

AN ACT

RELATING TO LICENSING; AMENDING AND REPEALING SECTIONS OF THE  
MASSAGE THERAPY PRACTICE ACT.

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

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

"61-12C-1. SHORT TITLE.--Chapter 61, Article 12C NMSA  
1978 may be cited as the "Massage Therapy Practice Act"."

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

"61-12C-2. LEGISLATIVE PURPOSE.--In the interest of  
public health, safety and welfare and to protect the public  
from unlawful, improper and incompetent practice of massage  
therapy, it is necessary to regulate that practice."

Section 3. 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. "department" means the regulation and  
licensing department;
- C. "jurisprudence" means the statutes and rules  
of the state pertaining to the practice of massage therapy;
- D. "massage therapist" means a person licensed to

practice massage therapy pursuant to the Massage Therapy Practice Act;

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

F. "massage therapy school" means a facility providing an educational program in massage therapy that is registered with the board."

Section 4. Section 61-12C-5 NMSA 1978 (being Laws 1991, Chapter 147, Section 5, as amended) is amended to read:

"61-12C-5. LICENSE OR REGISTRATION REQUIRED.--

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

massage therapist.

B. A person shall not use the title of or represent himself 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 he is a massage therapist.

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

D. 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 registered massage therapy school."

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

"61-12C-6. EXEMPTIONS.--Nothing in the Massage Therapy Practice Act shall be construed to prevent:

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

B. students from rendering massage therapy services within the course of study of an approved massage

therapy school and under the supervision of a licensed massage therapy instructor;

C. 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 his place of residence for the practice of massage therapy. The board shall establish by rule the duration of stay for a visiting massage therapy instructor; and

D. sobadores, Hispanic traditional healers, Native American healers, reflexology, which is limited to hands, feet and ears or other healers who do not manipulate the soft tissues for therapeutic purposes from practicing those skills. Healers who use these practices but apply for a license or registration pursuant to the Massage Therapy Practice Act shall comply with all licensure requirements of that act.

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

"61-12C-7. BOARD CREATED--MEMBERSHIP.--

A. The "massage therapy board" is created. The board is administratively attached to the department.

B. The board consists of five members who are New Mexico residents. Members of the board shall be appointed by

the governor to terms of four years. The terms shall be staggered, and the governor shall make appointments of two two-year terms, two three-year terms and one four-year term, if necessary to produce staggered terms. Three members of the board shall be massage therapists, each with at least five years of massage therapy practice and who are actively engaged in the practice of massage therapy during their tenure as members. Two members of the board shall be public members who have not been licensed and have 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 Meetings 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 be reimbursed as

provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

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

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

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

B. provide for the evaluation of the qualifications of applicants for licensure or registration under the Massage Therapy Practice Act;

C. provide for the issuance of licenses or registrations to applicants who meet the requirements of the Massage Therapy Practice Act;

D. provide for the inspection, when required, of the business premises of any licensee or registrant during regular business hours;

E. establish minimum training and educational standards for licensure as a massage therapist or registration as a massage therapy instructor;

F. pursuant to the Uniform Licensing Act, conduct hearings on charges against applicants, licensees or registrants and take actions described in Section 61-1-3 NMSA

1978;

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

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

I. adopt an annual budget;

J. adopt a code of professional conduct;

K. provide for the investigation of complaints against licensees; and

L. publish at least annually combined or separate lists of licensed massage therapists, registered massage therapy instructors and registered massage therapy schools."

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

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

A. The board 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 completed all educational

requirements established by the board; and

(3) has completed at least six hundred fifty hours in length that includes at least five hundred hours of massage therapy instruction.

B. The board shall register as a massage therapy instructor any applicant who:

(1) is currently licensed as a massage therapist; and

(2) has completed the educational and experience requirements established by the board, which requirements shall meet minimum standards of training and curriculum for massage therapy instructors established by the board.

C. An initial license or registration issued pursuant to this section may be for a period of up to two years pursuant to board rule."

Section 9. Section 61-12C-10 NMSA 1978 (being Laws 1991, Chapter 147, Section 10, as amended) is amended to read:

"61-12C-10. REQUIREMENTS FOR REGISTRATION OF MASSAGE THERAPY SCHOOLS.--

A. The board shall establish by rule procedures for the registration of massage therapy schools and shall register massage therapy schools that meet the requirements of the Massage Therapy Practice Act and rules adopted by the board pursuant to that act.



B. The board shall establish minimum standards of training and curriculum for massage therapy schools. Massage therapy schools shall provide an educational program that includes a minimum of six hundred fifty hours of training and shall include instruction in:

- (1) anatomy;
- (2) physiology;
- (3) massage therapy;
- (4) business;
- (5) hydrotherapy;
- (6) first aid;
- (7) cardiopulmonary resuscitation; and
- (8) professional ethics."

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

"61-12C-11. DISPLAY OF LICENSE OR REGISTRATION.--A massage therapy license or registration issued by the board shall at all times be posted in a conspicuous place in the holder's principal place of business."

Section 11. Section 61-12C-13 NMSA 1978 (being Laws 1991, Chapter 147, Section 13, as amended) is amended to read:

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

A. The board shall establish by rule the required

examinations and the procedures for taking and retaking them. The board shall determine the passing grade on examinations.

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

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

"61-12C-14. TEMPORARY LICENSE.--

A. Prior to examination, an applicant for licensure may obtain a temporary license to engage in the practice of massage therapy if the applicant meets all the requirements for licensure except completion of the examination.

B. The temporary license is valid until the results of the next scheduled examination are available and a license is issued or denied.

C. No more than one temporary license may be issued to an individual, and no temporary license shall be issued to an applicant who has previously failed the examinations."

Section 13. Section 61-12C-16 NMSA 1978 (being Laws

1991, Chapter 147, Section 16, as amended) is amended to read:

"61-12C-16. LICENSURE BY CREDENTIALS.--After successful completion of a jurisprudence examination, the board may license an applicant, provided that he 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."

Section 14. Section 61-12C-17 NMSA 1978 (being Laws 1991, Chapter 147, Section 17, as amended) is amended to read:

"61-12C-17. LICENSE OR REGISTRATION RENEWAL--  
CONTINUING EDUCATION.--

A. Massage therapy licenses and massage therapy instructor registrations shall expire biennially. Massage therapy school registrations shall expire annually. Expiration dates shall be established by rule.

B. The board may establish continuing educational requirements as a condition of the renewal of massage therapy licenses and massage therapy instructor registrations.

C. A license or registration shall be renewed by

submitting a renewal application on a form provided by the board.

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

Section 15. Section 61-12C-18 NMSA 1978 (being Laws 1991, Chapter 147, Section 18) is amended to read:

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

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

B. If within a period of two years from the date the license or registration was placed on inactive status the massage therapist or massage therapy instructor 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 or registration shall be restored in full."

Section 16. Section 61-12C-20 NMSA 1978 (being Laws

1991, Chapter 147, Section 20, as amended) is amended to read:

"61-12C-20. LICENSE FEES.--The board shall establish by rule a schedule of reasonable fees for applications, examinations, licenses, registrations, inspections, renewals, penalties, reactivation and necessary administrative fees, but no single fee shall exceed five hundred dollars (\$500). All fees collected shall be deposited in the massage therapy fund."

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

"61-12C-21. ADVERTISING.--A massage therapist, massage therapist instructor or massage therapy school licensed or registered pursuant to the Massage Therapy Practice Act shall include the number of the license or registration, and the designation as a "massage therapist", "registered massage therapy instructor" or "registered massage therapy school" in any advertisement of massage therapy services as established by board rule."

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

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

A. Pursuant to the Uniform Licensing Act, the board may take disciplinary action against a person licensed or registered pursuant to the Massage Therapy Practice Act.

B. The board has authority to take an action set forth in Section 61-1-3 NMSA 1978 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 his own the license or registration of another;

(3) allowed the use of his license or registration 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 or unethical conduct or a violation of the code of ethics;

(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; or

(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 State Rules Act.

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 Uniform Licensing 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 or registration.

E. License and registration 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 19. Section 61-12C-27 NMSA 1978 (being Laws 1993, Chapter 173, Section 20) is amended to read:

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

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

B. renders or attempts to render massage therapy services, instruction as a massage therapy instructor or instruction as a massage therapy school without the required current valid license or registration issued by the board; or

C. advertises or uses a designation, diploma or certificate implying that he is a massage therapist, massage therapy instructor or massage therapy school unless he holds a current valid license or registration issued by the board."

Section 20. REPEAL.--Sections 61-12C-4 and 61-12C-6 NMSA 1978 (being Laws 1991, Chapter 147, Sections 4 and 6, as amended) are repealed.

Section 21. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. \_\_\_\_\_



