



## PROCEDURES FOR DENIAL OF CERTIFICATION OR DISCIPLINE/REVOCAION

Pursuant to California Business and Professions Code sections 4600 et. seq., the California Massage Therapy Council (the "Council" or "CAMTC") hereby adopts the following procedures relative to the denial of certification or the discipline/revocation of a certificate issued pursuant to California Business and Professions Code sections 4600 et. seq. (hereinafter the "Law"):

1. Reasons for denial or discipline/revocation. Certification may be denied or revoked, or an existing certificate holder may be disciplined, for reasons reasonably related to protecting the public safety, including the following:
  - a. Failure to meet and/or maintain the criteria for certification listed in sections 4604, 4604.1, or 4604.2.
  - b. Failure to obtain a positive fitness determination after fingerprinting pursuant to section 4606.
  - c. Unprofessional conduct, including, but not limited to, any of the following:
    1. Engaging in sexually suggestive advertising related to massage services;
    2. Engaging in any form of sexual activity on the premises of a massage establishment where massage is provided for compensation, excluding a residence;
    3. Engaging in sexual activity while providing massage services for compensation;
    4. Practicing massage on a suspended CAMTC certificate or practicing outside of the conditions of a restricted CAMTC certificate;
    5. Providing massage of the genitals or anal region; or
    6. Providing massage of female breasts without the written consent of the person receiving the massage and a referral from a licensed California health care provider.
  - d. Procuring or attempting to procure a certificate by fraud misrepresentation, or mistake.
  - e. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of the Massage Therapy Act or any rule or bylaw adopted by the Council.
  - f. Conviction of any felony, misdemeanor, infraction, or municipal code violation, or being held liable in an administrative or civil action for an act

that is substantially related to the qualifications, functions, or duties of a certificate holder. A record of the conviction or other judgment or liability shall be conclusive evidence of the crime or liability.

- g. Impersonating an applicant or acting as a proxy for an applicant in any examination referred to in the Massage Therapy Act for the issuance of a certificate.
- h. Impersonating a certificate holder or permitting or allowing a non-certified person to use a certificate.
- i. Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder.
- j. Committing any act punishable as a sexually related crime or being required to register pursuant to the Sex Offender Registration Act (Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code), or being required to register as a sex offender in another state.
- k. Failure to fully disclose all information requested on the application.
- l. Denial of licensure, revocation, suspension, restriction, citation, or any other disciplinary action against an applicant or certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, judgment, or citation shall be conclusive evidence of these actions.
- m. Dressing, while engaged in the practice of massage for compensation, or while visible to clients in a massage establishment, in any of the following:
  - 1. Attire that is transparent, see-through, or substantially exposes the certificate holder's undergarments.
  - 2. Swim attire, if not providing a water-based massage modality approved by the Council.
  - 3. A manner that exposes the certificate holder's breasts, buttocks, or genitals.
  - 4. A manner that constitutes a violation of section 314 (indecent exposure) of the Penal Code.
  - 5. A manner that is otherwise deemed by the Council to constitute unprofessional attire based on the custom and practice of the profession in California.
- n. Failure to comply with Business and Professions Code section 4607, which provides that the Council may "discipline an owner or operator of a massage business or establishment who is certified pursuant to this chapter or is an applicant for certification pursuant to this chapter for the conduct of all individuals providing massage for compensation on the business premises."
- o. Failure to meet the requirements in Business and Professions Code section 4608:

1. Failing to display an original CAMTC certificate wherever he or she provides massage for compensation.
2. Failing to have his or her CAMTC identification card in his or her possession while providing massage services for compensation.
3. Failing to provide his or her full name and certificate number upon the request of a member of the public, the Council, or a member of law enforcement or a local government agency that is responsible for regulating massage or massage establishments, at the location where he or she is providing massage services for compensation.
4. Failing to include the name under which he or she is certified and certificate number in any and all advertising of massage for compensation.
5. Failing to notify CAMTC within 30 days of any change in home address, address of massage establishment or other location where he or she provides massage for compensation (excluding those locations where massage is provided only on an out-call basis).
6. Failing to notify CAMTC of primary email address, if any, or failure to notify CAMTC within 30 days of a change in primary email address.

- p. Engaging in an unfair business practice as defined in Business and Professions Code section 4611:

1. Holding oneself out or using the title of “certified massage therapist” or “certified massage practitioner” or any other term, such as “licensed,” “certified,” “CMT,” or “CMP” in any manner whatsoever that implies or suggests that the person is CAMTC certified when he or she does not currently hold an active and valid CAMTC certificate.
2. Falsely stating, or advertising, or putting out any sign or card or other device, or to falsely represent to the public through any print or electronic media, that he or she or any other individual is licensed, certified, or registered by a governmental agency as a massage therapist or practitioner.

2. Investigations. Section 4615 of the Business and Professions Code provides:

“(a) The council shall have the responsibility to determine whether the school from which an applicant has obtained the education required by this chapter meets the requirements of this chapter.

(1) If the council has any reason to question whether or not the applicant received the education that is required by this chapter from the school or schools that the applicant is claiming, the council shall investigate the facts to determine that the applicant received the required education prior to issuing a certificate.

(2) For purposes of this section and any other provision of this chapter that authorizes the council to receive factual information as a condition of taking any action, the council may conduct oral interviews of the applicant and others or conduct any investigation deemed necessary to establish that the information received is accurate and satisfies the criteria established by this chapter.”

If an applicant or certificate holder has been convicted of a felony, misdemeanor, infraction, or municipal code violation, whether expunged or not, CAMTC will conduct an investigation and review all convictions substantially related to the qualifications, functions or duties of a certified massage professional. Each application or certificate holder will be evaluated on a case-by-case basis. CAMTC will consider the factors identified in the Council's Criteria for Proof of Rehabilitation when making a certification or disciplinary determination. CAMTC will make the determination for approval or denial of certification or discipline of a certificate holder by evaluating the entire application, all supporting documentation, and all other evidence and information in its possession.

3. Actions relative to applicants for certification. The Council may:
  - a. Deny an application for certification based on the reasons listed in paragraph 1 above or on any other grounds which are deemed reasonably necessary to protect the public safety.
  - b. Issue an initial certificate on probation, with specific terms and conditions, including a period of suspension, based on the reasons listed in paragraph 1 above or on any other grounds that are deemed reasonably necessary to protect the public safety.
  
4. Actions relative to existing certificate holders. The Council may discipline a certificate holder by any, or a combination, of the following methods:
  - a. Placing the certificate holder on probation, which may include limitations or conditions on practice.
  - b. Suspending the certificate and the rights conferred by the Massage Therapy Act on a certificate holder for a period not to exceed one year.
  - c. Revoking the certificate.
  - d. Suspending or staying the disciplinary order, or portions of it, with or without conditions.
  - e. Taking other action as the Council, or a person appointed by the Council, deems proper, as authorized by the Massage Therapy Act or policies, procedures, rules, or bylaws adopted by the Board.
  - f. Notwithstanding any other law, if the Council receives notice that a certificate holder has been arrested and charges have been filed by the appropriate prosecuting agency against the certificate holder alleging a violation of subdivision (b) of section 647 of the Penal Code or any offense described in section 1.j. above, the Council shall take all of the following actions:
    1. Immediately suspend, on an interim basis, the certificate of that certificate holder.
    2. Notify the certificate holder within 10 business days, at the address last filed with the Council, that the certificate has been suspended and the reasons for the suspension.

3. Notify by email or first-class mail any establishment or employer that the Council has in its records as employing the certificate holder, that the certificate has been suspended, within 10 business days.

4. Notify by email the clerk or other designated contact of the city, county, or city and county in which the certificate holder lives or works, pursuant to the Council's records, that the certificate has been suspended, within 10 business days.

Upon notice to the Council that the charges described above in this subparagraph f. have resulted in a conviction, the Council shall permanently revoke the suspended certificate. The Council shall provide notice to the certificate holder, at the address last filed with the Council, by a method providing delivering confirmation, within 10 business days that it has evidence of a valid record of conviction and that the certificate will be revoked unless the certificate holder provides evidence within 15 days from the date of the Council's mailing of the letter that the conviction is either invalid or that the information is otherwise erroneous. If a certificate is permanently revoked pursuant to this provision, the certificate holder shall not be allowed to re-apply for certification.

Upon notice that the charges described above in this subparagraph f. have resulted in an acquittal, have otherwise been dismissed prior to conviction, or the certificate holder has been convicted of an offense other than 647(b) or an offense described in section 1.j. above, the certificate shall be immediately reinstated and the certificate holder and any establishment or employer that received notice pursuant to these procedures shall be notified of the reinstatement within 10 business days.

g. Notwithstanding any other law, if the Council determines that a certificate holder has committed an act punishable as a sexually related crime or a felony that is substantially related to the qualifications, functions, or duties of a certificate holder, the Council may immediately suspend the certificate of that certificate holder. A determination to immediately suspend a certificate pursuant to this subdivision shall be based on the preponderance of the evidence and the Council shall also consider any available credible mitigating evidence before making a decision. Written statements by any person shall not be considered by the Council when determining whether to immediately suspend a certificate unless made under penalty of perjury. If the Council suspends a certificate in accordance with this subdivision, the Council shall take all of the following additional actions:

1. Notify the certificate holder, at the address last filed with the Council, within 10 business days by a method providing delivery confirmation, that the certificate has been suspended, the reason for the suspension, and that the certificate holder has the right to request a hearing pursuant to paragraph 3 below.

2. Notify by electronic mail or any other means consistent with the notice requirements of this chapter, within 10 business days, any business or employer that the Council has in its records as

employing or contracting with the certificate holder for massage services, and the California city or county that has jurisdiction over that establishment or employer, that the certificate has been suspended.

3. A certificate holder whose certificate is suspended pursuant to this provision shall have the right to request, in writing, an oral hearing or consideration of a written statement to challenge the factual basis for the suspension. If the holder of the suspended certificate requests an oral hearing or consideration of a written statement on the suspension, the oral hearing or consideration of a written statement shall be held within 30 days after receipt of the request. A certificate holder whose certificate is suspended based on this provision shall be subject to revocation or other discipline in accordance with paragraph 1 of these Denial Procedures.

5. Procedure for denial, suspension, revocation, or discipline of a certificate. Any denial or disciplinary decision shall be decided upon and imposed in good faith and in a fair and reasonable manner. Denial and disciplinary decisions shall be based on a preponderance of the evidence. In determining the basis for denial or discipline and making a final decision that denial or discipline shall be imposed, the Council may consider all written documents or statements as evidence, but shall weigh the reliability of those documents or statements. A final decision to deny or impose discipline may be based solely on a written statement or declaration made under penalty of perjury and the individual providing the written statement or declaration made under penalty of perjury shall not be required to appear at an oral hearing or provide additional documents or information beyond the written statement or declaration made under penalty of perjury that was already provided.

All denials, suspensions, revocations, and other discipline required or allowed by the Massage Therapy Act and these Procedures shall be carried out by an employee of the Council known as the Division Director of the Professional Standards Division (hereinafter the "Division Director"). The Division Director shall be assisted by Council staff and such other employees as shall be determined necessary by the Division Director. The Division Director, along with any staff/employees under his/her supervision, shall be collectively known as the Professional Standards Division (the "PSD").

If Council staff determines that grounds appear to exist for denial of an application for certification or discipline of an existing certificate holder, staff shall forward the matter to the Division Director, or a PSD employee designated by the Division Director to receive such information, and the procedures set forth below shall be followed (except in cases where the specific procedures in section 4.f. above apply):

- a. The PSD shall be responsible for reviewing and making determinations regarding individual proposed denials and discipline. The PSD shall ensure that the PSD employees making proposed denial and discipline decisions and the hearing officers making final denial and discipline decisions do not have a conflict of interest relative to the affected applicant or certificate holder subject to denial or discipline.
- b. If after reviewing the matter, the PSD determines that action should be taken, the applicant or certificate holder shall be provided at least 15 days

prior notice of the proposed denial or discipline and the reasons for the proposed denial or discipline. Notice shall be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or certified mail sent to the last known address of the applicant or certificate holder shown on the Council's records.

- c. The applicant or certificate holder shall be given an opportunity to be heard, either orally or in writing, at least five (5) days before the effective date of the proposed denial or discipline. Applicants and certificate holders may request a continuance of their oral telephonic hearing or consideration of a written statement hearing date. Reasonable continuance requests for applicants may be provided at the sole discretion of CAMTC. Reasonable continuance requests for certificate holders may be provided at the sole discretion of CAMTC only if ALL of the following conditions are met: 1) the certificate holder's certificate is already, and will remain, suspended during the continuance; and 2) the new proposed effective date of revocation or discipline, if the continuance is granted, will occur during the time period that the certificate holder is certified. The hearing shall be held, or the written statement considered, by the Division Director (or his or her designee) and at least one other employee (Hearing Officers), who together are authorized to determine whether the denial of certification or proposed discipline should occur. The decision of the Division Director/ Hearing Officers shall be final.
- d. Notice of the PSD's final decision shall be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or certified mail sent to the last known address of the applicant or certificate holder shown on the Council's records.
- e. Any action in superior court challenging a denial of certification or discipline of an existing certificate holder, including a claim alleging defective notice, shall be commenced within 90 days after the effective date of the certificate denial or certificate holder discipline. Certification issued by the Council is not a fundamental vested right and judicial review of denial and disciplinary decisions made by the Council shall be conducted using the substantial evidence standard of review. If the action is successful, the court may order any relief, including reinstatement, that it finds equitable under the circumstances.
- f. An applicant or certificate holder who is denied certification or whose certificate is revoked pursuant to these procedures, except for permanent revocations as described in section 4.f. above, shall not be allowed to re-apply for certification until two years after the effective date of the certificate denial or certificate revocation.