

CHAPTER 452 MESSAGE THERAPY

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§452-1 Definitions. For the purpose of this chapter, the following definitions shall be adopted:

"Board" means the board of massage therapy created under this chapter.

"Massage", "massage therapy", and "Hawaiian massage" commonly known as lomilomi, means any method of treatment of the superficial soft parts of the body, consisting of rubbing, stroking, tapotement, pressing, shaking, or kneading with the hands, feet, elbow, or arms, and whether or not aided by any mechanical or electrical apparatus, appliances, or supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in this practice. Any mechanical or electrical apparatus used as described in this chapter shall be approved by the United States Food and Drug Administration.

"Massage therapy establishment" means premises occupied and used for the purpose of practicing massage therapy or massage therapy training; provided that when any massage therapy

establishment is situated in any building used for residential purposes, the massage therapy establishment premises shall be set apart and shall not be used for any other purpose.

"Massage therapist" means any person who engages in the occupation or practice of massage for compensation.

"Massage therapist apprentice" means any person who engages in the occupation or practice of massage under the direct supervision of a sponsoring massage therapist who is employed by or registered with an approved massage establishment.

"Massage therapist student" means any person who engages in the study or practice of massage therapy who is under the direct supervision of the teacher in a school setting.

"Principal massage therapist" means a massage therapist designated by an establishment or an out-call massage service as the person in charge.

§452-2 License required. (a) It is unlawful for any person in the State to engage in or attempt to engage in the occupation or practice of massage for compensation without a current massage therapist license issued pursuant to this chapter.

(b) A massage therapist apprentice who has a permit, or a massage therapist student under the direct supervision of a teacher in a massage school setting, is also permitted to engage in or attempt to engage in the occupation or practice of massage.

§452-3 Massage therapy establishments to be licensed. No massage therapy establishment shall be operated unless it has been duly licensed as provided for in this chapter.

§452-4 Creation of state board; qualifications. (a) There is established within the department of commerce and consumer affairs for administrative purposes a state board of massage therapy consisting of five members.

(b) Three members shall have at least three years of practical experience as licensed massage therapists, who shall be actively employed as massage therapists, and two shall be public members.

(c) Board members affiliated with any school teaching massage or any apprenticeship or other massage therapy training program shall disclose that affiliation and shall at all times adhere to the provisions of chapter 84 and the interpretations of that chapter by the state ethics commission.

§452-5 REPEALED.

§452-6 Powers and duties of the board. (a) The board shall adopt rules pursuant to chapter 91 for the purposes of this chapter.

(b) In addition to any other powers and duties authorized by law, the board may grant, or upon proof of violation of this chapter or the rules adopted by the board governing the practice under this chapter, revoke, suspend, or refuse to renew a license as provided in this chapter.

(c) The board shall adopt rules pursuant to chapter 91 relating to massage therapist apprenticeship and training including rules establishing qualifications for apprenticeship permits and

training programs and the requirements to be met by massage therapist apprentices prior to taking the massage therapist license examination.

(d) The executive secretary, under the direction of the board, shall issue subpoenas for the attendance of witnesses before the board with the same effect as if the subpoenas were issued in an action in the circuit court, and shall, under the direction of the board, administer oaths in all matters pertaining to the duties of the executive secretary's office or connected with the administration of the affairs of the board. Disobedience of a subpoena and false swearing before the executive secretary or the board shall be attended by the same consequences and be subject to the same penalties as if the disobedience or false swearing occurred in an action in the circuit court.

§452-7 REPEALED.

§452-8 REPEALED.

§452-9 Records of board. The board shall keep a record of all of its proceedings and activities including all applications, and the action taken thereon. The books and records of the board shall be prima facie evidence of matters therein contained. The provisions of chapter 92F shall prevail in the disclosure of information maintained by the board.

§452-10 REPEALED.

§452-11 Assistance to board. The board may call to its aid any person or persons of established reputation and known ability in their profession, for the purpose of conducting examinations, inspection, and investigations of all persons affected by this chapter.

§452-12 Application for examination. Each person who desires to practice the occupation of massage therapist shall file with the board a written application on a form prescribed and supplied by the board, and shall submit such credentials as may be required by this chapter or the rules adopted by the board, and shall also pay the board the required fees.

§452-13 Requisites for admission to examination and licensing of massage therapists and massage therapy establishments. (a) The executive secretary of the board shall determine the sufficiency of the preliminary qualifications of applicants for admission to examination and licensing. The executive secretary shall require that:

- (1) A nonrefundable application fee shall be paid to the board at the time of the application.
- (2) The examination fee shall be refunded only if the applicant is found not qualified to take the license examination.

- (3) An applicant for examination shall have completed academic training in anatomy, physiology, structural kinesiology, and the theory and demonstration of massage, which is not confined to any specific system or method of massage therapy, spent at least six months as a massage therapist apprentice or massage therapist student in a school approved by the board, and met all other requirements set for apprentices or students by the board pursuant to section 452-6(c).
- (b) An applicant desiring to license a massage therapy establishment shall file with the board a written application on a form prescribed and supplied by the board, and setting forth that the applicant has complied with all of the requirements in a manner and detail as may be required by the rules established by the board. A license fee shall be paid to the board together with the application fee.

§452-14 Examination. The department of commerce and consumer affairs or the board may contract with professional testing services to prepare, administer, and grade the examination for applicants as may be required for the purposes of this chapter. The examination of applicants for a license to practice massage shall be conducted under rules prescribed by the board and shall consist of a written examination which is not confined to any specific system or method and which is consistent with the practical and theoretical requirements of the occupation as provided by this chapter.

§452-15 Licenses. If an applicant for an examination for massage therapist passes the examination to the satisfaction of the board, the board shall issue a license to that effect, signed by the chairman. The license shall be evidence that the person to whom it is issued is entitled to follow the practice stipulated therein as prescribed in this chapter. The license shall not be transferable and shall be conspicuously displayed in the place of business or employment.

§452-16 Renewal of license; fees. Massage therapist and massage therapy establishment licenses shall expire on June 30 of each even-numbered year following the date of issuance unless renewed for the next biennium. These licenses may be renewed by filing an application therefor, accompanied by a renewal fee. The application shall be made between May 1 and June 30 of each even-numbered year. Failure to apply for renewal as provided in this section shall constitute a forfeiture of the license as of the date of expiration. Any license so forfeited may be restored within one year after expiration upon the filing of an application in the same manner and payment of a penalty fee in addition to all delinquent fees. Thereafter, the person shall apply as a new applicant and the board may require the person to take and pass the examination and satisfy all requirements for the examination, including training, if the board is not satisfied that the person possesses current knowledge and skills for the practice of massage therapy.

§452-17 Fees. (a) The fees for application, licensing, and other registrations shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and shall be paid in advance and deposited with the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o).

(b) Every applicant who is required by the board to be examined shall pay an examination fee as provided in rules adopted by the director pursuant to chapter 91. The examination fee may be paid directly to the testing agency by the director or the examinee or deposited with the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o).

§452-18 Sanitary rule. The department of health shall prescribe such sanitary rules as it deems necessary, with particular reference to the precautions necessary to be employed to prevent the creating and spreading of infectious and contagious diseases.

§452-19 Penalties. (a) Any person who practices massage or maintains a massage therapy establishment, or acts in any capacity wherein a license is required by this chapter, without a license provided for in this chapter, shall be guilty of a petty misdemeanor.

(b) Any owner, operator, manager, or licensee in charge of or in control of a massage therapy establishment who knowingly employs a person who is not licensed as a massage therapist or who has not received a permit as a massage therapist apprentice as provided in this chapter, or who allows an unlicensed person to perform, operate, or practice massage is guilty of a misdemeanor.

§452-20 REPEALED.

§452-21 To whom provisions in this chapter shall not apply. Nothing in this chapter shall prohibit service in case of emergency, or domestic administration, without compensation, nor services by persons holding any valid license, permit, or certificate dealing with the healing arts, nor services by barbers, hairdressers, cosmeticians, and cosmetologists lawfully carrying on their particular profession or business under any existing law of this State.

§452-22 REPEALED.

§452-23 Advertising. (a) It is a misdemeanor for any person, including a person who is exempt by section 452-21 from this chapter, to advertise with or without any limiting qualifications as a massage therapist unless the person holds a valid license under this chapter. Further, it shall be a violation of this chapter for any person to advertise:

- (1) As a massage therapist or a massage therapy establishment unless the person holds a valid license under this chapter in the classification so advertised;
- (2) By combining advertising for a licensed massage therapy service with escort or dating services;
- (3) As performing massage in a form in which the person has not received training, or of a type which is not licensed or otherwise recognized by statute or administrative rule;

- (4) By using in any mass distribution, print advertisements such as newspaper advertisements, or telephone directory listings, pictures depicting the human form other than hands, wrists, and forearms;
- (5) By using any term other than therapeutic massage or massage therapy to refer to the service; or
- (6) By referring to any personal physical qualities of the practitioner.

"Advertise" as used in this section includes, but is not limited to, the issuance of any card, sign, or device to any person; the causing, permitting, or allowing of any sign or marking on or in any building, vehicle or structure; advertising in any newspaper or magazine; any listing or advertising in any directory under a classification or heading that includes the word "massage therapist" or "massage therapy establishment"; or commercials broadcast by airwave transmission.

(b) A massage therapist or massage therapy establishment may advertise in print or broadcast medium, as defined in subsection (a) only if the massage therapist or massage therapy establishment includes in the advertisement or listing the massage therapist's or massage therapy establishment's applicable and current license number, and provides written evidence of the number's validity to the publisher or producer of the advertising medium. The publisher or producer of a print or broadcast advertising medium shall refuse to publish or broadcast an advertisement or listing for a massage therapist or massage therapy establishment that does not comply with the provisions of this subsection. A publisher or producer who obtains a signed statement from the massage therapist or massage therapy establishment which states that the massage therapist or massage therapy establishment has read the text of the advertisement or listing, has an applicable and current massage therapist or massage therapy establishment license for the services advertised, has included all applicable and current license numbers in the advertisement or listing, and is aware of civil and criminal penalties for advertising as a massage therapist or massage therapy establishment without a valid license, shall be entitled to a rebuttable presumption of compliance with this subsection.

(c) Upon entry of either a final order of the board of massage therapy pursuant to chapter 91, or a judgment by a court of competent jurisdiction, finding that a massage therapist or massage therapy establishment has advertised in violation of section 452-2 or this section, the public utility furnishing telephone service to the massage therapist or massage therapy establishment shall disconnect the telephone number contained in the advertisement or listing.

(d) A publisher or producer of a print or broadcast advertising medium shall not be liable in any suit, action, or claim arising from refusal to list or accept advertisements pursuant to subsection (b). Good faith compliance by a public utility with subsection (c) is a complete defense to any civil or criminal action brought against it arising from the termination of telephone service.

§452-24 Disciplinary actions. (a) In addition to any other actions authorized by law, the board may take disciplinary action against any licensee, including, but not limited to, revocation, suspension, fine, or a combination thereof, or may refuse to grant or renew a license for any cause authorized by law, including but not limited to the following:

- (1) Procuring a license through fraud, misrepresentation, or deceit or permitting an unlicensed person to perform activities which require a license under this chapter;
- (2) Conviction of any crime involving moral turpitude;
- (3) Practicing massage while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;

- (4) Failure to display a license as provided in this chapter;
 - (5) Professional misconduct, gross carelessness, or manifest incapacity in the practice of massage;
 - (6) Violating this chapter or the rules adopted pursuant thereto;
 - (7) Failing to comply with the board order;
 - (8) Any other conduct constituting fraudulent or dishonest dealings;
 - (9) Making a false statement on any document submitted or required to be filed by this chapter; or
 - (10) Any representation, or the use of any designation, which states or implies that the person is able to perform a technique of massage which the person is not trained to perform.
- (b) Any person who violates any of the provisions of this chapter or the rules adopted pursuant thereto shall be fined not less than \$100 nor more than \$1,000 for each violation.

[§452-25] Right of injunction. The department of commerce and consumer affairs, in addition to any other remedies available, may apply to a court having competent jurisdiction for an injunction to restrain any violation of this chapter.

[§452-26] Cumulative remedies. The remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

§452- Citation for licensee violations; fines. (a) In addition to any other remedy available under this chapter, the department of commerce and consumer affairs may issue a citation to any person who holds a massage therapist or massage therapy establishment license issued by the board, or is designated the principal massage therapist by the massage therapy establishment, for any of the following violations of this chapter or the rules adopted pursuant to this chapter and chapter 91:

- (1) Failure of a massage therapy establishment, during all hours of operation, to conspicuously display a current massage therapy establishment license and the current licenses and permits of all persons employed by the massage therapy establishment who engage in the practice of massage therapy;
 - (2) Failure of a principal massage therapist to ensure that every massage therapist apprentice who engages in the practice of massage therapy at the massage therapy establishment wears a conspicuously placed name tag stating the massage therapist apprentice's name and the word "apprentice" during all hours of operation;
 - (3) Operation of a massage therapy establishment without the presence of a principal massage therapist or a licensed designee during all hours of operation; or
 - (4) Failure of a massage therapist or massage therapy establishment to include the respective massage therapist's or massage therapy establishment's current license number in any advertisement pursuant to section 452-23 (b).
- (b) Each citation:

- (1) Shall be in writing and describe the basis of the citation, including the specific statute or rule violated;
 - (2) May contain an order of abatement and the assessment of a fine in the amount of \$250 for each violation;
 - (3) Shall be served on the licensee by personal service; and
 - (4) Shall inform the licensee that the licensee may submit a written request to the board for a hearing to contest the citation, within twenty calendar days from the service of the citation.
- (c) If the licensee timely submits a written request to the board for a hearing, the board may designate a hearings officer to conduct the hearing in accordance with chapter 91.
- (d) If the licensee does not timely submit a written request to the board for a hearing, the citation shall be deemed a final order of the board.
- (e) Failure of a licensee to pay any assessed fine within thirty calendar days, unless the licensee contests the citation, may result in further disciplinary action by the board.