

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2499 Session of
2008

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MAY 13, 2008

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 17, 2008

AN ACT

1 Regulating massage therapy; establishing the State Board of
2 Massage Therapy; providing for funds, for licensure, for
3 disciplinary action, for remedies, for penalties and for
4 preemption; ~~and making an appropriation.~~ <—

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

7 Section 1. Short title.

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

10 Section 2. Declaration of policy.

11 The General Assembly finds and declares as follows:

12 (1) The practice of massage therapy may cause public
13 safety issues if the practice is not subject to responsible
14 regulation.

15 (2) Reasonable regulation is in furtherance of public

1 health, safety and welfare interests.

2 (3) Regulation is necessary to set educational standards
3 within the profession and to protect the public from
4 unqualified massage therapy practitioners and unscrupulous
5 individuals.

6 (4) Consumer protection with respect to both health and
7 economic matters will be afforded the public through the
8 regulation and associated legal remedies provided for in this
9 act.

10 Section 3. Definitions.

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

14 "Account." The Professional Licensure Augmentation Account.

15 "Applicant." An individual who applies for a license.

16 "Board." The State Board of Massage Therapy.

17 "Bureau." The Bureau of Professional and Occupational
18 Affairs.

19 "Commissioner." The Commissioner of Professional and
20 Occupational Affairs.

21 "Convicted." Includes a finding or verdict of guilt, an
22 admission of guilt, a plea of nolo contendere or a sentence of
23 probation without verdict, disposition in lieu of trial or an
24 accelerated rehabilitative disposition in the disposition of
25 felony charges.

26 "Department." The Department of State of the Commonwealth.

27 "License." A license to practice massage therapy under this
28 act.

29 "Licensee." An individual who holds a license to practice
30 massage therapy.

1 "Massage therapist." An individual licensed by the board to
2 practice massage therapy.

3 "Massage therapy." The application of a system of structured
4 touch, pressure, movement, holding and treatment of the soft
5 tissue manifestations of the human body in which the primary
6 intent is to enhance the health and well-being of the client
7 without limitation, except as provided in this act. The term
8 includes the external application of water, heat, cold,
9 lubricants or other topical preparations, lymphatic techniques,
10 myofascial release techniques and the use of electro-mechanical
11 devices which mimic or enhance the action of the massage
12 techniques. The term does not include the diagnosis or treatment
13 of impairment, illness, disease or disability, a medical
14 procedure, a chiropractic manipulation/adjustment, physical
15 therapy mobilization/manual therapy, therapeutic exercise,
16 electrical stimulation, ultrasound or prescription of medicines
17 for which a license to practice medicine, chiropractic, physical
18 therapy, occupational therapy, podiatry or other practice of the
19 healing arts is required.

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

23 "Sexual behavior." Conduct which is or is intended to be
24 sexual in nature or which may be construed by a reasonable
25 person as sexual in nature.

26 "Sexual exploitation." Sexual behavior with a current client
27 which uses trust, knowledge, emotions or influence derived from
28 the professional relationship.

29 "Sexual offense." An offense under any provision of 18
30 Pa.C.S. (relating to crimes and offenses).

1 Section 4. Board.

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

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

10 (2) Five members who meet the educational and experience
11 qualifications for licensure under section 6. No more than
12 one member under this paragraph shall be an owner of a school
13 that provides instruction in massage therapy.

14 (3) The Secretary of Health or a designee.

15 (4) The commissioner or a designee.

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

20 (c) Initial appointments.--Within 90 days of the effective
21 date of this section, the Governor shall nominate two
22 professional members to serve four-year terms, one public member
23 and one professional member to serve three-year terms, one
24 public member and one professional member to serve two-year
25 terms and one professional member to serve a one-year term. A
26 professional member initially appointed to the board pursuant to
27 this act need not be licensed at the time of appointment but at
28 the time of appointment must have satisfied the eligibility
29 requirements for licensure and must have practiced massage
30 therapy for five consecutive years or more immediately preceding

1 the appointments.

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

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

13 (f) Forfeiture of membership.--A board member who fails to
14 attend three consecutive meetings without permission of the
15 commissioner shall forfeit the member's seat unless the
16 commissioner, upon written request from the member, finds that
17 the member should be excused from a meeting because of illness
18 or the death of a family member.

19 (g) Compensation.--A member of the board, except the
20 commissioner, shall receive per diem compensation at the rate of
21 \$60 when actually attending to the work of the board. Members
22 shall also receive reasonable traveling, hotel and other
23 necessary expenses incurred in the performance of their duties
24 in accordance with regulations.

25 (h) Forfeiture for nonattendance.--A public member who fails
26 to attend two consecutive statutorily mandated training seminars
27 in accordance with section 813(e) of the act of April 9, 1929
28 (P.L.177, No.175), known as The Administrative Code of 1929,
29 shall forfeit the public member's seat unless the commissioner,
30 upon written request from the public member, finds that the

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

3 (i) Quorum.--A majority of the members of the board shall
4 constitute a quorum for the purposes of conducting the business
5 of the board. Except for temporary and automatic suspensions
6 under section 10(d), a member may not be counted as part of a
7 quorum or vote on any issue unless the member is physically in
8 attendance at the meeting.

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

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

14 (l) Notice.--Reasonable notice of all meetings shall be
15 given in conformity with 65 Pa.C.S. Ch. 7 (relating to open
16 meetings).

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

24 Section 5. Powers and duties of board.

25 The board has the following powers and duties:

26 (1) To pass upon the qualifications and fitness of
27 applicants for licenses and reciprocal licenses and to
28 promulgate regulations requiring applicants to pass
29 examinations relating to qualifications as a prerequisite to
30 the issuance of a license.

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

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

6 (4) To conduct hearings upon complaints concerning
7 violations of this act and the regulations promulgated under
8 this act and to seek the prosecution and enjoinder of
9 violations.

10 (5) To expend money necessary to the proper carrying out
11 of its assigned duties.

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

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

25 (8) To establish standards of eligibility for license
26 renewal. These standards shall include, but not be limited
27 to, the demonstration of satisfactory completion of a minimum
28 of 24 hours of continuing education related to the practice
29 of massage therapy in accordance with board regulations. No
30 credit may be given for courses in office management or

1 practice building. The board may waive all or part of the
2 continuing education requirement to a licensee who shows to
3 the satisfaction of the board that the licensee was unable to
4 complete the requirement due to illness, emergency or
5 hardship.

6 Section 6. Qualification for licensure.

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

10 (1) The applicant is of good moral character.

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

13 (3) The applicant has completed a massage program of at
14 least 600 hours of in-class, postsecondary education
15 instruction approved by the Department of Education or by the
16 board. The program under this paragraph must include training
17 in the human immunodeficiency virus and related risks and
18 training in cardiopulmonary resuscitation.

19 (4) The applicant has passed an examination under
20 section 8.

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

23 (6) The applicant is not addicted to alcohol, narcotics
24 or other habit-forming drugs.

25 (7) The applicant has not been convicted of a felony
26 under the act of April 14, 1972 (P.L.233, No.64), known as
27 The Controlled Substance, Drug, Device and Cosmetic Act, or
28 of an offense under the laws of another jurisdiction which,
29 if committed in this Commonwealth, would be a felony under
30 The Controlled Substance, Drug, Device and Cosmetic Act,

1 unless the following apply:

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

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

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

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

17 (1) Is an active professional practitioner of massage
18 therapy.

19 (2) Meets the qualifications described in subsection
20 (a)(1), (2), (5), (6) and (7).

21 (3) Complies with one of the following subparagraphs:

22 ~~(i) Has:~~

<—

23 ~~(A) been in active, continuous practice for at~~

24 (I) HAS BEEN IN ACTIVE, CONTINUOUS PRACTICE FOR AT

<—

25 least five years immediately preceding the effective date
26 of this section; and.

<—

27 ~~(B) completed 150 hours of instruction in~~

<—

28 ~~massage, including continuing education and related~~
29 ~~subjects.~~

30 ~~(ii) Has passed an examination administered by a~~

~~certifying agency which is approved by the National
Commission of Certifying Agencies and is in good standing
with the certifying agency or with the board.~~

(II) HAS PASSED AN EXAMINATION THAT IS PART OF A
CERTIFICATION PROGRAM ACCREDITED BY THE NATIONAL
COMMISSION OF CERTIFYING AGENCIES.

(iii) Has completed 500 hours of instruction in
massage and related subjects from a massage therapy
program approved by the Department of Education or by the
board.

(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:

1 (i) six months from the date of issuance; or
2 (ii) the date the applicant fails the licensing
3 examination.

4 (d) Transferability.--A license and a temporary practice
5 permit are not transferable.

6 Section 7. Biennial renewal of license.

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

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

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

16 (i) Current certification to administer
17 cardiopulmonary resuscitation.

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

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

25 (c) Inactive status.--Any person licensed under this act may
26 request an application for inactive status. The application may
27 be completed and returned to the board; upon receipt of each
28 application, the applicant shall be maintained on inactive
29 status without fee and shall be entitled to apply for an active
30 license at any time. An application to reactivate a license

1 which has been placed on inactive status for less than five
2 years shall be accompanied by a verification of nonpractice, the
3 renewal fee and documentation evidencing the satisfactory
4 completion of the continuing education requirement for the
5 preceding biennial period. Any person who requests an active
6 status license who has been on inactive status for a period of
7 five consecutive years or longer shall, prior to receiving an
8 active license, satisfy the requirements of the board's
9 regulations for ensuring continued competence and remit the
10 required fee. A person shall not be denied active status as a
11 result of any increased educational requirements for licensure
12 since the time he or she received his or her original license.

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

23 Section 8. Examinations.

24 The board shall contract with a professional testing
25 organization for the examination of qualified applicants for
26 licensure. The board shall approve the examination before it is
27 administered. Any examination approved by the board must meet
28 generally recognized psychometric principles and standards. All
29 written, oral and practical examinations shall be prepared and
30 administered by a qualified and approved professional testing

1 organization in the manner prescribed for written examinations
2 by section 812.1 of the act of April 9, 1929 (P.L.177, No.175),
3 known as The Administrative Code of 1929.

4 Section 9. Reciprocity.

5 The board has the power to grant a reciprocal license to an
6 applicant who is licensed or certified as a massage therapist or
7 similar practice in another state and has demonstrated
8 qualifications which equal or exceed those required under this
9 act in the determination of the board. No license shall be
10 granted under this section to an applicant unless the state in
11 which the applicant is licensed affords reciprocal treatment to
12 individuals who are residents of this Commonwealth and who are
13 licensed under this act.

14 Section 10. Refusal, suspension and revocation of licenses.

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

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

23 (2) Being found to have engaged in immoral or
24 unprofessional conduct. In proceedings based on this
25 paragraph, actual injury to the client need not be
26 established. As used in this paragraph, the term
27 "unprofessional conduct" includes:

28 (i) a departure from or failure to conform to the
29 standards of acceptable and prevailing practice; and
30 (ii) sexual exploitation of a client.

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

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

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

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

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

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

16 (9) Practicing beyond the licensee's defined scope of
17 practice.

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

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

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

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

9 (1) Deny the application for a license.

10 (2) Administer a public reprimand.

11 (3) Revoke, suspend, limit or otherwise restrict a
12 license.

13 (4) Require a licensee to submit to the care, counseling
14 or treatment of a physician.

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

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

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

26 (d) Temporary and automatic suspension.--A license issued
27 under this act shall be temporarily suspended under
28 circumstances determined by the board to be an immediate and
29 clear danger to the public health and safety. The board shall
30 issue an order to that effect without a hearing, but upon due

1 notice, to the licensee concerned at his or her last known
2 address, which shall include a written statement of all
3 allegations against the licensee. The provisions of subsection
4 (c) shall not apply to temporary suspension. The board shall
5 thereupon commence formal action to suspend, revoke or restrict
6 the license of the person concerned as otherwise provided for in
7 this act. All actions shall be taken promptly and without delay.
8 Within 30 days following the issuance of an order temporarily
9 suspending a license, the board shall conduct or cause to be
10 conducted a preliminary hearing to determine that there is a
11 prima facie case supporting the suspension. The licensee whose
12 license has been temporarily suspended may be present at the
13 preliminary hearing and may be represented by counsel, cross-
14 examine witnesses, inspect physical evidence, call witnesses,
15 offer evidence and testimony and make a record of the
16 proceedings. If it is determined that there is not a prima facie
17 case, the suspended license shall be immediately restored. The
18 temporary suspension shall remain in effect until vacated by the
19 board, but in no event longer than 180 days.

20 Section 11. Reinstatement of license.

21 Unless ordered to do so by a court of competent jurisdiction,
22 the board shall not reinstate the license of an individual which
23 has been revoked. An individual whose license has been revoked
24 may reapply for a license after a period of at least five years,
25 and must meet all of the licensing requirements of this act.

26 Section 12. Impaired professional.

27 (a) Appointment of professional consultant.--The board, with
28 the approval of the commissioner, shall appoint and fix the
29 compensation of a professional consultant who is a licensee of
30 the board, or such other professional as the board may determine

1 with education and experience in the identification, treatment
2 and rehabilitation of persons with physical or mental
3 impairments. Such consultant shall be accountable to the board
4 and shall act as a liaison between the board and treatment
5 programs, such as alcohol and drug treatment programs licensed
6 by the Department of Health, psychological counseling and
7 impaired professional support groups, which are approved by the
8 board and which provide services to licensees under this act.

9 (b) Subsequent action by board.--The board may defer and
10 ultimately dismiss any of the types of corrective action set
11 forth in this act for an impaired professional so long as the
12 professional is progressing satisfactorily in an approved
13 treatment program, provided that the provisions of this
14 subsection shall not apply to a professional convicted of a
15 felonious act prohibited by the act of April 14, 1972 (P.L.233,
16 No.64), known as The Controlled Substance, Drug, Device and
17 Cosmetic Act, or convicted of, pleaded guilty to or entered a
18 plea of nolo contendere to a felony relating to a controlled
19 substance in a court of law of the United States or any other
20 state, territory or country. An approved program provider shall,
21 upon request, disclose to the consultant such information in its
22 possession regarding any impaired professional in treatment
23 which the program provider is not prohibited from disclosing by
24 an act of the United States, this Commonwealth or any other
25 state. Such requirement of disclosure by an approved program
26 provider shall apply in the case of impaired professionals who
27 enter an agreement in accordance with this section, impaired
28 professionals who are the subject of a board investigation or
29 disciplinary proceeding and impaired professionals who
30 voluntarily enter a treatment program other than under the

1 provisions of this section but who fail to complete the program
2 successfully or to adhere to an aftercare plan developed by the
3 program provider.

4 (c) Agreement.--An impaired professional who enrolls in an
5 approved treatment program shall enter into an agreement with
6 the board under which the professional's license shall be
7 suspended or revoked, but enforcement of the suspension or
8 revocation may be stayed for the length of time the professional
9 remains in the program and makes satisfactory progress, complies
10 with the terms of the agreement and adheres to any limitations
11 on his or her practice imposed by the board to protect the
12 public. Failure to enter into such an agreement shall disqualify
13 the professional from the impaired professional program and
14 shall activate an immediate investigation and disciplinary
15 proceeding by the board.

16 (d) Report by provider.--If, in the opinion of the
17 consultant after consultation with the provider, an impaired
18 professional who is enrolled in an approved treatment program
19 has not progressed satisfactorily, the consultant shall disclose
20 to the board all information in his or her possession relevant
21 to the issue of impairment regarding said professional, and the
22 board shall institute proceedings to determine if the stay of
23 the enforcement of the suspension or revocation of the impaired
24 professional's license shall be vacated.

25 (e) Immunity.--An approved program provider who makes a
26 disclosure pursuant to this section shall not be subject to
27 civil liability for such disclosure or its consequences.

28 (f) Reports by others.--Any hospital or health care
29 facility, peer or colleague who has substantial evidence that a
30 professional has an active addictive disease for which the

1 professional is not receiving treatment, is diverting a
2 controlled substance or is mentally or physically incompetent to
3 carry out the duties of his or her license shall make or cause
4 to be made a report to the board, provided that any person or
5 facility who acts in a treatment capacity to an impaired
6 professional in an approved treatment program is exempt from the
7 mandatory reporting requirement of this subsection. Any person
8 or facility who reports pursuant to this section in good faith
9 and without malice shall be immune from any civil or criminal
10 liability arising from such report. Failure to provide such
11 report within a reasonable time from receipt of knowledge of
12 impairment shall subject the person or facility to a fine of not
13 more than \$1,000. The board shall levy this penalty only after
14 affording the accused party the opportunity for a hearing, as
15 provided under 2 Pa.C.S. (relating to administrative law and
16 procedure).

17 Section 13. Records and fees.

18 (a) Records.--A record of all licensees shall be kept in the
19 office of the board and shall be open to public inspection and
20 copying upon payment of a reasonable fee for copying the record.

21 (b) Fees.--

22 (1) All fees required under this act shall be fixed by
23 the board by regulation. If the revenue raised by fees, fines
24 and civil penalties imposed under this act are not sufficient
25 to meet expenditures over a two-year period, the board shall
26 increase those fees by regulation so that the projected
27 revenues will meet or exceed projected expenditures.

28 (2) If the bureau determines that the fees established
29 by the board under paragraph (1) are inadequate to meet the
30 minimum enforcement efforts required by this act, the bureau,

1 after consultation with the board, shall increase the fees by
2 regulation in an amount so that adequate revenues are raised
3 to meet the required enforcement effort.

4 Section 14. Other professions.

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

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

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

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

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

19 (A) a licensee; or

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

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

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

27 (5) The practice of an individual who uses touch, words
28 and directed movement to deepen awareness of existing
29 patterns of movement in the body and to suggest new
30 possibilities of movement, while engaged within the scope of

1 practice of a profession with established standards and
2 ethics.

3 (6) The practice of an individual who uses touch to
4 affect the energy systems, accupoints, Qi meridians or
5 channels of energy of the human body while engaged within the
6 scope of practice of a profession with established standards
7 and ethics.

8 Section 15. Unlawful practice.

9 (a) General rule.--Except as set forth in section 14(1) and
10 (2), an individual may not practice massage therapy or hold
11 oneself out as a massage therapist unless licensed by the board.

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

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

26 (d) Terminology.--Except as set forth in section 14(1), a
27 business entity may not utilize in connection with a business
28 name or activity the words, "massage," "massage therapist,"
29 "massage practitioner," "masseur," "masseuse" or "myotherapist,"
30 or any derivative of these terms and their related

1 abbreviations, which imply directly or indirectly that massage
2 therapy services are being provided, unless the services of the
3 business are provided by licensees.

4 (e) Injunction.--Unlawful practice may be enjoined by the
5 courts upon petition of the commissioner or the board. In a
6 proceeding under this section, it shall not be necessary to show
7 that an individual has been injured. Procedure in such cases
8 shall be the same as in any other injunction suit.

9 (f) Remedy cumulative.--The injunctive remedy provided in
10 this section shall be in addition to any other civil or criminal
11 prosecution and punishment.

12 Section 16. Violation of act.

13 (a) General rule.--Notwithstanding any law to the contrary,
14 a person that violates a provision of this act or a regulation
15 of the board commits a misdemeanor of the third degree and
16 shall, upon conviction, be sentenced to pay a fine of not more
17 than \$1,000 or to imprisonment for not more than six months for
18 the first violation and to pay a fine of not more than \$2,000 or
19 to imprisonment for not less than six months or more than one
20 year, or both, for each subsequent violation.

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

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

30 (2) A person that employs a massage therapist in

1 violation of this act.

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

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

7 (c) Assessment of costs of investigation.--The board may
8 assess against a respondent determined to be in violation of the
9 disciplinary provisions administered by the board in a
10 disciplinary proceeding pending before the board for final
11 determination, as part of the sanction, the costs of
12 investigation underlying that disciplinary action. The cost of
13 investigation shall not include any associated legal fees or any
14 cost of prosecution.

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

20 Section 17. Preemption.

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

25 Section 49. ~~Appropriation and repayment~~ FUNDING. <—

26 ~~(a) Appropriation. The sum of \$85,000, or as much thereof~~ <—
27 ~~as may be necessary, is hereby appropriated from the~~
28 ~~Professional Licensure Augmentation Account to the department~~
29 ~~for the payment of costs associated with processing licenses and~~
30 ~~renewing licenses, for the operation of the board and for other~~

1 ~~costs associated with this act.~~

2 ~~(b) Repayment. The appropriation shall be repaid by the~~
3 ~~board to the account within three years of the beginning of~~
4 ~~issuance of licenses by the board.~~

5 FUNDS NECESSARY FOR THE PAYMENT OF COSTS ASSOCIATED WITH <—
6 PROCESSING LICENSES AND RENEWING LICENSES, FOR THE OPERATION OF
7 THE BOARD AND FOR OTHER COSTS ASSOCIATED WITH THIS ACT SHALL BE
8 TRANSFERRED FROM THE PROFESSIONAL LICENSURE AUGMENTATION ACCOUNT
9 TO THE DEPARTMENT.

10 Section 50. Regulations.

11 The board shall promulgate regulations to carry out this act.
12 Publication of the final-form regulations under this section
13 shall take place within 18 months of the effective date of this
14 section. The board shall report, within 60 days of the effective
15 date of this section, and every 30 days thereafter, on the
16 status of the regulations to the Consumer Protection and
17 Professional Licensure Committee of the Senate and the
18 Professional Licensure Committee of the House of
19 Representatives.

20 Section 51. Effective date.

21 This act shall take effect as follows:

22 (1) The following provisions shall take effect
23 immediately:

24 (i) Sections 4, 5 and 50.

25 (ii) This section.

26 (2) The remainder of this act shall take effect in two
27 years.