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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, K. SMITH, CALTAGIRONE AND  
MARSHALL, MAY 13, 2008

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SENATOR ARMSTRONG, APPROPRIATIONS, IN SENATE, RE-REPORTED AS  
AMENDED, OCTOBER 7, 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, for penalties and for  
4 preemption.

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.~~

1           ~~(2) Reasonable regulation is in furtherance of public~~  
2           ~~health, safety and welfare interests.~~

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

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

11 Section 3 2. Definitions. <—

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

15          "Account." The Professional Licensure Augmentation Account.

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

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

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

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

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

27          "CONVICTION." A JUDGMENT OF GUILT, AN ADMISSION OF GUILT OR <—  
28          A PLEA OF NOLO CONTENDERE.

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

30          "HEALING ARTS." THE SCIENCE AND SKILL OF DIAGNOSIS AND <—

1 TREATMENT IN ANY MANNER WHATSOEVER OF DISEASE OR ANY AILMENT OF  
2 THE HUMAN BODY.

3 "License." A license to practice massage therapy under this  
4 act.

5 "Licensee." An individual who holds a license to practice  
6 massage therapy.

7 "Massage therapist." An individual licensed by the board to  
8 practice massage therapy.

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

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

30 ~~"Sexual behavior." Conduct which is or is intended to be~~ <—

1 ~~sexual in nature or which may be construed by a reasonable~~  
2 ~~person as sexual in nature.~~

3 ~~"Sexual exploitation." Sexual behavior with a current client~~  
4 ~~which uses trust, knowledge, emotions or influence derived from~~  
5 ~~the professional relationship.~~

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

8 Section 4 3. Board. <—

9 (a) Establishment.--There is established the State Board of  
10 Massage Therapy, an administrative board within the department.

11 The board shall consist of ~~nine~~ 11 members who are citizens of <—  
12 the United States and who have been residents of this

13 Commonwealth for at least a ~~two-year~~ FIVE-YEAR period prior to <—  
14 the effective date of this section. The board shall be composed  
15 of the following individuals:

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

17 (2) ~~Five~~ SIX members who meet the educational and <—  
18 experience qualifications for licensure under section ~~6~~ 5. No <—  
19 more than one member under this paragraph shall be an owner  
20 of a school that provides instruction in massage therapy.

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

22 (4) THE ATTORNEY GENERAL OR A DESIGNEE. <—

23 ~~(4)~~ (5) The commissioner or a designee. <—

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

28 (c) Initial appointments.--Within ~~90~~ 180 days of the <—  
29 effective date of this section, the Governor shall nominate two  
30 professional members to serve four-year terms, one public member

1 and one professional member to serve three-year terms, one  
2 public member and one professional member to serve two-year  
3 terms and one professional member to serve a one-year term. A  
4 professional member initially appointed to the board pursuant to  
5 this act need not be licensed at the time of appointment but at  
6 the time of appointment must have satisfied the eligibility  
7 requirements for licensure and must have practiced massage  
8 therapy for five consecutive years or more immediately preceding  
9 the appointments.

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

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

21 ~~(f) Forfeiture of membership.--A board member who fails to~~ <—  
22 ~~attend three consecutive meetings without permission of the~~  
23 ~~commissioner shall forfeit the member's seat unless the~~  
24 ~~commissioner, upon written request from the member, finds that~~  
25 ~~the member should be excused from a meeting because of illness~~  
26 ~~or the death of a family member.~~

27 (F) FORFEITURE OF MEMBERSHIP.--A PROFESSIONAL OR PUBLIC <—  
28 MEMBER WHO FAILS TO ATTEND THREE MEETINGS IN 18 MONTHS SHALL  
29 FORFEIT THE MEMBER'S SEAT UNLESS THE COMMISSIONER, UPON WRITTEN  
30 REQUEST FROM THE MEMBER, FINDS THAT THE MEMBER SHOULD BE EXCUSED

1 FROM A MEETING BECAUSE OF ILLNESS OR DEATH OF A FAMILY MEMBER.

2 (g) Compensation.--A member of the board, except the  
3 commissioner, shall receive per diem compensation at the rate of  
4 \$60 when actually attending to the work of the board. Members  
5 shall also receive reasonable traveling, hotel and other  
6 necessary expenses incurred in the performance of their duties  
7 in accordance with regulations.

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

16 (i) Quorum.--A majority of the members of the board shall  
17 constitute a quorum for the purposes of conducting the business  
18 of the board. Except for temporary and automatic suspensions  
19 under section ~~10(d)~~ 9(D), a member may not be counted as part of ←  
20 a quorum or vote on any issue unless the member is physically in  
21 attendance at the meeting.

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

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

27 ~~(l) Notice. Reasonable notice of all meetings shall be ←~~  
28 ~~given in conformity with 65 Pa.C.S. Ch. 7 (relating to open~~  
29 ~~meetings).~~

30 ~~(m)~~ (L) Operating procedures.--The board shall meet within ←

1 30 days after the appointment of its initial members and shall  
2 institute operating procedures and an application form for  
3 licensing massage therapists. It shall be the responsibility of  
4 the board to educate the public as to the requirements of  
5 licensing in order to hold oneself out or to practice as a  
6 licensed massage therapist within this Commonwealth.

7 Section 5 4. Powers and duties of board. <—

8 The board has the following powers and duties:

9 (1) To pass upon the qualifications and fitness of  
10 applicants for licenses and reciprocal licenses. ~~and to~~ <—  
11 ~~promulgate regulations requiring applicants to pass~~  
12 ~~examinations relating to qualifications as a prerequisite to~~  
13 ~~the issuance of a license.~~

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

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

19 ~~(4) To conduct hearings upon complaints concerning~~ <—  
20 ~~violations of this act and the regulations promulgated under~~  
21 ~~this act and to seek the prosecution and enjoinder of~~  
22 ~~violations.~~

23 ~~(5) To expend money necessary to the proper carrying out~~  
24 ~~of its assigned duties.~~

25 ~~(6)~~ (4) To submit annually a report to the Consumer <—  
26 Protection and Professional Licensure Committee of the Senate  
27 and the Professional Licensure Committee of the House of  
28 Representatives containing a description of the types of  
29 complaints received, status of the cases, board action which  
30 has been taken and length of time from the initial complaint

1 to final board resolution.

2 ~~(7)~~ (5) To submit annually to the Appropriations ←  
3 Committee of the Senate and the Appropriations Committee of  
4 the House of Representatives, within 15 days after the  
5 Governor has submitted a budget to the General Assembly, a  
6 copy of the budget request for the upcoming fiscal year which  
7 the board previously submitted to the department.

8 ~~(8)~~ (6) To establish standards of eligibility for ←  
9 license renewal. These standards shall include, but not be  
10 limited to, the demonstration of satisfactory completion of a  
11 minimum of 24 hours of continuing education related to the  
12 practice of massage therapy in accordance with board  
13 regulations. No credit may be given for courses in office  
14 management or practice building. The board may waive all or  
15 part of the continuing education requirement to a licensee  
16 who shows to the satisfaction of the board that the licensee  
17 was unable to complete the requirement due to illness,  
18 emergency or hardship.

19 Section ~~6~~ 5. Qualification for licensure. ←

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

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

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

26 (3) The applicant has completed a massage program of at  
27 least 600 hours of in-class, postsecondary education  
28 instruction approved by the ~~Department of Education or by the~~ ←  
29 ~~board~~ STATE BOARD OF PRIVATE LICENSED SCHOOLS. The program ←  
30 under this paragraph must include training in the human

1 immunodeficiency virus and related risks and training in  
2 cardiopulmonary resuscitation.

3 (4) The applicant has passed an examination under  
4 section 8 7. <—

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

7 ~~(6) The applicant is not addicted to alcohol, narcotics <—~~  
8 ~~or other habit forming drugs.~~

9 ~~(7)~~ (6) The applicant has not been convicted of a felony <—  
10 under the act of April 14, 1972 (P.L.233, No.64), known as  
11 The Controlled Substance, Drug, Device and Cosmetic Act, or  
12 of an offense under the laws of another jurisdiction which,  
13 if committed in this Commonwealth, would be a felony under  
14 The Controlled Substance, Drug, Device and Cosmetic Act,  
15 unless the following apply:

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

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

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

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

1           ~~(1) Is an active professional practitioner of massage~~ <—  
2           ~~therapy.~~

3           (1) IS ABLE TO DEMONSTRATE THAT THE APPLICANT HAS <—  
4           CONDUCTED A BUSINESS AND BEEN AN ACTIVE PARTICIPANT IN THAT  
5           BUSINESS WHICH WAS MAINLY THE PRACTICE OF MASSAGE THERAPY.

6           (2) Meets the qualifications described in subsection  
7           (a)(1), (2), (5), ~~(6) and (7)~~ AND (6). <—

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

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

12           (ii) Has passed ~~an~~ A MASSAGE THERAPY examination <—  
13           that is part of a certification program accredited by the  
14           National Commission of Certifying Agencies.

15           (iii) Has completed 500 hours of instruction in  
16           massage and related subjects from a massage therapy  
17           program approved by the ~~Department of Education or by the~~ <—  
18           ~~board~~ STATE BOARD OF PRIVATE LICENSED SCHOOLS. <—

19           (iv) Has:

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

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

26           (v) Has:

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

30           (B) completed 100 hours of instruction in



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 7. 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 8. Reciprocity. <—

13 The board has the power to grant a reciprocal license WITHOUT <—  
14 FURTHER EXAMINATION to an applicant who is licensed or certified  
15 as a massage therapist or similar practice in another state and  
16 has demonstrated qualifications which equal or exceed those  
17 required under this act in the determination of the board. No  
18 license shall be granted under this section to an applicant  
19 unless the state in which the applicant is licensed affords  
20 reciprocal treatment to individuals who are residents of this  
21 Commonwealth and who are licensed under this act.

22 Section 9. 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~~ A CRIME of moral turpitude or of an offense which, if <—  
29 committed in this Commonwealth, would constitute a ~~sexual~~ <—  
30 ~~offense or~~ a felony.

1 (2) Being found to have engaged in immoral or  
2 unprofessional conduct. In proceedings based on this  
3 paragraph, actual injury to the client need not be  
4 established. As used in this paragraph, the term

5 ~~"unprofessional conduct" includes:~~ <—

6 ~~(i) a departure from or failure to conform to the~~  
7 ~~standards of acceptable and prevailing practice; and~~

8 ~~(ii) sexual exploitation of a client.~~

9 "UNPROFESSIONAL CONDUCT" INCLUDES A DEPARTURE FROM OR FAILURE <—  
10 TO CONFORM TO THE STANDARDS OF ACCEPTABLE AND PREVAILING  
11 PRACTICE.

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

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

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

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

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

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

27 (9) Practicing beyond the licensee's defined scope of  
28 practice.

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

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

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

20           (1) Deny the application for a license.

21           (2) Administer a public reprimand.

22           (3) Revoke, suspend, limit or otherwise restrict a  
23 license.

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

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

29           (6) Restore a suspended license and impose any  
30 disciplinary or corrective measure which it might originally

1 have imposed.

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

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

1 Section ~~11~~ 10. Reinstatement of license. <—

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

7 ~~Section 12. Impaired professional.~~ <—

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

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

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

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

27 ~~(d) Report by provider. If, in the opinion of the~~  
28 ~~consultant after consultation with the provider, an impaired~~  
29 ~~professional who is enrolled in an approved treatment program~~  
30 ~~has not progressed satisfactorily, the consultant shall disclose~~

1 ~~to the board all information in his or her possession relevant~~  
2 ~~to the issue of impairment regarding said professional, and the~~  
3 ~~board shall institute proceedings to determine if the stay of~~  
4 ~~the enforcement of the suspension or revocation of the impaired~~  
5 ~~professional's license shall be vacated.~~

6 ~~(c) Immunity. An approved program provider who makes a~~  
7 ~~disclosure pursuant to this section shall not be subject to~~  
8 ~~civil liability for such disclosure or its consequences.~~

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

28 ~~Section 13. Records and fees.~~

29 ~~(a) Records. A record of all licensees shall be kept in the~~  
30 ~~office of the board and shall be open to public inspection and~~

1 ~~copying upon payment of a reasonable fee for copying the record.~~

2 ~~(b) Fees.~~

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

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

15 SECTION 11. SETTING OF FEES AND DISPOSITION OF FEES, FINES AND <—  
16 CIVIL PENALTIES.

17 (A) SETTING OF FEES.--ALL FEES REQUIRED UNDER THIS ACT SHALL  
18 BE FIXED BY THE BOARD BY REGULATION AND SHALL BE SUBJECT TO THE  
19 ACT OF JUNE 25, 1982 (P.L.633, NO.181), KNOWN AS THE REGULATORY  
20 REVIEW ACT. IF THE REVENUES RAISED BY THE FEES, FINES AND CIVIL  
21 PENALTIES IMPOSED UNDER THIS ACT ARE NOT SUFFICIENT TO MEET  
22 EXPENDITURES OVER A TWO-YEAR PERIOD, THE BOARD SHALL INCREASE  
23 THOSE FEES BY REGULATION SO THAT PROJECTED REVENUES WILL MEET OR  
24 EXCEED PROJECTED EXPENDITURES.

25 (B) FEE INCREASE.--IF THE BUREAU DETERMINES THAT THE FEES  
26 ESTABLISHED BY THE BOARD UNDER SUBSECTION (A) ARE INADEQUATE TO  
27 MEET THE MINIMUM ENFORCEMENT EFFORTS REQUIRED BY THIS ACT, THEN  
28 THE BUREAU, AFTER CONSULTATION WITH THE BOARD AND SUBJECT TO THE  
29 REGULATORY REVIEW ACT, SHALL INCREASE THE FEES BY REGULATION IN  
30 AN AMOUNT THAT ADEQUATE REVENUES ARE RAISED TO MEET THE REQUIRED

1 ENFORCEMENT EFFORT.

2 (C) DISPOSITION OF FEES, FINES AND CIVIL PENALTIES.--ALL  
3 FEES, FINES AND CIVIL PENALTIES IMPOSED IN ACCORDANCE WITH THIS  
4 ACT SHALL BE PAID INTO THE PROFESSIONAL LICENSURE AUGMENTATION  
5 ACCOUNT.

6 (D) FEES PERMITTED.--THE BOARD MAY CHARGE A FEE, AS SET BY  
7 THE BOARD BY REGULATION, FOR ALL EXAMINATIONS, REGISTRATIONS,  
8 RENEWALS, CERTIFICATIONS, LICENSES OR APPLICATIONS PERMITTED BY  
9 THIS ACT OR REGULATIONS UNDER THIS ACT.

10 SECTION 12. PUBLIC ACCESS TO LIST OF LICENSEES.

11 THE BOARD SHALL MAINTAIN A CURRENT LIST OF ANY PERSON  
12 LICENSED WITH THE BOARD. THE LIST SHALL BE POSTED ON THE BOARD'S  
13 INTERNET WEBSITE AND SHALL BE SUBJECT TO THE ACT OF FEBRUARY 14,  
14 2008 (P.L.6, NO.3), KNOWN AS THE RIGHT-TO-KNOW LAW.

15 Section ~~14~~ 13. Other professions. ←

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

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

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

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

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

30 (A) a licensee; or

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

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

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

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

14 (6) The practice of an individual who uses touch to  
15 affect the energy systems, ~~acupoints~~ ACUPOINTS, Qi meridians <—  
16 or channels of energy of the human body while engaged within  
17 the scope of practice of a profession with established  
18 standards and ethics. SUCH PRACTICES INCLUDE ACUPRESSURE, <—  
19 ASIAN BODYWORK THERAPY, POLARITY THERAPY BODYWORK, QUIGON,  
20 REIKI, SHIATSU AND TUI NA.

21 Section ~~15~~ 14. Unlawful practice. <—

22 (a) General rule.--Except as set forth in section ~~14(1)~~ <—  
23 13(1) and (2), an individual may not practice massage therapy or <—  
24 hold oneself out as a massage therapist unless licensed by the  
25 board.

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

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

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

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

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

23 (E) INJUNCTION.--IT SHALL BE UNLAWFUL FOR ANY PERSON TO <—  
24 PRACTICE OR ATTEMPT TO OFFER TO PRACTICE MASSAGE THERAPY AS  
25 DEFINED IN THIS ACT WITHOUT HAVING AT THE TIME OF SO DOING A  
26 VALID, UNEXPIRED, UNREVOKED AND UNSUSPENDED LICENSE ISSUED UNDER  
27 THIS ACT. THE UNLAWFUL PRACTICE MAY BE ENJOINED BY THE COURTS ON  
28 PETITION OF THE BOARD OR THE COMMISSIONER. IN ANY SUCH  
29 PROCEEDING, IT SHALL NOT BE NECESSARY TO SHOW THAT ANY PERSON IS  
30 INDIVIDUALLY INJURED BY THE ACTIONS COMPLAINED OF. IF IT IS

1 DETERMINED THAT THE RESPONDENT HAS ENGAGED IN THE UNLAWFUL  
2 PRACTICE, THE COURT SHALL ENJOIN THE RESPONDENT FROM SO  
3 PRACTICING UNLESS AND UNTIL THE RESPONDENT HAS BEEN DULY  
4 LICENSED. PROCEDURE IN SUCH CASES SHALL BE THE SAME AS IN ANY  
5 OTHER INJUNCTION SUIT. THE REMEDY BY INJUNCTION HEREBY GIVEN IS  
6 IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL PROSECUTION AND  
7 PUNISHMENT.

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

11 Section ~~16~~ 15. Violation of act. <—

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

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

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

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

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

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

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

14 (C) ASSESSMENT OF COSTS OF INVESTIGATION.--THE BOARD MAY ←  
15 ASSESS AGAINST THE RESPONDENT IN A DISCIPLINARY ACTION UNDER  
16 THIS ACT, AS PART OF THE SANCTION, THE COST OF INVESTIGATION  
17 UNDERLYING THAT DISCIPLINARY ACTION.

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

23 Section ~~17~~ 16. Preemption. ←

24 This act shall preempt and supersede any ordinance relating  
25 to the licensure or regulation of massage therapists by a  
26 political subdivision in effect on the effective date of this  
27 ~~act~~ SECTION. ←

28 SECTION 17. EFFECT OF LICENSURE. ←

29 LICENSURE UNDER THIS ACT SHALL NOT BE CONSTRUED AS REQUIRING  
30 NEW OR ADDITIONAL THIRD-PARTY REIMBURSEMENT OR OTHERWISE

1 MANDATING COVERAGE UNDER 75 PA.C.S. CH. 17 (RELATING TO  
2 FINANCIAL RESPONSIBILITY) OR THE ACT OF JUNE 2, 1915 (P.L.736,  
3 NO.338), KNOWN AS THE WORKERS' COMPENSATION ACT.

4 Section 49. Funding.

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. THE TRANSFERRED FUNDS SHALL BE REPAID BY THE <—  
10 BOARD TO THE ACCOUNT WITHIN THREE YEARS OF THE BEGINNING OF  
11 ISSUANCE OF LICENSES BY THE BOARD.

12 Section 50. Regulations.

13 The board shall promulgate regulations to carry out this act.  
14 Publication of the final-form regulations under this section  
15 shall take place within 18 months of the effective date of this  
16 section. The board shall report, within ~~60~~ 180 days of the <—  
17 effective date of this section, and every 30 days thereafter, on  
18 the status of the regulations to the Consumer Protection and  
19 Professional Licensure Committee of the Senate and the  
20 Professional Licensure Committee of the House of  
21 Representatives.

22 Section 51. Effective date.

23 This act shall take effect as follows:

24 (1) The following provisions shall take effect  
25 immediately:

26 (i) Sections ~~4,5~~ 3, 4 and 50. <—

27 (ii) This section.

28 (2) The remainder of this act shall take effect in two  
29 years.