

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1571

By: Walker

AS INTRODUCED

An Act relating to Massage Therapy Practice Act; providing short title; defining terms; establishing licensing; providing for exceptions; creating the State Board of Massage Therapy; providing for powers of Board; establishing requirements for licensure of certain persons; prohibiting assignability of license; providing for examinations; providing for licensure by credentials; establishing procedure for renewal of license; providing for licensing of certain practicing massage therapists; establishing inactive status; providing for license fees; restricting advertising; providing for power of county or municipal governments; providing for denial and suspension of license; protecting certain actions; creating criminal offenses and punishments; creating fund; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3200 of Title 59, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Massage Therapy Practice Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3201 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the Massage Therapy Practice Act:

1. "Board" means the State Board of Massage Therapy;
2. "Clinical practicum" means the portion of a massage therapy student's education where the student is providing massage therapy services outside of class hours for no compensation;

3. "Direct access" means the ability that the public has to seek out treatment by a massage therapist without the direct referral from a medical or health care professional;

4. "Feldenkrais Method" means a system of somatic education in which touch and words are used to eliminate faulty habits, learn new patterns of self-organization and action, and improve a person's own functional movement patterns. The method is based on principles of physics, biomechanics and an understanding of, or learning about, human development. The practice is federally trademarked and requires permission from the Feldenkrais Guild to use the term and methodology;

5. "Massage therapist" means an individual who practices massage or massage therapy and is licensed under this act;

6. "Massage and bodywork therapist" means a massage therapist who uses visual, kinesthetic and palpatory skills to assess the body and may evaluate a condition to the extent of determining whether massage/bodywork is indicated or contraindicated;

7. "Massage therapy" means the skillful treatment of the soft tissues of the human body. "Massage" and "bodywork" as used in this act are used interchangeably. Massage and bodywork is designed to promote general relaxation, improve movement, relieve somatic and muscular pain or dysfunction, stress and muscle tension, and provide for general health enhancement, personal growth, education, and the organization, balance and integration of the human body, and includes, but is not limited to:

- a. the use of touch, pressure, friction, stroking, gliding, percussion, kneading, movement, positioning, holding, range of motion and nonspecific stretching within the normal anatomical range of movement, and vibration by manual or mechanical means with or without the use of massage devices that mimic or enhance manual measures, and

- b. the external application of ice, heat, and cold packs (thermal therapy), water, lubricants, abrasives and external application of herbal or topical preparations not classified as prescription drugs;

8. "Massage therapy school" means a facility providing an educational program in massage therapy that is registered with the Board;

9. "Polarity therapy" means diverse applications affecting the human energy system. These applications include energetic approaches to somatic contact, verbal facilitation, nutrition, exercise, and health education; and

10. "Trager Approach" means a form of movement education that uses subtle directed movements and the skilled touch of a practitioner. The Trager Approach combines physical movement with sensory awareness and internal imagery designed to increase the client's self-awareness and generate physiological changes in the body tissues so as to allow the client to experience a new way of moving his or her body. The practice is federally trademarked.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3202 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A person shall not provide or offer to provide massage therapy for compensation unless that person is a licensed massage therapist.

B. A person shall not use the title of or represent themselves to be a massage therapist or use any other title, abbreviations, letters, figures, signs or devices that indicate the person is a massage therapist unless that person is a massage therapist.

C. A person shall not maintain, manage or operate a massage therapy school offering education, instruction, or training in massage therapy unless the school is a licensed massage therapy school pursuant to Section 7 of this act.

D. Individuals practicing massage under this act shall not perform any of the following:

- a. diagnosis of illness or disease,
- b. high velocity, low-amplitude thrust applied to a joint,
- c. electrical stimulation,
- d. application of ultrasound, or
- e. prescribing of medicines.

E. Nothing in the Massage Therapy Practice Act shall be construed to prevent:

1. Qualified members of other recognized professions that are licensed or regulated under Oklahoma law from rendering services within the scope of their license, provided they do not represent themselves as massage therapists;

2. Students from rendering massage therapy services within the course of study of an approved massage therapy school;

3. Visiting massage therapy instructors from another state or territory of the United States, the District of Columbia, or any foreign nation from teaching massage therapy, provided the instructor is duly licensed or registered, if required, and is qualified in their place of residence for the practice of massage therapy;

4. Persons duly licensed in another state or territory of the United States, the District of Columbia, or any foreign nation when incidentally in this state to provide service as a part of an emergency response team working in conjunction with disaster relief officials or as a part of a charity event while not receiving compensation;

5. Individuals whose practices are limited to hands, feet, and ears; or healers who do not perform massage as defined in Section 2 of this act or represent themselves as massage therapists, or manipulate the soft tissues for therapeutic purposes from practicing

those skills. Healers who use these practices and who apply for a license pursuant to the Massage Therapy Practice Act shall comply with all licensure requirements of this act;

6. Persons who use procedures within the scope of practice of their profession, which has established standards and ethics, provided that their services use touch, words, and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement while engaged, but who are not designated or implied to administer massage or to be massage therapists. These practices include, but are not limited to, the Feldenkrais Method, polarity therapy, and the Trager Approach; and

7. No part of this act is meant to restrain the ability of physicians or other health care professionals from appropriately referring to duly licensed massage therapists or limit in any way the right of direct access of the public to licensed massage therapists.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3203 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The "State Board of Massage Therapy" is hereby created.

B. The Board shall consist of seven (7) members who are Oklahoma residents. The terms shall be staggered.

1. Two members shall be appointed by the Speaker of the Oklahoma House of Representatives for terms of four (4) years as follows:

- a. one member shall be a licensed massage therapist with at least five (5) years of massage therapy practice and who is actively engaged in the practice of massage therapy during the member's tenure, and

- b. one member shall be a licensed medical doctor (M.D.) with no financial interest, direct or indirect, in the profession of massage therapy; and

2. Two members shall be appointed by the President Pro Tempore of the State Senate for terms of three (3) years as follows:

- a. one member shall be a licensed massage therapist, and
- b. one member shall be a licensed osteopathic physician (D.O.) with no financial interest, direct or indirect, in the profession of massage therapy; and

3. Three members shall be appointed by the Governor for terms of two (2) years as follows:

- a. one member shall be a licensed massage therapist,
- b. one member shall be a licensed massage therapy school owner, and
- c. one member shall be a member of the public who has not been licensed and has no financial interest, direct or indirect, in the profession of massage therapy.

C. Each member of the Board shall hold office until a successor has been appointed and qualified.

D. No Board member shall serve more than two full consecutive terms.

E. The Board shall elect annually a chair and other officers as it deems necessary. The Board shall meet as often as necessary for the conduct of business, but no less than twice a year. Meetings shall be held in accordance with the Open Meeting Act. Three members, at least one of whom must be a public member, shall constitute a quorum.

F. A Board member may be recommended for removal as a member of the Board for failing to attend, after proper notice, three consecutive Board meetings.

G. Members of the Board shall serve without compensation but may be reimbursed for actual and necessary expenses incurred in the

performance of their duties in accordance with the provisions of the State Travel Reimbursement Act.

H. Each Board member shall be held accountable to their appointing authority for the proper performance of all duties and obligations of the Board member's office. The appointing authority shall cause to be investigated any complaints or unfavorable reports received concerning the actions of the Board or its individual members and shall take appropriate action thereon, which may include removal of any Board member for malfeasance, misfeasance, neglect of duty, commission of a felony, incompetency, or permanent inability to perform official duties.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3204 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Massage Therapy is hereby authorized to adopt and promulgate rules it deems necessary for the implementation and enforcement of the Massage Therapy Practice Act, pursuant to the Oklahoma Administrative Procedures Act including, but not limited to, qualifications for licensure, renewals, reinstatements, continuing education requirements, and fees.

B. The Board is hereby empowered to perform investigations, to require the production of records and other documents relating to practices regulated by the Massage Therapy Practice Act, and to seek injunctive relief.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3205 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Effective November 1, 2006, the State Board of Massage Therapy shall issue a license to practice massage therapy to any person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

1. Has reached the age of majority;
2. Has obtained legal residence status in the State of Oklahoma;
3. Has completed at least five hundred (500) class hours of massage therapy instruction at an approved massage therapy school;
4. Has successfully passed the National Certification Examination of the National Certification Board for Therapeutic Massage and Bodywork or an examination of equivalent stature, which is accredited by the National Commission of Certifying Agencies; and
5. Provides proof of documentation that the applicant currently maintains liability insurance for their employment as a massage therapist.

B. 1. Unless exempt pursuant to this section, on and after November 1, 2005, any person wishing to practice massage therapy in this state shall obtain a license to practice pursuant to the provisions of the Massage Therapy Practice Act.

2. From one (1) year after the effective date of this act, for a period of one (1) year, the Board may grant a license to an applicant who:

- a. pays the appropriate licensing fees as set by the Board, and
- b. produces proof that the applicant has met at least four of the following requirements prior to the effective date of this act, with at least one being from division (1) of this subparagraph:

- (1) (a) has completed a program of study of at least five hundred (500) hours of professional massage training at a state-licensed school,
- (b) has successfully passed the National Certification of Therapeutic Massage and Bodywork,

- (c) has successfully passed the NCCAOM certification for Asian Bodywork Therapy,
 - (d) has a copy of IRS records listing income declared in the practice of massage therapy,
 - (e) has a copy of mortgage, office rent or lease identifying primary business as massage therapy,
 - (f) has a current membership in national massage or bodywork association, and
 - (g) has a previous licensure from any other state or municipality, and
- (2)
- (a) has a verifiable letter from employer or contractor,
 - (b) has financial records showing a separate business checking account and normal expenses directly relating to the practice of massage,
 - (c) has a verifiable dated advertisement for professional massage (newspaper/phone book)
 - (d) has five verifiable letters from massage clients confirming the individual has been in practice for one (1) year, and
 - (e) has a published article or news item individual listing the individual as a massage therapist.

C. An initial license issued pursuant to this section may be for a period of up to two (2) years pursuant to rules promulgated by the Board.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3206 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Massage Therapy shall promulgate rules for the licensure of massage therapy schools and shall license massage therapy schools that meet the requirements of the Massage Therapy Practice Act and rules adopted by the Board pursuant to that act.

B. Massage therapy schools will provide to the Board a list of all instructors that will be utilized in the training of massage therapy school students in a timely manner. The schools shall list the qualifications of the instructors, as well as documented proof that the instructors are licensed as massage therapists under the Massage Therapy Practice Act and have at least three (3) consecutive years of experience in the field of massage therapy as defined in Section 2 of this act.

C. Massage therapy schools shall provide an educational program that includes a minimum of five hundred (500) hours of training over a minimum period of six (6) months and shall include instruction in the following topics:

1. One hundred twenty-five (125) hours of in-class, supervised instruction in the body's systems, anatomy, physiology and kinesiology;

2. Two hundred (200) hours of in-class, supervised instruction in massage and bodywork assessment, theory and application;

3. Ten (10) hours of in-class instruction in business and ethics with a minimum of six (6) hours in ethics;

4. Forty (40) hours of in-class, supervised instruction in pathology;

5. One hundred twenty-five (125) hours of additional in-class, supervised instruction in an area or related field that theoretically completes the massage program of study; and

6. Other studies as determined by the massage therapy school of no less than one hundred (100) hours.

D. No program will include a clinical practicum that is more than ten percent (10%) of the total program's contact hours or one hundred (100) hours of clinical practicum, whichever is greater. All contact hours represent in-class hours with an instructor.

E. The Board may establish continuing educational requirements as a condition of the renewal of massage therapy licenses.

1. For the first two (2) years after the effective date of this act, applicants for renewal shall submit proof of twelve (12) hours of continuing education that is considered category A according to the standards of the National Certification Board for Therapeutic Massage and Bodywork.

2. After the first two (2) years, applicants for renewal shall submit proof of twenty-four (24) hours of continuing education that is considered category A according to the standards of the National Certification Board for Therapeutic Massage and Bodywork.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3207 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A massage therapy license issued by the Board shall at all times be posted in a conspicuous place in the holder's principal place of business.

B. A license issued pursuant to the Massage Therapy Practice Act is not assignable or transferable.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3208 of Title 59, unless there is created a duplication in numbering, reads as follows:

The required examination referred to in this act is the National Certification Examination for Therapeutic Massage and Bodywork as offered by the National Certification Board for Therapeutic Massage and Bodywork or an examination of equivalent status.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3209 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Board may license an applicant, provided that the applicant possesses a valid license or registration to practice massage therapy issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia, or any foreign nation and has met educational and examination requirements equal to or exceeding those established pursuant to the Massage Therapy Practice Act.

B. 1. Massage therapy licenses shall expire biennially. Massage therapy school licenses shall expire annually. Expiration dates shall be established by rule by the Board. The Board may establish continuing educational requirements as a condition of the renewal of massage therapy licenses.

2. A license shall be renewed by submitting a renewal application on a form provided by the Board.

3. A sixty-day grace period shall be allowed each license holder after the end of the renewal period, during which time a license may be renewed upon payment of the renewal fee and a late fee as prescribed by the Board.

D. 1. A massage therapy license not renewed at the end of the sixty-day grace period shall be placed on inactive status for a period not to exceed two (2) years. At the end of two (2) years, if the license has not been reactivated, it shall automatically expire.

2. If within a period of two (2) years from the date the license was placed on inactive status the massage therapist wishes to resume practice, the Board shall be notified in writing, and, upon proof of completion of any continuing education or refresher courses prescribed by rule of the Board and payment of an amount set by the Board in lieu of all lapsed renewal fees, the license shall be restored in full.

E. The Board shall establish by rule a schedule of reasonable fees for applications, licenses, inspections, renewals, penalties, reactivation, and necessary administrative fees, but no single fee shall exceed One Hundred Dollars (\$100.00). All fees collected shall be deposited in the Massage Therapy Revolving Fund.

F. The Board shall promulgate rules establishing a schedule of reasonable fees for massage therapy school licenses and necessary administrative fees, based on a sliding scale reflecting the number of students within the school's program per year, which is to be approved by the Board. All fees collected shall be deposited in the Massage Therapy Revolving Fund.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3210 of Title 59, unless there is created a duplication in numbering, reads as follows:

A massage therapist or massage therapy school licensed pursuant to the Massage Therapy Practice Act shall include the number of the license and the designation as a "massage therapist" or "licensed massage therapy school" in any advertisement of massage therapy services as established by Board rule.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3211 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Massage Therapy Practice Act shall supersede all ordinances or regulations regulating massage therapists in any city, county, or political subdivision.

B. This section does not affect city, county, or a political subdivision's regulations relating to zoning requirements or occupational license fees pertaining to health care professions.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3212 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Massage Therapy may take disciplinary action against a person licensed pursuant to the Massage Therapy Practice Act as follows:

1. Deny or refuse to renew a license;
2. Suspend or revoke a license;
3. Issue an administrative reprimand; or
4. Impose probationary conditions,

when the licensee or applicant has engaged in unprofessional conduct that has endangered or is likely to endanger the health, welfare, or safety of the public.

B. The Board has authority to take an action upon a finding by the Board that the licensee, registrant, or applicant:

1. Is guilty of fraud, deceit or misrepresentation;
2. Attempted to use as the person's own the license of another;
3. Allowed the use of the person's license by another;
4. Has been adjudicated as mentally incompetent by regularly

constituted authorities;

5. Has been convicted of any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of conviction;

6. Is guilty of unprofessional conduct. Unprofessional conduct shall include the following:

- a. obtaining or attempting to obtain a license by fraud, misrepresentation, concealment of material facts, or making a false statement to the Board,
- b. being convicted of a felony in any court if the act or acts for which the licensee or applicant for license was convicted are determined by the Board to have a direct bearing on whether the person is trustworthy to serve the public as a licensed massage therapist.

"Conviction", as used in this paragraph, shall include

a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere in a court of law, or

c. having sexual contact with a client or having engaged or attempted to engage in lewd or immoral conduct with any client or patient;

7. Is habitually or excessively using controlled substances or alcohol;

8. Is guilty of false, deceptive, or misleading advertising;

9. Is guilty of aiding, assisting, or advertising any unlicensed or unregistered person in the practice of massage therapy;

10. Is grossly negligent or incompetent in the practice of massage therapy;

11. Has had a license or registration to practice massage therapy revoked, suspended, or denied in any jurisdiction, territory, or possession of the United States or another country for acts of the licensee or registrant similar to acts described in this section. A certified copy of the record of conviction shall be conclusive evidence of the conviction;

12. Is guilty of failing to comply with a provision of the Massage Therapy Practice Act or rules of the Board adopted pursuant to that act and filed in accordance with the Administrative Procedures Act; or

13. Is guilty of diagnosis, treatment, or the prescription of drugs or medicines for which a license to practice medicine, chiropractic, physical therapy or podiatry is required by law.

C. Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the Board, and shall conform with the provisions of the Administrative Procedures Act.

D. The Board may establish the guidelines for the disposition of disciplinary cases. Guidelines may include, but shall not be

limited to, minimum and maximum fines, periods of probation, conditions of probation, or reissuance of a license.

E. License holders who have been found culpable and sanctioned by the Board shall be responsible for the payments of all costs of the disciplinary proceedings.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3213 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. No member of the State Board of Massage Therapy shall bear liability or be subject to civil damages or criminal prosecution for any action undertaken or performed within the scope of their duty.

B. No person or legal entity providing truthful and accurate information to the Board, whether as a report, a complaint, or testimony, shall be subject to civil damages or criminal prosecutions.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3214 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A person who does any of the following is guilty of a misdemeanor:

1. Violates a provision of the Massage Therapy Practice Act or rules adopted pursuant to this act;

2. Renders or attempts to render massage therapy services or instruction as a massage therapy school without the required current valid license issued by the Board; or

3. Advertises or uses a designation, diploma, or certificate implying that the person is a massage therapist or massage therapy school unless the person holds a current valid license issued by the Board.

B. 1. Therapists regulated by this act are designated as "massage therapists" and entitled to utilize the term "massage" when advertising or printing promotional material.

2. Anyone not authorized to use a professional title regulated by this act, and who uses such professional title, shall be subject to discipline by the Board.

3. Anyone who knowingly aids and abets one or more persons not authorized to use a professional title regulated by this act or knowingly employs or contracts persons not authorized to use said regulated professional title in the course of the employment, shall also be subject to a disciplinary proceeding before the Board. It shall be a violation of this act for any person to advertise for licensed massage therapy services in any combination with escort or dating services.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3215 of Title 59, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the State Board of Massage Therapy to be designated the "Massage Therapy Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the State Board of Medical Licensure and Supervision from fees, appropriations, and donations. Sixty percent (60%) of monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the State Board of Massage Therapy for the purpose of administering the Massage Therapy Practice Act. Forty percent (40%) of monies accruing to the fund shall be contributed to the General Revenue Fund. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 17. This act shall become effective November 1, 2005.

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