

No. 2008-118

AN ACT

HB 2499

Regulating massage therapy; establishing the State Board of Massage Therapy; providing for funds, for licensure, for disciplinary action, for remedies, for penalties and for preemption.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Massage Therapy Law.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Account.” The Professional Licensure Augmentation Account.

“Applicant.” An individual who applies for a license.

“Board.” The State Board of Massage Therapy.

“Bureau.” The Bureau of Professional and Occupational Affairs.

“Commissioner.” The Commissioner of Professional and Occupational Affairs.

“Conviction.” A judgment of guilt, an admission of guilt or a plea of nolo contendere.

“Department.” The Department of State of the Commonwealth.

“Healing arts.” The science and skill of diagnosis and treatment in any manner whatsoever of disease or any ailment of the human body.

“License.” A license to practice massage therapy under this act.

“Licensee.” An individual who holds a license to practice massage therapy.

“Massage therapist.” An individual licensed by the State Board of Massage Therapy to practice massage therapy.

“Massage therapy.” The application of a system of structured touch, pressure, movement, holding and treatment of the soft tissue manifestations of the human body in which the primary intent is to enhance the health and well-being of the client without limitation, except as provided in this act. The term includes the external application of water, heat, cold, lubricants or other topical preparations, lymphatic techniques, myofascial release techniques and the use of electro-mechanical devices which mimic or enhance the action of the massage techniques. The term does not include the diagnosis or treatment of impairment, illness, disease or disability, a medical procedure, a chiropractic manipulation - adjustment, physical therapy mobilization - manual therapy, therapeutic exercise, electrical stimulation, ultrasound or prescription of medicines for which a license to practice medicine,

chiropractic, physical therapy, occupational therapy, podiatry or other practice of the healing arts is required.

“Reflexology.” The physical act of using thumbs, fingers and hand techniques to apply specific pressure on the reflex area in the feet, hands or ears of the client.

Section 3. Board.

(a) Establishment.—There is established the State Board of Massage Therapy, an administrative board within the department. The board shall consist of 11 members who are citizens of the United States and who have been residents of this Commonwealth for at least a five-year period prior to the effective date of this section. The board shall be composed of the following individuals:

(1) Two members who are members of the public.

(2) Six members who meet the educational and experience qualifications for licensure under section 5. No more than one member under this paragraph shall be an owner of a school that provides instruction in massage therapy.

(3) The Secretary of Health or a designee.

(4) The Attorney General or a designee.

(5) The commissioner or a designee.

(b) Term of office.—Except as provided in subsection (c), the members of the board shall serve for four-year terms and shall be appointed by the Governor by and with the advice and consent of a majority of the members elected to the Senate.

(c) Initial appointments.—Within 180 days of the effective date of this section, the Governor shall nominate two professional members to serve four-year terms, one public member and one professional member to serve three-year terms, one public member and one professional member to serve two-year terms and one professional member to serve a one-year term. A professional member initially appointed to the board pursuant to this act need not be licensed at the time of appointment, but at the time of appointment must have satisfied the eligibility requirements for licensure and must have practiced massage therapy for five consecutive years or more immediately preceding the appointments.

(d) Continuation in office.—Each board member shall continue in office until a successor is appointed and qualified but no longer than six months after the expiration of the term. If a board member shall die, resign or otherwise become disqualified during the term of office, a successor shall be appointed in the same way and with the same qualifications as set forth in this section and shall hold office for the unexpired portion of the term.

(e) Limit on terms.—No board member shall be eligible for reappointment to serve more than two consecutive four-year terms.

(f) Forfeiture of membership.—A professional or public member who fails to attend three meetings in 18 months shall forfeit the member’s seat unless the commissioner, upon written request from the member, finds that

the member should be excused from a meeting because of illness or death of a family member.

(g) Compensation.—A member of the board, except the commissioner, shall receive per diem compensation at the rate of \$60 when actually attending to the work of the board. Members shall also receive reasonable traveling, hotel and other necessary expenses incurred in the performance of their duties in accordance with regulations.

(h) Forfeiture for nonattendance.—A public member who fails to attend two consecutive statutorily mandated training seminars in accordance with section 813(e) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, shall forfeit the public member's seat unless the commissioner, upon written request from the public member, finds that the public member should be excused from a meeting because of illness or the death of a family member.

(i) Quorum.—A majority of the members of the board shall constitute a quorum for the purposes of conducting the business of the board. Except for temporary and automatic suspensions under section 9(d), a member may not be counted as part of a quorum or vote on any issue unless the member is physically in attendance at the meeting.

(j) Chairperson.—The board shall annually select a chairperson from among its members.

(k) Meetings.—The board shall meet at least four times a year in Harrisburg and at other times and places as the board shall determine is necessary to conduct board business.

(l) Operating procedures.—The board shall meet within 30 days after the appointment of its initial members and shall institute operating procedures and an application form for licensing massage therapists. It shall be the responsibility of the board to educate the public as to the requirements of licensing in order to hold oneself out or to practice as a licensed massage therapist within this Commonwealth.

Section 4. Powers and duties of board.

The board has the following powers and duties:

(1) To pass upon the qualifications and fitness of applicants for licenses and reciprocal licenses.

(2) To promulgate regulations not inconsistent with this act and only as necessary to carry out this act.

(3) To examine, deny, approve, issue, revoke, suspend or renew licenses of massage therapists under this act and to conduct hearings in connection with those powers and duties.

(4) To submit annually a report to the Consumer Protection and Professional Licensure Committee of the Senate and the Professional Licensure Committee of the House of Representatives containing a description of the types of complaints received, status of the cases, board action which has been taken and length of time from the initial complaint to final board resolution.

(5) To submit annually to the Appropriations Committee of the Senate and the Appropriations Committee of the House of Representatives, within 15 days after the Governor has submitted a budget to the General Assembly, a copy of the budget request for the upcoming fiscal year which the board previously submitted to the department.

(6) To establish standards of eligibility for license renewal. These standards shall include, but not be limited to, the demonstration of satisfactory completion of a minimum of 24 hours of continuing education related to the practice of massage therapy in accordance with board regulations. No credit may be given for courses in office management or practice building. The board may waive all or part of the continuing education requirement to a licensee who shows to the satisfaction of the board that the licensee was unable to complete the requirement due to illness, emergency or hardship.

Section 5. Qualification for licensure.

(a) Applicants.—An applicant shall be considered to be qualified for a license if the applicant submits proof satisfactory to the board of all of the following:

(1) The applicant is of good moral character.

(2) The applicant has a high school diploma or its equivalent.

(3) The applicant has completed a massage program of at least 600 hours of in-class, postsecondary education instruction approved by the State Board of Private Licensed Schools. The program under this paragraph must include training in the human immunodeficiency virus and related risks and training in cardiopulmonary resuscitation.

(4) The applicant has passed an examination under section 7.

(5) The applicant has paid a fee as established by the board by regulation.

(6) The applicant has not been convicted of a felony under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or of an offense under the laws of another jurisdiction which, if committed in this Commonwealth, would be a felony under The Controlled Substance, Drug, Device and Cosmetic Act, unless the following apply:

(i) At least ten years have elapsed from the date of conviction.

(ii) The applicant satisfactorily demonstrates to the board that the applicant has made significant progress in personal rehabilitation since the conviction and that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of the applicant's clients or the public or a substantial risk of further criminal violations.

(iii) The applicant otherwise satisfies the qualifications required under this act.

(b) Existing practitioners.—The board shall issue a license to an applicant who, on the effective date of this subsection, complies with all of the following paragraphs:

(1) Is able to demonstrate that the applicant has conducted a business and been an active participant in that business which was mainly the practice of massage therapy.

(2) Meets the qualifications described in subsection (a)(1), (2), (5) and (6).

(3) Complies with one of the following subparagraphs:

(i) Has been in active, continuous practice for at least five years immediately preceding the effective date of this section.

(ii) Has passed a massage therapy examination that is part of a certification program accredited by the National Commission for Certifying Agencies.

(iii) Has completed 500 hours of instruction in massage and related subjects from a massage therapy program approved by the State Board of Private Licensed Schools.

(iv) Has:

(A) passed the National Examination for State Licensure (NESL) offered through the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB); and

(B) completed 100 hours of instruction in massage and related subjects.

(v) Has:

(A) passed the Massage and Bodywork Licensure Examination (MBLEx) offered through the Federation of State Massage Therapy Boards (FSMTB); and

(B) completed 100 hours of instruction in massage and related subjects.

(c) Temporary practice permit.—

(1) The board may issue a temporary practice permit to an applicant in order to permit the applicant to practice massage therapy during the six-month period after completion of the applicant's education program.

(2) The temporary practice permit issued under paragraph (1) shall be nonrenewable and shall expire on the earlier of:

(i) six months from the date of issuance; or

(ii) the date the applicant fails the licensing examination.

(d) Transferability.—A license and a temporary practice permit are not transferable.

Section 6. Biennial renewal of license.

(a) Duration of license.—A license shall be valid for two years. The expiration date shall be established by regulation of the board. Application for renewal of a license shall be forwarded to an individual holding a current license prior to the expiration date of the current renewal.

(b) Procedure.—To renew a license, a licensee must do all of the following:

(1) File a renewal application with the board which includes the following:

(i) Current certification to administer cardiopulmonary resuscitation.

(ii) Certification of successful completion of a minimum of 24 hours of continuing education in the field of massage therapy during the immediately preceding two years. Certification of continuing education credit hours submitted by the massage therapist shall be properly signed as being correct and true.

(2) Pay a fee established by regulation of the board.

(c) Inactive status.—Any person licensed under this act may request an application for inactive status. The application may be completed and returned to the board; upon receipt of each application, the applicant shall be maintained on inactive status without fee and shall be entitled to apply for an active license at any time. An application to reactivate a license which has been placed on inactive status for less than five years shall be accompanied by a verification of nonpractice, the renewal fee and documentation evidencing the satisfactory completion of the continuing education requirement for the preceding biennial period. Any person who requests an active status license who has been on inactive status for a period of five consecutive years or longer shall, prior to receiving an active license, satisfy the requirements of the board's regulations for ensuring continued competence and remit the required fee. A person shall not be denied active status as a result of any increased educational requirements for licensure since the time he or she received his or her original license.

(d) Reporting of multiple licensure.—A licensee who is licensed to practice massage therapy in another jurisdiction shall report this information to the board on the license renewal application. Any disciplinary action taken in another jurisdiction shall be reported to the board on the license renewal application or within 90 days of final disposition, whichever is sooner. Multiple licensure shall be noted by the board on the licensee's record, and the other licensing jurisdiction shall be notified by the board of any disciplinary actions taken against the licensee in this Commonwealth.

Section 7. Examinations.

The board shall contract with a professional testing organization for the examination of qualified applicants for licensure. The board shall approve the examination before it is administered. Any examination approved by the board must meet generally recognized psychometric principles and standards. All written, oral and practical examinations shall be prepared and administered by a qualified and approved professional testing organization in the manner prescribed for written examinations by section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Section 8. Reciprocity.

The board has the power to grant a reciprocal license without further examination to an applicant who is licensed or certified as a massage therapist or similar practice in another state and has demonstrated qualifications which equal or exceed those required under this act in the determination of the board. No license shall be granted under this section to an applicant unless the state in which the applicant is licensed affords reciprocal treatment to individuals who are residents of this Commonwealth and who are licensed under this act.

Section 9. Refusal, suspension and revocation of licenses.

(a) Grounds.—The board may refuse, suspend, revoke, limit or restrict a license or discipline a licensee for any of the following:

(1) Being convicted under Federal law, under the law of any state or under the law of another jurisdiction of a crime of moral turpitude or of an offense which, if committed in this Commonwealth, would constitute a felony.

(2) Being found to have engaged in immoral or unprofessional conduct. In proceedings based on this paragraph, actual injury to the client need not be established. As used in this paragraph, the term “unprofessional conduct” includes a departure from or failure to conform to the standards of acceptable and prevailing practice.

(3) Violating standards of professional practice or conduct as established by board regulation.

(4) Presenting false credentials or documents or making a false statement of fact in support of the individual’s application for a license.

(5) Submitting a false or deceptive license renewal to the board.

(6) Having a license suspended, revoked or refused or receiving other disciplinary action by the proper licensing authority of another jurisdiction.

(7) Violating a regulation promulgated by the board or violating an order of the board previously entered in a disciplinary proceeding.

(8) Incompetence, negligence or misconduct in carrying out the practice of massage therapy.

(9) Practicing beyond the licensee’s defined scope of practice.

(10) Knowingly aiding, assisting, hiring or advising someone in the unlawful practice of massage therapy.

(11) Being unable to practice with reasonable skill and safety by reason of illness, drunkenness, use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the board, upon probable cause, has authority to compel a licensee to submit to a mental or physical examination by a physician approved by the board. Failure of a licensee to submit to an examination when directed by the board, unless the failure is due to circumstances beyond the licensee’s control, may result in a default and final order entered against the licensee without the taking of testimony or

presentation of evidence. A licensee affected under this paragraph shall be afforded an opportunity to demonstrate that the licensee can resume competent practice with reasonable skill and safety.

(b) Board action.—If the board finds that the license or application for license may be refused, revoked, restricted or suspended under the terms of subsection (a), the board may do any of the following:

- (1) Deny the application for a license.
- (2) Administer a public reprimand.
- (3) Revoke, suspend, limit or otherwise restrict a license.
- (4) Require a licensee to submit to the care, counseling or treatment of a physician.

(5) Suspend enforcement of its findings and place a licensee on probation with the right to vacate the probationary order for noncompliance.

(6) Restore a suspended license and impose any disciplinary or corrective measure which it might originally have imposed.

(c) Administrative Agency Law.—Actions of the board under subsections (a) and (b) are subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

(d) Temporary and automatic suspension.—A license issued under this act shall be temporarily suspended under circumstances determined by the board to be an immediate and clear danger to the public health and safety. The board shall issue an order to that effect without a hearing, but upon due notice, to the licensee concerned at his or her last known address, which shall include a written statement of all allegations against the licensee. The provisions of subsection (c) shall not apply to temporary suspension. The board shall thereupon commence formal action to suspend, revoke or restrict the license of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within 30 days following the issuance of an order temporarily suspending a license, the board shall conduct or cause to be conducted a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee whose license has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board, but in no event longer than 180 days.

Section 10. Reinstatement of license.

Unless ordered to do so by a court of competent jurisdiction, the board shall not reinstate the license of an individual which has been revoked. An individual whose license has been revoked may reapply for a license after a

period of at least five years, and must meet all of the licensing requirements of this act.

Section 11. Setting of fees and disposition of fees, fines and civil penalties.

(a) Setting of fees.—All fees required under this act shall be fixed by the board by regulation and shall be subject to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act. If the revenues raised by the fees, fines and civil penalties imposed under this act are not sufficient to meet expenditures over a two-year period, the board shall increase those fees by regulation so that projected revenues will meet or exceed projected expenditures.

(b) Fee increase.—If the bureau determines that the fees established by the board under subsection (a) are inadequate to meet the minimum enforcement efforts required by this act, then the bureau, after consultation with the board and subject to the Regulatory Review Act, shall increase the fees by regulation in an amount that adequate revenues are raised to meet the required enforcement effort.

(c) Disposition of fees, fines and civil penalties.—All fees, fines and civil penalties imposed in accordance with this act shall be paid into the Professional Licensure Augmentation Account.

(d) Fees permitted.—The board may charge a fee, as set by the board by regulation, for all examinations, registrations, renewals, certifications, licenses or applications permitted by this act or regulations under this act.

Section 12. Public access to list of licensees.

The board shall maintain a current list of any person licensed with the board. The list shall be posted on the board's Internet website and shall be subject to the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

Section 13. Other professions.

Nothing in this act shall be construed as preventing, restricting or requiring licensure of any of the following activities:

(1) The practice of a profession by an individual who is licensed, certified or registered by a Commonwealth agency under other law and who is performing services or advertising within the authorized scope of practice.

(2) The practice of massage therapy by an individual employed by the Federal Government while the individual is engaged in the performance of duties under Federal law.

(3) A student enrolled in a massage therapy education program who is:

(i) conducting massage therapy activities under the supervision of:

(A) a licensee; or

(B) instructors or supervisors who meet the licensing criteria of the Department of Education or the board; and

(ii) enrolled in a school approved by the Department of Education or by the board.

(4) The practice by an individual while performing reflexology.

(5) The practice of an individual who uses touch, words and directed movement to deepen awareness of existing patterns of movement in the body and to suggest new possibilities of movement, while engaged within the scope of practice of a profession with established standards and ethics.

(6) The practice of an individual who uses touch to affect the energy systems, acupoints, Qi meridians or channels of energy of the human body while engaged within the scope of practice of a profession with established standards and ethics. Such practices include acupressure, Asian bodywork therapy, polarity therapy bodywork, quigon, reiki, shiatsu and tui na.

Section 14. Unlawful practice.

(a) General rule.—Except as set forth in section 13(1) and (2), an individual may not practice massage therapy or hold oneself out as a massage therapist unless licensed by the board.

(b) Title.—An individual who holds a license or is maintained on inactive status may use the title “Licensed Massage Therapist” and the abbreviation “L.M.T.” No other individual may use the title “Licensed Massage Therapist” or the title “Massage Therapist” or hold oneself out to others as a massage therapist. This subsection includes advertising as a massage therapist and adopting or using any title or description, including massage therapist, massage practitioner, masseur, masseuse, myotherapist or a derivative of those terms and their related abbreviations, which implies directly or indirectly that massage services are being provided.

(c) Employment.—An individual, corporation, partnership, firm or other entity may not employ an individual in massage therapy unless the individual is licensed by the board.

(d) Terminology.—Except as set forth in section 13(1), a business entity may not utilize in connection with a business name or activity the words, “massage,” “massage therapist,” “massage practitioner,” “masseur,” “masseuse,” “myotherapist” or any derivative of these terms and their related abbreviations, which implies directly or indirectly that massage therapy services are being provided, unless the services of the business are provided by licensees.

(e) Injunction.—It shall be unlawful for any person to practice or attempt to offer to practice massage therapy as defined in this act without having, at the time of so doing, a valid, unexpired, unrevoked and unsuspended license issued under this act. The unlawful practice may be enjoined by the courts on petition of the board or the commissioner. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If it is determined that the respondent has engaged in the unlawful practice, the court shall enjoin the respondent from so practicing unless and until the respondent has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to any other civil or criminal prosecution and punishment.

(f) Remedy cumulative.—The injunctive remedy provided in this section shall be in addition to any other civil or criminal prosecution and punishment. Section 15. Violation of act.

(a) General rule.—Notwithstanding any law to the contrary, a person that violates a provision of this act commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than six months for the first violation and to pay a fine of not more than \$2,000 or to imprisonment for not less than six months nor more than one year, or both, for each subsequent violation.

(b) Civil penalty.—In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board or by a vote of the majority of the qualified and confirmed membership or a minimum of five members, whichever is greater, may levy a civil penalty of up to \$10,000 on any of the following:

(1) A massage therapist who violates a provision of this act.

(2) A person that employs a massage therapist in violation of this act.

(3) An individual who holds himself out as a licensee without being properly licensed as provided in this act.

(4) The responsible officers or employees of a corporation, partnership, firm or other entity that violates a provision of this act.

(c) Assessment of costs of investigation.—The board may assess against the respondent in a disciplinary action under this act, as part of the sanction, the cost of investigation underlying that disciplinary action.

(d) Administrative Agency Law.—Action of the board under subsection (b) is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

Section 16. Preemption.

This act shall preempt and supersede any ordinance relating to the licensure or regulation of massage therapists by a political subdivision in effect on the effective date of this section.

Section 17. Effect of licensure.

Licensure under this act shall not be construed as requiring new or additional third-party reimbursement or otherwise mandating coverage under 75 Pa.C.S. Ch. 17 (relating to financial responsibility) or the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act.

Section 49. Funding.

Funds necessary for the payment of costs associated with processing licenses and renewing licenses, for the operation of the board and for other costs associated with this act shall be transferred from the Professional Licensure Augmentation Account to the department. The transferred funds shall be repaid by the board to the account within three years of the beginning of issuance of licenses by the board.

Section 50. Regulations.

The board shall promulgate regulations to carry out this act. Publication of the final-form regulations under this section shall take place within 18 months of the effective date of this section. The board shall report, within 180 days of the effective date of this section, and every 30 days thereafter, on the status of the regulations to the Consumer Protection and Professional Licensure Committee of the Senate and the Professional Licensure Committee of the House of Representatives.

Section 51. Effective date.

This act shall take effect as follows:

- (1) The following provisions shall take effect immediately:
 - (i) Sections 3, 4 and 50.
 - (ii) This section.
- (2) The remainder of this act shall take effect in two years.

APPROVED—The 9th day of October, A.D. 2008.

EDWARD G. RENDELL