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SENATE BILL 200

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO MASSAGE THERAPY; AMENDING THE MASSAGE THERAPY PRACTICE ACT TO DELETE CERTAIN REFERENCES TO MASSAGE THERAPY INSTRUCTORS; ADDING A SCOPE OF PRACTICE PROVISION; EXPANDING CONTINUING EDUCATION PROVISIONS; MAKING TECHNICAL CHANGES TO THE MASSAGE THERAPY PRACTICE ACT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-12C-3 NMSA 1978 (being Laws 1991, Chapter 147, Section 3, as amended) is amended to read:

"61-12C-3. DEFINITIONS.--As used in the Massage Therapy Practice Act:

- A. "board" means the massage therapy board;
- B. "continuing education" means courses, seminars,

workshops and classes in areas related to the practice of
massage therapy, such as:

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- 1 (1) massage;
2 (2) bodywork;
3 (3) health care;
4 (4) psychology;
5 (5) anatomy and physiology;
6 (6) business;
7 (7) insurance;
8 (8) ethics;
9 (9) professional development;
10 (10) movement therapy;
11 (11) stress management;
12 (12) exempt modalities listed in Subsection C
13 of Section 61-12C-5.1 NMSA 1978;
14 (13) cardiopulmonary resuscitation or first
15 aid; and
16 (14) complementary alternative medicine
17 modalities determined by the board to be related to the
18 practice of massage therapy;
19 C. "continuing education provider" means:
20 (1) an individual who was an active New Mexico
21 registered independent massage therapy instructor on the
22 effective date of this 2019 act;
23 (2) a massage therapy school regulated by the
24 requisite regulatory agency where the massage therapy school is
25 located;

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1 (3) a national or international professional
2 association for massage therapists;

3 (4) an individual or an organization approved
4 by a national or international massage therapy continuing
5 education approval agency;

6 (5) a health care professional organization;
7 or

8 (6) accredited post-secondary educational
9 institutions;

10 [~~B.~~] D. "department" means the regulation and
11 licensing department;

12 [~~G.~~] E. "jurisprudence" means the statutes and
13 rules of the state pertaining to the practice of massage
14 therapy;

15 [~~D.~~] F. "massage therapist" means [~~a person~~] an
16 individual licensed to practice massage therapy pursuant to the
17 Massage Therapy Practice Act;

18 [~~E.~~] G. "massage therapy" means the treatment of
19 soft tissues for therapeutic purposes, primarily comfort and
20 relief of pain; it is a health care service that includes
21 gliding, kneading, percussion, compression, vibration,
22 friction, nerve strokes, stretching the tissue and exercising
23 the range of motion and may include the use of oils, salt
24 glows, hot or cold packs or hydrotherapy. Synonymous terms for
25 massage therapy include massage, therapeutic massage, body

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1 massage, myomassage, bodywork, body rub or any derivation of
2 those terms. "Massage therapy" does not include the diagnosis
3 or treatment of illness or disease or any service or procedure
4 for which a license to practice medicine, nursing,
5 chiropractic, physical therapy, occupational therapy,
6 acupuncture or podiatry is required by law; and

7 ~~[F.]~~ H. "massage therapy school" means a facility
8 providing an educational program in massage therapy that is
9 registered with the board."

10 SECTION 2. Section 61-12C-5 NMSA 1978 (being Laws 1991,
11 Chapter 147, Section 5, as amended) is amended to read:

12 "61-12C-5. LICENSE ~~[OR REGISTRATION]~~ REQUIRED.--

13 A. ~~[A person]~~ An individual shall not provide or
14 offer to provide massage therapy for compensation unless that
15 ~~[person]~~ individual is a massage therapist.

16 B. ~~[A person]~~ An individual shall not use the title
17 of or ~~[represent himself to be]~~ make any representation as
18 being a massage therapist or use any other title,
19 abbreviations, letters, figures, signs or devices that indicate
20 the ~~[person]~~ individual is a massage therapist unless ~~[he]~~ the
21 individual is a massage therapist.

22 ~~[G. A person shall not provide or offer to provide~~
23 ~~massage therapy training as a massage therapy instructor unless~~
24 ~~he is registered as a massage therapy instructor pursuant to~~
25 ~~Section 61-12C-9 NMSA 1978.~~

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1 ~~D. A person shall not maintain, manage or operate a~~
2 ~~massage therapy school offering education, instruction or~~
3 ~~training in massage therapy unless the school is a registered~~
4 ~~massage therapy school.]"~~

5 SECTION 3. Section 61-12C-5.1 NMSA 1978 (being Laws 2001,
6 Chapter 121, Section 1, as amended) is amended to read:

7 "61-12C-5.1. EXEMPTIONS.--Nothing in the Massage Therapy
8 Practice Act shall be construed to prevent:

9 A. qualified members of other recognized
10 professions that are licensed or regulated under New Mexico law
11 from rendering services within the scope of their licenses or
12 regulations; provided they do not represent themselves as
13 massage therapists;

14 B. students from rendering massage therapy services
15 within the course of study of [~~an approved~~] a registered
16 massage therapy school; and [~~under the supervision of a~~
17 ~~licensed massage therapy instructor~~;

18 ~~G. visiting massage therapy instructors from~~
19 ~~another state or territory of the United States, the District~~
20 ~~of Columbia or a foreign nation from teaching massage therapy;~~
21 ~~provided the instructor is duly licensed or registered, if~~
22 ~~required, and is qualified in the instructor's place of~~
23 ~~residence for the practice of massage therapy. The board shall~~
24 ~~establish by rule the duration of stay for a visiting massage~~
25 ~~therapy instructor; and~~

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1 D-] C. sobadores; Hispanic traditional healers;
2 Native American healers; reflexologists whose practices are
3 limited to hands, feet and ears; practitioners of polarity,
4 Trager approach, Feldenkrais method, craniosacral therapy,
5 Roling structural integration, reiki, ortho-bionomy or ch'i
6 gung; or practitioners of healing modalities not listed in this
7 subsection who do not manipulate the soft tissues for
8 therapeutic purposes from practicing those skills. An exempt
9 practitioner who applies for a license [~~or registration~~]
10 pursuant to the Massage Therapy Practice Act shall comply with
11 all licensure requirements of that act."

12 SECTION 4. Section 61-12C-8 NMSA 1978 (being Laws 1991,
13 Chapter 147, Section 8, as amended) is amended to read:

14 "61-12C-8. BOARD POWERS.--The board has the power to:

15 A. adopt and file, in accordance with the State
16 Rules Act, rules necessary to carry out the provisions of the
17 Massage Therapy Practice Act, in accordance with the provisions
18 of the Uniform Licensing Act;

19 B. provide for the evaluation of the qualifications
20 of applicants for licensure as a massage therapist or
21 registration as a massage therapy school under the Massage
22 Therapy Practice Act;

23 C. provide for the issuance of massage therapist
24 licenses [~~or registrations~~] to applicants who meet the
25 requirements of the Massage Therapy Practice Act;

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1 D. establish minimum curricula for massage therapy
2 schools and provide for the issuance and revocation of massage
3 therapy school registrations;

4 E. establish instructor qualifications for hands-on
5 massage therapy instruction within the minimum curricula;

6 ~~[D.]~~ F. provide for the inspection, when required,
7 of the business premises of any licensee or registrant during
8 regular business hours;

9 ~~[E.]~~ G. establish minimum training and educational
10 standards for licensure as a massage therapist; ~~[or~~
11 ~~registration as a massage therapy instructor;~~

12 ~~F.]~~ H. pursuant to the Uniform Licensing Act,
13 conduct hearings on charges against applicants or licensees ~~[or~~
14 ~~registrants]~~ and take actions described in Section 61-1-3 NMSA
15 1978;

16 ~~[G.]~~ I. bring an action for injunctive relief in
17 district court seeking to enjoin a person from violating the
18 provisions of the Massage Therapy Practice Act;

19 ~~[H.]~~ J. issue cease and desist orders to persons
20 violating the provisions of the Massage Therapy Practice Act or
21 any rule adopted by the board pursuant to that act;

22 ~~[I.]~~ K. adopt an annual budget;

23 ~~[J.]~~ L. adopt a code of professional conduct for
24 massage therapists;

25 ~~[K.]~~ M. provide for the investigation of complaints

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1 against licensees and registrants; and

2 [E.] N. publish at least annually combined or
3 separate lists of licensed massage therapists [~~registered~~
4 ~~massage therapy instructors~~] and registered massage therapy
5 schools."

6 SECTION 5. Section 61-12C-9 NMSA 1978 (being Laws 1991,
7 Chapter 147, Section 9, as amended) is amended to read:

8 "61-12C-9. REQUIREMENTS FOR LICENSURE OF MASSAGE
9 THERAPISTS [~~AND REGISTRATION OF MASSAGE THERAPY INSTRUCTORS~~].--

10 A. The board shall issue a license to practice
11 massage therapy to any [~~person~~] individual who files a
12 completed application, accompanied by the required fees, and
13 who submits satisfactory evidence that the applicant:

- 14 (1) has reached the age of majority;
- 15 (2) has completed all educational requirements
16 established by the board; and
- 17 (3) has completed at least six hundred fifty
18 hours [~~in length~~] of education that includes at least five
19 hundred hours of massage therapy instruction.

20 [~~B. The board shall register as a massage therapy~~
21 ~~instructor any applicant who:~~

- 22 [~~(1) is currently licensed as a massage~~
23 ~~therapist; and~~
- 24 [~~(2) has completed the educational and~~
25 ~~experience requirements established by the board, which~~

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1 ~~requirements shall meet minimum standards of training and~~
2 ~~curriculum for massage therapy instructors established by the~~
3 ~~board.~~

4 G.] B. An initial license [~~or registration~~] issued
5 pursuant to this section may be for a period of up to two years
6 pursuant to board rule."

7 SECTION 6. Section 61-12C-13 NMSA 1978 (being Laws 1991,
8 Chapter 147, Section 13, as amended) is amended to read:

9 "61-12C-13. EXAMINATIONS.--

10 A. The board shall establish by rule the required
11 examinations for licensure as a massage therapist and the
12 procedures for taking and retaking them. The board shall
13 determine the passing grade on examinations.

14 B. The board shall specify by rule the general
15 areas of competency to be covered by examinations for licensure
16 and ensure that the examinations measure adequately both an
17 applicant's competency and knowledge of related statutory
18 requirements. Professional testing services may be utilized
19 for the examinations."

20 SECTION 7. Section 61-12C-17 NMSA 1978 (being Laws 1991,
21 Chapter 147, Section 17, as amended) is amended to read:

22 "61-12C-17. LICENSE [~~OR REGISTRATION~~] RENEWAL--CONTINUING
23 EDUCATION.--

24 A. Except as provided for initial licensure in
25 Subsection B of Section 61-12C-9 NMSA 1978, massage therapy

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1 licenses [~~and massage therapy instructor registrations~~] shall
2 expire biennially. [~~Massage therapy school registrations shall~~
3 ~~expire annually.~~] Expiration dates shall be established by
4 rule.

5 B. The board may establish continuing [~~educational~~]
6 education requirements as a condition of the renewal of massage
7 therapy licenses [~~and massage therapy instructor~~
8 ~~registrations~~].

9 C. All courses offered by continuing education
10 providers shall be acceptable to meet continuing education
11 requirements regardless of the location where the course is
12 offered.

13 D. A continuing education provider who is an
14 individual who was an active New Mexico registered independent
15 massage therapy instructor on the effective date of this 2019
16 act shall submit to the board a syllabus and one-time fee for
17 any course not previously approved by the board.

18 E. Within thirty days of application, the board may
19 approve or deny the application of an individual who is not a
20 continuing education provider to offer a particular continuing
21 education course; provided that the individual submits:

22 (1) a copy of any relevant license;

23 (2) proof of a minimum of two years'

24 experience in the area of instruction;

25 (3) a course syllabus for the proposed course;

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- 1 (4) a resume; and
- 2 (5) a one-time fee to be determined by the
- 3 board by rule.

4 [~~G.~~] F. A license [~~or registration~~] shall be

5 renewed by submitting a renewal application on a form provided

6 by the board.

7 [~~D.~~] G. A sixty-day grace period shall be allowed

8 each [~~license or registration holder~~] licensee after the end of

9 the renewal period, during which time a license [~~or~~

10 ~~registration~~] may be renewed upon payment of the renewal fee

11 and a late fee as prescribed by the board."

12 SECTION 8. Section 61-12C-18 NMSA 1978 (being Laws 1991,

13 Chapter 147, Section 18, as amended) is amended to read:

14 "61-12C-18. INACTIVE STATUS.--

15 A. A massage therapy license [~~or massage therapy~~

16 ~~instructor registration~~] not renewed at the end of the sixty-

17 day grace period shall be placed on inactive status for a

18 period not to exceed two years. At the end of two years, if

19 the license [~~or registration~~] has not been reactivated, it

20 shall automatically expire.

21 B. If within a period of two years from the date

22 the license [~~or registration~~] was placed on inactive status the

23 [~~massage therapist or massage therapy instructor~~] licensee

24 wishes to resume practice, the [~~board shall be notified~~]

25 licensee shall notify the board in writing, and, upon proof of

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1 completion of any continuing education or refresher courses
2 prescribed by rule of the board and payment of an amount set by
3 the board in lieu of all lapsed renewal fees, the license [~~or~~
4 ~~registration~~] shall be restored in full."

5 SECTION 9. Section 61-12C-21 NMSA 1978 (being Laws 1991,
6 Chapter 147, Section 21, as amended) is amended to read:

7 "61-12C-21. ADVERTISING.--A massage therapist [~~massage~~
8 ~~therapist instructor~~] or massage therapy school [~~licensed or~~
9 ~~registered pursuant to the Massage Therapy Practice Act~~] shall
10 include the number of the license or registration and the
11 designation as a "licensed massage therapist" [~~"registered~~
12 ~~massage therapy instructor"~~] or "registered massage therapy
13 school" in any advertisement of massage therapy services as
14 established by board rule."

15 SECTION 10. Section 61-12C-24 NMSA 1978 (being Laws 1991,
16 Chapter 147, Section 24, as amended) is amended to read:

17 "61-12C-24. [~~DENIAL~~] SUSPENSION, REVOCATION AND
18 REINSTATEMENT OF LICENSES.--

19 A. Pursuant to the Uniform Licensing Act, the board
20 may take disciplinary action against [~~a person~~] an individual
21 licensed [~~or registered~~] pursuant to the Massage Therapy
22 Practice Act.

23 B. The board has authority to take an action set
24 forth in Section 61-1-3 NMSA 1978 upon a finding by the board
25 that the licensee [~~registrant or applicant~~]:

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1 (1) is guilty of fraud, deceit or
2 misrepresentation;

3 (2) attempted to use as [~~his~~] the licensee's
4 own the license [~~or registration~~] of another;

5 (3) allowed the use of [~~his~~] the licensee's
6 license [~~or registration~~] by another;

7 (4) has been adjudicated as mentally
8 incompetent by regularly constituted authorities;

9 (5) has been convicted of [~~any offense~~
10 ~~punishable by incarceration in a state penitentiary or federal~~
11 ~~prison~~] a crime that substantially relates to the
12 qualifications, functions or duties of a massage therapist. A
13 copy of the record of conviction, certified by the clerk of the
14 court entering the conviction, is conclusive evidence of
15 conviction;

16 (6) is guilty of unprofessional or unethical
17 conduct or a violation of the code of ethics;

18 (7) is habitually or excessively using
19 controlled substances or alcohol;

20 (8) is guilty of false, deceptive or
21 misleading advertising;

22 (9) is guilty of aiding, assisting or
23 advertising [~~any~~] an unlicensed [~~or unregistered~~
24 ~~person~~] individual in the practice of massage therapy;

25 (10) is grossly negligent or incompetent in

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1 the practice of massage therapy;

2 (11) has had a license [~~or registration~~] to
3 practice massage therapy revoked, suspended or denied in any
4 jurisdiction, territory or possession of the United States or
5 another country for acts of the licensee [~~or registrant~~]
6 similar to acts described in this section. A certified copy of
7 the record of conviction shall be conclusive evidence of the
8 conviction; or

9 (12) is guilty of failing to comply with a
10 provision of the Massage Therapy Practice Act or rules of the
11 board adopted pursuant to that act and filed in accordance with
12 the State Rules Act.

13 C. Disciplinary proceedings may be instituted by
14 sworn complaint of any [~~person~~] individual, including members
15 of the board, and shall conform with the provisions of the
16 Uniform Licensing Act.

17 D. The board [~~may~~] shall establish the guidelines
18 for the disposition of disciplinary cases. Guidelines may
19 include [~~but shall not be limited to~~] minimum and maximum
20 fines, periods of probation, conditions of probation or
21 reissuance of a license [~~or registration~~].

22 E. [~~License and registration holders~~] Licensees who
23 have been found culpable and sanctioned by the board shall be
24 responsible for the payments of all costs of the disciplinary
25 proceedings."

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1 SECTION 11. Section 61-12C-27 NMSA 1978 (being Laws 1993,
2 Chapter 173, Section 20, as amended) is amended to read:

3 "61-12C-27. OFFENSES--CRIMINAL PENALTIES.--~~[A person]~~ An
4 individual who does any of the following is guilty of a
5 misdemeanor and shall be sentenced pursuant to Section 31-19-1
6 NMSA 1978:

7 A. violates a provision of the Massage Therapy
8 Practice Act or rules adopted pursuant to that act;

9 B. renders or attempts to render massage therapy
10 services [~~instruction as a massage therapy instructor or~~
11 ~~instruction as a massage therapy school~~] without the required
12 current valid license [~~or registration~~] issued by the board; or

13 C. advertises or uses a designation, diploma or
14 certificate implying that [~~he~~] the individual is a massage
15 therapist [~~massage therapy instructor~~] or massage therapy
16 school unless [~~he~~] the individual holds a current valid license
17 or registration issued by the board."

18 SECTION 12. A new section of the Massage Therapy Practice
19 Act is enacted to read:

20 "[NEW MATERIAL] MASSAGE THERAPY SCHOOL REGISTRATION,
21 RENEWAL, SUSPENSION AND REVOCATION.--

22 A. A person shall not maintain, manage or operate a
23 massage therapy school offering education, instruction or
24 training in massage therapy unless the school is a registered
25 massage therapy school.

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1 B. Massage therapy school registrations shall
2 expire annually. Expiration dates shall be established by rule
3 of the board.

4 C. A registration shall be renewed by submitting a
5 renewal application on a form provided by the board.

6 D. A sixty-day grace period shall be allowed each
7 registrant after the end of the renewal period, during which
8 time a registration may be renewed upon payment of the renewal
9 fee and a late fee as prescribed by the board.

10 E. Proceedings to determine whether to suspend or
11 revoke the registration of a massage therapy school may be
12 instituted by sworn complaint of any individual, including
13 members of the board, and shall conform with the provisions of
14 the Uniform Licensing Act."

15 **SECTION 13.** A new section of the Massage Therapy Practice
16 Act is enacted to read:

17 "[NEW MATERIAL] DENIAL OF LICENSE.--

18 A. Pursuant to the Uniform Licensing Act, the board
19 may deny the issuance of a massage therapist license to an
20 applicant.

21 B. The board has authority to take an action set
22 forth in Section 61-1-3 NMSA 1978 upon a finding by the board
23 that the applicant:

24 (1) is guilty of fraud, deceit or
25 misrepresentation;

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1 (2) attempted to use as the applicant's own
2 the license of another;

3 (3) allowed the use by another of the
4 applicant's license issued in another jurisdiction;

5 (4) has been adjudicated as mentally
6 incompetent by regularly constituted authorities;

7 (5) has been convicted of a crime that
8 substantially relates to the qualifications, functions or
9 duties of a massage therapist. A copy of the record of
10 conviction, certified by the clerk of the court entering the
11 conviction, is conclusive evidence of conviction;

12 (6) is guilty of unprofessional or unethical
13 conduct or a violation of the code of ethics;

14 (7) is habitually or excessively using
15 controlled substances or alcohol;

16 (8) is guilty of false, deceptive or
17 misleading advertising;

18 (9) is guilty of aiding, assisting or
19 advertising the practice of massage therapy in New Mexico
20 without a New Mexico license;

21 (10) is grossly negligent or incompetent in
22 the practice of massage therapy;

23 (11) has had a license to practice massage
24 therapy revoked, suspended or denied in any jurisdiction,
25 territory or possession of the United States or another country

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1 for acts of the applicant similar to acts described in this
2 section. A certified copy of the record of conviction shall be
3 conclusive evidence of the conviction; or

4 (12) is guilty of failing to comply with a
5 provision of the Massage Therapy Practice Act or rules of the
6 board adopted pursuant to that act and filed in accordance with
7 the State Rules Act."

8 SECTION 14. A new section of the Massage Therapy Practice
9 Act is enacted to read:

10 "[NEW MATERIAL] SCOPE OF PRACTICE.--The practice of
11 massage therapy consists of the assessment of the soft tissue
12 structures of the body; the treatment and prevention of
13 physical dysfunction and pain of soft tissue; and joint
14 movement within normal physiologic range of motion to relieve
15 pain or to develop, maintain, rehabilitate or augment physical
16 function."

17 SECTION 15. EMERGENCY.--It is necessary for the public
18 peace, health and safety that this act take effect immediately.