUTHORITY

On October 18, 2017, the Lexington Board of Health, pursuant to the authority granted under Massachusetts General Laws (M.G.L.), Chapter 111, Section 31 adopts these “Regulations Governing the Practice of Bodywork” to protect the public health and safety of the community. These regulations will take effect October 18, 2017.

§ 155-155. 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 Regulations 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 adequately 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.

§ 155-156. 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 Town of Lexington. 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 Public Health Director 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 to the Board of Health.

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

Board of Health shall mean the Lexington 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 a 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 for bodywork. 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 Public Health Director or the Board of Health.

Department shall mean the Office of Public Health.

Director shall mean the Public Health Director.

Establishment shall mean any location, or portion thereof, as listed on the permit and under the control of an individual operator, which advertises and/or provides bodywork therapy services on the premises. Any health care facility licensed by an agency of the Commonwealth of Massachusetts, or the office of any health care professional licensed by 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 the 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 Town of Lexington, or a document issued by the Department allowing a specific person to practice bodywork in the Town of Lexington.

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 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 or her name, issued by the Department.

§ 155-157. EXEMPTIONS

- (a) 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.
- (b) Hospitals, long-term care facilities, and home health agencies licensed or certified under the laws of the Commonwealth of Massachusetts shall be exempt from these Regulations.

§ 155-158. REQUIREMENT FOR A PERMIT TO PRACTICE BODYWORK

To practice bodywork therapy, or to be employed in a bodywork establishment in the Town of Lexington, 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 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 eighteen (18) years of age at the time of application. The applicant shall submit a high school diploma or its verifiable equivalent.
- (e) The applicant shall be able to communicate effectively in English.
- (f) The applicant shall attach to his/her application a signed passport type photograph taken within the preceding 12 months.
- (g) The applicant shall provide satisfactory evidence of being appropriately certified in accordance with Section 3 'Certification.'
- (h) The applicant shall provide proof of coverage by an individual professional liability insurance policy of at least one million dollars (\$1,000,000) per occurrence and at least one million dollars (\$1,000,000) aggregate.
- (i) The applicant shall complete a release of Criminal Offender Record Information (CORI) and a release of Sexual Offender Registry Information (SORI) to the Department.
- (j) The applicant shall disclose the circumstances surrounding any of the following:
 - i. Any conviction for any sexual related crime occurring within the past ten (10) years.
 - ii. Revocation or denial of a permit or license to practice bodywork issued by any state or municipality.
 - iii. 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) All documents submitted for the purpose of obtaining a permit become the property of the Department and will not be returned.

§ 155-159. REQUIREMENT FOR A PERMIT TO OPERATE A BODYWORK ESTABLISHMENT

To operate a bodywork establishment in the Town of Lexington, 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) Applications shall be accepted throughout the year. The Department shall make reasonable efforts to act on completed applications within thirty (30) days of receipt.
- (d) 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.
- (e) The applicant is responsible for ensuring all persons performing bodywork in his/her establishment are permitted by the Department.
- (f) The applicant shall submit a non-refundable application fee with the application. The fee will be determined by the Board of Health. An application is not considered complete unless accompanied by the applicable fee.
- (g) 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.
- (h) All documents submitted for the purpose of obtaining a permit become the property of the Department and will not be returned.
- (i) The applicant 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.

§ 155-160. PERMITS

- (a) All permits expire on the thirty-first (31st) day of December each year.
- (b) Permit holders intending to renew a current permit shall submit the appropriate renewal application(s) provided by the Department along with the applicable fees determined by the Board of Health, before the thirty-first (31st) day of December.

- (c) Any permits not renewed by the thirty-first (31st) day of December shall be administratively revoked.
- (d) Administratively revoked permits may be subject to a reinstatement fee, as determined by the Board of Health.
- (e) Administratively revoked permits may be reinstated upon meeting all renewal requirements.
- (f) A permit shall be considered retired if not renewed for more than twelve (12) months. A retired permit may not be renewed; an initial permit application must be submitted to the Department.
- (g) Permits are non-transferable.
- (h) No replacement permits will be issued.
- (i) All permit holders shall notify the Department of a change of name and/or address within (30) days of such change.
- (j) All permits shall be displayed on the premises in a location that is conspicuous, open, and obvious to all people entering the establishment.

§ 155-161. REQUIREMENTS AND STANDARDS FOR BODYWORK ESTABLISHMENTS AND BODYWORK THERAPISTS

- (a) Bodywork Establishment.
 - i. All new establishments initially permitted after the effective date of these Regulations must contain a waiting area for clients within the establishment.
 - ii. 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.
 - iii. All establishments shall comply with the zoning requirements and bylaws of the Town of Lexington.
 - iv. The establishment, and any facilities or equipment contained therein, including any showers, table showers and sinks, shall at all times meet the requirements of the Lexington Fire Department and the Lexington Building Commissioner.
 - v. Bodywork may be conducted only in adequately lighted, heated and ventilated rooms, which are so constructed that they can be kept clean. Floors, walls, ceilings and windows must be kept free of dust, soil, and other unclean substances.

- vi. All equipment, furniture, linens and supplies used in the performance of bodywork shall be maintained in a safe and sanitary manner.
- vii. 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 of table.
- viii. If any latex-containing products are used, a sign shall be conspicuously posted alerting all clients that latex-containing products are in use.
- ix. All establishments shall be responsible for the acts of all therapists and other employees working at that establishment.

(b) Bodywork Therapist.

- i. 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.
 - ii. All therapists shall maintain a sufficient level of personal cleanliness and wear clothing that is clean, as determined by the Department.
 - iii. All therapists shall be properly clothed, within the bounds of decency and propriety. GENERAL REQUIREMENTS
- (a) Hours of operation for any establishment shall be limited to 7:00 AM to 10:00 PM, both inclusive.
 - (b) 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.
 - (c) Not including clients and exempt professionals, only permit holders may be present or employed in an establishment during operation.
 - (d) There shall be at least one (1) bodywork therapist present in the establishment at all times of operation.
 - (e) All permit holders shall notify the Department of any criminal complaint brought against him/her within seven (7) days.

- (f) No false statements or information shall be presented to the Department, or any agent thereof.
- (g) No alcoholic beverages may be served in any bodywork establishment.
- (h) No therapist in a bodywork establishment may be unclothed.
- (i) 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.
- (j) No room or section of a bodywork establishment shall be used as a bedroom or for sleeping or domicile.

§ 155-162. SEXUAL ACTIVITY PROHIBITED

- (a) Sexual activity by any person or persons in any establishment is prohibited.
- (b) 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 includes: 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 may involve the use of any device or object and is not dependent on whether penetration, orgasm, or ejaculation occurs.

§ 155-163. ADVERTISING

- (a) 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..
- (b) Any person who is not permitted in the manner described herein may not represent him/herself as being a permitted or licensed bodywork therapist or to hold him/herself 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.
- (c) Unless all bodywork therapists within the establishment possess individual permits to practice bodywork in the Town of Lexington, 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 or advertisements of any sort.

- (d) 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.

§ 155-164. INSPECTIONS

(a) Establishments and therapists are subject to inspections by the Department or its authorized agent(s) during all times of operation.

(b) The purpose of inspections is to verify compliance with these Regulations.

(c) Denial of access to an agent of the Department shall result in the immediate administrative revocation of the permit to operate a bodywork establishment.

(d) 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.

(e) 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. A re-inspection fee, as determined by the Board of Health, shall be issued to the operator.

§ 155-165. ENFORCEMENT

(a) Orders.

- i. Upon a finding by the Director or the Department that a permit holder has violated any provision of these Regulations, the Director or the Department may order both the operator and any bodywork therapist responsible for violating these Regulations to correct any violation of the provision of these Regulations.
- ii. Orders shall be in writing and served on the permit holder(s) as follows:
 - 1. By sending a copy of the order by certified mail, return receipt requested, or
 - 2. Personally, by any person authorized to serve civil process, or

3. By posting a copy in a conspicuous place on or about the establishment.

(b) Hearings.

- i. Upon a finding by the Director or the Department that a permit holder has violated any provision of these Regulations, the Director or the Department may order both the operator and any bodywork therapist responsible for violating these Regulations to attend a hearing with the Board of Health.
- ii. The Board of Health may take any of the following actions, separately or in any combination, which is deemed appropriate for the offense:
 1. Suspension of a permit for a fixed period of time, or
 2. Revocation of a permit. Any person who has had a permit revoked may not apply for another permit in the Town of Lexington.
- iii. The person to whom any order or notice has been issued pursuant to violations of any provision of these regulations may request a hearing before the Board of Health. Such request shall be in writing and shall be filed with the Department within five (5) working days of receipt of the order or notice. Upon receipt of such request, the Department shall inform the petitioner thereof in writing of the time and place of said hearing, which shall be commenced within a reasonable time.
- iv. At the hearing, the petitioner shall be given an opportunity to be heard, to challenge the inspection findings, and/or to show why the order should be modified or rescinded, or why the permit should not be suspended or revoked. Any oral testimony given at a hearing shall be recorded electronically and shall be part of the permit holder's file.
- v. After the hearing, the Board of Health shall make a final decision based upon the complete hearing record and shall inform the petitioner in writing of the decision. If the Board sustains or modifies an order, it shall be carried out within the time period allotted in the original order or in the modification.
- vii. Every notice, order, decision or other record prepared by the Department or Director in connection with the hearing shall be entered as a matter of public record in the Department.
- viii. Any person aggrieved by the final decision of the Board of Health may seek relief in a court of competent jurisdiction.

§ 155-167. PENALTIES

- (a) 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.
- (b) 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.

§ 155-168. VARIANCE

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.

§ 155-169. 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 holding shall not affect the validity of the remaining portions thereof.