
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2499

Session of
2008

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

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL
LICENSURE, IN SENATE, AS AMENDED, SEPTEMBER 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.

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

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

29 "HEALING ARTS." THE SCIENCE AND SKILL OF DIAGNOSIS AND <—
30 TREATMENT IN ANY MANNER WHATSOEVER OF DISEASE OR ANY AILMENT OF

1 THE HUMAN BODY.

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

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

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

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

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

29 ~~"Sexual behavior." Conduct which is or is intended to be~~ <—
30 ~~sexual in nature or which may be construed by a reasonable~~

1 ~~person as sexual in nature.~~

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

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

7 Section 4 3. Board. <—

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

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

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

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

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

22 ~~(4)~~ (5) The commissioner or a designee. <—

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

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

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

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

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

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

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

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

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

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

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

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

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

29 ~~(m)~~ (L) Operating procedures.--The board shall meet within <—
30 30 days after the appointment of its initial members and shall

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

6 Section ~~5~~ 4. Powers and duties of board. <—

7 The board has the following powers and duties:

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

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

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

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

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

24 ~~(6)~~ (4) To submit annually a report to the Consumer <—
25 Protection and Professional Licensure Committee of the Senate
26 and the Professional Licensure Committee of the House of
27 Representatives containing a description of the types of
28 complaints received, status of the cases, board action which
29 has been taken and length of time from the initial complaint
30 to final board resolution.

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

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

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

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

(1) The applicant is of good moral character.

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

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

~~board~~ STATE BOARD OF PRIVATE LICENSED SCHOOLS. The program under this paragraph must include training in the human immunodeficiency virus and related risks and training in

1 cardiopulmonary resuscitation.

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

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

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

8 ~~(7)~~ (6) The applicant has not been convicted of a felony <—
9 under the act of April 14, 1972 (P.L.233, No.64), known as
10 The Controlled Substance, Drug, Device and Cosmetic Act, or
11 of an offense under the laws of another jurisdiction which,
12 if committed in this Commonwealth, would be a felony under
13 The Controlled Substance, Drug, Device and Cosmetic Act,
14 unless the following apply:

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

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

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

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

30 ~~(1) Is an active professional practitioner of massage~~ <—

1 ~~therapy.~~

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

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

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

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

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

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

18 (iv) Has:

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

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

25 (v) Has:

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

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

1 (c) Temporary practice permit.--

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

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

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

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

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

13 Section 7 6. Biennial renewal of license. <—

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

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

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

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

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

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

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

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

30 Section 8 7. Examinations.

<—

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

11 Section 9 8. Reciprocity. <—

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

21 Section 10 9. Refusal, suspension and revocation of licenses. <—

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

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

30 (2) Being found to have engaged in immoral or

unprofessional conduct. In proceedings based on this paragraph, actual injury to the client need not be established. As used in this paragraph, the term

~~"unprofessional conduct" includes:~~

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

"UNPROFESSIONAL CONDUCT" INCLUDES A DEPARTURE FROM OR FAILURE TO CONFORM TO THE STANDARDS OF ACCEPTABLE AND PREVAILING PRACTICE.

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

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

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

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

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

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

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

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

(11) Being unable to practice with reasonable skill and

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

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

19 (1) Deny the application for a license.

20 (2) Administer a public reprimand.

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

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

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

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

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

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

30 Section ~~11~~ 10. Reinstatement of license.

<—

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

6 ~~Section 12.—Impaired professional.~~

<—

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

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

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

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

26 ~~(d) Report by provider. If, in the opinion of the~~
27 ~~consultant after consultation with the provider, an impaired~~
28 ~~professional who is enrolled in an approved treatment program~~
29 ~~has not progressed satisfactorily, the consultant shall disclose~~
30 ~~to the board all information in his or her possession relevant~~

~~to the issue of impairment regarding said professional, and the board shall institute proceedings to determine if the stay of the enforcement of the suspension or revocation of the impaired professional's license shall be vacated.~~

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

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

~~Section 13. Records and fees.~~

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

1 ~~(b) Fees.~~

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

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

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

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

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

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

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

9 SECTION 12. PUBLIC ACCESS TO LIST OF LICENSEES.

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

14 Section ~~14~~ 13. Other professions.

<—

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

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

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

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

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

29 (A) a licensee; or

30 (B) instructors or supervisors who meet the

1 licensing criteria of the Department of Education or
2 the board; and

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

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

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

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

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

21 (a) General rule.--Except as set forth in section ~~14~~(1) <—
22 13(1) and (2), an individual may not practice massage therapy or <—
23 hold oneself out as a massage therapist unless licensed by the
24 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) <—
10 13(1), a business entity may not utilize in connection with a <—
11 business name or activity the words, "massage," "massage
12 therapist," "massage practitioner," "masseur," "masseuse" or
13 "myotherapist," or any derivative of these terms and their
14 related abbreviations, which imply directly or indirectly that
15 massage therapy services are being provided, unless the services
16 of the 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 (E) INJUNCTION.--IT SHALL BE UNLAWFUL FOR ANY PERSON TO <—
23 PRACTICE OR ATTEMPT TO OFFER TO PRACTICE MASSAGE THERAPY AS
24 DEFINED IN THIS ACT WITHOUT HAVING AT THE TIME OF SO DOING A
25 VALID, UNEXPIRED, UNREVOKED AND UNSUSPENDED LICENSE ISSUED UNDER
26 THIS ACT. THE UNLAWFUL PRACTICE MAY BE ENJOINED BY THE COURTS ON
27 PETITION OF THE BOARD OR THE COMMISSIONER. IN ANY SUCH
28 PROCEEDING, IT SHALL NOT BE NECESSARY TO SHOW THAT ANY PERSON IS
29 INDIVIDUALLY INJURED BY THE ACTIONS COMPLAINED OF. IF IT IS
30 DETERMINED THAT THE RESPONDENT HAS ENGAGED IN THE UNLAWFUL

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

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

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

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

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

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

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

30 (3) An individual who holds himself out as a licensee

without being properly licensed as provided in this act.

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

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

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

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

Section ~~17~~ 16. Preemption.

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

Section 49. Funding.

Funds necessary for the payment of costs associated with processing licenses and renewing licenses, for the operation of the board and for other costs associated with this act shall be

1 transferred from the Professional Licensure Augmentation Account
2 to the department. THE TRANSFERRED FUNDS SHALL BE REPAYED BY THE <—
3 BOARD TO THE ACCOUNT WITHIN THREE YEARS OF THE BEGINNING OF
4 ISSUANCE OF LICENSES BY THE BOARD.

5 Section 50. Regulations.

6 The board shall promulgate regulations to carry out this act.
7 Publication of the final-form regulations under this section
8 shall take place within 18 months of the effective date of this
9 section. The board shall report, within ~~60~~ 180 days of the <—
10 effective date of this section, and every 30 days thereafter, on
11 the status of the regulations to the Consumer Protection and
12 Professional Licensure Committee of the Senate and the
13 Professional Licensure Committee of the House of
14 Representatives.

15 Section 51. Effective date.

16 This act shall take effect as follows:

17 (1) The following provisions shall take effect
18 immediately:

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

20 (ii) This section.

21 (2) The remainder of this act shall take effect in two
22 years.