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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:

- (1) massage;
- (2) bodywork;
- (3) health care;
- (4) psychology;
- (5) anatomy and physiology;
- (6) business;
- (7) insurance;
- (8) ethics;
- (9) professional development;

- 1 (10) movement therapy;
- 2 (11) stress management;
- 3 (12) exempt modalities listed in Subsection
4 C of Section 61-12C-5.1 NMSA 1978;
- 5 (13) cardiopulmonary resuscitation or first
6 aid; and
- 7 (14) complementary alternative medicine
8 modalities determined by the board to be related to the
9 practice of massage therapy;

10 C. "continuing education provider" means:

- 11 (1) an individual who was an active
12 New Mexico registered independent massage therapy instructor
13 on the effective date of this 2019 act;
- 14 (2) a massage therapy school regulated by
15 the requisite regulatory agency where the massage therapy
16 school is located;
- 17 (3) a national or international professional
18 association for massage therapists;
- 19 (4) an individual or an organization
20 approved by a national or international massage therapy
21 continuing education approval agency;
- 22 (5) a health care professional organization;
- 23 or
- 24 (6) accredited post-secondary educational
25 institutions;

1 D. "department" means the regulation and licensing
2 department;

3 E. "jurisprudence" means the statutes and rules of
4 the state pertaining to the practice of massage therapy;

5 F. "massage therapist" means an individual
6 licensed to practice massage therapy pursuant to the Massage
7 Therapy Practice Act;

8 G. "massage therapy" means the treatment of soft
9 tissues for therapeutic purposes, primarily comfort and
10 relief of pain; it is a health care service that includes
11 gliding, kneading, percussive, compression, vibration,
12 friction, nerve strokes, stretching the tissue and exercising
13 the range of motion and may include the use of oils, salt
14 glows, hot or cold packs or hydrotherapy. Synonymous terms
15 for massage therapy include massage, therapeutic massage,
16 body massage, myomassage, bodywork, body rub or any
17 derivation of those terms. "Massage therapy" does not
18 include the diagnosis or treatment of illness or disease or
19 any service or procedure for which a license to practice
20 medicine, nursing, chiropractic, physical therapy,
21 occupational therapy, acupuncture or podiatry is required by
22 law; and

23 H. "massage therapy school" means a facility
24 providing an educational program in massage therapy that is
25 registered with the board."

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

3 "61-12C-5. LICENSE REQUIRED.--

4 A. An individual shall not provide or offer to
5 provide massage therapy for compensation unless that
6 individual is a massage therapist.

7 B. An individual shall not use the title of or
8 make any representation as being a massage therapist or use
9 any other title, abbreviations, letters, figures, signs or
10 devices that indicate the individual is a massage therapist
11 unless the individual is a massage therapist."

12 SECTION 3. Section 61-12C-5.1 NMSA 1978 (being Laws
13 2001, Chapter 121, Section 1, as amended) is amended to read:

14 "61-12C-5.1. EXEMPTIONS.--Nothing in the Massage
15 Therapy Practice Act shall be construed to prevent:

16 A. qualified members of other recognized
17 professions that are licensed or regulated under New Mexico
18 law from rendering services within the scope of their
19 licenses or regulations; provided they do not represent
20 themselves as massage therapists;

21 B. students from rendering massage therapy
22 services within the course of study of a registered massage
23 therapy school; and

24 C. sobadores; Hispanic traditional healers; Native
25 American healers; reflexologists whose practices are limited

1 to hands, feet and ears; practitioners of polarity, Trager
2 approach, Feldenkrais method, craniosacral therapy, Rolfing
3 structural integration, reiki, ortho-bionomy or ch'i gung; or
4 practitioners of healing modalities not listed in this
5 subsection who do not manipulate the soft tissues for
6 therapeutic purposes from practicing those skills. An exempt
7 practitioner who applies for a license pursuant to the
8 Massage Therapy Practice Act shall comply with all licensure
9 requirements of that act."

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

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

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

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

21 C. provide for the issuance of massage therapist
22 licenses to applicants who meet the requirements of the
23 Massage Therapy Practice Act;

24 D. establish minimum curricula for massage therapy
25 schools and provide for the issuance and revocation of

1 massage therapy school registrations;

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

4 F. provide for the inspection, when required, of
5 the business premises of any licensee or registrant during
6 regular business hours;

7 G. establish minimum training and educational
8 standards for licensure as a massage therapist;

9 H. pursuant to the Uniform Licensing Act, conduct
10 hearings on charges against applicants or licensees and take
11 actions described in Section 61-1-3 NMSA 1978;

12 I. bring an action for injunctive relief in
13 district court seeking to enjoin a person from violating the
14 provisions of the Massage Therapy Practice Act;

15 J. issue cease and desist orders to persons
16 violating the provisions of the Massage Therapy Practice Act
17 or any rule adopted by the board pursuant to that act;

18 K. adopt an annual budget;

19 L. adopt a code of professional conduct for
20 massage therapists;

21 M. provide for the investigation of complaints
22 against licensees and registrants; and

23 N. publish at least annually combined or separate
24 lists of licensed massage therapists and registered massage
25 therapy schools."

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

3 "61-12C-9. REQUIREMENTS FOR LICENSURE OF MASSAGE
4 THERAPISTS.--

5 A. The board shall issue a license to practice
6 massage therapy to any individual who files a completed
7 application, accompanied by the required fees, and who
8 submits satisfactory evidence that the applicant:

9 (1) has reached the age of majority;

10 (2) has completed all educational
11 requirements established by the board; and

12 (3) has completed at least six hundred fifty
13 hours of education that includes at least five hundred hours
14 of massage therapy instruction.

15 B. An initial license issued pursuant to this
16 section may be for a period of up to two years pursuant to
17 board rule."

18 SECTION 6. Section 61-12C-13 NMSA 1978 (being Laws
19 1991, Chapter 147, Section 13, as amended) is amended to
20 read:

21 "61-12C-13. EXAMINATIONS.--

22 A. The board shall establish by rule the required
23 examinations for licensure as a massage therapist and the
24 procedures for taking and retaking them. The board shall
25 determine the passing grade on examinations.

1 B. The board shall specify by rule the general
2 areas of competency to be covered by examinations for
3 licensure and ensure that the examinations measure adequately
4 both an applicant's competency and knowledge of related
5 statutory requirements. Professional testing services may be
6 utilized for the examinations."

7 SECTION 7. Section 61-12C-17 NMSA 1978 (being Laws
8 1991, Chapter 147, Section 17, as amended) is amended to
9 read:

10 "61-12C-17. LICENSE RENEWAL--CONTINUING EDUCATION.--

11 A. Except as provided for initial licensure in
12 Subsection B of Section 61-12C-9 NMSA 1978, massage therapy
13 licenses shall expire biennially. Expiration dates shall be
14 established by rule.

15 B. The board may establish continuing education
16 requirements as a condition of the renewal of massage therapy
17 licenses.

18 C. All courses offered by continuing education
19 providers shall be acceptable to meet continuing education
20 requirements regardless of the location where the course is
21 offered.

22 D. A continuing education provider who is an
23 individual who was an active New Mexico registered
24 independent massage therapy instructor on the effective date
25 of this 2019 act shall submit to the board a syllabus and

1 one-time fee for any course not previously approved by the
2 board.

3 E. Within thirty days of application, the board
4 may approve or deny the application of an individual who is
5 not a continuing education provider to offer a particular
6 continuing education course; provided that the individual
7 submits:

- 8 (1) a copy of any relevant license;
- 9 (2) proof of a minimum of two years'
10 experience in the area of instruction;
- 11 (3) a course syllabus for the proposed
12 course;
- 13 (4) a resume; and
- 14 (5) a one-time fee to be determined by the
15 board by rule.

16 F. A license shall be renewed by submitting a
17 renewal application on a form provided by the board.

18 G. A sixty-day grace period shall be allowed each
19 licensee after the end of the renewal period, during which
20 time a license may be renewed upon payment of the renewal fee
21 and a late fee as prescribed by the board."

22 SECTION 8. Section 61-12C-18 NMSA 1978 (being Laws
23 1991, Chapter 147, Section 18, as amended) is amended to
24 read:

25 "61-12C-18. INACTIVE STATUS.--

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

6 B. If within a period of two years from the date
7 the license was placed on inactive status the licensee wishes
8 to resume practice, the licensee shall notify the board in
9 writing, and, upon proof of completion of any continuing
10 education or refresher courses prescribed by rule of the
11 board and payment of an amount set by the board in lieu of
12 all lapsed renewal fees, the license shall be restored in
13 full."

14 SECTION 9. Section 61-12C-21 NMSA 1978 (being Laws
15 1991, Chapter 147, Section 21, as amended) is amended to
16 read:

17 "61-12C-21. ADVERTISING.--A massage therapist or
18 massage therapy school shall include the number of the
19 license or registration and the designation as a "licensed
20 massage therapist" or "registered massage therapy school" in
21 any advertisement of massage therapy services as established
22 by board rule."

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

1 "61-12C-24. SUSPENSION, REVOCATION AND REINSTATEMENT OF
2 LICENSES.--

3 A. Pursuant to the Uniform Licensing Act, the
4 board may take disciplinary action against an individual
5 licensed pursuant to the Massage Therapy Practice Act.

6 B. The board has authority to take an action set
7 forth in Section 61-1-3 NMSA 1978 upon a finding by the board
8 that the licensee:

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

11 (2) attempted to use as the licensee's own
12 the license of another;

13 (3) allowed the use of the licensee's
14 license by another;

15 (4) has been adjudicated as mentally
16 incompetent by regularly constituted authorities;

17 (5) has been convicted of a crime that
18 substantially relates to the qualifications, functions or
19 duties of a massage therapist. A copy of the record of
20 conviction, certified by the clerk of the court entering the
21 conviction, is conclusive evidence of conviction;

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

24 (7) is habitually or excessively using
25 controlled substances or alcohol;

1 (8) is guilty of false, deceptive or
2 misleading advertising;

3 (9) is guilty of aiding, assisting or
4 advertising an unlicensed individual in the practice of
5 massage therapy;

6 (10) is grossly negligent or incompetent in
7 the practice of massage therapy;

8 (11) has had a license to practice massage
9 therapy revoked, suspended or denied in any jurisdiction,
10 territory or possession of the United States or another
11 country for acts of the licensee similar to acts described in
12 this section. A certified copy of the record of conviction
13 shall be conclusive evidence of the conviction; or

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

18 C. Disciplinary proceedings may be instituted by
19 sworn complaint of any individual, including members of the
20 board, and shall conform with the provisions of the Uniform
21 Licensing Act.

22 D. The board shall establish the guidelines for
23 the disposition of disciplinary cases. Guidelines may
24 include minimum and maximum fines, periods of probation,
25 conditions of probation or reissuance of a license.

1 E. Licensees who have been found culpable and
2 sanctioned by the board shall be responsible for the payments
3 of all costs of the disciplinary proceedings."

4 SECTION 11. Section 61-12C-27 NMSA 1978 (being Laws
5 1993, Chapter 173, Section 20, as amended) is amended to
6 read:

7 "61-12C-27. OFFENSES--CRIMINAL PENALTIES.--An
8 individual who does any of the following is guilty of a
9 misdemeanor and shall be sentenced pursuant to Section 31-19-
10 1 NMSA 1978:

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

13 B. renders or attempts to render massage therapy
14 services without the required current valid license issued by
15 the board; or

16 C. advertises or uses a designation, diploma or
17 certificate implying that the individual is a massage
18 therapist or massage therapy school unless the individual
19 holds a current valid license or registration issued by the
20 board."

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

23 "MESSAGE THERAPY SCHOOL REGISTRATION, RENEWAL,
24 SUSPENSION AND REVOCATION.--

25 A. A person shall not maintain, manage or operate

1 a massage therapy school offering education, instruction or
2 training in massage therapy unless the school is a registered
3 massage therapy school.

4 B. Massage therapy school registrations shall
5 expire annually. Expiration dates shall be established by
6 rule of the board.

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

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

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

18 SECTION 13. A new section of the Massage Therapy
19 Practice Act is enacted to read:

20 "DENIAL OF LICENSE.--

21 A. Pursuant to the Uniform Licensing Act, the
22 board may deny the issuance of a massage therapist license to
23 an applicant.

24 B. The board has authority to take an action set
25 forth in Section 61-1-3 NMSA 1978 upon a finding by the board

1 that the applicant:

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

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

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

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

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

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

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

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

21 (9) is guilty of aiding, assisting or
22 advertising the practice of massage therapy in New Mexico
23 without a New Mexico license;

24 (10) is grossly negligent or incompetent in
25 the practice of massage therapy;

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

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

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

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

20 SECTION 15. EMERGENCY.--It is necessary for the public
21 peace, health and safety that this act take effect
22 immediately. _____