

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2499

Session of  
2008

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INTRODUCED BY McCALL, SHIMKUS, BELFANTI, BEYER, BOBACK, BOYD, BRENNAN, COHEN, CREIGHTON, DALEY, DALLY, J. EVANS, FRANKEL, GEORGE, GINGRICH, GRUCELA, HARHAI, HARKINS, HARPER, JAMES, JOSEPHS, KAUFFMAN, KORTZ, KULA, MAHER, MOYER, MUNDY, PALLONE, PETRARCA, READSHAW, SCAVELLO, SEIP, SIPTROTH, McILVAINE SMITH, SOLOBAY, SONNEY, SURRA, WHEATLEY, MAHONEY, WALKO, ROCK, THOMAS, FREEMAN AND K. SMITH, MAY 13, 2008

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AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 11, 2008

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## 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 ~~and~~, 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  
16 health, safety and welfare interests.

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

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

9 Section 3. Definitions.

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

13 "Account." The Professional Licensure Augmentation Account.

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

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

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

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

20 "CONVICTED." INCLUDES A FINDING OR VERDICT OF GUILT, AN  
21 ADMISSION OF GUILT, A PLEA OF NOLO CONTENDERE OR A SENTENCE OF  
22 PROBATION WITHOUT VERDICT, DISPOSITION IN LIEU OF TRIAL OR AN  
23 ACCELERATED REHABILITATIVE DISPOSITION IN THE DISPOSITION OF  
24 FELONY CHARGES.

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

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

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

30 "Massage therapist." An individual licensed by the board to

1 practice massage therapy.

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

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

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

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

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

30 Section 4. Board.

1 (a) Establishment.--There is established the State Board of  
2 Massage Therapy, an administrative board within the department.  
3 The board shall consist of nine members who are citizens of the  
4 United States and who have been residents of this Commonwealth  
5 for at least a two-year period prior to the effective date of  
6 this section. ~~Two members shall be public members, five members~~ <—  
7 ~~shall be individuals who meet the educational and experience~~  
8 ~~qualifications for licensure under section 6, one member shall~~  
9 ~~be the Secretary of Health or a designee and one member shall be~~  
10 ~~the commissioner or a designee.~~ THE BOARD SHALL BE COMPOSED OF <—  
11 THE FOLLOWING INDIVIDUALS:

12 (1) TWO MEMBERS WHO ARE MEMBERS OF THE PUBLIC.

13 (2) FIVE MEMBERS WHO MEET THE EDUCATIONAL AND EXPERIENCE  
14 QUALIFICATIONS FOR LICENSURE UNDER SECTION 6. NO MORE THAN  
15 ONE MEMBER UNDER THIS PARAGRAPH SHALL BE AN OWNER OF A SCHOOL  
16 THAT PROVIDES INSTRUCTION IN MASSAGE THERAPY.

17 (3) THE SECRETARY OF HEALTH OR A DESIGNEE.

18 (4) THE COMMISSIONER OR A DESIGNEE.

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

23 (c) Initial appointments.--Within 90 days of the effective  
24 date of this section, the Governor shall nominate two  
25 professional members to serve four-year terms, one public member  
26 and one professional member to serve three-year terms, one  
27 public member and one professional member to serve two-year  
28 terms and one professional member to serve a one-year term. A  
29 professional member initially appointed to the board pursuant to  
30 this act need not be licensed at the time of appointment but at

1 the time of appointment must have satisfied the eligibility  
2 requirements for licensure and must have practiced massage  
3 therapy for ~~at least five consecutive years~~ FIVE CONSECUTIVE <—  
4 YEARS OR MORE immediately preceding the appointments.

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

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

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

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

28 (h) Forfeiture for nonattendance.--A public member who fails  
29 to attend two consecutive statutorily mandated training seminars  
30 in accordance with section 813(e) of the act of April 9, 1929

1 (P.L.177, No.175), known as The Administrative Code of 1929,  
2 shall forfeit the public member's seat unless the commissioner,  
3 upon written request from the public member, finds that the  
4 public member should be excused from a meeting because of  
5 illness or the death of a family member.

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

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

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

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

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

27 Section 5. Powers and duties of board.

28 The board has the following powers and duties:

29 (1) To pass upon the qualifications and fitness of  
30 applicants for licenses and reciprocal licenses and to

1 promulgate regulations requiring applicants to pass  
2 examinations relating to qualifications as a prerequisite to  
3 the issuance of a license.

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

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

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

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

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

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

28 (8) To establish standards of eligibility for license  
29 renewal. These standards shall include, but not be limited  
30 to, the demonstration of satisfactory completion of a minimum

1 of 24 hours of continuing education related to the practice  
2 of massage therapy in accordance with board regulations. No  
3 credit may be given for courses in office management or  
4 practice building. The board may waive all or part of the  
5 continuing education requirement to a licensee who shows to  
6 the satisfaction of the board that the licensee was unable to  
7 complete the requirement due to illness, emergency or  
8 hardship.

9 Section 6. Qualification for licensure.

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

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

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

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

22 (4) The applicant has passed an examination under  
23 section 8.

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

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

28 ~~(7) The following apply:~~

29 ~~(i) The applicant has not been convicted of a felony~~  
30 ~~under the act of April 14, 1972 (P.L.233, No.64), known~~

<—



1       ~~as The Controlled Substance, Drug, Device and Cosmetic~~  
2       ~~Act, or of an offense under the laws of another~~  
3       ~~jurisdiction which, if committed in this Commonwealth,~~  
4       ~~would be a felony under The Controlled Substance, Drug,~~  
5       ~~Device and Cosmetic Act, unless the following apply:~~

6               ~~(A) At least ten years have elapsed from the~~  
7       ~~date of conviction.~~

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

16               ~~(C) The applicant otherwise satisfies the~~  
17       ~~qualifications required under this act.~~

18               ~~(ii) The term "convicted" shall include a judgment,~~  
19       ~~an admission of guilt or a plea of nolo contendere.~~

20       (7) THE APPLICANT HAS NOT BEEN CONVICTED OF A FELONY       <—  
21       UNDER THE ACT OF APRIL 14, 1972 (P.L.233, NO.64), KNOWN AS  
22       THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT, OR  
23       OF AN OFFENSE UNDER THE LAWS OF ANOTHER JURISDICTION WHICH,  
24       IF COMMITTED IN THIS COMMONWEALTH, WOULD BE A FELONY UNDER  
25       THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT,  
26       UNLESS THE FOLLOWING APPLY:

27               (I) AT LEAST TEN YEARS HAVE ELAPSED FROM THE DATE OF  
28       CONVICTION.

29               (II) THE APPLICANT SATISFACTORILY DEMONSTRATES TO  
30       THE BOARD THAT THE APPLICANT HAS MADE SIGNIFICANT

1           PROGRESS IN PERSONAL REHABILITATION SINCE THE CONVICTION  
2           AND THAT LICENSURE OF THE APPLICANT SHOULD NOT BE  
3           EXPECTED TO CREATE A SUBSTANTIAL RISK OF HARM TO THE  
4           HEALTH AND SAFETY OF THE APPLICANT'S CLIENTS OR THE  
5           PUBLIC OR A SUBSTANTIAL RISK OF FURTHER CRIMINAL  
6           VIOLATIONS.

7           (III) THE APPLICANT OTHERWISE SATISFIES THE  
8           QUALIFICATIONS REQUIRED UNDER THIS ACT.

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

12           (1) Is an active professional practitioner of massage  
13          therapy.

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

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

17           (i) Has:

18                   (A) been in active, continuous practice for at  
19                   least five years immediately preceding the effective  
20                   date of this section; and

21                   (B) completed 150 hours of instruction in  
22                   massage, INCLUDING CONTINUING EDUCATION and related     <—  
23                   subjects.

24           (ii) Has passed an examination administered by a  
25           certifying agency which is approved by the National  
26           Commission of Certifying Agencies and is in good standing  
27           with the certifying agency or with the board.

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

1 board.

2 (c) Temporary practice permit.--

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

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

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

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

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

14 Section 7. Biennial renewal of license.

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

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

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

24 (i) Current certification to administer  
25 cardiopulmonary resuscitation.

26 (ii) Certification of successful completion of a  
27 minimum of 24 hours of continuing education in the field  
28 of massage therapy during the immediately preceding two  
29 years. Certification of continuing education credit hours  
30 submitted by the massage therapist shall be properly

1 signed as being correct and true.

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

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

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

1 Section 8. Examinations.

2 The board shall contract with a professional testing  
3 organization for the examination of qualified applicants for  
4 licensure. The board shall approve the examination before it is  
5 administered. ANY EXAMINATION APPROVED BY THE BOARD MUST MEET <—  
6 GENERALLY RECOGNIZED PSYCHOMETRIC PRINCIPLES AND STANDARDS. All  
7 written, oral and practical examinations shall be prepared and  
8 administered by a qualified and approved professional testing  
9 organization in the manner prescribed for written examinations  
10 by section 812.1 of the act of April 9, 1929 (P.L.177, No.175),  
11 known as The Administrative Code of 1929.

12 Section 9. Reciprocity.

13 The board has the power to grant a reciprocal license to an  
14 applicant who is licensed or certified as a massage therapist or  
15 similar practice in another state and has demonstrated  
16 qualifications which equal or exceed those required under this  
17 act in the determination of the board. No license shall be  
18 granted under this section to an applicant unless the state in  
19 which the applicant is licensed affords reciprocal treatment to  
20 individuals who are residents of this Commonwealth and who are  
21 licensed under this act.

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

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

26 (1) Being convicted under Federal law, under the law of  
27 any state or under the law of another jurisdiction of an  
28 offense of moral turpitude or of an offense which, if  
29 committed in this Commonwealth, would constitute a sexual  
30 offense or a felony. ~~As used in this paragraph, the term~~ <—

1 ~~"convicted" includes a finding or verdict of guilt, an~~  
2 ~~admission of guilt or a plea of nolo contendere or receiving~~  
3 ~~probation without verdict, disposition in lieu of trial or an~~  
4 ~~accelerated rehabilitative disposition in the disposition of~~  
5 ~~felony charges.~~

6 (2) Being found to have engaged in immoral or  
7 unprofessional conduct. In proceedings based on this  
8 paragraph, actual injury to the client need not be  
9 established. As used in this paragraph, the term  
10 "unprofessional conduct" includes:

11 (i) a departure from or failure to conform to the  
12 standards of acceptable and prevailing practice; and

13 (ii) sexual exploitation of a client.

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

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

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

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

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

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

29 (9) Practicing beyond the licensee's defined scope of  
30 practice.

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

3           (11) Being unable to practice with reasonable skill and  
4 safety by reason of illness; drunkenness; use of drugs,  
5 narcotics, chemicals or any other type of material; or as a  
6 result of any mental or physical condition. In enforcing this  
7 paragraph, the board, upon probable cause, has authority to  
8 compel a licensee to submit to a mental or physical  
9 examination by a physician approved by the board. Failure of  
10 a licensee to submit to an examination when directed by the  
11 board, unless the failure is due to circumstances beyond the  
12 licensee's control, may result in a default and final order  
13 entered against the licensee without the taking of testimony  
14 or presentation of evidence. A licensee affected under this  
15 paragraph shall be afforded an opportunity to demonstrate  
16 that the licensee can resume competent practice with  
17 reasonable skill and safety.

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

22           (1) Deny the application for a license.

23           (2) Administer a public reprimand.

24           (3) Revoke, suspend, limit or otherwise restrict a  
25 license.

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

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

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

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

9       (d) Temporary and automatic suspension.--A license issued  
10      under this act shall be temporarily suspended under  
11      circumstances determined by the board to be an immediate and  
12      clear danger to the public health and safety. The board shall  
13      issue an order to that effect without a hearing, but upon due  
14      notice, to the licensee concerned at his or her last known  
15      address, which shall include a written statement of all  
16      allegations against the licensee. The provisions of subsection  
17      (c) shall not apply to temporary suspension. The board shall  
18      thereupon commence formal action to suspend, revoke or restrict  
19      the license of the person concerned as otherwise provided for in  
20      this act. All actions shall be taken promptly and without delay.  
21      Within 30 days following the issuance of an order temporarily  
22      suspending a license, the board shall conduct or cause to be  
23      conducted a preliminary hearing to determine that there is a  
24      prima facie case supporting the suspension. The licensee whose  
25      license has been temporarily suspended may be present at the  
26      preliminary hearing and may be represented by counsel, cross-  
27      examine witnesses, inspect physical evidence, call witnesses,  
28      offer evidence and testimony and make a record of the  
29      proceedings. If it is determined that there is not a prima facie  
30      case, the suspended license shall be immediately restored. The



1 temporary suspension shall remain in effect until vacated by the  
2 board, but in no event longer than 180 days.

3 Section 11. Reinstatement of license.

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

9 Section 12. Impaired professional.

10 (a) Appointment of professional consultant.--The board, with  
11 the approval of the commissioner, shall appoint and fix the  
12 compensation of a professional consultant who is a licensee of  
13 the board, or such other professional as the board may determine  
14 with education and experience in the identification, treatment  
15 and rehabilitation of persons with physical or mental  
16 impairments. Such consultant shall be accountable to the board  
17 and shall act as a liaison between the board and treatment  
18 programs, such as alcohol and drug treatment programs licensed  
19 by the Department of Health, psychological counseling and  
20 impaired professional support groups, which are approved by the  
21 board and which provide services to licensees under this act.

22 (b) Subsequent action by board.--The board may defer and  
23 ultimately dismiss any of the types of corrective action set  
24 forth in this act for an impaired professional so long as the  
25 professional is progressing satisfactorily in an approved  
26 treatment program, provided that the provisions of this  
27 subsection shall not apply to a professional convicted of a  
28 felonious act prohibited by the act of April 14, 1972 (P.L.233,  
29 No.64), known as The Controlled Substance, Drug, Device and  
30 Cosmetic Act, or convicted of, pleaded guilty to or entered a

1 plea of nolo contendere to a felony relating to a controlled  
2 substance in a court of law of the United States or any other  
3 state, territory or country. An approved program provider shall,  
4 upon request, disclose to the consultant such information in its  
5 possession regarding any impaired professional in treatment  
6 which the program provider is not prohibited from disclosing by  
7 an act of the United States, this Commonwealth or any other  
8 state. Such requirement of disclosure by an approved program  
9 provider shall apply in the case of impaired professionals who  
10 enter an agreement in accordance with this section, impaired  
11 professionals who are the subject of a board investigation or  
12 disciplinary proceeding and impaired professionals who  
13 voluntarily enter a treatment program other than under the  
14 provisions of this section but who fail to complete the program  
15 successfully or to adhere to an aftercare plan developed by the  
16 program provider.

17 (c) Agreement.--An impaired professional who enrolls in an  
18 approved treatment program shall enter into an agreement with  
19 the board under which the professional's license shall be  
20 suspended or revoked, but enforcement of the suspension or  
21 revocation may be stayed for the length of time the professional  
22 remains in the program and makes satisfactory progress, complies  
23 with the terms of the agreement and adheres to any limitations  
24 on his or her practice imposed by the board to protect the  
25 public. Failure to enter into such an agreement shall disqualify  
26 the professional from the impaired professional program and  
27 shall activate an immediate investigation and disciplinary  
28 proceeding by the board.

29 (d) Report by provider.--If, in the opinion of the  
30 consultant after consultation with the provider, an impaired

1 professional who is enrolled in an approved treatment program  
2 has not progressed satisfactorily, the consultant shall disclose  
3 to the board all information in his or her possession relevant  
4 to the issue of impairment regarding said professional, and the  
5 board shall institute proceedings to determine if the stay of  
6 the enforcement of the suspension or revocation of the impaired  
7 professional's license shall be vacated.

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

11 (f) Reports by others.--Any hospital or health care  
12 facility, peer or colleague who has substantial evidence that a  
13 professional has an active addictive disease for which the  
14 professional is not receiving treatment, is diverting a  
15 controlled substance or is mentally or physically incompetent to  
16 carry out the duties of his or her license shall make or cause  
17 to be made a report to the board, provided that any person or  
18 facility who acts in a treatment capacity to an impaired  
19 professional in an approved treatment program is exempt from the  
20 mandatory reporting requirement of this subsection. Any person  
21 or facility who reports pursuant to this section in good faith  
22 and without malice shall be immune from any civil or criminal  
23 liability arising from such report. Failure to provide such  
24 report within a reasonable time from receipt of knowledge of  
25 impairment shall subject the person or facility to a fine of not  
26 more than \$1,000. The board shall levy this penalty only after  
27 affording the accused party the opportunity for a hearing, as  
28 provided under 2 Pa.C.S. (relating to administrative law and  
29 procedure).

30 Section 13. Records and fees.

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

4 (b) Fees.--

5 (1) All fees required under this act shall be fixed by  
6 the board by regulation. If the revenue raised by fees, fines  
7 and civil penalties imposed under this act are not sufficient  
8 to meet expenditures over a two-year period, the board shall  
9 increase those fees by regulation so that the projected  
10 revenues will meet or exceed projected expenditures.

11 (2) If the bureau determines that the fees established  
12 by the board under paragraph (1) are inadequate to meet the  
13 minimum enforcement efforts required by this act, the bureau,  
14 after consultation with the board, shall increase the fees by  
15 regulation in an amount so that adequate revenues are raised  
16 to meet the required enforcement effort.

17 Section 14. Other professions.

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

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

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

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

30 (i) conducting massage therapy activities under the

1 supervision of:

2 (A) a licensee; or

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

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

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

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

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

21 Section 15. Unlawful practice.

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

25 (b) Title.--An individual who holds a license or is  
26 maintained on inactive status may use the title "Licensed  
27 Massage Therapist" and the abbreviation "L.M.T." No other  
28 individual may use the title "Licensed Massage Therapist" or the  
29 title "Massage Therapist" or hold oneself out to others as a  
30 massage therapist. This subsection includes advertising as a

1 massage therapist and adopting or using any title or  
2 description, including massage therapist, massage practitioner,  
3 masseur, masseuse, myotherapist or a derivative of those terms  
4 and their related abbreviations, which implies directly or  
5 indirectly that massage services are being provided.

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

9 (d) Terminology.--Except as set forth in section 14(1), a  
10 business entity may not utilize in connection with a business  
11 name or activity the words, "massage," "massage therapist,"  
12 "massage practitioner," "masseur," "masseuse" or "myotherapist,"  
13 or any derivative of these terms and their related  
14 abbreviations, which imply directly or indirectly that massage  
15 therapy services are being provided, unless the services of the  
16 business are provided by licensees.

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

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

25 Section 16. Violation of act.

26 (a) General rule.--Notwithstanding any law to the contrary,  
27 a person that violates a provision of this act or a regulation  
28 of the board commits a misdemeanor of the third degree and  
29 shall, upon conviction, be sentenced to pay a fine of not more  
30 than \$1,000 or to imprisonment for not more than six months for

1 the first violation and to pay a fine of not more than \$2,000 or  
2 to imprisonment for not less than six months or more than one  
3 year, or both, for each subsequent violation.

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

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

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

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

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

20 (C) ASSESSMENT OF COSTS OF INVESTIGATION.--THE BOARD MAY <—  
21 ASSESS AGAINST A RESPONDENT DETERMINED TO BE IN VIOLATION OF THE  
22 DISCIPLINARY PROVISIONS ADMINISTERED BY THE BOARD IN A  
23 DISCIPLINARY PROCEEDING PENDING BEFORE THE BOARD FOR FINAL  
24 DETERMINATION, AS PART OF THE SANCTION, THE COSTS OF  
25 INVESTIGATION UNDERLYING THAT DISCIPLINARY ACTION. THE COST OF  
26 INVESTIGATION SHALL NOT INCLUDE ANY ASSOCIATED LEGAL FEES OR ANY  
27 COST OF PROSECUTION.

28 ~~(e)~~ (D) Administrative Agency Law.--Action of the board <—  
29 under subsection (b) is subject to 2 Pa.C.S. Ch. 5 Subch. A  
30 (relating to practice and procedure of Commonwealth agencies)

1 and Ch. 7 Subch. A (relating to judicial review of Commonwealth  
2 agency action).

3 SECTION 17. PREEMPTION. <—

4 THIS ACT SHALL PREEMPT AND SUPERSEDE ANY ORDINANCE RELATING  
5 TO THE LICENSURE OR REGULATION OF MASSAGE THERAPISTS BY A  
6 POLITICAL SUBDIVISION IN EFFECT ON THE EFFECTIVE DATE OF THIS  
7 ACT.

8 Section 49. Appropriation and repayment.

9 (a) Appropriation.--The sum of \$85,000, or as much thereof  
10 as may be necessary, is hereby appropriated from the  
11 Professional Licensure Augmentation Account to the department  
12 for the payment of costs associated with processing licenses and  
13 renewing licenses, for the operation of the board and for other  
14 costs associated with this act.

15 (b) Repayment.--The appropriation shall be repaid by the  
16 board to the account within three years of the beginning of  
17 issuance of licenses by the board.

18 Section 50. Regulations.

19 The board shall promulgate regulations to carry out this act.  
20 Publication of the final-form regulations under this section  
21 shall take place within 18 months of the effective date of this  
22 section. The board shall report, within 60 days of the effective  
23 date of this section, and every 30 days thereafter, on the  
24 status of the regulations to the Consumer Protection and  
25 Professional Licensure Committee of the Senate and the  
26 Professional Licensure Committee of the House of  
27 Representatives.

28 Section 51. Effective date.

29 This act shall take effect as follows:

30 (1) The following provisions shall take effect



1 immediately:

2 (i) ~~Section~~ SECTIONS 4, 5 AND 50. <—

3 (ii) This section.

4 (2) The remainder of this act shall take effect in two  
5 years.