

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1417

By: Hall

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5
6 AS INTRODUCED

7 An Act relating to professions and occupations;
8 creating the Massage Therapy Practice Act; providing
9 short title; defining terms; requiring certain
10 license; prohibiting certain actions; requiring
11 license for certain schools; authorizing Board of
12 Chiropractic Examiners to adopt certain rules;
13 providing for certain powers of the Board;
14 establishing requirements for licensure of certain
15 persons; authorizing Board to grant certain licenses
16 under certain circumstances; requiring posting of
17 certain license; stating certain license is not
18 assignable or transferable; providing for
19 reciprocity; providing for licensure by credentials;
20 providing for expiration of certain licenses;
21 establishing procedure for renewal of license;
22 providing for certain inactive status and procedures
23 for restoring status; providing for certain fees;
24 setting limits of certain fees; authorizing Board to
take certain disciplinary actions; providing for the
institution of certain disciplinary proceedings;
providing for certain guidelines for the disposition
of disciplinary cases; providing for responsibility
for certain costs; prohibiting certain liability,
civil damages or criminal prosecution; creating
criminal offenses and punishments; authorizing the
use of certain terms; making the use of certain
professional title subject to certain discipline;
stating violation of the act; providing for
codification; and declaring an emergency.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 5101 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

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

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 5102 of Title 59, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in the Massage Therapy Practice Act:

10 1. "Board" means the Board of Chiropractic Examiners;

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

14 3. "Massage therapist" means an individual who practices
15 massage or massage therapy and is licensed under the Massage Therapy
16 Practice Act. A massage therapist uses visual, kinesthetic and
17 palpatory skills to assess the body and may evaluate a condition to
18 the extent of determining whether massage is indicated or
19 contraindicated;

20 4. "Massage therapy" means the skillful treatment of the soft
21 tissues of the human body. Massage is designed to promote general
22 relaxation, improve movement, relieve somatic and muscular pain or
23 dysfunction, stress and muscle tension, and provide for general
24 health enhancement, personal growth, education, and the

1 organization, balance and integration of the human body, which
2 include, but are not limited to:

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

10 b. the external application of ice, heat, and cold packs
11 for thermal therapy, water, lubricants, abrasives and
12 external application of herbal or topical preparations
13 not classified as prescription drugs;

14 5. "Massage therapy school" means a facility providing
15 instruction in massage therapy; and

16 6. "OBPVS" means the Oklahoma Board of Private Vocational
17 Schools.

18 SECTION 3. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 5103 of Title 59, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Unless a person is a licensed massage therapist, a person
22 shall not:

23 1. Use the title of massage therapist;

24 2. Represent himself or herself to be a massage therapist;

1 3. Use any other title, words, abbreviations, letters, figures,
2 signs or devices that indicate the person is a massage therapist; or

3 4. Utilize the terms "massage", "massage therapy" or "massage
4 therapist" when advertising or printing promotional material.

5 B. A person shall not maintain, manage or operate a massage
6 therapy school offering education, instruction or training in
7 massage therapy unless the school is a licensed massage therapy
8 school.

9 C. Individuals practicing massage under this act shall not
10 perform any of the following:

11 1. Diagnosis of illness or disease;

12 2. High-velocity, low-amplitude thrust;

13 3. Electrical stimulation;

14 4. Application of ultrasound;

15 5. Use of any technique that interrupts or breaks the skin; or

16 6. Prescribing of medicines.

17 D. Nothing in the Massage Therapy Practice Act shall be
18 construed to prevent:

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

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

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

7 4. Any nonresident person holding a current license,
8 registration, or certification in massage therapy from another state
9 or recognized national certification system determined as acceptable
10 by the Board when temporarily present in this state from providing
11 massage therapy services as a part of an emergency response team
12 working in conjunction with disaster relief officials or at special
13 events such as conventions, sporting events, educational field
14 trips, conferences, traveling shows or exhibitions; or

15 5. Physicians or other health care professionals from
16 appropriately referring to duly licensed massage therapists.

17 E. Nothing in the Massage Therapy Practice Act shall be
18 construed to limit in any way the right of direct access of the
19 public to licensed massage therapists.

20 SECTION 4. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 5104 of Title 59, unless there
22 is created a duplication in numbering, reads as follows:

23 A. The Board of Chiropractic Examiners is hereby authorized to
24 adopt and promulgate rules pursuant to the Administrative Procedures

1 Act that it deems necessary for the implementation and enforcement
2 of the Massage Therapy Practice Act, including, but not limited to,
3 qualifications for licensure, renewals, reinstatements, continuing
4 education requirements and fees.

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

9 SECTION 5. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 5105 of Title 59, unless there
11 is created a duplication in numbering, reads as follows:

12 A. Effective January 1, 2014, the Board of Chiropractic
13 Examiners shall issue a license to practice massage therapy to any
14 person who files a completed application, accompanied by the
15 required fees, and who submits satisfactory evidence that the
16 applicant:

- 17 1. Has reached the age of majority;
- 18 2. Has passed an adopted examination before issuance of a
19 license to assist in determining the applicant's entry-level
20 competence under this section.

21 The Board may adopt rules to establish additional standards or
22 criteria for exam acceptance.

- 23 3. Currently maintains liability insurance for practice as a
24 massage therapist; and

1 4. Has not had any criminal proceeding taken against the
2 applicant including, but not limited to:

- 3 a. pleading guilty or nolo contendere to, or receiving a
4 conviction for, a felony,
- 5 b. pleading guilty or nolo contendere to, or receiving a
6 conviction for, a misdemeanor involving moral
7 turpitude, or
- 8 c. pleading guilty or nolo contendere to, or receiving a
9 conviction for, violation of federal or state
10 controlled dangerous substance laws.

11 B. 1. Unless otherwise exempt pursuant to the Massage Therapy
12 Practice Act, after November 1, 2013, any person wishing to practice
13 massage therapy in this state shall obtain a license to practice
14 pursuant to the provisions of the Massage Therapy Practice Act.

15 2. For eighteen (18) months after the effective date of this
16 act, and for only eighteen (18) months, the Board may grant a
17 license to an applicant who:

- 18 a. has completed the equivalent of five hundred (500)
19 hours of formal education in massage therapy from a
20 state-licensed school and proof stating that the
21 applicant has been a massage therapist in this state
22 for no less than one (1) year,

1 b. has proof that he or she has been a practicing massage
2 therapist for no less than three (3) years in this
3 state, or

4 c. has the equivalent of seven hundred fifty (750) hours
5 of formal education in massage therapy from a state-
6 licensed school.

7 SECTION 6. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 5106 of Title 59, unless there
9 is created a duplication in numbering, reads as follows:

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

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

15 SECTION 7. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 5107 of Title 59, unless there
17 is created a duplication in numbering, reads as follows:

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

1 B. 1. Massage therapy licenses shall expire biennially.
2 Expiration dates shall be established by rule by the Board.

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

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

9 C. 1. A massage therapy license not renewed at the end of the
10 thirty-day grace period shall be placed on inactive status for a
11 period not to exceed one (1) year. At the end of one (1) year, if
12 the license has not been reactivated, it shall automatically expire.

13 2. If within a period of one (1) year from the date the license
14 was placed on inactive status the massage therapist wishes to resume
15 practice, the Board shall be notified in writing, and, upon proof of
16 completion of all continuing education requirements and payment of
17 an amount set by the Board in lieu of all lapsed renewal fees, the
18 license shall be restored in full.

19 D. The Board shall establish a schedule of reasonable and
20 necessary administrative fees.

21 1. The Board shall fix the amount of fees so that the total
22 fees collected will be sufficient to meet the expenses of
23 administering the provisions of the Massage Therapy Practice Act and
24 so that there are no unnecessary surpluses.

1 2. The Board shall not fix a license fee at an amount in excess
2 of Three Hundred Dollars (\$300.00) and a renewal fee at an amount in
3 excess of Two Hundred Dollars (\$200.00) annually.

4 3. a. The fee for the issuance of a license to replace a
5 license which was lost, destroyed, or mutilated shall
6 be Twenty-five Dollars (\$25.00).

7 b. The fee shall accompany the application for a
8 replacement license.

9 E. The Board shall promulgate rules establishing a schedule of
10 reasonable fees for massage therapy school applications, licenses,
11 inspections, renewals, reactivations and necessary administrative
12 fees, based on a sliding scale reflecting the number of students
13 within the school's program per year, which is to be approved by the
14 Board.

15 SECTION 8. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 5108 of Title 59, unless there
17 is created a duplication in numbering, reads as follows:

18 A. The Board of Chiropractic Examiners may take disciplinary
19 action against a person licensed pursuant to the Massage Therapy
20 Practice Act as follows:

- 21 1. Deny or refuse to renew a license;
- 22 2. Suspend or revoke a license;
- 23 3. Issue an administrative reprimand; or

1 4. Impose probationary conditions when the licensee or
2 applicant has engaged in unprofessional conduct that has endangered
3 or is likely to endanger the health, welfare, or safety of the
4 public.

5 B. The Board has the authority to take an action upon a finding
6 by the Board that the licensee or applicant is guilty of
7 unprofessional conduct.

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

11 D. The Board shall establish the guidelines for the disposition
12 of disciplinary cases. Guidelines may include, but shall not be
13 limited to, minimum and maximum fines, periods of probation,
14 conditions of probation, or reissuance of a license.

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

18 F. The surrender of a license shall not deprive the Board of
19 jurisdiction to proceed with disciplinary action.

20 SECTION 9. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 5109 of Title 59, unless there
22 is created a duplication in numbering, reads as follows:
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1 A. No member of the Board of Chiropractic Examiners shall bear
2 liability or be subject to civil damages or criminal prosecution for
3 any action undertaken or performed within the scope of duty.

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

8 SECTION 10. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 5110 of Title 59, unless there
10 is created a duplication in numbering, reads as follows:

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

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

15 2. Renders or attempts to render massage therapy services or
16 massage therapy instruction without the required current valid
17 license issued by the Board of Chiropractic Examiners;

18 3. Advertises or uses a designation, diploma, or certificate
19 implying that the person offers massage therapy instruction or is a
20 massage therapy school unless the person holds a current valid
21 license issued by the Oklahoma Board of Private Vocational Schools;
22 or
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1 4. Advertises or uses a designation, diploma, or certificate
2 implying that the person is a massage therapist unless the person
3 holds a current valid license issued by the Board.

4 B. 1. Therapists regulated by the Massage Therapy Practice Act
5 are designated as "massage therapists" and entitled to utilize the
6 term "massage" when advertising or printing promotional material.

7 2. Anyone not authorized to use a professional title regulated
8 by the Massage Therapy Practice Act, and who uses such professional
9 title, shall be subject to discipline by the Board.

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

18 SECTION 11. It being immediately necessary for the preservation
19 of the public peace, health and safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

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