

BOARDS AND COMMISSIONS
Board of Licensure for Massage Therapy
(Amendment)

201 KAR 42:035. Application process, exam, and curriculum requirements.

RELATES TO: KRS 309.358, 309.359, 309.362, 309.363

STATUTORY AUTHORITY: KRS 309.355(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the board to administer and enforce the provisions of KRS 309.350 to 309.364 and to evaluate the qualifications of applicants for licensure. KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364, including educational program curriculum. The board may issue a license to an applicant meeting the standards established in KRS 309.358 or 309.359. This administrative regulation establishes the application process and curriculum requirements for licensure.

Section 1. An applicant for licensure as a massage therapist shall:

- (1) File a completed, signed, and dated Application for Licensure as a Massage Therapist, and the required documentation with the board, meeting the requirements established in KRS 309.358;
- (2) Pay the application fee as established in 201 KAR 42:020; and
- (3) Affix a two (2) inch by two (2) inch or larger passport quality color head shot photograph of only the applicant to the application form. The photograph submitted with the application shall be taken within the previous six (6) months to reflect the current appearance of the applicant.

Section 2.

- (1) To comply with KRS 309.358(1)(f)~~(4)~~, an applicant shall submit to the board, upon application, an official transcript or certificate that:
 - (a) Shows the completion of at least 600 classroom hours earned at a board approved massage therapy program; and
 - (b) Itemizes compliance with the clock hour requirements established in KRS 309.363(1)(b).
- (2) Board approved massage therapy programs include only those programs holding a certificate of good standing issued pursuant to KRS 309.363, KRS 309.3631, and 201 KAR 42:080.
- (3) A massage therapy school which has registered and obtained a school code assignment with the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) shall maintain good standing with the NCBTMB during the entire period the applicant attended the school. Suspension or revocation of the NCBTMB school code at any time during that period shall constitute grounds for:
 - (a) Denial of an application for licensure by graduates of that school; and
 - (b) Revocation of a Certificate of Good Standing held by the massage therapy school.
- (4) A school's non-renewal of an NCBTMB code while in good standing shall not preclude an applicant from obtaining licensure.

Section 3. Examinations.

- (1) An applicant shall successfully pass an examination:
 - (a) Listed in KRS 309.358(1)(g)~~(5)~~; or
 - (b) Approved by the board pursuant to KRS 309.358(1)(g)~~(5)~~ and listed in subsection (4) of this section.
- (2) An examination shall be approved by the board as meeting the standard established in KRS 309.358(1)(g)~~(5)~~ if the board finds that the examination:

- (a) Has been scientifically constructed to be valid and objective;
 - (b) Reflects the curriculum content established in KRS 309.363(1);
 - (c) Has security procedures to protect the exam content; and
 - (d) Has clear application, reporting, and appeal procedures.
- (3) Approval of exams shall be noted in the board minutes and on the board Web site at <http://bmt.ky.gov>.
- (4) The following examinations have been approved by the board pursuant to KRS 309.358(1)(g)~~[(5)]~~:
- (a) The Massage and Bodywork Licensing Examination (MBLEx) or other exam administered by the Federation of State Massage Therapy Boards (FSMTB);
 - (b) An entry level examination administered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB);
 - (c) Any examination of a certifying agency approved by National Commission on Certifying Agencies (NCCA);
 - (d) An entry level massage therapy examination administered by the National Board Certification Agency (NBCA);
 - (e) The State of Ohio Massage Therapy Licensing Exam; and
 - (f) ~~[(e)]~~ The State of New York Massage Therapy Licensing Exam; ~~[(or)]~~
 - ~~[(d)]~~ ~~[(The National Board Certification Agency (NBCA) Massage Therapy Certification Exam, Level One.)]~~

Section 4.

- (1) An applicant with a criminal history, excluding minor traffic violations, may be required to~~shall~~participate in an in-person interview with~~be interviewed by~~ the board's Application Committee prior to licensure.The purpose of this interview~~[with the board's application committee]~~ shall be to find if the applicant meets~~[complies with]~~ the requirement for good moral character established in KRS 309.358(1)(c)~~[(3)]~~ and 335B.040, and the~~The~~ interview shall be conducted pursuant to the board's authority under KRS 309.355(2), [KRS] 309.362(1)(b), and 309.362(2) and in accordance with KRS 335B.010 to 335B.070.
- (2) All applicants shall submit a recent fingerprint-supported background check performed by the Kentucky State Police and the Federal Bureau of Investigation. The required background check shall be applied for within the ninety (90) days preceding the date of submission of the application for licensure to the board.

Section 5. Appeals. ~~[(1)]~~

- ~~[(1)] [Upon initial review, the board shall make a preliminary determination with respect to an application. Preliminary determinations shall be non-final determinations until:]~~
- ~~[(a)] [A final decision is rendered subsequent to an administrative hearing conducted pursuant to KRS Chapter 13B;]~~
 - ~~[(b)] [Settlement of the matter by informal proceedings is accomplished; or]~~
 - ~~[(c)] [The time for appeal under subsection (2) of this section has expired.]~~
- ~~[(2)]~~ An applicant may appeal the denial of~~a preliminary determination denying~~ his or her licensure application by requesting a hearing in accordance with KRS 309.362(2)~~[(4)]~~. In order to request a hearing, the applicant shall file a notice of appeal in writing~~by certified mail that is received by the board~~ within thirty (30) days of the date of the letter informing the applicant of the ~~[preliminary determination of]~~ denial.

Section 6. Incorporation by Reference.

- (1) The "Application for Licensure as a Massage Therapist", June 2021~~[September 2015]~~, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, Frankfort, Kentucky.

~~40601~~ ~~Division of Occupations and Professions, 911 Leawood Drive, Frankfort,~~
~~Kentucky 40601~~, Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's Web site
address is: <https://bmt.ky.gov/>.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 9:58 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 8:00 a.m. EST on November 29, 2021, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

CONTACT PERSON: Leah Cooper Boggs, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (office) (502) 782-0562, phone (cell) (502) 352-8095, fax (502) 564-3969, email LBoggs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation sets forth the requirements for licensure and the procedure to obtain a license in massage therapy.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to notify potential licensees of the requirements for licensure and the process for application.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

The proposed regulation updates and clarifies the requirements for licensure and the procedure to obtain a license. The proposed regulation also updates references to the authorizing statute as amended by HB 79 (2021).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

See (1)(d).

(b) The necessity of the amendment to this administrative regulation:

See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes:

See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes:

See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This regulation will affect the 2,665 individuals licensed by the Board and anyone interested in obtaining a license from the Board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

None. It only simplifies and clarifies the requirements for licensure and the procedure to obtain a license in massage therapy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

None. It only simplifies and clarifies the requirements for licensure and the procedure to obtain a license in massage therapy.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

It will assist licensees and prospective licensees in understanding the process to obtain a license.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

None. It only simplifies and clarifies the requirements for licensure and the procedure to obtain a license in massage therapy.

(b) On a continuing basis:

None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

There is no cost to the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Board of Licensure for Massage Therapy.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 309.355(1), 309.355(3)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation. (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No answer provided.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

None.

(c) How much will it cost to administer this program for the first year?

There are no additional costs.

(d) How much will it cost to administer this program for subsequent years?

See 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: